

Public Private Partnerships- A Boon or a Bane: The Case of Nava Sheva International Container Terminal , Mumbai - An Emerging Economy Perspective from India

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Public Private Partnerships: An Introduction

Public private partnerships has been a major factor in developing infrastructural competencies in developing countries and in this report we will be discussing the PPP formed by the Mumbai Port Trust (Jawaharlal Nehru Port Trust) with four other overseas companies to build an International Container Terminal to handle increased traffic flows at the port, efficient services and increased revenue for the Port Trust authorities by creation of this *Nava Sheva International Container Terminal(NSCIT)*. **Please refer to exhibit 1 for classification of PPP projects.**

Process Management in PPP: Methods

This is done through a variety of steps: In the pre bid process the activities are done under supervision under the supervision of ADB Technical Assistance Programme with pre bid grading of projects and risk valuation done by officers trained in project appraisal and management and preparation of the contractual obligations like some projects have an 'escalation cost' tied to them where a stipulated fine the developer has to pay with each day of delay in the project. Some projects like the Electricity Commissioning Projects (as for e.g Dabhol Power Plant in Maharashtra, India) where the government required Enron Inc to provide a counter guarantee. Then a global tender is floated and based on the criteria specified by the government developers are chosen and a contract is entered into by the

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interested parties A schematic diagram is presented in exhibit 2 which is abstracted from the government website of public private partnership board in India.

A General Discussion on PUBLIC – PRIVATE SECTOR DIFFERENCES

Scholars have increasingly sought to determine the real differences between public and private organizations, focusing on a range of variables (e.g., Nutt, (1993); Perry & Rainey, (1988); Ring & Perry,(1985); Moulton, (2006); Van Der Wal et al.,(2008).In fact, Perry and Rainey (1988) recall the etymological distinction: in Latin, the term “public” means by the people, while “private” means set apart.

It is believed that the understanding of public and private sector differences is a vital step on the way towards a more efficient understanding of IPPPs. The review of the recent literature on the topic highlights some of the differences between public and private sectors which must be taken into account when analyzing management practices in IPPPs. In general terms, the public sector still has higher levels of bureaucracy (Bretschneider,1990; Rainey & Bozeman, 2000), it depends more on other organizations (Bretschneider,1990), its operating efficiency is lower (Goldeng, Grünfeld & Benito, (2008)and its managers have less autonomy than those in the private sector. One of the main characteristics of the public sector is the greater amount of formalization and “red tape” in comparison to the private sector (Bretschneider,(1990); Rainey & Bozeman, (2000). Even the concept of red tape has a variety of interpretations. It can be defined as the rules, regulations, and procedures that remain in force and entail a compliance burden but do not advance the legitimate purposes that the rules were intended to serve the higher levels of red tape that public organizations present are due to “dividing authority among three separate branches (executive, legislative, and judicial) designed to prevent abuses of power, and from federal emphasis on civil service rules”. Another important attribute that differentiates public and private organizations is the decision making process.

In this respect, Nutt’s (2006) results show that public managers give less value to the use of consultative and networking practices in making decisions. Moreover, they are also less

inclined to act if a decision seems controversial, accepting less risk in their choices than their private sector counterparts. In addition, differences have been found between the public and the private sectors' managerial experiences in formal as well as informal collective bargaining, which reflects how public sector managers tend to negotiate less; however, over time these differences seem to disappear. There are also differences in managers' sector perceptions. Feeney argues that public managers will have a more positive view of the public sector when they have a higher desire for advancement, or a desire to serve the public interests, and also when they have previously been employed in the private sector. However, he also states that public managers will have negative views of the public sector when they perceive increased levels of red tape. Recently, Van Der Wal and Huberts (2008) surveyed 382 public and private managers to determine their core values². They found numerous dissimilarities that need to be considered to understand the characteristics of each sector. They conclude that the core values of private managers seem to be innovativeness, profitability and self-fulfilment, while public managers attach more importance to incorruptibility, serviceability and social justice. These findings are in line with the notion of the "Public Sector Ethos", described by Stoker (2006): Public Service Ethos is a sense that involves: 1) A performance culture: a strong commitment to service for individuals and the community; 2) A commitment to accountability: an emphasis on open access to information; 3) A capacity to support universal access: recognition of a special responsibility to support the rights of all service users in an environment; 4) Responsible employment practices; and 5) Contribution to community well-being. Moreover, the different values held by each sector's employees can affect the reciprocal perception of each other, thus placing an important barrier for the engagement in projects that demand cross-sector collaboration. The results regarding the level of ambiguity in organization goals have been contradictory in our literature review. The first study reviewed stated that public managers perceive higher goal clarity, challenging the idea that public administration goals are usually more ambiguous. The same authors suggest that the cause of this confusion is that public organizations have less goal measurability, but this does not mean that managers do not know which goals they have to pursue. A subsequent study provides a third view stating that there were no differences in goal ambiguity between the two sectors.

Finally, the results of Boyne's (2002) meta-analysis suggest that public organizations have more goal ambiguity than private ones. Lastly, significant differences are also found in the managerial focus of the two sectors.

The Case of Nava Sheva Container Port Terminal at Mumbai India- A Perspective From Emerging Economy PPPs.

Players for PPP in this context:

In accordance with the policy of liberalization and to create additional capacity at Mumbai Port which is one of the busiest international ports the **Government of India along with the** 'Department of Shipping' entered into a Public Private Partnership in 2006 with a consortium of private operators **comprising of** P&O Australian Ports, Konsotium Perkapalan Berhad and DBC Group of companies.

Need for PPP: Main objective was to bring efficiency, productivity and quality of service and to enhance competitiveness in port services in India and to handle increased traffic at the International Container Terminal and to increase revenue earnings for the Government Exchequer

Overview of Nava Sheva Project

Jawaharlal Nehru Port is located on the west coast of India. The NSICT terminal is part of JNPT(Jawaharlal Nehru Port Trust) and is located next to the container terminal of JNPT. A global notice was issued in December 1995 inviting bids from interested parties for construction, operation and maintenance of a new Six hundred metres (600 m) quay length container terminal for a period of Thirty(30) years on BOT(Built, Own-Operate) basis. The project involved construction of a two-berth terminal, reclamation of 20 hectares of area for container yards and installation of requisite container handling equipment along with other related facilities, with a **projected capacity of 0.6 million Twenty Foot Equivalent Unit (TEU) containers per annum.**(Container capacity is often expressed in *Twenty Foot Equivalent*

Units (TEU, or sometimes teu). An equivalent unit is a measure of containerized cargo capacity equal to one standard 20 ft (length) × 8 ft (width) container. As this is an approximate measure, the height of the box is not considered, for instance the 9 ft 6 in (2.9 m) *High cube* and the 4-ft 3-in (1.3 m) *half height* 20 ft (6.1 m) containers are also called one TEU). The bid conditions did not specify the capital cost of the project.

After evaluating the financial bids of technically qualified bidders, using the criteria of highest NPV of royalty offered (PLEASE SEE TABLE 1), JNPT awarded the contract to a consortium of P&O Australia Ports, Konsortium Perkapalan Behrad and DBC Group of Companies. A License Agreement (henceforth referred to as the “Concession Agreement”) was signed on July 3rd 1997 between this consortium and JNPT. The consortium was later incorporated as a separate company called the Nava Sheva International Container Terminal Limited. NSICT thus became India’s first PPP initiative in the port sector developed at a cost of \$ 180 million. This was a welcome development for catering to the rising demand for container handling capacity.

Table 1 Distribution of Guaranteed Royalty payments (As percentage of minimum guaranteed royalty payments)

Years from Start of Operation	Royalty payments (%)
7 years	2.26%
14 years	17.24%
21 years	31.66%
28 years	49%

Source: NSCIT Bid offer

One view of the partnership is that NSICT has been a runaway success. In recognition of its outstanding performance, the Confederation of Indian Industry bestowed the CII Award for Excellence in Infrastructure to NSICT in February 2003. NSICT has achieved operational results comparable with global standards - recording Gross Ship Rates of over 100 moves per hour and average vessel turnaround time of 0.75 days. (N.B: Vessel Turnaround time is the total time between the average and departure of all ships divided by number of ships).

Gross Ship Rates or Gross Tonnage Rate is calculated based on "the moulded volume of all enclosed spaces of the ship" and is used to determine things such as a ship's manning regulations, safety rules, registration fees and port dues, whereas the older gross register tonnage is a measure of the volume of certain enclosed spaces.

In April 2005, NSICT handled traffic that exceeded twice the capacity estimated by JNPT at the time of bidding. The presence of a well managed terminal also created a competitive environment that spurred the modernization of the neighbouring terminal owned by JNPT.

A contrary view is that NSICT made profits far in excess of the permitted returns and that a significant part of these profits could be attributed to monopoly rents arising out of a flawed regulation of tariffs[6] in an environment of inadequate capacity creation compared to rising demand. The third terminal at JNPT was commissioned only in 2006. As a result, much of the volume and efficiency gains were not shared with the users. From its inception and up to March 2005, NSICT revenues aggregated over Rs. 1,624 crore (\$406 million) out of which the royalty amount payable to JNPT was Rs. 117 crores (\$29 million) that constituted 7.2% of its total revenues.

When viewed in the light of its extraordinary returns, **notwithstanding the rate of return regulation**, the project signals an unequal partnership between a private operator, fiercely driven by objective of maximizing returns, and an absentee landlord unable to enforce the **basic terms of a badly structured**

Concession Agreement [8], coupled with a weak regulator who chose to be dependent on

the “regulated” for determination of tariffs. This environment provided enough leverage for NSICT to manipulate the deal, ex post, to its own advantage and to the disadvantage of port users.

[1] The turnaround time of ships in a port (UN Publications, Sales No E67,VIII,5)

[2] Gross Tonnage Rates/Gross Ship Rates as used interchangeably are defined by

The International Convention on Tonnage Measurement of Ships, 1969, adopted by the International Maritime Organization in 1969, and came into force on July 18, 1982.

Process Management in NSCIT (A Brief View)

The mode of operation of the project was through BOT (**Build-Own-Operate**) project with open tendering invited for the project. The Licensing period offered was for a period of 30 days.

The contract was for Thirty (30) years in the nature of a concession contract. The agreement with Port Trust of India was made in such a way that at the end of the concession period all the assets used in the process will revert back to Port Trust of India. Two bids (Financial and Technical) were invited from the prospective bidders. Financial bids of only technically qualified bidders was opened.

The Bidders had specified an upfront their licensing fee in their financial bids.

Mode of Governance/Regulatory Framework

Creation of an independent statutory authority called TAMP (*Tariff Authority for Major Ports*) with powers to determine tariff chargeable from the port users Cost plus approach along with an assured rate of return was used for fixing of tariff. Tariff proposals are initiated by the stakeholders, port trusts and port operators. TAMP could exercise suo moto jurisdiction in tariff fixing under regulatory norms. Participative approach of all the members (public and private) in tariff fixation has been one of the best approaches adopted.

Creation of a SPV (Special Purpose Vehicle)[5]

The consortium of P&O Australia Ports, Konsortium Kenpakalam Berhad and DBC Group of Companies was later incorporated as a separate company called Nava Sheva International Port Terminal for managing the affairs and in case of disputes there was an appellate authority (JNPT) for amicable settlement.

Criteria for awarding project

On the basis of highest NPV (Net Present Value), royalty was awarded to the consortium of the operators which was later incorporated as a separate company.

Views on Implementation/Execution of the Project in 2006:

The project was considered to be a runaway success. It was awarded a prize for excellence by the Confederation of Indian Industry (CII). Average vessel turnaround time in the port had increased by 0.75 days. There were allegations (from different quarters of stakeholders) of unfair gains by private operators to the tune of \$406 million while the government only managed to collect revenues of \$29 million. The private sector have been charged with using the government machinery, using it to their benefit for making unaccounted gains and finally the port users have to bear the extra burden of costs.

Weaknesses in the Project:-

First and foremost, TAMP's (*Tariff Authority for Major Ports*) jurisdiction was only limited to tariff fixation and no other administrative powers were vested on it.

- There were no periodic reviews regarding costs, progress etc and there was lack of transparency in the project.
- No proper norms were fixed relating to capital and operating costs and this resulted in adopting different measures at different points of time as there was no equitable justification
- Wide gap between projected and actual revenues were noticed during this period resulting in a financial turmoil.

(From its inception up to March 2005, NSICT revenues aggregated over Rs 1624 crore out of which 7.2 percent or Rs 117crores were paid as the royalty to JNPT. In contrast, between 2000 and 2005, NSICT achieved an average return (post royalty) of nearly 80 percent per annum on its equity, which was four times the stipulated return of 20 per cent, making it one of the most profitable ports in the world, albeit at the expense of captive users. Over 2002-2005, NSICT extracted inadmissible returns of Rs 524 crore, which translated into annual returns of over 100 percent on its equity. In the absence of any norms relating to capital and operating costs, TAMP had to rely on the information provided by the 'regulated', which was not always dependable or forthcoming. The tariff guidelines of 1998 provided for an assured return on equity (RoE), but did not specify a normative debt-equity ratio. TAMP "adjusted" the debt-equity ratio from 65:35, as stated by NSICT, to 50:50 after 2000. (Typically, such ratios for infrastructure projects range from 90:10 to 70:10.) This "adjustment" resulted in the equity base increasing from Rs 213.17 crore to Rs 304.53 crore for the years 2000-2001 and onwards. That translated into higher tariff, providing greater returns to NSICT at the expense of port users. Although in 2005 the distinction between debt and equity was eliminated by providing a flat return of 15 percent on capital employed, no attempt was

made to specify any norms relating to capital and operating costs that determine the bulk of port tariffs. The absence of any norms provides an inbuilt incentive to the concessionaire to overstate costs-capital or operating and this resulted in undue benefits for the concessionaire)

In the matter of tariff setting, TAMP dithered for three years and engaged in half-hearted efforts to solicit cooperation from NSICT, right until 2005, while NSICT reaped 'undue benefits' arising out of large increase in traffic. (The tariff should have gone down usually with the heavy growth in traffic.)[This justifies the case of an absentee landlord...]

Net Present Value (NPV) is a method of evaluating a capital investment project which measures the difference between its cost and the present value of its expected cash flows.

$$\text{Formula for NPV is } NPV = NCF_0 + \frac{NCF_1}{1+k} + \frac{NCF_2}{(1+k)^2} + \dots + \frac{NCF_n}{(1+k)^n}$$

where NCF_0, NCF_1, NCF_2 and NCF_n are cash flows of the project in Year 0, Year 1, Year 2 and Year N respectively and k is the cost of capital.

In absence of a clear costing norms TAMP accepted the costs submitted by the SPV, NSICT without any contention.

(N.B. TAMP: Tariff Authority for Major Ports, SPV: Special Purpose Vehicle).

(N.B. 1 crore = 10 Million)

Recommendations:

Firstly the jurisdiction for TAMP should be increased from tariff fixation to all other aspects like monitoring of the partner's progress in a PPP (here NSICT), periodic reviews and call for explanations and settlement of disputes if any, by conciliatory participation. Maintenance of transparency and accountability regarding costing measures and performance monitored

through advanced tools and following all norms. Information should be provided to all the stakeholders about the progress; also they should publish a white paper through which the public at large is informed about the progress.

Secondly, it was felt the new SPV which is created should be under the supervision of eminent and efficient management of Top Managers from Private sectors who shall be given the charge for entire period with autonomy and responsibility and make them manage the SPV like an SBU (Strategic Business Unit) in Multi National Companies. In this way we can free the projects from Bureaucratic clutches thus saving them from mismanagement, vested interests and corruption, thus reducing the financial burden on the government exchequer and the public at large. (As far as the latest news there has been a commission of enquiry conducted by the Regulatory authorities and the legal battle drives on.). Finally, for settlement of disputes relating to PPP involving foreign players fast track Legal mechanisms (e.g. fast track courts with specific function of dispute resolution for these type of PPP's should be constituted for speedy redressal of grievances).

Conclusion

As highlighted in the guidelines for PPP in the Port sector was to mobilize resources through public private partnership which was needed for additional capacity handling to provide a suitable solution to burgeoning traffic as well as to improve efficiency, productivity and quality of service to bring about the much needed competitiveness in port services. However, the outcome was quite different than the expectation. The private partner leveraged its competencies to provide high quality services to port users but at the same time extracted unlawful gains from its users confronting them with a monopolistic situation.

This case highlights the inefficient functioning of the regulatory stakeholder like the JNPT who preferred to turn a blind eye to this deal whereas if it could have been more vigilant during the bid acceptance stage the non-workability of such a high royalty vis-a- vis the regulated tariff based on return.

It also brings into mind that going for a PPP in essential operations like ports will achieve the desired result only, when there are proper regulatory and monitoring mechanisms for smooth functioning of the contractual obligations.

Thus it teaches us all a lesson just by resorting to a model of Public Private Partnership would not act as panacea for all remedies. A well regulated policy framework coupled with an efficient monitoring system will bring the desired results.

Case Review Questions

1. Why is it required to go for PPP model?
2. What is PPP model and how is it different from other project implementation? What is the need for cluster approach?
3. What are the hurdles in a big ticket PPP project?
4. Is there a need for independent monitoring system? Differentiate between independent audit and regular monitoring system?

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European Commission Directorate General Regional Policy, "Guidelines for Successful Public-Private Partnerships" Brussels, February 2003.

(http://europa.eu.int/comm/regional_policy/sources/docgener/guides/PPPguide.htm)

See for TAMP website: <http://www.tariffauthority.gov.in/>

See for public private partnership in India website <http://www.pppinindia.com>

See Ministry of Shipping website :

<http://www.shipping.gov.in/writereaddata/link/linkimages/gideport2958264063.pdf>

Exhibit 1 - A Generalized Framework of PPP

Type of PPP	<i>Instrumental</i>
Main Reason for PPP	<i>Social Needs</i>
Legal Mechanism	<i>Concession Contract</i>
Ways to deal with communication and conflict resolution	<i>1st Step: PPP Empowering Committee. 2nd Step : Arbitration</i>
Involvement between organizations (dependent, independent, interdependent)	<i>Interdependent</i>

Source: Ysa.T.2007 Governance Forms in Urban Public-Private Partnerships
International Public Management Journal, 10 (1):35-57)

Exhibit 2 - PPP Projects Process Management in India

PPP Project-Process	Ministry of Finance Initiatives
Capabilities needed in the public sector Project Identification Preparation of Initial Screening Report (ISR)	Technical Project Management and monitoring skills with specific officials trained in handling technical project Expert Support through MIS consultants and Legal Advice from Asian Development Bank. Sector Specific and Need Assessment Workshops
Approval of the ISR/Project from Regulatory Authorities	Training officers on PPP's Project Management including project financing and risk assessment. Exposure to best practices. Pre bid grading of projects/risk valuation.

Project Feasibility Studies (Involves financial structuring/risk assessment/ demand assessment)	Transaction Advisors
Documentation Stage (Bid document/Concession Agreement/contractual Structure Development)	India Specific Infrastructure Fund for Project Expenses during initial Development phase. Standardized Bidding Documents. Online Project Toolbox and Manual.
Bidding Process	
Selection of Private Investor/ Developer	

Signing of Agreement (Concession Contract)	
Monitoring Stage	
Support for Commercial Viability	Viability Gap Funding
Long Term Debt Financing	Financing through IIFCL

Exhibit 3 - Bidding Process for NSCIT: A Brief Overview

The bidding process treated royalty payments as the bid parameter for selection of the preferred bidder. Royalty payments, therefore, was central to the bid evaluation process. The financial offer [6] of NSCIT was evaluated the highest among competing offers, included the royalty payment per TEU and the minimum guaranteed royalty payments over the 30 year concession period. Starting with a base of Rs 47 (\$1.18) per TEU in the first year of operation (1999), royalty payments increased to Rs 5,610 (\$140.25) per TEU in the last year of operation.(2027).The graph also illustrates the minimum guaranteed amount payable by NSICT to JNPT each year starting with the first year of operation of the terminal to the last.

b) TAMP used a cost plus approach with an assured return on equity as the basis for tariff regulation as per the TAMP Guidelines of 1998.

c) As per the “Guidelines for Regulation of Tariff at Major Ports, 2004” (the “Revised Guidelines”)

Para2.4.1: The “cost plus” approach would continue to be followed with an assured 15% return on Capital Employed (the “ROCE”)

(TAMP= Tariff Authority for Major Ports)

Exhibit 4 - Nhava Sheva International Container Terminal (NSCIT) Project: Extortionately Costly

(The actions and inaction of the government, the port trust, and the regulator allowed unlawful gains to the private partner at the cost of port users, shows a study commissioned by the Planning Commission. Here's a PPP that's not only extortionately costly but also represents abdication of governmental responsibility):

Excerpts:

The Centre issued in 1996 the guidelines that recognized that the port trusts could undertake PPP projects under the Major Port Trusts Act, 1963.

The guidelines were aimed at attracting private investment in building terminals and other facilities on build-own-operate (BOT) basis.

The bidders were to indicate an upfront fee for the licence and royalty per ton of cargo to be handled, both to be paid to the port trusts, as well as the minimum guaranteed cargo.

The port trusts were to continue to maintain their regulatory role and “ensure that private investment does not result in the creation of private monopolies.”

The guidelines underscored the need for an independent tariff regulatory authority for determination of port tariffs.

The tariff so fixed would be a ceiling and both the private entrepreneurs and the port trusts would be free to charge less than such notified tariff. Accordingly, the MPT Act was amended in March 1997 for setting up the Tariff Authority for Major Ports (TAMP).

First PPP in port sector

Nhava Sheva International Container Terminal (NSICT) became India's first PPP initiative in the port sector in July 1997 when Jawahar Lal Nehru Port Trust (JNPT) awarded the BOT concession for the terminal to a consortium of P&O Australia Ports, Konsortium Perkapalan Behrad and DBC group of companies. The consortium was later incorporated as NSICT Ltd.

The project included construction of a two-berth terminal, reclamation of 20 hectares of area for container yards, installation of requisite container handling equipment and other facilities, with a projected capacity of 0.6 million twenty foot equivalent unit (TEU) containers per annum.

The bid conditions did not specify the capital cost of the project.

The terminal was completed at a cost of about Rs 733 crore in 1999, over a relatively short period of two years.

'Success' at what cost?

"One view of the partnership is that NSICT has been a runaway success, recording gross ship rates of over 100 moves per hour and average vessel turnaround time of 0.75 days. In April 2005, NSICT handled traffic that exceeded twice the capacity estimated by JNPT at the time of bidding," wrote Bharat Salhotra in a 'case study' commissioned by the Planning Commission and published in November 2007.

"The contrary view is that NSICT made profits far in excess of the permitted returns and that a significant part of these profits could be attributed to monopoly rents arising out of a flawed regulation of tariffs in an environment of inadequate capacity creation compared to rising demand," Salhotra wrote.

From its inception up to March 2005, NSICT revenues aggregated over Rs 1624 crore out of which 7.2 percent or Rs 117 crore were paid as the royalty to JNPT.

In contrast, between 2000 and 2005, NSICT achieved an average return (post royalty) of nearly 80 percent per annum on its equity, which was four times the stipulated return of 20 per cent, making it one of the most profitable ports in the world, albeit at the expense of captive users.

Inadmissible returns, effete regulation

Over 2002-2005, NSICT extracted inadmissible returns of Rs 524 crore, which translated into annual returns of over 100 percent on its equity.

In the absence of any norms relating to capital and operating costs, TAMP had to rely on the information provided by the 'regulated', which was not always dependable or forthcoming, says Salhotra.

The tariff guidelines of 1998 provided for an assured return on equity (RoE), but did not specify a normative debt-equity ratio. TAMP "adjusted" the debt-equity ratio from 65:35, as stated by NSICT, to 50:50 after 2000. *(Typically, such ratios for infrastructure projects range from 90:10 to 70:10.)*

This "adjustment" resulted in the equity base increasing from Rs 213.17 crore to Rs 304.53 crore for the years 2000-2001 and onwards. That translated into higher tariff, providing greater returns to NSICT at the expense of port users.

Though the revised guidelines of 2005 eliminated the distinction between debt and equity by providing a flat return of 15 percent on capital employed, no attempt was made to specify any norms relating to capital and operating costs that determine the bulk of port tariffs, says Salhotra.

The absence of any norms provides an inbuilt incentive to the concessionaire to overstate costs – capital or operating.

In the matter of tariff setting, TAMP dithered for three years and engaged in half-hearted efforts to solicit cooperation from NSICT, right until 2005, while NSICT reaped 'undue benefits' arising out of large increase in traffic. (The tariff should have gone down with the heavy growth in traffic.)

The sharp increase in the volume of traffic was known to JNPT, yet there is no evidence to suggest that in its capacity as a licensor and in discharge of its responsibility under section 42 of the MPT Act, JNPT sought the intervention of TAMP for a tariff review or compelled NSICT to subject itself to a review of tariffs as per law, especially to prevent it from recovering monopoly rents.

The tariff order of 2005 recognised that NSICT had accumulated (post royalty) an excess surplus of Rs 473.42 crore during 2000-2005 over and above the admissible 20 percent return on equity.

In addition, despite admitting that a reduction of 30 percent in tariff was indeed warranted, TAMP reduced the revenue by only 12.8 percent to bring it back to JNPT level.

Improper/Misconstrued Policy directives

The Department of Shipping (DoS) and JNPT apparently erred in structuring the project, which involved a tariff model that was incompatible with the bidding model.

The DoS attempted to address this incompatibility through an ill-conceived policy directive on treatment of royalty, which changed the tenor and structure of the entire deal. As a result of this policy directive, NSICT would pay only Rs 2560 crore to JNPT over the concession period against an estimated royalty of Rs 8390 crore, resulting in an undue gain of Rs 5830 crore which would be borne by port users.

TAMP allowed the burden of royalty payments to be passed on to port users even though royalty was the basis on which NSICT was selected. As a result, port users paid over 80 percent more than what was due during that period.

The role of JNPT as grantor of the concession was equally suspect, as it took no steps discharge its statutory duties under the law or the concession agreement and allowed NSICT a free hand.

“When viewed in the light of its extraordinary returns, notwithstanding the rate of return regulation, the project signals an unequal partnership between a private operator, fiercely driven by objective of maximizing returns, and an absentee landlord unable to enforce the basic terms of a badly structured concession agreement, coupled with a weak regulator who chose to be dependent on the ‘regulated’ for determination of tariffs.

This environment provided enough leverage for NSICT to manipulate the deal, ex post, to its own advantage and to the disadvantage of port users,” says Bharat Salhotra.

(This article is a summary of the detailed case s of Nhava-Sheva International Container Terminal project done by Bharat Salhotra IAS, on behalf of the Planning Commission. Salhotra currently works as a General Manager for Delhi Freight Corridor Corporation of India Ltd. The full case study can be accessed on the website run by the secretariat on infrastructure of the Planning Commission: <http://infrastructure.gov.in/pdf/NSICT.pdf>)

Exhibit 5 - Overview of Tariff Guidelines of 1998

PART I

A set of guidelines was adopted by TAMP in February 1998 the features of which are as follows:

- a) A cost plus approach along with an assured rate of return would be adopted for tariff fixation.
- b) Tariff proposals could be initiated by any of the stakeholders port trusts, port users, port operators, and representative bodies of user groups.
- c) TAMP could exercise suo moto jurisdiction in tariff fixation.
- d) A participative approach was followed in case of tariff reviews.

Part II

The Tariff Guidelines of 1998 were superseded by the "Guidelines for Regulation of Tariff at Major Ports, 2004" (the "Revised Guidelines") whose salient features are as follows:

- a) The 'cost plus' approach would continue to be followed with an assured 15% return on Capital Employed (The "ROCE")
- b) The final rate fixed by TAMP will ordinarily be effective only prospectively.
- c) TAMP may suo moto review its orders, for good and sufficient reasons. In such proceedings, the normal consultative process will be followed.

Exhibit 6 - Guidelines for PPP in Major Ports

- a) Open tenders to be invited for private participation on Build, Operate and Transfer basis (BOT).
- b) Period of License not to exceed 30 years.
- c) At the end of concession period, all assets to revert back to the Port Trust, free of cost.
- d) Two Bid System (technical and financial) to be followed. Bidders asked to indicate in their financial bids i) an upfront fee for the license ii) royalty per ton of cargo to be handled and iii) the minimum guaranteed cargo.

Exhibit 7 - Diagram of Export Process

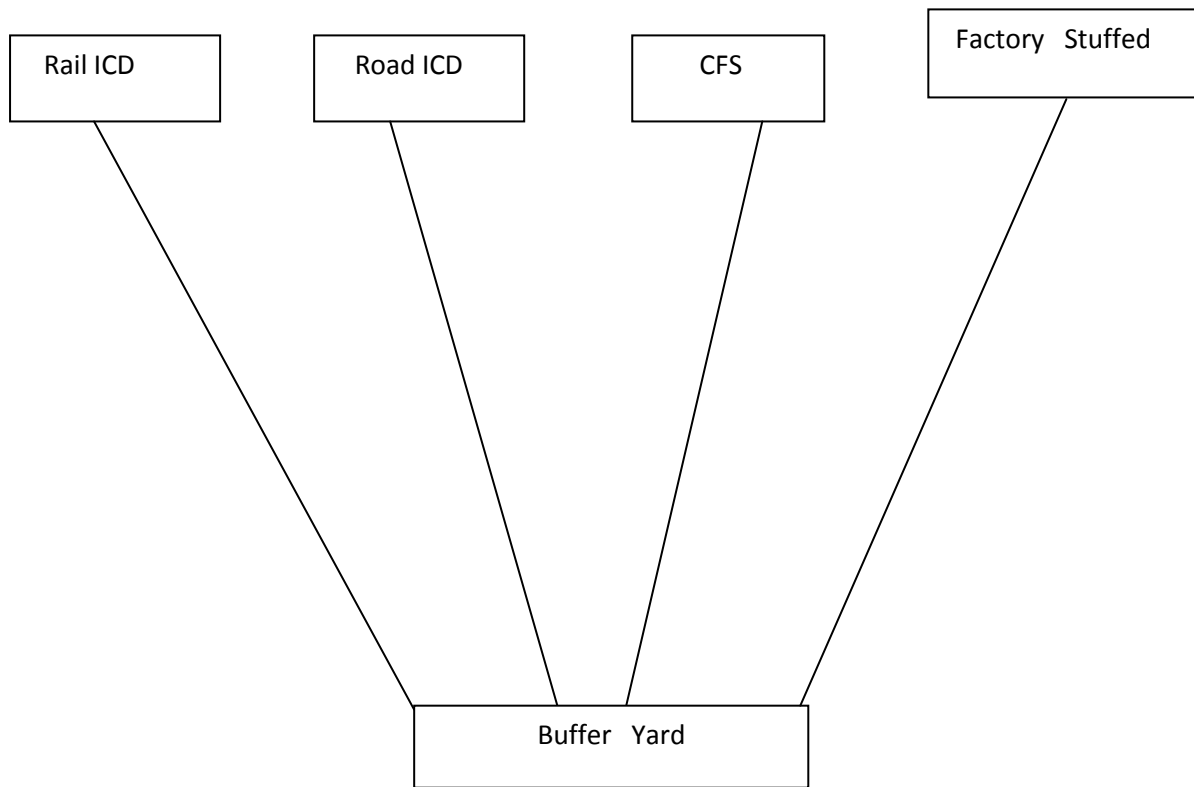


Exhibit 8 - Unrequited Benefits received by NSCIT

(Total quantum of Inadmissible benefits that have been permitted by TAMP for 2000-2008)

Item	2000-2005	2005-2006	2006-2008	Total
Royalty Pass Through	116.69	68.25	165.27	350.27
Additional receipts on account of D/E from 65:35 to 50:50	37.61	0	0	37.61
Excess Surplus beyond 20% ROE (2000-2005) & 15% ROCE (2005-2008)	473.41	77.41	10.9	561.72
Total unrequited receipts of NSCIT	627.71(\$157MN)	145.66(\$36MN)	176.17(\$144MN)	949.54(\$237MN)