

Economic Times

9 March, 2007

Can there be Competition in Infrastructure?

By

Vinod Dhall¹

Traditionally, infrastructure services across the world have been provided by governments. These include airports, ports, electricity, roads, railways and telecom. With the exception of telecom, the bulk of these facilities in India are still owned by government. Only recently, these sectors have been opened to private players.

In telecom, there are numerous private parties competing with each other. In electricity, private players have entered primarily in generation and also in distribution, e.g., in Delhi. In ports, private operators have set up terminals in existing ports, or developed private ports, all by themselves, e.g. at Jawaharlal Nehru Port Trust and Pipava port in Gujarat. In roads, there are several toll roads assigned to private parties by states or by NHAI. Recently, private entry has taken place in the airports with the award of modernization of Delhi, Bangalore, Hyderabad and Mumbai airports to private entities. In water supply, there has been no private entry so far.

¹ The author is Member, Competition Commission of India. These are his personal views. He is author-editor of “*Competition Law Today: Concepts, Issues and the Law in Practice*”, Oxford University Press.

Infrastructure has strong monopolistic features - a natural monopoly, or a network industry. Where a particular facility is considered essential, competition authority can order compulsory access on reasonable terms. The essential facility doctrine is recognised in most competition regimes. In Australia, it has been incorporated specifically.

Some concession agreements awarded for roads and ports have stipulated that no competing facility would be set up by government within a certain number of years. This can perpetuate the monopoly of the concessionaire during that period; instead the concession agreement could give the right to government to set up the competing facility once a certain level of capacity utilization has been reached.

Clauses can be stipulated which would prevent discrimination in favour of related parties. For example, at Delhi airport, hitherto owned by AAI, Indian Airlines enjoyed a separate and large terminal while private airlines were crowded together into a smaller terminal. Such treatment could be a violation under the Competition Act. There is a case involving Rome Airport where it denied access to a competing caterer. This too could be a violation under competition law.

Sector regulators have powers to determine tariff; instead a cap on tariff can be fixed so as to allow competition among parties to offer prices below the cap. This can be ensured, for example, by the Tariff Authority for Major Ports.

In the case of mergers in the infrastructure sector, issues could arise about their impact on competition. A long list of factors to be considered in this context are listed in Section-20 of the Competition Act which the Competition Commission must consider.

Finally, to ensure free competition, it is important to separate the functions of operation, regulation and policy making. For example, it may be difficult to ensure fair competition, if government which has policy making role, is also the regulator and the provider of the services.

(Author is CCI member. Views are personal)
