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## Introducing Competition in Container Movement by Rail

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## Introducing Competition in Container Movement by Rail<sup>1</sup>

### Abstract

*Container movement by rail was a monopoly of Indian Railways (IR) until recently and its subsidiary, Container Corporation (CONCOR) was the sole operator of container trains. Entry of other entities in 2007 has been driven by larger public policy concerns. In the process, issues such as resistance of the incumbent, erection of entry barriers, denial of level playing field, use of a closely held organization as a consultant, and conflicting roles of IR as licensor, regulator, service provider, and operator came into sharp focus. This paper attempts to review the process starting from the policy announcement (February 2005) to evolution of a Model Concession Agreement (January 2007) and shows how policies were influenced by the incumbent to restrict competition by creating barriers on the one hand and how an alternate view provided by external entities, like the Planning Commission and other non-IR stakeholders significantly altered the course of action leading to entry of a large number of competing players.*

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## Introducing Competition in Container Movement by Rail

### I. Background

1. The Minister of Railways (MR), in his budget speech on 26<sup>th</sup> February, 2005, had announced that the Ministry of Railways (MoR) and the Government of India would permit private operators to run container trains. At the time of this announcement, all container train operations on Indian Railways (IR) network were being carried out solely by Container Corporation of India Ltd (CONCOR), a listed subsidiary of IR. A brief background of CONCOR is given in Exhibit 1.
2. A policy to allow operators other than CONCOR was also announced in 1994. The operators were to develop their own terminals and rolling stock. Traffic was proposed to be moved by block rakes between Inland Container Depots (ICDs) and gateway ports. However, the policy did not clearly bring out the role of CONCOR vis-à-vis new operators and the guidelines were found to be restrictive in implementation.
3. Central Warehousing Corporation (CWC) obtained clearance to run container trains in 2001. It, however, waited till 2005 to take the matter forward. In November 2004, IR also permitted Pipavav Rail Corporation Ltd (PRCL) to run container trains between Pipavav port and 15 hinterland CONCOR ICDs spread across the country. However, there was resistance from CONCOR and prior to commencement of activities, the move was reversed when MoR decided to come up with a separate policy.
4. As the policy was not sufficiently attractive and prospective entrants were apprehensive of CONCOR's role, it failed to draw any response. It was in this context that the MR announced a fresh initiative in his budget speech of February 2005, *"With the globalization of the Indian economy and spurt in imports and exports, the container traffic is expected to grow exponentially. It has been assessed that the growth will be of the order of 15%. In order to meet the growing demand for container trains, organizations other than Container Corporation of India will also be considered for movement of container traffic."* This announcement was widely attributed to directions from the Prime Minister's Office after the new government assumed office in May 2004.
5. Subsequent to the budget announcement, in a meeting of the Committee on Infrastructure (CoI) held on 12<sup>th</sup> May, 2005, under the chairmanship of the Prime Minister, it was decided that MoR would prepare a scheme to allow entry to various operators. The target date for finalising the scheme was set at August 2005. In the meanwhile, Member (Traffic), Railway Board (MT) (also the ex-officio Chairman of CONCOR) framed a detailed policy but the MR desired that the subject be studied by a professional agency. Accordingly, RITES, a

multidisciplinary consultancy organisation under the administrative control of MoR, was awarded the study on 10<sup>th</sup> June, 2005. A brief background of RITES is provided in Exhibit 2. The scope of work given to RITES, *inter alia*, included:

- Identification of capacity constraints on container carrying routes of IR's network
- Formulation of policy guidelines and other requirements for selection of new operators
- Assessment of minimum level of investments to be made by prospective operators in rail infrastructure (other than terminal and rolling stock) and likely return thereon
- Examination of desirability of levying license fee from the prospective operators.

## II. RITES Report

### *Projections and assessment*

6. RITES submitted its first draft to the (Railway Board) RB on 18<sup>th</sup> July, 2005. This was followed by the draft final report on 2<sup>nd</sup> September, 2005, before finalising it on 15<sup>th</sup> September, 2005 in consultation with the RB.
7. RITES projected 30% of the total container traffic to be carried by IR in 2014-15, starting from their current estimate of 21%. In respect of port related traffic for IR, this implied an increase from less than 1 million TEUs in 2004-05 to about 4 million TEUs projected for 2014-15.
8. RITES also studied 28 container rail corridors to assess the capacity constraints likely to arise in meeting the growing traffic requirements. RITES report identified a number of sections which were or are likely to become saturated on each corridor. It also assessed the capital costs required for alleviating such constraints. RITES recognised that IR was planning to develop Dedicated Freight Corridors between Delhi-Mumbai and Delhi-Kolkata and, once completed, these two corridors would create adequate capacity.

### *Market feedback*

9. RITES interacted with several players for market feedback. It was reported that the users felt that there was no benchmark available to evaluate CONCOR's services as they had no alternative. It concluded that "*perhaps CONCOR has reached its optimal level of operations and in the absence of any competition, may not be able bring about the desired level of efficiency and growth in its container business*".

10. Almost all agencies welcomed the initiative to allow entry of new operators in container train movement as they expected competition in container train operation to benefit shippers. Some of the suggestions were:

- A level playing field vis-à-vis CONCOR is essential.
- IR must provide guarantee of transit times and introduce a system of penalties and rewards.
- The entire network ought to be available to the private operator rather than limiting them to one segment or a portion of the network.
- Since investments are required in terminals and rolling stock (wagons), they should not be asked to invest further in rail infrastructure.
- If a licence fee is charged, it should be nominal and preferably included in the haulage charges.

### ***Recommendations***

#### *Entry requirements*

11. For the new container operators, RITES argued that “*the requirements should be such that it deters frivolous contenders.*” RITES recommended the entry requirements based on background and financial capability in terms of networth/turnover, availability of rail access, level playing field, trade perceptions and expectations, likely share of rail in container freight market and safeguarding IR interest. RITES stated that the guidelines proposed in the report were meant for export and import traffic only.
12. On rail access, RITES recommended that the interested operator must have proper rail access (terminal) in the hinterland location for handling container trains. Alternatively, the operator should have an agreement or MOU with an existing ICD for its use. In the absence of either option, the operator should undertake to develop an ICD in two years time. Recognizing that no one other than CONCOR might have rail linked facilities, RITES recommended that IR should encourage the development of common user rail terminals with private sector participation. The rates charged by such common user facilities could be regulated as was the practice in UK. Thailand also had a common user facility operated by the State Railways.

*Regulating entry*

13. For entry of operators, RITES classified and grouped the ports based on existing and anticipated traffic volume. The most important corridor of JNP/Mumbai Port – Delhi Area was classified as a separate category. RITES proposed that any new entrant would have to select one or more routes from among the categories on which it wanted to operate. Table 1 gives the areas of operation of each category.
14. RITES recommended varying minimum traffic commitment and entry fee for each route depending upon the category to which the route belonged (Table 1). The minimum traffic commitments might be achieved by the new entrant within one year and in case of any shortfall, the operator would be liable to pay IR the haulage charge based on the minimum commitment. RITES recommended regulating the entry of new operators owing to capacity limitation on certain corridors serving the ports, with entry fee based on bids. The highest bidder would be allowed access to a particular route. As and when the capacities became available, the existing operators could be given opportunity to offer additional traffic or new operators might be allowed by IR on the same route.

Table 1: Entry fee proposed by RITES

Category	Areas of Operation	Minimum trains per week (pairs per week)	Traffic level most likely to materialise	Proposed Entry Fee (Rs crore)
I	JNP/Mumbai Port– Delhi Area rail corridor	7		130
II	Rail corridors serving JNP and its hinterland other than Delhi Area	4	6	70
III	Rail corridors serving Pipavav, Mundra, Chennai, Ennore, Vizag and Kochi and their hinterland	3	5	45
IV	Rail corridors serving ports of Kandla, New Mangalore, Tuticorin, Haldia/Kolkata, Paradip and Mormugao and their hinterland	1	2	15

15. RITES proposed the entry fee on the basis of twin criteria, namely, the '*growth in the rail share of container traffic, with adequate financial gains to IR*', and '*to present an attractive financial scheme to prospective operators, providing a reasonable return on their investment*'. The investment would include rolling stock and terminal, and the entry fee. The entry fee was worked out based on expected revenues while allowing 10-12% return on investment. However, no details for the estimated revenue and costs were provided in the report.
16. According to the report, "*the entry fee will be charged on the basis of per route under each category. For example, category II routes such as Ludbiana-JNP or Ahmedabad-JNP will be treated as separate routes for the purpose of entry fee. In case an operator wants to operate on another route (other than the original route) in the same category, he will be required to pay 50% of the entry fee for that category. However, in case the operator decides to run container trains in a different category other than the original category, he will be required to pay the full entry fee for the new route under the said category*". To make the scheme attractive, it proposed entry fee in stages. 30% was to be paid on receipt of permission to operate container trains; 30% at the end of one year of commercial operations; and 40% at the end of three years.
17. RITES proposed that in case the traffic levels exceeded the level for which the entry fee was assessed, the operator should share additional revenue with IR. In case an operator was to run a regular additional train, he should pay 10% extra haulage charge to IR. If the additional train was run occasionally, the operator should pay 15% extra haulage charge.

#### *Commitment to and from IR*

18. RITES spelt out the expected commitments from new entrants. These included, amongst others, adherence to accounting and operational procedures, approval of designs, maintenance of rolling stock and access to premises. RITES also outlined certain commitments required from IR to enable the success of the policy. It proposed that IR should consider making unused assets, such as sheds and sidings, and surplus land available to the private parties on lease on reasonable terms. This was seen as important for quick entry.

### **III. Planning Commission's concerns on RITES' proposals**

#### *Inter-ministerial meeting*

19. Subsequent to award of the study to RITES, in a meeting taken by Principal Secretary to the Prime Minister in June 2005, it was decided that inter-ministerial consultations were required before the new policy was finalised. Accordingly, in a meeting on 6<sup>th</sup> October, 2005, the

RITES report was discussed. In the meeting, the Advisor to Deputy Chairman, Planning Commission (ADC) also circulated a paper on the policy for container rail services including comments on RITES' proposals. The debate essentially revolved around issues relating to 'entry barrier', 'level playing field vis-à-vis CONCOR, the incumbent', and 'protection of user interests'.

#### *Entry barriers*

20. The Planning Commission (PC) representative in the meeting described the entry fee proposals as a 'double jeopardy' since CONCOR already had monopoly power and, therefore, enjoyed first mover advantages. As compared to CONCOR which was well entrenched, the new entrants would not only have to take risks associated with large investments in rolling stock and terminal(s), business development, demand growth and competition, they would also have to commit to pay an entry fee upfront. In case they had to bid for a constrained route, they might also face the 'winner's curse'. Further, the issue of increased risks due to the charging of route specific entry fee within a single category was also discussed. All this would result in creating potent **entry barriers** for prospective operators. Most of the members of the committee agreed that IR should come up with an alternative proposal if the objective was to protect its revenues. Such a proposal should ensure level playing field and should not end up creating entry barriers for protecting CONCOR's monopoly.

#### *Level playing field*

21. The representatives of Ministry of Commerce and Industry (MoCI), and PC were apprehensive of possible discrimination against new entrants and in the interest of a **level playing field**, suggested that, "*A provision should be included in the guidelines to ensure that private operators are treated at par with CONCOR. This is considered necessary because CONCOR, the track and the locos were all owned by MoR and there are risks of discrimination against the private operators.*"

#### *Users' interest*

22. The meeting also discussed the issue of likely competitiveness in the container services and **protection of users' interest**. The representatives of the MoCI and the Department of Shipping (DoS) expressed the fear of cartelization and felt that users' interest be protected by a regulator. The representatives of MoR and PC, however, felt that competition would automatically ensure fair charges for the users. It was also felt that the Competition Commission of India could act as the regulator in case of any grievance of users. Currently, prices were set unilaterally by CONCOR, possibly keeping in mind competition from the road sector.



23. The meeting decided that the concerns expressed by the participants be incorporated in the paper circulated by the ADC and circulated afresh. Based on the revised paper and with its own comments, the MoR would organize an inter-ministerial meeting. Subsequently, a meeting with stakeholders would also be organised prior to finalisation of the policy.

### *Revised paper by the PC*

24. The revised paper was circulated by ADC on 10<sup>th</sup> October, 2005. It noted that the fast pace of market growth warranted augmentation of capacity on a competitive basis. It would help not only in improving efficiency of transportation and of port infrastructure, but also in increasing the traffic carried by IR, thereby resulting in higher earnings. The paper went on to analyze the implications of RITES' proposals on promotion of competition as the policy objective.

### *Entry fee*

25. To promote competition in the expanding market for container movement, the paper argued that imposition of entry fee as recommended by RITES would hurt competition as new entrants would begin with several handicaps. Not only the case for entry fee was weak, but also the quantum of fee proposed was high. MoCI, DoS and PC were all opposed to imposition of entry fee, especially through bidding in respect of congested routes where demand exceeded available capacity. Promotion of competition was also in the interest of IR as it would increase the share of container movement by rail as compared to road. This would result in higher revenues for IR through haulage charge. If the idea of entry fee was motivated by the concerns relating to increased investment requirement by the IR due to rise in traffic volumes, then it should impose higher haulage charge or cess uniformly from all players rather than charging entry fee from new entrants.
26. The paper also examined the proposal of entry fee from the perspective of thwarting entry of '*frivolous players*'. It pointed out that any new entrant would have to own or lease a rail linked terminal and rail flat wagons for carrying containers, all approved by IR. The new operators would thus be captive customers of IR and would have invested considerable sums before commencing business. It was proposed that a registration fee/security deposit of Rs 1 lakh per rail flat wagon would be payable by the operator for 100 wagons. 90% of this amount would be refunded as and when the wagons enter commercial service. Thus, there would be no risk of entry of frivolous players. Moreover, frivolous players are not attracted to businesses where no capacity rights can be created and sold off or used for exercising monopoly power.

27. The paper suggested doing away with entry fee and that the new entrants be allowed transportation of containers over the entire network of IR without being tied down to a specific route, subject to operational feasibility. It also objected to demanding minimum traffic guarantees from the operators since IR would not incur any opportunity cost or capacity charge if an operator failed to provide traffic.

*Level playing field: 'First come first served' despatch of trains*

28. The paper emphasised that the terms and conditions offered to CONCOR should be formalised and be the same as those offered to new entrants. In particular, the paper suggested that the despatch of container trains should be on a '*first come first served*' basis subject to operational contingencies and constraints in a transparent manner to allay the fears of discriminatory treatment in favour of CONCOR. It stressed upon the need to ensure a level playing field in terms of owning/leasing rail linked terminals, utilisation of unused IR facilities, haulage charges, documentation and legal liabilities. It also suggested transit guarantees that IR should offer to the operators to be enforced through suitable premium/penalty payment clauses. Timetabled paths (a departure from the normal IR freight operations) were also recommended.

29. The operators were to be given full freedom for setting tariff vis-à-vis their customer (subject only to the Competition Commission against cartelisation or restrictive trade practices) and paying for damages. However, reimbursement from IR to the extent of IR's liability would be subject to the IR Act.

30. ADC sent another note on 22<sup>nd</sup> October, 2005 with further comments on the RITES report. In addition to arguments made in the paper, the note critiqued specific suggestions of RITES related to entry criteria, entry fees and revenue share, among others (Exhibit 3). It argued in favour of opening up the entire network to the operators, and to extend the scope from just export import cargo to include domestic cargo.

#### **IV. Response from the RB**

31. The RB responded to some of the concerns raised on the RITES report in a letter dated 18<sup>th</sup> October, 2005. According to the RB, the IR reserved the right to determine the freight rates including haulage charge. Although the freight rates had been falling, IR was the final authority in fixing the rates. Similarly, IR was not in a position to give guaranteed transit times and departures according to a fixed time table for the proposed private freight trains. Such commitments had not been given to any operator including CONCOR. The IR might

be in a position to consider guaranteed transit time and fixed timetable on the Dedicated Freight Corridors..

32. The letter mentioned that since many routes were carrying as much as 150% of their daily capacity in terms of number of trains, *“they will be able to permit a maximum of 1 to 7 trains per week per operator and that too for a limited number of operators depending upon the available capacity of that route”*. It argued that in case too many operators were interested in a route, the selection may be best done by bidding as in other sectors.
33. As regards the entry fee, RB argued that entry fee should be paid only by the new entrants. Examples from the telecom sector were cited by the RB, wherein *“though the new entrants were asked to pay for a license fee, the same was not levied on the existing operators: DOT and MTNL. Thus CONCOR should not be liable to pay an entry fee”*.

## V. Meeting with stakeholders

34. A meeting with stakeholders was called on 17<sup>th</sup> November, 2005. Prior to this meeting, PC had circulated a questionnaire to the stakeholders for inviting their opinion on entry fees, the categories of routes, the qualification criteria, the method of allocation of trains when the capacity was limited, and on the treatment of CONCOR with regard to entry fees. They were also given access to the RITES report. A variety of opinions emerged, but it was clear from all the private parties that no special treatment by way of exemption of entry fee or any other operational preference should be given to the incumbent, CONCOR. Exhibit 4 gives the summary of responses received from the prospective players and other stakeholders.

## VI. IMG meeting and the draft policy

35. In the IMG meeting on 24<sup>th</sup> November, 2005 with Chairman, RB, it was decided that the draft policy be finalised taking into account the views of stakeholders and the comments received from members. In a departure from RITES' proposal, domestic movement was added to the categories. The four categories as proposed in the RITES report were, however, retained.
36. According to the draft policy, any new entrant for category I routes would have to pay a non-refundable registration fee of Rs 50 crore. This would enable the entrant to operate on all routes including category I routes. In case the entrant wanted access to routes other than category I routes, the non-refundable registration fee would be Rs 10 crore *for each category*. This fee would be payable at the time of application and would be returned without interest in case the applicant was found ineligible. The draft policy did not envisage any restriction on

routes within a category or number of allowed trains. The permission would be valid for 20 years and could be extended by 5 years on payment of fee applicable at that time subject to satisfactory performance.

37. The terms and conditions spelt out in the draft policy laid down that the trains by the operators would be despatched on 'first come first served' basis in a non-discriminatory manner. The rolling stock would be procured by the operators based on IR approved design, and it would have to be inspected by IR as per the rules in force. Most of the other operational terms and conditions in the draft policy were similar to the RITES proposals.

## VII. The final policy

38. After the announcement of the draft policy, ADC, in a letter dated 20<sup>th</sup> December, 2005 to Chairman, RB forwarded PC's comments on the draft policy. As compared to the draft policy, the following major changes were made and explicitly announced:

- The networth or turnover criterion for a company was reduced to Rs 100 crore from Rs 250 crore.
- For operations beyond 20 years, the extendable period was increased to 10 years from 5 years.
- The process of registration as well as train operations would be uniformly applicable to all including CONCOR. The trains were to be despatched on non-discriminatory 'first come first served' basis.

39. Table 2 gives the areas of operation and registration fee for each category as was announced in the final policy.

Table 2

Category	Areas of Operation	Registration Fee (Rs crore)
I	JNP/Mumbai Port - National Capital Region rail corridor and beyond. This category will also include all domestic traffic.	50 (automatically includes all four categories)
II	Rail corridors serving JNP/Mumbai Port and its hinterland in other than National Capital Region and beyond. This category will also include all domestic traffic except on category I routes.	10

III	Rail corridors serving the ports of Pipavav, Mundra, Chennai/Ennore, Vizag and Kochi and their hinterland. This category will also include all domestic traffic except on category I routes.	10
IV	Rail corridors serving other ports like Kandla, New Mangalore, Tuticorin, Haldia/Kolkata, Paradip and Mormugao and their hinterland and all domestic traffic routes. This category will also include all domestic traffic except on category I routes.	10

40. Other than the above changes, the final policy contained all other provisions of the draft policy. On 5<sup>th</sup> January, 2006, the final policy was announced in a press conference by the MR (Exhibit 5). Operators were invited to register from 16<sup>th</sup> January to 15<sup>th</sup> February, 2006. The response was 'overwhelming' as per the MoR. In the first round (February 2006), 14 operators (Exhibit 6) including the incumbent CONCOR signed agreements with IR to set up container train operations. 10 of these permissions were sought for operating on the entire network of IR including category I routes. Collectively, the operators had deposited a total of Rs 540 crore with the MoR towards registration fee.

### VIII. Model Concession Agreement

#### *Process*

41. Further issues were raised by stakeholders, knowing that a Model Concession Agreement (MCA) would be prepared for finalisation of the contractual arrangement. These included the time from which many of the obligations would be valid, including the date of 'in principle' approval or the signing of the MCA. Other issues were the selection of ports in each category, the limited one month time window for applications, timing of payment of haulage charges, service level issues like maintenance of wagons by IR versus other parties, scheduling of trains including time guarantees, time windows for indenting and supply of locomotives, fees and process for extension of contract beyond the initial 20 years.
42. Stakeholders including the RB also pointed to other dimensions that the MCA would need to address including financing default and lenders' rights, sale and transfer, termination rights, indemnity for IR, and dispute resolution.
43. In the 6<sup>th</sup> meeting of the Empowered Sub committee of COI held on 13th February, 2006, it was agreed that the MCA for container train operations would be examined by an IMG chaired by Chairman, RB and comprising representatives of Department of Economic

Affairs, PC, Law Ministry, MoCI, and DoS, with a view to ensuring that the MCA was based on best practices and addressed stakeholder concerns.

44. MoR sought the services of RITES for drafting the MCA. RITES, in turn, engaged a law firm, and in consultation with MoR and PC, identified guidelines for formulating the MCA. The draft MCA prepared by MoR went through a number of discussions and several issues raised by the PC were resolved.
45. Besides extensive inputs from PC coupled with deliberations in the IMG, the MCA was subjected to several rounds of consultations with stakeholders. It was also examined and vetted by experienced legal consultants. The IMG finalised the draft MCA in its meeting held on January 2, 2007. The MCA received support from all stakeholders including the 14 applicants. *The MCA was approved by the MR and executed with the applicants on January 4, 2007.*

#### *Content*

46. The MCA addressed issues which were typically important for limited recourse financing of 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. Salient features of the MCA are given in Exhibit 7. The MCA reflected the final policy, which relied on creation of a level playing field, especially the principle of ‘first come first served’.

## **IX. Issues**

### ***Role of incumbent, CONCOR***

47. Over the years, CONCOR had been responsible for developing the business of rail based container movement in India. However, as noted by RITES in its report on the operations of CONCOR, “*There is no denying the fact that being a public sector subsidiary, CONCOR has received support – and to some extent protection – from its parent organisation, which has facilitated its growth in inter-modal rail operations.*” For example, the tariffs payable to IR for container movement were generally kept in line with the lowest commodity class of IR and this helped CONCOR in pricing its services over 40% of its costs. Two initiatives by IR, in 1994 and 2004, to open up this sector to operators other than CONCOR failed, primarily due to lack of clarity on the role of CONCOR vis-à-vis the other operators, and CONCOR’s own resistance.
48. Having grown as a monopolist in the specific domain of rail based container movement, even without explicit ‘machinations’ on the part of CONCOR, its large presence is, to say the

least, daunting. The proximity to IR, its parent, sets the context for conflict of interest, putting pressure for significant ‘watch dog’ like efforts to move towards a level playing field. The fact that a Rs 50 crore licence fee payable by CONCOR was viewed as unnecessary by IR reflects this, especially when CONCOR was already contributing over Rs 1,000 crore as haulage charges in 2006-07, and paying dividends on its profits to IR.

49. While efforts were taken to move towards a level playing field by making explicit the operating discipline, the issues would be deeper due to the very proximity reflected in the ownership and management control of CONCOR by IR.

#### *Use of RITES as a consultant*

50. The use of RITES as a consultant is again a reflection of the close relationship to IR due to the nature of ownership and management control. Although RITES was able to leverage its closeness to IR both in terms of knowledge and manpower for executing consultancy assignments, its ability to advise the parent (IR) dispassionately on a matter of policy with strategic implications was questionable. This was demonstrated in the initial framework of taking capacity constraints as given, proposing entry to the highest bidder where the demand exceeded the available capacity (thereby significantly increasing the costs of the new entrant as compared to CONCOR), not addressing the level playing field issues with sufficient depth, and viewing the scope of private operations only in export import traffic.

#### *Role of PC and other stakeholders*

51. As is evident from the policy making process, the role of the PC has been very significant in providing an alternate point of view, often questioning principles that were taken for granted. These are attributable to two major strengths that the PC brought in. The first is due to their being an outsider to IR and the second due to their being closely involved with the public private partnership processes in the infrastructure sector. Valuable perspectives were also brought in by MoCI, DoS and other stakeholders including potential operators.

#### *Role of IR*

52. The variety of issues raised thus far brings out the distortions caused due to conflict in the multiple roles of IR as licensor, regulator, service provider, and operator. Though the need for private investment and competition is well recognised, this can only be achieved through creation of a policy environment where competition and private sector participation are not stifled by acts of resistance on the part of incumbents. In the instant case, the policy had remained still born from 1994 until 2006. But for external participation in the evolution of

this policy, even the 2005 budget announcement may have met the same fate as the 1994 initiative. In particular, the external pressures on creation of a level playing field, especially through the ‘first come first served’ policy were critical and catalytic in helping IR to roll out the policy announcement of MR.

### *Conclusion*

53. Introduction of competing entities has provided the much needed choice to users of container services. It has led to expansion in capacity. The new concessionaires have acquired 89 container trains as compared to 189 trains owned by CONCOR as of September 2009. Inability of IR to provide or promote common ICDs coupled with the restricted commodities has constrained the growth potential.
54. The evolution of policy in this case sheds light on the nature of impediments that are faced when the policy involves participation of the private sector in an area traditionally served by the public sector. It is evident that **incumbent resistance** influenced the policy making process. While the objective of the policy started with introduction of competition to bring efficiency gains, the objectives quickly expanded to protection of IR revenues, and to mitigate the effect of capacity constraints, resulting in **entry barriers**.. As far as users were concerned, competition would have been the best remedy to protect their interests as the bargaining power of new entrants, given an active incumbent, would have been low. The policy making at an entry stage also did not factor in risks, which would be imposed on the private players if ambiguities and discretion of the public entities enhanced by a non **level playing field** could affect their use of investment and profitability.
55. The policy process brings out the significance of the role of the non-IR stakeholders in dealing with incumbent resistance and the consequent entry barriers while ensuring a level playing field. Though there is recognition of the ambiguities and distortions, the issue may be far from being addressed. It would be essential to have an independent regulator on issues of service levels, pricing, non transparent collusion etc, primarily focused on the transactions between the IR and the operators.



### Exhibit 1: CONCOR, the Incumbent

CONCOR was set up in 1989 as a wholly owned subsidiary of Indian Railways to transport containers by rail in India. While it had a full time Managing Director, the ex-officio Chairman was the Member (Traffic), RB. IR had ventured into containerized intermodal movement for domestic traffic as early as 1966. They used 5 ton containers, which were not an international standard. The market did not pick up and these containers were discontinued. In 1981, IR handled the first ISO standard international container from Cochin port. This business picked up and IR invested in ICDs. CONCOR took over the ICD assets of IR and commenced operations in 1989.

CONCOR had worked over the last 15 years to register a large growth in the containers that it handled. As India's trade increased in the 1980s and most of its partners were already well on to containerisation, it became imperative to receive and use containers in exports and imports. By 2005, about 37% shares of CONCOR were divested to non-governmental entities including the public.

In 2004-05, CONCOR had over 100 modern rakes, each of 45 wagons and speed potential of 100 km per hour. The wagons were designed for two TEUs, and capable of carrying upto 45 foot containers. It had over 50 terminals, of which 30 were rail linked ICDs in many interior towns, serving almost all the regions of India. It also had some road linked depots. Despite national presence in terms of infrastructure, as much as 50% of the total container traffic handled by CONCOR arose out of the northern region including the major ICDs in Tughlakabad and Ludhiana.

CONCOR had extended its operations into related areas. Examples included setting up of the third container handling terminal at JNP in collaboration with Maersk, another at Vallarpadam as part of Kochi port for transshipments in collaboration with Dubai Port Authority. It also operated Nepal's ICD.

#### Some Aspects of CONCOR's Operations (2004-05)

Terminals Owned or Operated (No)	54
Rakes Owned and Leased (No)	About 100
Wagons (No)	7582
High speed (BLC/BLL)	4606
Container flats (BFKN)	1,357
Other (BFKI/BOXK/BOXKH/BRNKH) (IR owned)	1,619
Total Traffic Handled (000' TEUs)	1728 (1377 EXIM and 351 Domestic)
Containers owned or leased (TEUs)	10874
Total Income (Rs crore)	2052
Total Expenditure (Rs crore)	1442
Profit before Tax (Rs crore)	610
Net Profit (Rs crore)	429

[CONCOR, 2005]

## Exhibit 2: RITES, the Consultant

RITES was a public enterprise of the GoI under the administrative control of MoR, with much of its staff drawn from IR, like CONCOR. It was established in 1974. While it had a full time Managing Director, the ex-officio Chairman was the Member (Mechanical), RB. It was a multidisciplinary consultancy organization in the fields of transport, infrastructure and related technologies. According to its website, “It provides a comprehensive array of services under a single roof and believes in transfer of technology to client organizations. RITES is internationally recognized as a leading consultant with operational experience of 62 countries in Africa, South East Asia, Middle East and Latin America. Most of RITES’ foreign assignments are for National Governments and other apex organizations”. Though predominantly perceived as a technical consulting organization in the domain of transport (railways in particular), it had closely worked with governments in technical consultancy related to infrastructure development in many countries.

RITES employed over 2000 staff including over 1200 specialists of high professional standing in the fields of engineering, management and planning.

In 2004-05, the total turnover of RITES was Rs 240 crore and the profit before tax was Rs 68 crore [MoR, 2006 (a)].

[<http://www.rites.com/web/index.php?option=content&task=view&id=49&Itemid=93>]

**Exhibit 3: PC's Note dated 22<sup>nd</sup> October, 2005*****“Entry Criteria***

(i) *To keep out ‘frivolous contenders,’ only export import traffic be considered.*

Since upfront investment in rolling stock would be a prerequisite, it is unlikely that ‘frivolous contenders’ will come forward at all, particularly because such investment cannot be used for any other purpose.

Further, there is no reason to restrict the policy to cover only export import cargo. The existing operator, CONCOR, also carries domestic cargo. Allowing carriage for both kinds of cargo will enable operators to maximize their carrying capacity and asset utilization. Railways will benefit from running full loads in both directions. It is also possible that export import cargo may require to be carried as domestic cargo before customs sealing. Domestic cargo should, therefore, be covered under this policy.

(ii) *Operators will be provided entry on specific routes which have been put in four categories on port linkage basis*

The objective is not clear, particularly since this will restrict free competition and deny a level playing field with the existing operator. All operators should have the equal access to the entire rail network, at par with the existing operator, so that customers have a real choice.

(iii) *IR may prescribe the minimum standards and scale of rail linked terminals*

This does not seem relevant to railways and, therefore, need not be prescribed under this scheme.

(iv) *Operators should provide a minimum traffic commitment, with one year given for stabilising the minimum volumes*

The Railways do not incur any opportunity cost or capacity charge if operators fail to provide traffic because no railways capacity is to be reserved or earmarked. Therefore the need for stipulating minimum traffic commitment from operators is not necessary.

***Entry Fees and Revenue Share***

(i) *Higher the level of traffic, higher the entry fee. Entry fee will go towards meeting the infrastructure requirements*

A new operator will offer container traffic from his own siding and on his own rolling stock, for carriage by railways on payment of freight which is calculated on fully distributed cost plus profit. This confirms with the railways’ business model. Whatever railways wish to realise should be charged through freight. Levy of an entry fee as currently proposed, is discriminatory.

Investing in rail infrastructure should not be a prerequisite for running container trains.

Container business constitutes only 2-3% of total freight business on the IR. Even though this share is likely to increase, it will still remain marginal. It is, therefore, not fair to ask container business to finance line capacity when it utilizes only a small fraction of it.

(ii) *Operator should share revenue on incremental traffic as this would interfere with 'normal' levels of traffic*

Sharing revenue on incremental traffic would contradict railways' own policy of offering volume discounts to its customers and would be a disincentive for increasing volumes. Further, the conditions applicable to CONCOR should also apply to new operators.

### ***Other***

(i) *Maintenance of rolling stock will be done by IR as it does not permit maintenance by private parties*

While the operator will naturally bear the cost of maintaining the rolling stock owned by him, railways should consider allowing him to engage other agencies for this task. Railways may not always have the requisite resources to suit the requirements of the operator. Railway maintenance could then become a constraint in terms of detention to rolling stock. It would be more efficient if maintenance were carried out by other agencies subject to railway inspection and supervision relating to safety.

(ii) *Services for shunting and formation of trains etc will be done and charged for separately.*

It should be clarified that the same rules will apply to CONCOR and its competitors.

(iii) *ROE will be 15% and payback for operators would be 12-13 years*

Since these services would be open to competition, such projections seem unnecessary.”

[PC Documents, 2005]

#### Exhibit 4: Summary of Responses Given by the Stakeholders

Adani Logistics (a very large logistics operator with its own port ICD and rail operations) suggested that (i) entry fee was justified but not as high as was recommended by RITES, future freight payment of two years should be adjusted against 50% of the entry fee, and credit must be given for investments already made, (ii) surcharge based on volumes was not good since 'multiple charges under various heads would complicate the commercial operations', (iii) no more than four players on any given route, and instead of bidding for selection, both technical and financial aspects need to be considered, (iv) any party that owns 450 flats (ie, 10 trains) should be considered an accredited operator with preference in selection given to port/rail track company, which also had trading and ICD operations, (v) 'first come first served' basis of train dispatch, (vi) level playing field with CONCOR

Kutch Railway Company (a JV of the MoR, Kandla Port Trust, Government of Gujarat and Gujarat Adani Port Ltd) suggested that (i) JVs of IR need not pay the entry fees, but a charge of Rs 5 lakh per flat may be levied on all, (ii) each route may be restricted to four to five operators, (iii) the stringent technical criteria were not good but those who had or could augment rail capacity should be given credits, (iv) 'first come first served' basis of train dispatch be followed.

Central Warehousing Corporation (CWC), a public sector entity, had already invested in 34 CFSs/ICDs and was handling 0.9 million TEUs despite not having been allowed entry into container train operation. Its application since 2001 had been pending with MoR. It had been allowed rail linked ICD at Loni (near Delhi) and rail linked CFS near JNP, Mumbai under a 1994 policy of MoR. In its response to the questionnaire, it felt that (i) the new entrant should have at least 10 years experience in container related businesses, an annual turnover of Rs 500 crore, investment of Rs 100 crore in container related infrastructure, should be already operating ICDs/CFSs with 0.5 million TEUs handled, and should be making profit for last five years. All these should be given equal weightage (ii) no entry fee to be levied and if IR require resources, it can levy a surcharge on haulage charge uniformly. In case an entry fee is insisted, the investment in rail infrastructure to be set off against the proposed entry fee, (iii) the permission to new entrants should be for five years, (iv) no rationing of number of trains allowed per operator and no operator including the incumbent should be allowed more than 50% on a route.

MAERSK, an international player in the business, suggested that (i) the concession agreement should be for 30 years because of the long life of the assets, (ii) IR should specify the available capacity on a route or corridor in terms of number of trains and the maximum and minimum number of operators on a route, (iii) the selected operators should have experience in train operations or should have an experienced operator as part of the consortium, and financial capability to undertake investments during the tenure of concession, (iv) no entry fee be imposed and if imposed, it should be set off against haulage charges payable to IR over a period of time, (v) IR should provide railway land at reasonable cost for development of rail sidings and allow common user rail sidings by the operators through SPVs (special purpose vehicles) so that each of them do not have to develop sidings independently, (vi) the tariff on haulage and all other charges be such as to enable operators to effectively compete with road; the idea of 10-15% share of the railways in additional traffic revenue is not justified and asked for the financial model used by RITES to be revealed and included in the RFP/RFQ, (vii) a level playing field vis-a-vis CONCOR would be essential.

NYK Line, one of the participants wanted clarification on whether the policy would only be for export import traffic or for domestic traffic. The NYK had also proposed that if for a “particular route the number of operators that may be permitted is to be based on the capacity available, then a bidding process ought to be undertaken in which the companies will quote how much deposit they would make for being selected for operating trains. The total deposits of the successful applicants would be kept with an entity like IRFC/RVNL etc who would pay to the applicants, interest on the balance portion of deposit at a predetermined rate which should be lower than the borrowing rate. This deposit will progressively get offset against haulage charges payable when the applicant starts running container trains”.

Among other stakeholders, Shipping Corporation of India (SCI), Sattva, Gateway and JM Baxi either supported no entry fee or fee as deposit to be refunded completely. P&O Ports, CM & CGM Global Pvt Ltd, NYK Line and PRCL supported lower entry fee as compared to RITES proposals.

[PC Documents, 2005]

## **Exhibit 5: Policy to Permit Various Operators to Move Container Trains on Indian Railways**

Policy to permit rail linking of Inland Container Depots (ICDs) by private parties other than M/S Container Corporation of India Ltd. (CONCOR) and allowing them to move container trains on the same lines as CONCOR for both international and domestic traffic has been under consideration of Ministry of Railways (MoR) for quite some time. In pursuance of the decisions taken on this issue, revised policy guidelines in supersession of earlier letter No91/TC(M&S)/6/2/volII dated 30.11.94 shall be as under:

### **1 Eligibility**

1.1 The scheme is open to all registered Indian public/private sector companies/persons either individually or in joint venture. It will include Indian registered companies of foreign entities.

#### 1.2 EXIM Traffic

The prospective operator should have a suitable access to a rail linked ICD with adequate handling capacity in the hinterland/inland location for handling of container trains.

OR

The operator should enter into an agreement with an existing rail ICD operator/rail terminal operator for using his facility for container train operations, within six months of obtaining in principal approval from MOR.

OR

The operator gives an undertaking that he will develop his own ICD with rail facility within a period of three years from the date of in principal approval to operate container trains.

#### 1.3 Domestic Traffic

The prospective operator should have a suitable access to two rail linked ICDs with adequate handling capacity in two hinterland/inland locations for handling of container trains

OR

The operator should enter into an agreement with an existing rail ICD operator/rail terminal operator for using his facility at two locations for container train operations, within six months of obtaining in principal approval from MOR.

OR

The operator gives an undertaking that he will his own ICD with rail facility at two locations within a period of three years from the date of in principal approval to operate container trains.

1.4 The applicant should have experience of the following, or should be engaged in any of the following activities:

- Transport
- Trade and Commerce
- Infrastructure
- Handling of Goods/Cargo
- Port/Land Terminal operations
- Logistics
- Warehousing
- Manufacturing
- Leasing

## 2 Regulation of Rail Container Operations

In order to regulate the entry of new rail container operators on IR network, various routes have been grouped into four categories largely based on the existing as well as anticipated traffic volumes on different rail corridors serving gateway ports. These categories are as follows:

### 2.1 *Category – I: JNP/Mumbai Port - National Capital Region Rail Corridor and beyond*

This category includes all existing/future ICDs serving JNP/Mumbai Port in National Capital Region like Tughlakabad, Dadri, Gurgaon, etc. This will also include all destinations reached via National Capital Region like Dhandari Kalan, Moradabad etc. This category will also include all domestic traffic.

### 2.2 *Category – II: Rail corridors serving JNP/Mumbai Port and its hinterland in other than National Capital Region and beyond*

This category includes all existing/future, ICDs serving JNP/Mumbai Port at locations other than those covered in category I. This category will also include all domestic traffic except on category I routes.

### 2.3 *Category – III: Rail corridors serving the ports of Pipavav, Mundra, Chennai/Ennore, Vizag and Kochi and their Hinterland*

This category includes all existing/future ICDs serving these ports. This category will also include all domestic traffic except on category I routes.

### 2.4 *Category – IV: Rail corridors serving other ports like Kandla, New Mangalore, Tuticorin, Haldia/Kolkata, Paradip and Mormugao and their hinterland and all domestic traffic routes*

This category includes all existing/future ICDs serving these ports. This category will also include all domestic traffic except on category I routes.



### **3 Financial Capability**

- 3.1 In case of an individual or a single company, either the turnover or the net worth should be a minimum of Rs 100 crore
- 3.2 In case a number of companies form a consortium for the purpose of operating container trains, each constituent member should have either annual turnover or net worth of at least Rs 50 crore
- 3.3 Companies which have been declared sick under SICA Act will not be eligible to participate in the proposed scheme either singly or in association with the other companies for container train operation

### **4 Approval Process**

- 4.1 If the proposed operator has to set up a new ICD then for rail linking an Inland Container Depot (ICD) he must obtain the requisite permissions from the concerned authorities of the Government of India for setting up and operating the ICD within six months.
- 4.2 The proposed operator should submit his request in writing to MOR indicating therein his legal identity, intended, scope of operations for the next five years atleast, proof of complying with various eligibility criteria indicated in this' policy, and willingness to abide by the terms and conditions laid down in the policy and as amended from time to time.
- 4.3 Based on the documents furnished and clarification, if any, Railways will give their 'in principle' approval. In case the prospective operator fails to indicate his readiness to operate his container trains to Railway's satisfaction within 3 years of grant of 'in principle approval' it will be deemed to have lapsed unless prior extension is given by railways at its sole discretion.
- 4.4 Before actually commencing operations, the operator will enter into an agreement with the Railways containing the detailed operating and accounting procedure: including the ownership of the new lines/assets and other relevant details. The agreement will have provision for suitable arbitration procedure for resolving any dispute.
- 4.5 The scheme will be open for one month every year.

### **5 Registration Fee**

- 5.1 At the time of submission of request to run container trains every applicant would be required to deposit a nonrefundable registration fee of Rs 50 crore for applying for all categories of routes including category I and Rs 10 crore for each individual category of routes except category I. Applications only for category I routes will not be accepted.
- 5.2 The registration fee of applicants who are not found eligible will be refunded without any interest.

## 6 Modalities of Granting New Licenses

- 6.1 In case the successful operator opts for category I, he will get a flexible permission to run trains between any pairs of points in the entire country. This will include permission for all other categories also. In case the operator applies for a particular category (except category I), he will get permission to run trains between any pairs, of points in that category only for EXIM traffic and in domestic traffic for all routes, except those in category I.
- 6.2 There will be no limit on number of trains on any of the routes.

## 7 Terms and conditions

- 7.1 The container trains of various operators will normally be dispatched on a nondiscriminating manner on 'first come first served' basis, subject to any operational exigencies and/or restrictions from time to time.
- 7.2 ICDs will be treated like private sidings with the extant rules and procedures laid down for private sidings' applying mutatis-mutandis to them.
- 7.3 Land and other related facilities required for railway operation and the track connecting the ICD to the nearest rail head will have to be provided by the operator at his own cost. However, if railway land is available he can apply for the same on the normal terms and conditions laid down by MOR.
- 7.4 For movement of containers, the operator will procure his own rolling stock/containers according to RDSO approved design. The rolling stock will be inspected as per rules in force.
- 7.5 Loading and unloading of containers in the ports/ICDs shall be responsibility of the operator.
- 7.6 Maintenance of track will be done by the operator at his own cost, with IR being paid for inspection/supervision according to the prescribed prevailing rates. Maintenance of rolling stock will be done by IR, for which the prescribed charges will be recovered from the operator.
- 7.7 The operator will allow IR to enter any of its premises for inspection and for scrutiny of documents pertaining to rail-related operations and provide necessary and reasonable facilities for doing so.
- 7.8 The operator can carry all goods subject to conditions specified in the goods tariff, red tariff and under provision of Indian Railway Act and any other instructions issued on the subject by MOR from time to time.
- 7.9 The movement of containers/flats will only be in block rakes of prescribed standard sizes for different types of wagons as notified by the Railways from time to time.

- 7.10 Information System: IR's Freight Operation Information System (FOIS) will also cater to the party's requirements for an integrated management and operations information service. The operator will provide all relevant data as required by FOIS. He will be given 'read only' access to this system at reasonable cost.
- 7.11 Haulage charges: The operator will pay to the railways haulage charges applicable uniformly to all operators, as notified/fixed by the Railways from time to time.
- 7.12 For payment of haulage charges the provisions of Commercial Manual and other guidelines issued from time to time will be followed.
- 7.13 Documentation work, including issue of Railway Receipt (RR) for haulage charges will be done by Railway staff posted by Railways in the ICD. The cost of such staff will be borne by the operator and will be charged separately.
- 7.14 Operator Tariff: the operator will charge his customers for rail haulage, terminal handling; ground rent etc. on a market determined basis and railways will not exercise any control over such pricing.
- 7.15 All operations like shunting, placement, withdrawal, formation etc. within the ICD will be done on party's advice and party will be charged separately for such services: as per the agreement signed between the two.
- 7.16 Demurrage: There will be no demurrage charges. Railway will however levy stabling charges as per rates notified from time to time in case rolling stock belonging to the operator is stabled on IR network.
- 7.17 The rail operator will be a common carrier as defined under Indian Railway Act.
- 7.18 Normal rules in respect of claims will be applicable according to the Indian railway Act, 1989.

## **8 Period of Validity of Permission for Operating Container Trains**

- 8.1 The validity of permission will be for a period of 20 years from the date of operation of container trains by the operator. The permission can be extended by 10 years to the same party after expiry of the validity of permission subject to satisfactory performance and on payment of the fee as applicable at that time, which will be decided by Railway Board.
- 8.2 An operator will be permitted to exit from the market or transfer the permission to another operator for container train operational subject to the latter fulfilling the selection criteria and subject to prior approval of the Ministry of Railways. This permission will however, be granted only one year after rail borne container traffic has commenced from his ICD

## **9 Cancellation of the Permission and Dispute Settlement**

- 9.1 In case the operator does not follow the rules laid down by Railways for safety of goods carried or of railway property or any rules laid by the Government for movement of

containers the operator can be penalized as notified from time to time or permission of the operator can be cancelled by giving one month's notice.

- 9.2 In case the operator wants to terminate operation of container trains prematurely he will give the request in writing to the Ministry of Railways with three months notice.
  - 9.3 On cancellation of the permission no part of the registration fee will be refunded to the party.
  - 9.4 In case of any dispute on this issue between the operator and the Railways the decision of the Railways will be final.
  - 9.5 Any dispute between the operator and the railways of this issue will be resolved within the framework of the agreement to be signed between the two as per para 3.4 of the policy.
  - 9.6 For resolving disputes on the issues pertaining to the siding for the ICD, claims for damages, haulage charges, etc. The operator can seek redressal by resorting to the relevant provisions of siding agreement, Railway Claims Tribunal or Railway Rates Tribunal also.
- 10 This policy is in supersession of all earlier decisions on running of container trains on IR and shall be in effect from the date notified in the Official Gazette of India.**

[MoR, 2006 (b)]

## Exhibit 6: Entrants

S No	Name of Company	Promoter Group	Promoter's Other Activities	Category	Licence Fee Paid (Rs Crore)
1	Adani Logistics	Adani Group	Ports, container terminal, railways, CFS	I	50
2	Central Warehousing Corporation (CWC)	PSU under Ministry of Consumer Affairs, Food and Public Distribution	Warehousing, CFS	I	50
3	CONCOR	PSU under Ministry of Railways	Incumbent	I	50
4	Emirates Trading Agency	Emirates Trading Agency	Shipping and port services	I	50
5	Gateway Rail Freight	Gateway Distriparks	CFS	I	50
6	Hind Terminals and MSC Agency	Hind Terminals (subsidiary of Sharaf Group, UAE), Mediterranean Shipping Company (Geneva)	Shipping, freight forwarding	I	50
7	India Infrastructure and Logistics	APL India (subsidiary of NOL, Singapore), Hindustan Infrastructure Project and Engineering	Container shipping, infrastructure entrepreneur	I	50
8	Container Rail Road Services	DP World	Ports, container terminal	I	50
9	Reliance Infrastructure Leasing	Reliance (ADAG)	Industry in general	I	50
10	Sical Multimodal And Rail Transport	SICAL Logistics Ltd	CFS, container terminal, shipping agency	I	50
11	Delhi Assam Roadways	Delhi Assam Roadways	Trucking	IV	10
12	Innovative B2B Logistics Solutions	Bagadiya Shipping and Bothra Brothers (P) Ltd	Shipping agency and entrepreneur	IV	10
13	Boxtrans (India) Logistics Services	JM Baxi & Co	Container terminal, CFS, stevedoring	IV	10
14	Pipavav Rail Corporation	Gujarat Pipavav Port Limited and MoR	Ports, railways	III	10

[Compiled from Various Sources]

### Exhibit 7: Salient Features of the MCA

**Concession Period:** A concession period of 20 years had 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.

**Categories of Routes:** Four categories of routes had been defined for the purpose of grant of concession. While Category I covered the entire rail network, the other routes were defined on the basis of connectivity to specified ports.

**Entry Fee:** An entry fee of Rs 50 crore (US \$12 million) had been proposed for the Category I concessions and Rs 10 crore each for all other categories.

**Operation of Trains:** There was no restriction on the frequency and number of trains that the concessionaire could offer to IR for haulage. Dispatch of these trains, however would be undertaken on first-come-first served basis. The operator offering the train first would be given preference for haulage of his train on a non-discriminatory basis, subject to availability of path.

**Termination:** In the event of termination, the agreement provided for an optional sale of wagons to IR. Termination payments had been quantified precisely as compared to the complex formulations in most agreements of this nature. Political force majeure and defaults by IR were proposed to qualify for adequate compensatory payments to the concessionaire and thus guarded against any discriminatory or arbitrary action by the government. Termination payment of an amount equal to 150% of the registration fee and 120% of the depreciated replacement value of the concessionaire's wagons had been proposed in the event of default by IR.

**Wagons and Containers:** The concessionaire would own its wagons but not necessarily the containers being carried on them. Provision had also been made for the concessionaire to offer idle wagons to IR for use at mutually agreed terms and conditions. In the beginning, all wagons would be maintained by IR 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 would be provided by IR to haul trains on a non-discriminatory basis on payment of notified charges. For delay in supply of locomotives beyond twelve hours, the IR would provide a rebate equal to 2% of the haulage charges payable by the concessionaire.

**Haulage Charges:** Haulage charges for movement of containers on the railway network would be prescribed by IR from time to time, and would be applicable uniformly to all operators on a non-discriminatory basis.

**Change in Technology:** Provision had been made for accommodating changes in technology. In the event that IR made any modification in technology or specifications, the concessionaire was obliged to carry out the relevant modifications at its cost. If double stack container operation

was mandated for specific routes, the concessionaire should, 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 Fees:** The concessionaire was entitled to levy and recover freight charges from its customers/users for the services provided. IR would not exercise any control over such levy or collection of charges.

**Restricted Commodities:** The IR would haul the concessionaire trains upon payment of prevalent haulage charges. However, from time to time, the IR would have the right to specify certain commodities, which ordinarily move in railway wagons in trainload, as restricted/notified commodities. These may be subjected to different tariff and conditions for haulage. Presently, ores, minerals, coal and coke have been specified as notified commodities.

[PC, 2007]

## References

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3. MoR, 2006 (a). Indian Railways Year Book 2004-05.
4. MoR, 2006 (b). The Gazette Notification dated 26<sup>th</sup> September, 2006
5. PC, 2007. Model Concession Agreement

## Glossary

ADC	Advisor to Deputy Chairman, Planning Commission
CFS	Container Freight Station
CoI	Committee on Infrastructure
CONCOR	Container Corporation of India Ltd
CWC	Central Warehousing Corporation
FOIS	Freight Operation Information System
ICD	Inland Container Depot
IMG	Inter Ministerial Group
IR	Indian Railways
JNP	Jawaharlal Nehru Port
MCA	Model Concession Agreement
MoCI	Ministry of Commerce & Industry
MoR	Ministry of Railways
DoS	Department of Shipping
MR	Minister of Railways
NSICT	Nava Sheva International Container Terminal
PC	Planning Commission
PRCL	Pipavav Rail Corporation Ltd
RB	Railway Board
RDSO	Railway Design and Standards Organisation
RR	Railway Receipt