Autonomy, Accountability, Professionalism and Independence in Sectoral Regulatory Authorities

Roads and Highways

Investors Perspective

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Infrastructure Leasing & Financial Services

- Promoted by:
  - Central Bank of India (CBI)
  - Housing Development & Finance Corporation (HDFC) and
  - Unit Trust of India (UTI)
- The Mandate: Commercialization of Infrastructure Projects through Formulation of Commercially-viable Schemes in Conjunction with Public and Private Sector Project Sponsors
- Uniquely Positioned to Advance the Cause of Infrastructure Development in the Country
  - Projects under Development: Rs 40,000 crores

IL&FS Transportation Networks Limited

- To domicile its expanding initiatives in the Road Sector, IL&FS promoted a Pan-India Surface Transport Company - IL&FS Transportation Networks Limited (CTNL)

- IL&FS now represents itself in this sector through CTNL

- CTNL has demonstrated Capability in Project Implementation in Road Sector-All projects completed to Time and Budget.
- Road Projects

Completed Projects		
▪ Delhi-NOIDA Toll Bridge		Rs 4080 Mn
▪ Ahmedabad Mehsana Toll Road	Rs 3250 Mn	
▪ Vadodara Halol Toll road		Rs 1650 Mn
▪ North Karnataka Expressway		Rs 5400 Mn
▪ East Coast Road	Rs 750 Mn	
Total		**Rs 15130 Mn**
Under Implementation		
▪ Trivandrum City Roads		Rs 2250Mn
▪ West Gujarat Expressway		Rs 2500Mn
Total		**Rs 4750Mn**

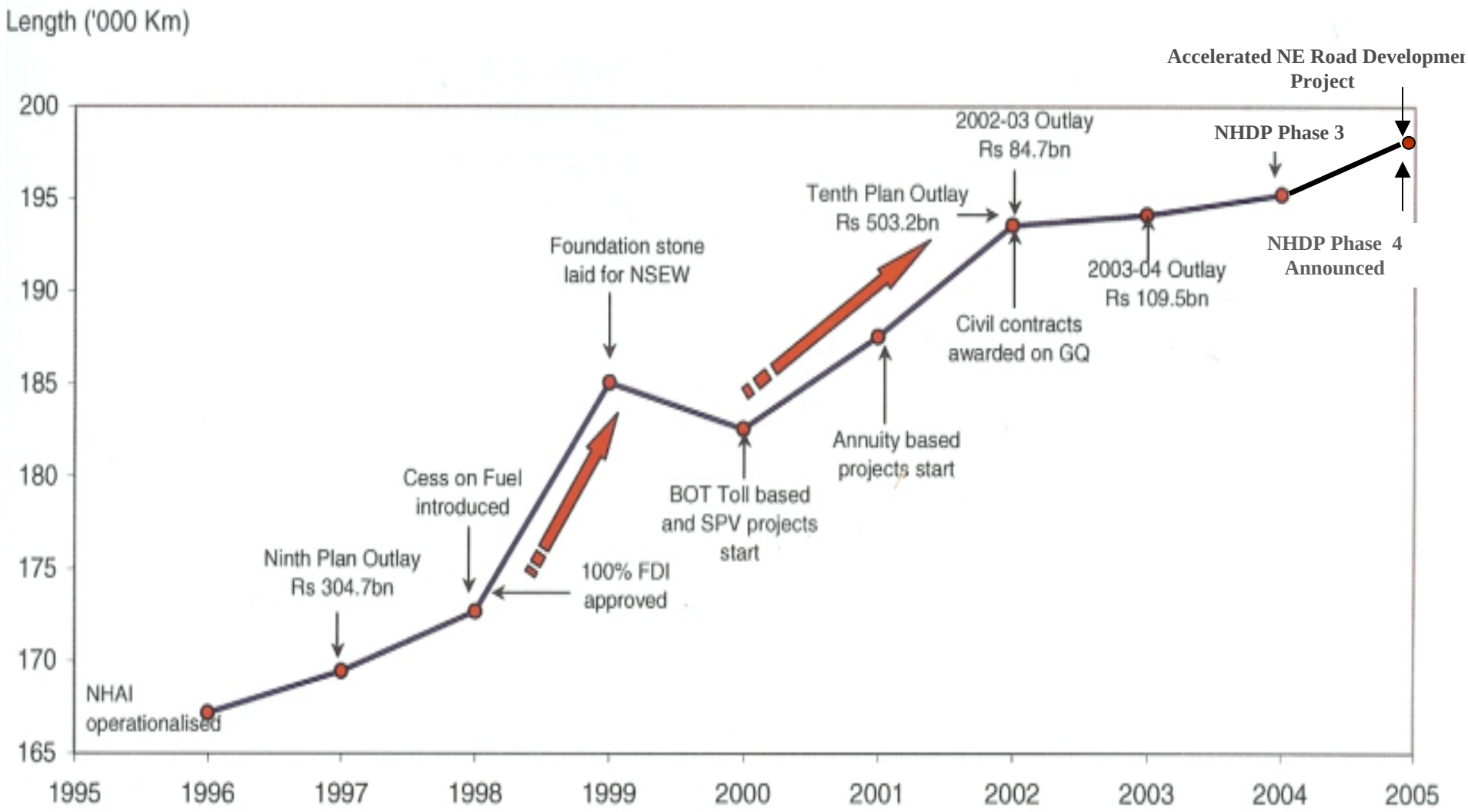
- Port Projects Under Implementation
  - Rewas Avare Port
  - Dighi Port

Section A : Background

PPP in the Road Sector

1990-1995	▪ Public Private Partnership began in the Road sector with the commissioning of the Rau Pitampur Road in 1992 by IL&FS ▪ In 1994 IL&FS, government of Uttar Pradesh and the Government of Delhi set up a Special Purpose Vehicle (SPV) to undertake the Development of the Delhi-NOIDA Bridge ▪ This was the genesis for SPVs in the Infrastructure Sector in the Country ▪ The Ministry of Road Transport and Highways (MORTH) initiated measures to accelerate road development
1995-2000	▪ Government of India announced initial programmes for implementing 27 bypasses, bridges and ROB through PPP ▪ These were medium size projects ranging between Rs 50-150 crore ▪ Multilateral Participation ▪ Increased Responsiveness to Private Sector Participation (PSP)
2000 onwards	▪ National Highway Authority of India(NHAI) Operationalised ▪ National Highway Development Programme Announced (NHDP) ▪ Other non-NHDP programmes announced ▪ State Government Road Development Initiatives

Milestones in Highway Development since NHAI



Source: NHAI, MORTH, Budget Documents

ITNL IL&FS TRANSPORTATION NETWORKS LIMITED

IL&FS Transportation Networks Limited

PSP at the State Level

State	Policy encourage PSP	Important PSP Initiatives
Andhra Pradesh	▪ Andhra Pradesh Road Development Corporation set up in 1997 ▪ Andhra Pradesh Infrastructure Initiative Fund ▪ Policy Framework to encourage PSP in BOT Projects	▪ Many road projects have also been taken up under the BOT scheme. ▪ These are mostly small size projects
Gujarat	▪ Gujarat Road Development Corporation was set up to encourage PSP ▪ BOT law, under the Gujarat Infrastructure Development Act, 1999, to enable quick decisions on projects and risk mitigation through contract agreements.	▪ Vadodara Halol Toll Road ▪ Ahmedabad Mehsana Toll Road
Karnataka	▪ Karnataka Road Development Corporation Limited et up in 1999 to promote PSP in Roads ▪ Formulated Road Development Policy in 1998	▪ Limited new construction but maintenance of most core network outsourced on a term basis
Madhya Pradesh	▪ MP Bridge Corporation ▪ Grant based BOT Model with grant funded through loans from HUDCO	▪ Significant, but only few projects have progressed to financial closure
Maharashtra	▪ Maharashtra State Road Development Corporation has been set up	▪ Mumbai Pune Expressway ▪ 29 ROBs through IRCON
Tamil Nadu	▪ Tamil Nadu Road Development Company Ltd a joint venture initiative between TIDCO and IL&FS has been set up for road construction and maintenance ▪ Raising funds through flotation of bonds and leveraging funds from external agencies like NABARD and HUDCO	▪ Key project implemented through PPP is the East Coast Road Project ▪ The East Coast Road, connecting Chennai and Pondicherry is one of the largest toll road in India.

Progress of PSP in Roads

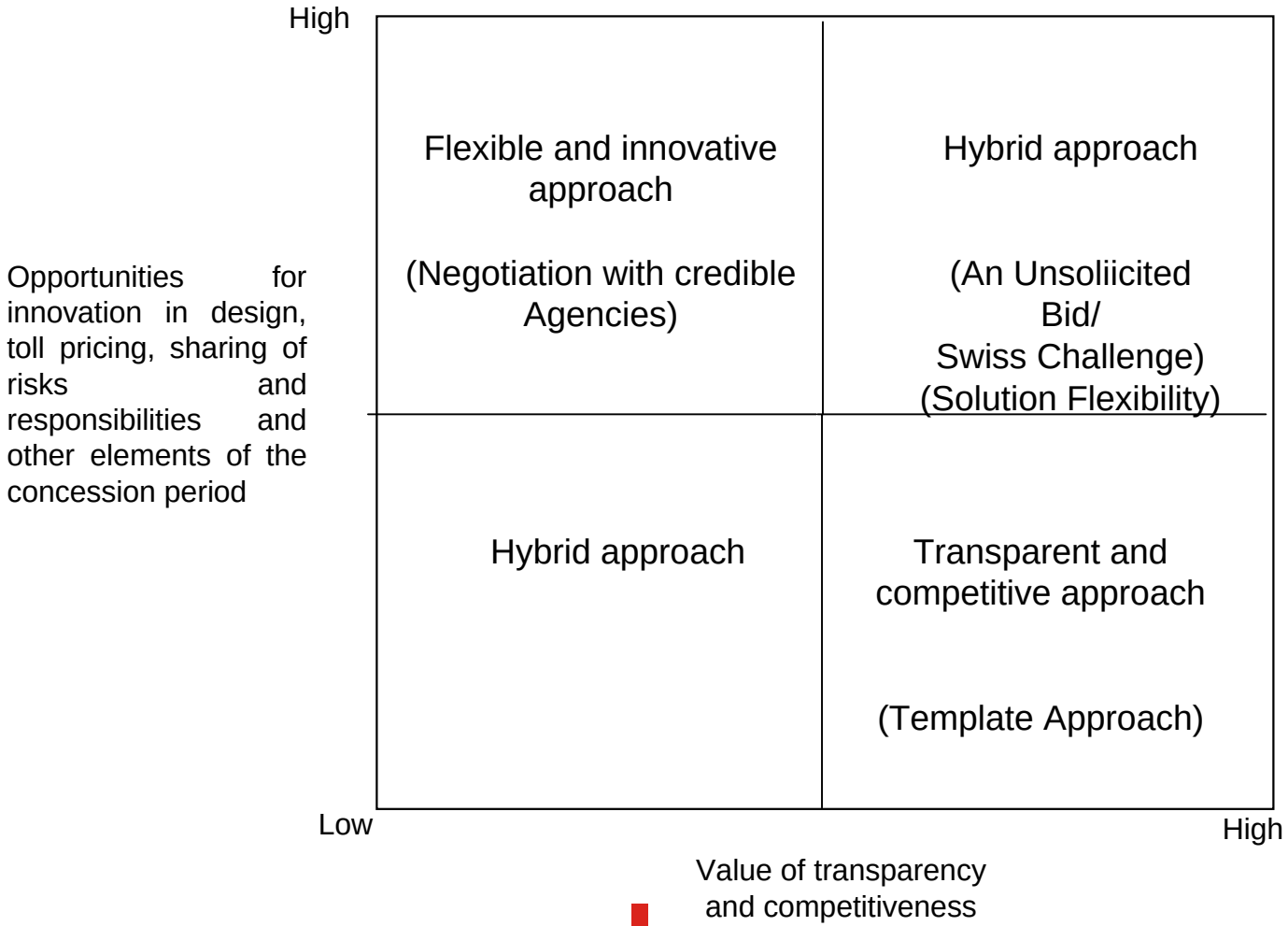
- The Central Government and many State Governments have made considerable progress in providing an enabling environment for PSP in the Road Sector
- The NHAI's achievement in the implementation of the NHDP through significant PSP has been particularly creditable and needs to be replicated across all sectors
- However, progress on the various programs has been delayed and targets have constantly been revised
- Moreover, the unexpected price increases have been a dampener on the timely completion of projects, particularly in projects implemented as cash contracts
- On the other hand, projects implemented through the BOT have largely been progressing on schedule
- It has been reported that while over 90% of the projects implemented through the BOT route are progressing as per schedule

Need to Accelerate PSP

- International experience suggests that India is on the right track to attract private sector investment, particularly as there is
  - Firm Political Will
  - Strong Macroeconomic Fundamentals
  - Developing Capital Market
- However, while the environment for attracting PSP in the sector has improved, some issues still persist
- These include, amongst others
  - the absence of an effective and autonomous regulatory authority
  - lack of flexibility in the Concession Format
  - absence of availability of quality information
- This has resulted in a slower than anticipated pace of private sector investment and a high incidence of project restructuring

Section B: Concession

Concession Structures



Early Days

- Early BoT projects were developed as Joint Ventures between the State or Central Governments and private sector companies of repute
- Concession Agreements reflected the negotiated position between the agencies involved
- This led to the concurrent prevalence of various “models” of Concession Agreements
- The project parameters as well as the concession structures of these “early” projects reflected the limited experience of PSP in the sector and were often less than optimal.
- The different structures of Concession also impeded wide acceptance by the financial institutions, banks and the capital market.

The Template Approach

- The NHAI subsequently developed a “Model” Concession Agreement
- Resulting in standardized the concession structure across all BoT projects
- This “Template” approach has lead to a greater familiarity amongst the private sector developers and financiers
- Therefore, reducing the turnaround time for both bidding and project financing
- Further, it has simplified the award and selection process making it both transparent and competitive
- However, despite the merits of the current system, it is increasingly being suggested that the process of project definition allow for a flexibility of approach by the bidder

The Hybrid Approach

- The current approach specifies the project design and prevents the bidder from suggesting more optimal and cost effective solutions

- Further, the bidder should also be allowed to structure the dues to and from the Concessionaire to match the expected cashflows of the project to ensure more efficient financing

- The challenge is to ensure such flexibility while maintaining a transparent and competitive bid and award process

- “Hybrid” approach towards selection will be more subjective. However, this could be largely mitigated by ensuring wide representation on the selection committee – and substantial opportunities for debate before finalization

- Further a more rigorous Rewards/Penalties regime would ensure the delivery of the project to cost, quality and time - and subsequently the maintenance of performance standards and service levels

Section C: The Need for Regulation

Some International Practices in Regulation

- Regulation can focus either on profits of monopoly companies or prices of monopoly services
- In practice, regulatory models often incorporate elements of both
- Some of the Regulation Models followed to Regulate Monopoly Infrastructure Firms include
  - Rate of Return Regulation
    - Regulated Price if a function of the specified rate of return for the Utility
    - Typically used when Regulation is first being applied in an Industry
  - Tariff Determination through Simulated Conditions
    - Rate Setting through simulation of competitive conditions that would meet demand for a specified duration
    - Value of parameters similar to the specific Concession Area
  - Price Cap Regulation
    - Price Cap, allows the operator to change its price level according to an index that typically comprise an inflation measure, I, and a “productivity offset”

- Revenue Cap Regulation
  - Revenue cap established for service baskets and allows the operator to change prices within the basket so long as the percentage change in revenue does not exceed the revenue cap index
- Benchmarking
  - Operator performance is compared to competing operators' performance
  - Penalties or awards are assessed based on the operator's relative performance
- Indexing
  - Price is indexed to macroeconomic or any other relevant parameter or set of parameters
  - Variation in price is dependant on fluctuation in the parameters

Need for a Highway Regulatory Authority

- Today the need seems to stem from the requirement of Dispute resolution
- With a large PPP program underway and planned a regulator to ensure concession compliance, user grievance redressal and a level playing field for all stakeholders is essential
- Currently both implementation and regulation are the vested in the same agencies
- This has resulted in in overlapping of responsibilities - possible conflict of interest situations and thus increasing the investment risk
- There already exist Regulatory Authorities in the Telecom and Energy Sectors
- Establishment of a Highway Regulatory Authority on similar lines for the road sector would provide an impetus to PSP in the sector

Composition and Roleplay

- The Regulator should include professionals from:
  - Legal
  - Financing
  - Engineering
- The regulator can be financed through a fee imposed on each concession awarded
- The Regulator should have judicial powers such that its orders would be implemented and appeals would be restricted
- It would also be the sounding board for the introduction of new policies and feedback on existing ones
- Regulaltion would provide with investors significant comfort in undertaking financing decisions

User Perspective

- Currently, the user has no recourse except to possible a consumer court for addressing inadequate service delivery
- Infact, at the center of the PPP structure is the capture of benefits derived by the user which provides the viability of private financing
- Users must have recourse to an agency where they are provided with
  - Information on levels of service
  - Penalties imposed for inadequate delivery
  - A speedy redressal

Dispute Resolution

- Disputes seem to be increasing with little or no resolution being achieved without arbitration
- The Concession provisions for Dispute Resolution Procedure does not seem to be working
- The probability of ending up in using arbitration is high
- The time and costs of arbitration are however, often high and a more certain and swift dispute resolution mechanism may reduce perceived risks for private investors
- Therefore, the need to introduce a regulator with powers to resolve disputes expeditiously and provide a level playing field

User Fee

- Currently Toll Rates are adjusted to changes in the Wholesale Price Index (WPI).
- However, WPI is solely dependent on Macro Economic variables that have no relationship to the nature and type of the business that the Concessionaire manages
- This makes it difficult for a Concessionaire to predict WPI variations over the tenor of the Concession
- The Concessionaire should be left to take on just the traffic risk.
- The entrepreneur, a contractor under most circumstance has limited capacity to predict rise in macro economic variables thus resulting in a negative view or an understated view of the increase in user fee
- Thus the resultant risk loading in the project is unduly high on this account

In Conclusion

- Given the Governments policy for inducing more private sector flows the introduction of a regulator is highly recommended

- Also, the User today has almost no redressal mechanism for lack of services

- Finally, the ultimate test is to ensure that the User is a willing payer(implies savings exceed tolls)

Thank you