Overview of the framework

Economic growth and trade expansion in recent years have enhanced the relevance of railways as a crucial element in the globalisation of the Indian economy. In particular, this sector has witnessed significant interest from both domestic as well as foreign investors following the policy initiatives taken by the Government of India to promote public private partnerships in infrastructure.

Railways key to global competitiveness

At present the total container traffic in India is about 5 million TEUs, including international and domestic cargo. Of this, the railways handle about 40 per cent leaving considerable scope for increase in rail borne container traffic.

With a view to attracting a greater share of container traffic and introducing competition in rail freight services, the Ministry of Railways announced a liberal policy, in January, 2006, permitting private entities to undertake movement of freight on privately owned container trains. The scheme was opened to all Indian companies including subsidiaries of foreign companies registered in India.

Liberalisation of rail freight services

For private operation of container trains on Indian Railways' network, a precise policy and regulatory framework has been spelt out in the Model Concession Agreement (MCA) contained in this volume. This framework addresses issues which are typically important for limited recourse financing of infrastructure related projects, such as mitigation and unbundling of risks; allocation of risks and rewards; symmetry of obligations between contracting parties; precision and predictability of costs and obligations; reduction of transaction costs; force majeure; and termination. It also address other important concerns such as user protection and transparent and fair procedures. The salient features of the model agreement are as follows.

Need for a framework

Concession period

A concession period of 20 years has been proposed with a provision for extension of 10 years on the same terms and conditions. The period of concession would start from the date of signing of the agreement.

Concession period should be sufficiently long

Scheduling of trains

The MCA provides for non-discriminatory scheduling of trains as among different operators, public and private. All container trains will be scheduled on a first-come-first-served basis, thus providing a level playing field to all operators including the incumbent public sector operator. There is no

Non-discriminatory scheduling rights are essential

restriction on the frequency and number of trains that a Concessionaire can offer to the Railway Administration for haulage.

Categories of routes

Four categories of routes have been defined for the purpose of grant of concession. While Category I covers the entire rail network, the other routes are defined on the basis of connectivity to specified ports.

Entry Fee

An entry fee of Rs. 50 crore (US $ 12 million) has been proposed for the Category I concession and Rs. 10 Crore each for all other categories.

Entry barriers should be minimal

Risk allocation

As an underlying principle, risks have been allocated to the parties that are best suited to manage them. Project risks have, therefore, been assigned to the private sector only to the extent it is capable of managing them. The transfer of such risks and obligations to the private sector would also increase the scope for innovation, leading to efficiencies in costs and services.

Risk allocation should be rational

Commercial risks have been allocated to the Concessionaire, as it is best suited to manage them. Operation and maintenance risks associated with the railway network as well as the movement of trains thereon alongwith all direct and indirect political risks have been assigned to the Railways Administration.

Right of substitution

Project assets do not constitute adequate security for lenders. It is the project revenue streams that constitute the mainstay of their security. Lenders would, therefore, require assignment and substitution rights so that the concession can be transferred to another company in the event of failure of the Concessionaire to operate the project successfully. The agreement accordingly provides for such substitution rights.

Lenders should have the right of substitution

Force majeure

The agreement contains requisite provision for dealing with force majeure events. In particular, it affords adequate protection to the Concessionaire against political action that may have a material adverse effect on the project.

Termination

In the event of termination, the Agreement provides for an optional sale of wagons to the Railway Administration. Termination payments have been quantified precisely as compared to the complex formulations in most

Termination payment should be fair and adequate

agreements of this nature. Political force majeure and defaults by the Railway Administration are proposed to qualify for adequate compensatory payments to the Concessionaire and thus guard against any discriminatory or arbitrary action by the Government. Termination payment of an amount equal to 150 per cent of the registration fee and 120 per cent of the Depreciated Replacement Value of the Concessionaire's wagons has been proposed in the event of default by the Railway Administration.

Wagons and containers

Maintenance obligations should be specified

The Concessionaire may own its wagons but not necessarily the containers being carried on them. Provision has also been made for the Concessionaire to offer idle wagons to the Railway Administration for use at mutually agreed terms and conditions. For the present, all wagons would be maintained by the Railway Administration and the Concessionaire would provide the requisite wagon examination facilities inside its rail terminal. Wagon maintenance charges would be included in the haulage fee. As the industry matures, wagon maintenance could also be undertaken by other approved entities.

Provision of locomotives

Locomotives should be provided on a non-discriminatory basis

Locomotives would be provided by the Railway Administration to haul trains on a non-discriminatory basis on payment of notified charges. For delay in supply of locomotives beyond twelve hours, the Authority would provide a rebate equal to 2 per cent of the haulage charges payable by the Concessionaire.

Haulage charges

Haulage charges should apply to all

Haulage charges for movement of containers on the railway network informally would be prescribed by the Railway Administration from time to time, and would be applicable to all operators on a non-discriminatory basis.

Change in technology

Concessionaire should conform to technology upgradation

Provision has been made for accommodating changes in technology. In the event that the Railway Administration makes any modification in technology or specifications, the Concessionaire is obliged to carry out the relevant modifications at its own cost. If double stack container operation is mandated for specific routes, the Concessionaire shall, within a reasonable period of time upgrade and / or acquire new wagons and also equip its rail terminals for handling such trains at its own cost.

User charges

The Concessionaire is entitled to levy and recover charges from its customers/users for the services provided. The Railway Administration would not exercise any control over such levy or collection of charges.

Concessionaire should be free to fix the user charges

Haulage of notified commodities

The Railway Administration would haul Concessionaire trains carrying notified commodities at the tariff specified for such commodities.

Miscellaneous

The MCA also addresses issues relating to dispute resolution, suspension of rights, change in law, insurance, defects liability, indemnity, redressal of public grievances and disclosure of project documents.

Conclusion

Together with the Annexes, the proposed framework addresses the issues are likely to arise in financing and operation of container trains by private entities. The proposed regulatory and policy framework contained in the MCA is a pre-requisite for attracting private investment with improved efficiencies and reduced costs, necessary for accelerating growth.

A fair and balanced framework is a pre-requisite for healthy competition