



Evolving Competition Laws in the Port Sector

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Structure of the Presentation



- **Characteristics of competition in Indian Ports**
- **Government perspective**
- **Private sector concerns**



Characteristics of competition in Indian Ports

Competing Entities in Indian Ports Sector



	Major Ports		Minor Ports	
	Common user	Captive	Common user	Captive
Common User facility –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

Competition laws need to address all possible types of competition

Competing Entities

Competing Entities in Indian Ports Sector



	Major Port Terminals		Minor Ports	
	Common user	Captive	Common user	Captive
Common User Terminals –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

- Tariffs regulated through TAMP
- Fixed concession Period in case of PPP
- Part of revenue and waterfront royalty to be paid to port authorities

Regulations presently address this type of competition

Competing Entities

Competing Entities in Indian Ports Sector



	Major Ports		Minor Ports	
	Common user	Captive	Common user	Captive
Common User Terminals –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

- Loss of revenue to terminal operator
- Unlike common user facilities, captive users only need to pay waterfront royalty
- Rebate on waterfront royalty in case of Captive minor ports

Need for coordination in captive port policies of state and central sector ports

Competing Entities

Competing Entities in Indian Ports Sector



	Major Ports		Minor Ports	
	Common user	Captive	Common user	Captive
Common User Terminals –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

Private minor ports
Have more favorable
concession terms

Minor ports have
tariff freedom
unlike Major ports

Need to address asymmetry in royalties between common user facilities at major & minor ports

Competing Entities

Competing Entities in Indian Ports Sector



	Major Ports		Minor Ports	
	Common user	Captive	Common user	Captive
Common User Terminals –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

- Concession terms differ state-wise
- Different waterfront Royalty & rebate
- Tariff freedom with minor ports nearly in all maritime states

Need to address asymmetry in royalties between common user ports in different states

Competing Entities

Competing Entities in Indian Ports Sector



	Major Ports		Minor Ports	
	Common user	Captive	Common user	Captive
Common User Terminals –Major ports				
Captive Terminal Major ports				
Common User Minor ports				
Captive Minor port				

•Loss of revenue due to captive ports is more pronounced.

•Too many captive Jetties can undermine viability of minor port

•Economies of scale

Need for coordinated captive ports policy between maritime states & UT



Competing Entities



Government perspective



- **Tariff Authority of Major Ports**
 - Regulation of returns at major ports
- **Competition Act, 2002**
 - Eliminate practices having adverse effect on competition
 - Protect consumer interest
 - Ensure freedom of trade
- **Competition Commission of India (CCI)**
 - Established under Competition Act, 2002
 - References can be made to and by CCI. CCI opinion is advisory
- **Draft Major Port Regulatory Authority Act, 2009**
 - To replace TAMP with a more empowered regulatory body
 - Govern performance & service parameters along with the Tariff

Draft Policy on Prevention of Monopoly



- **Coverage**
 - Award of PPT Projects by Major ports in India
- Existing concessionaire at a major port cannot participate in the bidding process of consecutive terminal for same cargo.
- **Capping number of PPP projects:**
 - Existing concessionaire can be allowed to participate in bidding provided with the award of that project the concessionaire will not have more than 2 PPP projects (incl. SEZs) within 100 kms of port limits.



- **Intra-port competition**
 - Ensures at least two distinct PPP operators for a cargo type in case of multiple PPP terminals
- **Competition within a cluster**
 - Capping number of port-BOT projects in region of 100kms of port limits
 - Ensures competition within a cluster of ports which compete for cargo in same hinterland

Issues not addressed in the draft policy



- **Size of investments**
 - The policy puts a cap on the number of BOT projects in cluster without prejudice to size of investments in those projects
- **Inter - Port Competition**
 - The cluster of ports is defined by the distance and not by the hinterland they cater to.
- **Competition within a cluster of ports**
 - Capping number of port-BOT projects in a cluster is one sided state government are not obliged to follow similar principles
- **Financial Investors perspective**
 - Can the same financial investor have stakes in competing terminals ?

Need for the holistic view towards competition and coordination between state and central authorities.



Private sector concerns

Asymmetry in the Regulatory Framework



- **Regulations Govern only Major Ports**
 - Terminals in major ports are subject to tariff fixation
- **Minor ports have greater operational and commercial freedom**
 - Freedom to charge market determined tariff for minor ports
- **Water-front royalties**
 - Up-to 80% rebate in waterfront royalties in minor ports

Asymmetry in the concession agreements



- **High sunk costs in port projects warrant long term protection of the investments**
- **State government subscribe to comprehensive harbor concept**
 - Concession agreement guarantees no new captive facilities or Greenfield concessions in the vicinity of the port
 - Terminals at major ports are subject to threat of captive / common user port in the vicinity in the state government's maritime boundary
- **Concession period**
 - Concession period extending up-to 50 years in case of green-field projects in minor ports

Asymmetry in regulations & concession might put major port projects at dis-advantage vis-à-vis minor ports.

Case Study – Arbitrage in royalty payments



- **The operator of one of the terminals major ports is also licensee for a minor port handling similar cargo.**
- **Both the terminals cater to similar tertiary hinterland**
- **As the royalty payments in case of minor ports are significantly lower than those at major port**
- **Licensee can achieve higher operational efficiencies by coordinating the flow of cargo through the two ports**
- **Loss of revenue to major port authority in-case of supply out-stripping the demand**



Thank You
