

**EPCA Report (July 2008)
Finalisation of the Outdoor Advertising Policy of MCD as applicable also
to the area under the New Delhi Municipal Council (NDMC) after
hearings with the applicants before the Hon'ble Supreme Court as per
its directions of April 25, 2008**

In the matter of W.P. (C) No.13029 of 1985; M.C. Mehta v/s UOI & others

The Honorable Supreme Court in its order dated 27.4.2007 directed EPCA to examine and file its opinion on the Outdoor Advertisement Policy prepared by the Municipal Corporation of Delhi. Further in its directions of 25.4.2008 the Hon'ble Supreme Court directed EPCA to hear all parties with applications before it. This report is based on these consultations and final decisions.

**Environment Pollution (Prevention & Control) Authority
for the National Capital Region**

1. Background

On 25.4.2008 the Hon'ble Supreme Court directed: "These matters relate to erection of hoardings in MCD, NDMC and NCT of Delhi area. It is submitted by some of the advertising agencies that they were not heard before the Bhure Lal Committee and learned ASG for Indian Railways and DMRC also state that they have entered into contracts with various agencies as regards setting up of hoarding in the city and the earlier order passed by this court has led to a situation which was the Indian Railways and DMRC have to cancel their contracts which was already entered into between the parties.

Having regard to these facts, the interim stay granted by this court is extended for a period of another two week. Meanwhile, the Bhure Lal Committee may hear the Indian Railways, DNRC and also the applicants before this Court. Learned counsel appearing for the applicants should give details/indicate the person who intend to appear before the Bhure Lal Committee to the registry and the registry will supply such list to Bhure Lal Committee. Meanwhile, there shall not be any new contracts or renewal of contracts or fresh hoardings contrary to the report given policy adopted by the Bhure Lal Committee."

2. List of persons who appeared before EPCA (based on the list of parties seeking directions from the Hon'ble Supreme Court)

1. Northern Railways
2. DMRC
3. M/S Pioneer Publicity Corporation Pvt. Ltd.
4. M/S Sai Associates
5. M/S Shalimar Advertiser
6. M/S Anant Arts
7. Ms. Taranjeet Kaur Sapra
8. Indian Outdoor Advertising Agency

3. Summary of submissions made before EPCA

3.1 Northern Railways

1. Railway land is available in patches. It is therefore not possible to have a policy prescribing distance of 50 metres from road junction, traffic intersection or another crossing. This provision should be deleted for railways.
2. For reasons of safety and reducing sound and vibration, bridge panels (even at the two-tier level) may be allowed to be set up on the over bridge.

3. The size restriction placed by MCD in the draft policy for unipole or bill boards are at variance with Railway's existing size of display. No such restriction should be imposed on Railways.
4. Railway does not agree with the cost sharing proposed in the policy. The institution is exempted under the Railway Act (Section 184/185) from payment of all taxes to civic bodies. However, "it had signed a few years ago an agreement with MCD agreeing that 10 per cent of the revenue from each advertising contract will be paid to the municipal body. Of late, this has been raised unilaterally on the demand of MCD to 25 per cent. It is pertinent to note that Delhi Metro (DMRC) has refused to pay the amount asked for by the MCD. In the proposed policy the MCD has hiked this amount to 50 per cent. This is considered highly unreasonable and we do not agree to any increase over the payment of 25 per cent of the revenue through advertisements."
5. There should not be a provision for NOC from the MCD for setting up the hoarding. Railway says that there is a definite distinction between hazardous and non-hazardous advertising hoarding depending on the extent such hoardings attracts the attention of the road or rail driver and at what point of time and space. It has set up adequate mechanisms for ensuring that safety of the structure is not compromised. The railways own departmental wing may be allowed to assess whether the outdoor advertising hoarding structure is hazardous or not.

3.2 Delhi Metro Rail Corporation Ltd (DMRC)

1. DMRC does not accept the provision in the policy under the heading, 'role of Municipal Corporation of Delhi that no person shall erect, exhibit etc any advertisement in public view without the prior written permission of the Commissioner. DMRC strongly objects to this as it is a government metro railway as defined under section 2(1)(f) of the Delhi Metro Railway (O&M) act 2002 and has the right to exhibit outdoor advertisements on their own structures under the provisions of section 29 of the Act entitled, Right of metro administration to display advertisements on metro railways or premises occupied by it. As such DMRC is not bound to obtain prior approval of the Commissioner, MCD before displaying such advertisements.
2. DMRC objects to the revenue sharing proposed in the policy, which requires that all advertisements which face the MCD roads irrespective of jurisdiction of land will be governed by rules and regulations laid down for advertisements, including sharing 50 per cent of the revenue received by them from the advertiser. This is not acceptable to DMRC, who under the provisions of section 184 of the Indian Railway Act 1989 are exempted from paying any taxes whatsoever to local authorities. The Indian Railway Act (Section 184/185) includes DMRC also and it exempts them from payment

of taxes to civic authorities. Furthermore, section 29 of the Delhi Metro Railway (Operation & Management) Act, 2002 mandates the applicant to use its premises, lands, buildings etc for displaying commercial advertisements and for that purpose to erect or construct or fix any hoarding, billboard etc. DMRC also point to section 103 of the same Act, under which, “the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any enactment other than this Act”.

3.3 M/s Pioneer Publicity Corporation Pvt Ltd a beneficiary of contracts from Northern Railway for entire Delhi division and from DMRC for some of its stations; from MCD and DTC

1. The policy seeks to maximize the revenues of the MCD by ensuring the elimination of the advertising devices controlled by Northern Railways, DMRC and owner of private premises. While MCD has imposed hoarding size restriction of 6mx3m (20x10'=200 feet) in respect of category-1 devices, there is no outer limit restriction on category 2 and category 3 advertisement devices and consequently, the sizes of these hoardings varies from 400-2000 feet.
2. The reduction of the number of category 1 advertisement devices on the roads shall increase the commercial viability of category 2 and category 3 devices and increase the revenue of MCD and NDMC as well as the beneficiaries of the contracts from these two agencies. It is also understood that the two agencies are planning to interpret the policy to give priority to category 2 or category 3 devices. In other words, if NDMC sets up a garbage dump on the road, then previously standing category 1 device, such as unipole will be removed by pleading the restriction of 75m distance from another device.
3. NDMC and MCD do not have the authority to identify and remove hazardous hoardings. Such a power has been vested to the traffic police through section 116(4) of the Motor Vehicles Act.
4. The policy does not explain why it has decided on 75m distance between two devices. This is arbitrary. Instead it should accept the distance provided in Mumbai policy of 20m.

3.4 M/s Shalimar Advertisers, partnership firm registered with the MCD for advertisements and awarded contracts by DMRC for display.

1. There is no conclusive report to show that there is any significant co-relation between hoardings and traffic accidents. EPCA is not qualified to discuss such a technical subject. The subject is highly technical and will require

- substantial study by technical experts over a period of at least one-two annual cycle.
2. The policy is biased and discriminatory, as it imposes longitudinal distance criteria for category 1 (large format) devices, but not in respect to Category 2 devices such as bus shelters, dhallows, public conveniences.
 3. The longitudinal distance of 75 m is arbitrary and not based on any study. It may be considered that the recently formulated outdoor advertisement policy by the Bombay Municipal Corporation has recommended only 20 m between any two advertisement devices.
 4. The imposition of size restrictions of hoardings on unipoles and bridge panels to the extent of 200 sq feet (10x20') while permitting variable displays extending up to 700 sq feet in the case of dhallows and public conveniences reflects that the said restriction on hoarding size has no nexus with the object of regulating hazardous displays.
 5. The policy fails to take into account that bridge panels are placed at great height and are visible from a long distance. In this case, the restriction of size of display to 10x20' is wholly unreasonable.

3.5 Ms. Taranjeet Kaur Sapra (sole proprietor of M/s Magnum International, engaged in the business of outdoor publicity on the rooftops/terraces of private properties in NCR of Delhi)

1. The decision not to allow the advertisements on roof tops of the building is beyond the terms of reference of the Committee as it is only directed to come out with an outdoor advertisement policy so as to ensure road safety.
2. The decision not to allow rooftop advertisements is highly arbitrary. It is submitted that rooftop hoardings are allowed in almost every big city in the world, including India. The policy guidelines on the grant of permission for display of sky-signs and advertisements under section 328 and 328A of the Mumbai Municipal Act 1888 allow rooftop hoardings.
3. This decision will cause huge losses of revenue to the MCD in addition to the loss of livelihood to the advertisers.

3.6 M/s. Sai Associates and M/s. Anant Arts

1. The size of bill-board should be increased, it should be made on the basis of road-width. Size of 6m x 3m should be kept on roads less than 30 m. On roads of 30-45m, it should be made 8m x 4m and on roads having 45 m +

- width, it should be made 10 m x 5 m. The distance from a red light should also be reduced to 50 m.
2. Height of all hoardings should be made uniform. There should be no discrimination between railway hoardings and other hoardings and the same height should be maintained, as has been done in Mumbai.
 3. Distance between devices in category 1 (large format) should be reduced to 20 m, as has been done in Mumbai. It should also be clarified that such a restriction is for hoardings in the same side of road-alignment.
 4. Building wraps in industrial areas should be permitted.
 5. It should be clarified if advertisements are allowed on footpath/right of way or if the distance of 3 m as measured from the edge of the road in the case of footpath/absence of footpath is to be maintained. Given this situation, it is requested that the policy should delete the prohibition on the complete footpath and the right of way.
 6. There is a need for clarity on the issue of hoardings in NDMC area as under the policy, large size billboards in commercial area will be allowed. This would imply that hoardings be allowed in the Central Business District (CP and its adjoining areas), under the jurisdiction of NDMC.
 7. Privately owned advertising device like radio taxi are required under the policy to be placed at the disposal of the MCD for inviting tenders for award of advertising rights. If this mechanism is allowed the private agency will have no option but to work with the MCD contractor irrespective of its credentials. The agency will also be at the mercy of such contractors for payments. Instead in such tri-party arrangements, MCD should fix a transparent fee structure/revenue arrangement and the concerned person be allowed to choose the advertiser, provided the advertiser is a licensed advertiser of MCD.
 8. Advertisements falling under category-4 (business-on premise signage) should also be implemented immediately. Furthermore, till such hoardings are not removed, it will not open potential avenues for displaying new advertisements in the permissible commercial areas, as allowed in the policy.
 9. The policy stipulates that in case of removal of existing authorized advertisement devices or shifting, no compensation would be payable. We submit that advertisers whose sites are removed due to the implementation of the policy should be compensated.

3.7 M/s Indian Outdoor Advertising Association (IOAA) (an association of various outdoor advertising companies incorporated under the provisions of the companies act 1956)

1. The draft policy has inherent fallacies and discrepancies, which need to be amended/modified.
2. It is stated that the policy will not be driven by revenue imperatives but by city development imperatives. As a result of such surmises, vague presumptions and assumptions, the EPCA has made recommendations about the size, shape, structure of hoards, that will make the very purpose of putting up the hoarding as nugatory and could ultimately lead to killing the outdoor advertising industry, which is one of the biggest source of revenue for municipal and local authorities.
3. For category I and III, IOAA would recommend 25 mts from the edge of the road and traffic intersections. It should follow the Mumbai policy that the location of the hoarding shall not be within 25 mts from the edge of the junction or circle.
4. The policy creates an artificial discrimination between category I/III and category II of hoardings. Any public policy, which discriminates in favour of a public utility will be bad in law.
5. The Mumbai policy has divided the city into three zones – H1: 10x20, 20x20, H2: 10x20, 20x20, 30x20, H3: 10x20, 20x20, 30x20, 40x20. In addition, on terraces in all wards, it can be 60x20, on wider roads, 40x40. It is submitted that this policy is realistic and practical and should be adopted for Delhi.
6. There is no co-relation between motor accidents and hoardings.
7. The present policy fails to address the issue of compensation to the parties who are going to be affected by the change of policy.

4. Response of MCD

In the advertisement policy, the size and distance have been prescribed on the basis of detailed studies conducted on the issue and as per deliberations made in EPCA and as such, no relaxation in the policy appears to be necessary, at this stage. However, if EPCA considers reducing the longitudinal distance to 50 mtr from 75 mtr between two large format advertisements, MCD will support the decision.

As per provisions of DMC Act, any advertisement displayed to public view in any manner whatsoever at any place within Delhi visible from any public street / public place, attracts the provisions of DMC Act and requires prior written permission of

Commissioner, MCD and payment of advertisement tax, except those which relate to the business of a railway administration and exhibited within the railway stations or upon any wall or other property of a railway administration. Further, as per provisions of DMC Act, all public streets in Delhi (except those which vested in the Union immediately before the commencement of this Act) and the pavement stones and other material thereof, vest in the Corporation. Most of the Metro tracks have been raised within the right of way of roads in the city of Delhi.

In view of the provisions of the DMC Act read with Section 184/185 of the Indian Railway Act, DMRC Ltd. / Northern Railways are not entitled to any exemption from payment of advertisement tax / fee in respect of the commercial advertisement put up on their land / building / structures, which are visible from any public street / public place. Even if DMR (O&M) Act, 2002 allows Metro Administration to use their properties for display of advertisement, it grants no exemption to DMRC from compliance of statutory provisions of DMC Act.

The Hon'ble Supreme Court, while approving the outdoor advertising policy approved the contention of EPCA that though the advertisement policy has been drafted by the Municipal Corporation of Delhi, the same is applicable to the entire city. Thus, in case any relaxation is made in the policy in the case of Railways or DMRC, such relaxation must be applicable to all the out-of-home displays in the jurisdiction of MCD/other civic agencies.

Under the approved policy, while advertisement through different kind of moving vehicles like Taxis, Trucks, Buses, Auto-rickshaws, Metro Rail, Local Trains, etc. has been permitted, advertisement through the mobile vehicles to be stationed at selected locations, for which contracts were awarded by the MCD for different zones, has not been permitted. The policy may be reviewed, thereby allowing advertisement through mobile vehicles, as per the terms & conditions approved by the MCD, for which contracts will be awarded on tender basis.

Response of MCD to Northern Railway submission

1. Railways: There is no data to prove that the distance has bearing on the safety, hence Railway is not agreeable to distances, in terms of 75 mtr. from Red Light and 75 mtr. between the two devices. There is need to have scientific basis for arriving at any distance. Again, the distance needs to be site specific and not general.

In the advertisement policy, the size and distance have been prescribed on the basis of detailed studies conducted on the issue at national and international level.

2. Railways do not agree with the cost sharing. They are exempted under the Railway Act (Section 184/185) from payment of all taxes to civic bodies.

Section 142/143 of the DMC Act provide as under:

"142. Tax on advertisements- (1) *Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post or structure; or upon or in any vehicle*

any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematographs), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the Corporation may determine.

(e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or

“143. Prohibition of advertisements without written permission of the Commissioner

–(1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

(2) The Commissioner shall not grant such permission if-

- (a) the advertisement contravenes any bye-law made under this Act; or*
 - (b) the tax, if any, due in respect of the advertisement has not been paid.*
- xxxxxxxxx.”*

Thus, any advertisement displayed to public view in any manner whatsoever at any place within Delhi visible from any public street / public place, attracts the provisions of DMC Act and requires the prior written permission of the Commissioner, MCD and payment of advertisement tax, except those which relate to the business of a railway administration and exhibited within the railway stations or upon any wall or other property of a railway administration.

Response to submission of DMRC

(i) They agree with the policy parameters. However, it is not agreeable to the effect that prior approval of Municipal Corporation is necessary, if the location of their outdoor advertisement is as per the approved policy.

(ii) They are also not agreeable to revenue sharing.

Section 142/143 of the DMC Act provide as under:-

“142. Tax on advertisements-*(1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post or structure; or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematographs), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the Corporation may determine.*

(e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or

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over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with bye-laws made under this Act,

(2) The Commissioner shall not grant such permission if-

(c) the advertisement contravenes any bye-law made under this Act; or

(d) the tax, if any, due in respect of the advertisement has not been paid.

Thus, any advertisement displayed to public view in any manner whatsoever at any place within Delhi visible from any public street / public place, attracts the provisions of DMC Act and requires the prior written permission of the Commissioner, MCD and payment of advertisement tax, except those which relate to the business of a railway administration and exhibited within the railway stations or upon any wall or other property of a railway administration.

Further, Section 298 of the DMC Act provides as under:-

"298. Vesting of public streets in Corporation-*(1) All streets within Delhi which are or at any time become public streets, and the pavements stones and other materials thereof shall vest in the Corporation.*

Provided that no public street, which immediately before the commencement of this Act, vested in the Union shall, unless the Central Government with the consent of the Corporation so directs, vest in the Corporation by virtue of this sub-section.

(2) All public streets vesting in the Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with bye-laws made in this behalf.

(3) Notwithstanding anything contained in sub-section (1) and (2), the Central Government may, by notification, direct that all or any of the functions of the Corporation or the Commissioner in respect of public streets under this Act shall be performed by such authority as may be specified therein."

Under Section 299 of the Act, functions of the Corporation in respect of public streets, have been mentioned.

Thus, all public streets in Delhi (except those which vested in the Union immediately before the commencement of this Act) and the pavement stones and other material thereof, vest in the Corporation. Most of the Metro tracks have been raised within the right of way of roads in the city of Delhi.

In view of the provisions of the DMC Act read with Section 184/185 of the Indian Railway Act, DMRC Ltd. is not entitled to any exemption from payment of advertisement tax / fee in respect of the commercial advertisement put up on their land / building / structures, which are visible from any public street / public place. Even if DMR (O&M) Act, 2002 allows

Metro Administration to use their properties for display of advertisement, it grants no exemption to DMRC from compliance of statutory provisions of DMC Act.

5. Response of NDMC

The NDMC area has a historical/heritage Character and outdoor advertising has a direct impact on urban aesthetics. As such, NDMC has not been in favour of large format advertising devices in its area with a view to maintain and improve urban aesthetics. However, NDMC has been supporting advertising as a source of revenue for implementation of Public Private Partnership projects as it aids in development of civic infrastructure like Public Conveniences, Bus-Q-Shelters, street furniture and signages, development of round-about, parks, gardens, parking infrastructure, foot over-bridges, subways etc without compromising on aesthetics.

The municipal bodies have been assigned certain obligatory functions under their Acts (the New Delhi Municipal Council Act, 1994 for NDMC) and the bye laws made there under. Keeping in view the considerations of “urban aesthetics and public safety”, one such function assigned is the regulation of advertisements under sections-88 to 99 of the New Delhi Municipal Council Act and the provisions of the “New Delhi Municipal Committee (Pasting of Bills and Advertisements) Bye laws, 1992”. The Railways and the Metro authorities are not responsible for urban aesthetics in the area under the jurisdiction of the local bodies. Therefore, the discussion on supremacy of one Act over the other is misguided as far as control/regulation of advertisements is concerned. The municipal Acts recognize the commercial independence of the Railways and accordingly the Act exempts taxation of advertisements if the advertisement relates to the business of a Railway Administration and is displayed within a railway station or upon a wall or other property of a railway administration.

This implies that if the advertisement is displayed for public view, it would attract both advertisement tax and regulation by the municipal bodies as advertising of railway business is exempt so long as it is displayed within a railway station or upon a wall or other railway property. The exemption cannot be extended to cover commercial advertising on structures (like unipoles next to railway bridges) created specially for display of advertisements which is visible to the public at large from the area within the jurisdiction of a municipal body and which serve no functional purpose. Furthermore, the advertisements contracts awarded by railways for advertisement on unipoles do not relate to the business of railways but relate to the business of other companies.

NDMC feels that the NDMC Act and Bye-Laws provide sufficient control mechanism for regulation of advertising; however, NDMC has no objection to further detailing of the advertising norms as has been proposed under the guidelines prepared by MCD and approved by.

6. Response of Delhi police

The views of Delhi Police on outdoor advertisements have already been communicated vide this office letter No. 4032/T.E. Branch (D-1)/Traffic dated 2.7.2007. Further, Delhi Police is in agreement with the Outdoor Advertising Policy, which has been finalised as per the directions of the Hon'ble Supreme Court of India by EPCA on September 10, 2007.

Briefly, our observations/reiterations are as under:

- i) Vehicular mounted advertisement devices may not be permitted, except on the rear side of a bus, on delivery and service vehicles for self-advertisement and taxi advertisement.
- ii) Advertisements on residential buildings, either on the front, side or on rooftop, may not be permitted. The advertisement on the front façade of commercial and official buildings may be permitted in commercial areas only.
- iii) No advertisement may be permitted on the central verge of the road either on electric poles or any other structure e.g. pedestrian railings/barriers etc.
- iv) Advertisement on unipole mounted rotatable devices, which rotate slowly may not be permitted.
- v) Advertisement through LCD illuminated devices on traffic signals, when the signal is red, may be permitted.
- vi) The policy of keeping the advertisement 75 meters from road intersections and maintaining a distance of 75 meters between them may be strictly adhered to even in the case of Railways and DMRC.

7. Response of Delhi Urban Arts Commission

The Delhi Urban Art Commission (DUAC) is a statutory body established under the Delhi Urban Art Commission Act 1973 set up to advise the Central government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design of Delhi; and to advise local authorities in respect of any project of building and engineering operation or any development proposal which affects or is likely to affect the aesthetic quality of the surroundings or any public amenity provided.

The DUAC has guidelines, issued under its statues for outdoor publicity. These guidelines have been reiterated by the Commission to EPCA and are given below:

Page 6, Section 3.1: Outdoor publicity includes all publicity material intended to advertise merchandise, to give information regarding persons, places, public performance, government announcement etc. These are in the form of:- Sign Board, Directional Sign Board, Bill Board, Hoarding, Neon Signs, Illuminated Sign Boards, Bus 'Q' Shelters, Balloons, Vehicles and Banners.

Section 3.2: With regard to the above, the following are the Commission's guidelines:-

- (1) No commercial hoarding, neon signs, or bill boards shall normally be allowed to be displayed by the local body/ public agency in the following areas, buildings and structures:
 - (i) Residential areas including major roads passing through residential areas.
 - (ii) Near road intersections or roundabouts.
 - (iii) In the vicinity of or on public buildings, (railway stations, bus terminus, airports and institutional buildings etc.)
 - (iv) Central Vista, including the entire bungalow area of Lutyen's New Delhi and other areas under jurisdiction of the New Delhi Municipal Committee.
 - (v) Near or in front of parks and public gardens.
 - (vi) River front and ridge areas.
 - (vii) Near or on all monumental buildings, archaeological monuments and religious buildings and buildings of National importance.
 - (viii) Over/under bridges (railway, pedestrian or vehicular) water tanks and communication towers or transmission towers.

Provided that the Commission may, however, allow Hoardings etc. to be put up in these areas in exceptional cases under a special appeal on the basis of a complete street picture prepared of these areas by the local body or the public agency concerned and submitted to the Commission for permission.

Sign/Bill Boards and free-standing commercial Hoardings of standardized sizes and specifications may be permitted by the local bodies (without referring to the Commission) in the following areas:-

- (a) The height of the signboard is not more than 75 cm. In the case of shops, restaurants and commercial establishments.
 - (i) Industrial areas.
 - (ii) On highways and roads outside the urbanisable limits.
 - (iii) Areas under wholesale trade and storage, etc.
 - (iv) Dumping areas, and
 - (v) Commercial areas-Bus Terminal, Bus Depot & Airport (as specified in the Master Plan).

No approval of the Commission shall be required by the local bodies for issuing license/ permission to fix sign/ bill-boards if the standards specified above are followed.

Local Bodies while awarding advertisement, Hoarding sites should ensure that advertisements are of a good quality as graphic designs. Any advertisement

deemed to be vulgar should be removed on being asked by the Delhi Urban Art Commission and all subsequent replacements should be subject to scrutiny.

8. EPCA's decision on the submissions and final policy

8.1 The matter of revenue sharing between Railways/DMRC and local bodies, MCD and NDMC.

In this matter, the following legal provisions have been examined by EPCA:

Railway Act: Page 59, Section 184: Taxation on railways by local authorities: (1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

Page 59, Section 185: Taxation of railways for advertisement: (1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax to any local authority in respect of any advertisement made on any part of the railway unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

The Delhi Metro Railway (Operation and Maintenance) Act, 2002: Page 11, Section 29: Right of metro railway administration to display commercial advertisements on metro railway or on the premises occupied by it: The metro railway administration may use its premises, lands, buildings, posts, bridges, structures, vehicles, rolling stock and other property for displaying commercial advertisements and for that purpose may erect or construct or fix any hoardings, billboards, show cases, and such other things for the display of posters or other publicity materials.

In addition, the 17.9.1996 Union Cabinet on 17.9.1996 mandated DMRC that the project cost over and above the equity and debt finance, would be raised by way of revenue from property development as also through levy of dedicated taxes.

Under the municipal act:

The Delhi Municipal Corporation Act, 1957: Page 67, Section 142: Tax on advertisements: (1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematographs), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed public view, a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the Corporation may determine:

Provided that no tax shall be levied under this section on any advertisement which:

- (a) relates to a public meeting, or to an election to Parliament or the Corporation or to candidature in respect of such election;
- (b) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building;
- (c) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same;
- (d) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building;
- (e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration;
- (f) relates to any activity of the Central Government or the Corporation.

Page 67, Section 143: Prohibition of advertisements without written permission of the Commissioner: (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with by-laws made under this Act.

The point of contention is the use of the word 'business' of railway administration. The municipal body is of the opinion that this restricts the exemption to only those cases where the advertisement is displayed in the 'business' establishment of the railway and within its premises. Northern Railways and DMRC, however holds that the exemption covers its work – the business of running railways and city metro services and so exempts these agencies from payment of taxes and city dues.

8.1.a EPCA's decision

It is clear that the final legal position on this matter will be decided in due course, but for the moment, based on the facts above and detailed discussions with the agencies responsible the following has been decided;

1. Northern Railways will through the advertisers share 25 per cent of the revenue.
2. DMRC will be exempt from sharing revenue of advertisements for the next five years.

8.2 The matter of seeking prior permission of MCD/NDMC by railway authorities before display of advertisements to public view

The view of the two railway agencies is that they are not only exempt from paying taxes but also have the authority, being government agencies, to display advertisements on their property without seeking prior permission of municipal agencies. Northern Railways has also sought exemption from the size of hoarding restrictions imposed in the policy.

This dispute is evident in other city guidelines for outdoor display. For instance, the Mumbai policy on the grant of permission for display of sky-signs and advertisements says that the contention of railways that they are not covered by local laws/bylaws under section 185 of the Indian Railways Act is not tenable. This is because, 'it is not realized that if a larger hoarding is allowed outside railways limits, it can make the railways' hoarding totally ineffective. Hence there is a need to develop mutual respect in this regard.'

The Mumbai policy stipulates that all advertisements set up by the railways on railway premises or stations (even if relating to their business) visible from or fronting any street and advertisements set up by private or non-railway agencies on railway premises, stations or land, will require prior permission from the municipal authority. It also stipulates that the responsibility to remove any illegal hoarding will lie with the railway authority.

Similarly, the 1998 act passed to amend the laws relating to municipal corporation and municipalities in Tamil Nadu for the purpose of regulating outdoor advertisements, also specifies that all those hoardings exhibited on any portion of the surface of such wall or property fronting any street will require prior permission of municipal authorities.

8.2.a EPCA's decision

The policy on outdoor hoardings will apply uniformly to Northern Railway, DMRC and other land holding agencies in the city. All provisions of the policy will have to be met by these agencies during the grant of advertisement contracts. To ensure that the policy is strictly adhered to it is necessary that prior permission is sought from the municipal bodies. We see no reason to make an exemption in this case.

It is important to make the two municipal bodies accountable for compliance with the provisions of this policy. This cannot be done, unless the two agencies are made responsible for ensuring that prior permissions are given for the installation of such hoardings in different parts of the city and that these permissions are compliant with the policy.

8.3 In the matter of reducing the space between the two hoardings; distance of the hoarding from the road and the removing size constraints on the hoardings.

It has been argued by many of the private advertising agencies that the draft policy is wrong in paying attention to the issue of safety of road users, as there is no empirical data to prove the hazardous nature of outdoor advertisements. These agencies have further submitted that the size of hoardings should be increased and the distance stipulated in the draft policy be reduced.

Data on road safety and outdoor hoardings

EPCA has conducted a careful review of global studies on the safety of hoardings. It is based on data that EPCA has taken the position in its report of September 2007 that “all hoardings are not hazardous, but clearly hoardings on roads, visible to traffic, are potential dangers to drivers. The outdoor advertising policy must give careful and high consideration to issues of road safety. This would require the policy to consider the location, design, size or type of sign along the arterial routes, where the potential for conflicts with traffic safety is highest. It would also require enforcement measures to ensure that these hoardings follow these stipulations.”

To arrive at this conclusion, EPCA has analysed the studies cited by private advertisers, which do not show any relationship between hoardings and accidents. The two studies most cited are by the Delhi based School of Planning and Architecture and the Kolkata based Centre for Advance Research on Transportation (CART) to substantiate this position. EPCA finds, based on global literature survey and its review of the mentioned studies that this position is inaccurate and cannot be the basis of the policy. It is clear from studies done across the world that there is substantial concern regarding the correlation between the distraction caused by the outdoor advertisements and driving. The studies state that it is not possible to correlate the danger to the specific accidents caused in the city, partly because drivers fear losing their insurance claim and partly because data does not exist in accident records, which tracks the correlation.

For instance, the Australian government’s Report of the Road Safety Committee on the Inquiry into Driver Distraction makes it clear that visual clutter impacts driver safety. It also quotes that a motor insurance company observed from their investigations that the clutter of road signs and advertising accounted for a number of crashes.

A global review and analysis of different studies done by B Wallace, a UK based researcher found the following:

- a. The effect is real. However, it is situation-specific. Many billboards and signs may have no measurable impact on road safety, but there is overwhelming

evidence that, at least in some situations, signs and billboards can be a threat to road safety.

- b. Almost all studies agree that too much 'visual clutter' at or near intersections and junctions can interfere with drivers' visual search strategies and lead to accidents.

The Indian studies as mentioned above do not find any correlation between road safety and outdoor hoardings. However, a careful review of the two studies finds serious flaws in their research methodology and resultant conclusions. The study done by the School of Planning and Architecture, New Delhi has only reviewed global studies that found no connection or studies whose results were inconclusive. It ignores in its review the numerous studies (available easily) that have found such correlations. It also ignores the basic issue raised by international studies that even if the driver does not cite a correlation between the hoarding and his or her distraction, it cannot be negated. The School of Planning study uses police data to prove that there is no correlation between the two. However it does not clarify if the police are required to question (as part of their questionnaire) the drivers, to find out if they were influenced by roadside signs, when the accident occurred. And even if they were, would the driver admit to the police because of legal and insurance claim issues.

The Calcutta study, cited by the MCD in its affidavit, incidentally was commissioned by Selvel advertising limited, which has major stakes in the business. This study, done by the Centre for Advance Research on Transportation, Indian Institute of Social Welfare and Business Management is also poor on methodology. For instance, its conclusions have been drawn on the basis that accidents were mostly caused by negligence and carelessness of drivers, passengers and pedestrians. However, the possibility that hoardings may have led to the negligence in the first place (distraction, moving signs) is not questioned. This is in spite of many previous studies that found such links, notably ones, which found an increase in accidents at/near 'visually cluttered' junctions. The study also draws on accident related data collected by the police. But it gives little cognizance to the fact that police questionnaire does not have a provision specific to the hoarding-accident linkage.

It is therefore clear that an Indian policy for outdoor hoarding must not negate the safety of road users and in fact, it must be driven by the concern for road safety.

For instance, the 2004 report on the effects of roadside advertisements on road safety by the Finnish Road Administration concluded that advertisements were a partial cause of the fatal accidents studied. While in some cases, the advertisements distracted road users because they were wrongly placed and so affected visibility, in other cases, even while the advertisement was correctly placed it was considered a partial cause. The paper concludes that the advertisements along main roads distract the detection of traffic signs and possibly also other objects relevant to the driver's task.

Even more important is the 2008 study from the University of Hull in the UK as in this case the investigators have actually conducted experiments to check the impact of distraction on drivers. In this experiment, volunteers had to drive as per instructions and were distracted by objects such as advertising hoardings. The 54 volunteers were asked to take turns through four levels of distraction: “no load” involved no distraction, ‘low load’ had three distractions, ‘high load’ six and ‘overload, nine. The results showed an increase in the reaction time of 100 millisecond between areas categorized as ‘no load’ and ‘overload’. This is equivalent to around an extra metre and a half in stopping distance. This, researchers said, was equivalent of a busy city centre, and concluded that “too much visual information in the form of advertising and signage has an effect on reaction times – the more distractions there are the slower the reaction time of the driver. It goes on to say, “we should be aware that the plethora of advertising at roadsides and signage may be contributing to road accidents.”

Even while outdoor advertisements do bring revenue to the city, policy must be driven by considerations of safety and aesthetics.

In this matter, the Delhi Police has also stated its position. Its concern is driven by safety of road users and based on this, the Delhi Police in their submission on the draft outdoor advertisement policy of MCD made in September 2007, they had stressed on the following:

- a. No advertising device has to be placed anywhere under any category which will obstruct free movement of road users;
- b. The distance between two advertisement devices should not be less than 100 m on highways and main city roads.

In their response of July 2008, on the EPCA approved draft policy, the Delhi police has reiterated its concern and has endorsed the draft policy of keeping the distance of advertisements 75 meters from road intersections and maintaining a distance of 75 meters between two devices.

Mumbai policy

Many private agencies have also submitted that the policy for Delhi must follow the advertisement policy for Mumbai, which allows hoardings within 20 metres of each other and within a distance of 25 metres from the traffic signal, measured from the ‘road line’ and 25 metres from the stop line of each approach road.

It would be important to note that this provision is also not backed by scientific study but by the decision of the city to promote hoardings. Clearly all cities have to take their individual decisions. Accordingly, Delhi has to take decisions based on the character of its city and its desire to promote hoardings, which are suited to city aesthetics and also safe for drivers.

It is also important to note that in Mumbai, there is citizen resentment and anger against the outdoor hoarding policy, which is seen as promoting advertising without cognizance to city aesthetics.

Furthermore, in Delhi, the Delhi Urban Arts Commission, the agency mandated with overseeing issues connected to city aesthetics has also made it clear that it does not want visual clutter and would like its guidelines to be strictly followed.

Changing global practices

It is also clear that cities across the world are learning the need to balance city aesthetics with revenues that they earn through advertisements, often the hard way. Beijing, for instance, has decided to remove all hoarding within the city. Its officials say this is being done to “to sanitize the city’s image cranes have dismantled many of the 90-odd billboards lining the city roads. An advertising ban has been extended across most of the city. *City officials want to prevent Beijing from becoming one very big Times Square.* Now billboards are to be allowed only along the fifth ring road encircling the city – many miles away from the city centre.

Similarly, Arnold Schwarzenegger, as governor of California is insisting on strict regulation of outdoor advertisements. The state’s Outdoor Advertising Act 2005 is, he says, intended to protect public investment in highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

In many cities of UK, local councils have removed hoardings, which they say leads to improving the visual environment and image. These cities contend that the objective of the outdoor advertising policy is “to seek the enhancement of the physical character and visual appearance of the city.” These cities argue that ‘promotion signs’ – hoarding which advertise products – can significantly add to the visual clutter in a locality and so are not encouraged. In other cities the outdoor advertisement policy is designed to discourage the proliferation of signs along major transport routes, including roadways and railways. Given this objective, these cities say that major promotion signs are “generally inconsistent with their image” and are generally discouraged.

In its global review, *EPCA found a significant number of cities, which discourage the use of large hoarding within the city.* Hoardings are preferred in highways or if these large billboards are allowed within the city limit, then these are restricted to business or already commercial districts and areas. For instance, the city of Sydney in its policy for outdoor advertising says the objective is to “reduce the number of large and freestanding billboard signs in the city.”

Sydney and many other cities argue that commercial signs (hoardings) are only necessary when they are important to the amenity of the city. Therefore, under policy, advertising hoardings are ‘discouraged’ and only permitted based on the following criterion:

- a. If they support the commercial viability of a significant building tenant (advertisements in cinemas etc)
- b. If they advertise a civic/community event involving the city
- c. If they can be considered as public art
- d. If the cumulative impact of the signs does not give rise to visual clutter.

The city explicitly bans the use of commercial advertising signs on pedestrian or vehicular overpasses, over-bridges, bridges and flyovers.

8.3.a EPCA's decision

Based on the above examination, no changes are required in the draft policy on these provisions. However, based on the discussions, changes have been made to standardize the sizes of the different formats in the final policy.

8.4. In the matter of the different categories of advertising devices

In the draft policy, under category 1, large format outdoor advertising devices are permitted to be 6mx3m (20 feet x 8 sq feet), while in category 2 says that it is allowed 23m per single wrap (247 sq feet).

This is a discrepancy, which needs to be corrected in the final policy, so that there is no discrimination against one type of structure.

However, as per the policy, there is a stated objective to distinguish between structures used for advertising only (category 1) and those that promote public utilities (category 2). The policy will promote the use of advertising in what is commonly known as street furniture. These are devices placed on public service amenities of the city like railway carriages, buses, metro trains, commercial passenger vehicles, bus shelters, metro shelters, public toilets and public garbage facilities, to name a few. This is done to improve the revenue viability of these public provisions.

But the policy will also ensure that the use of advertising space is not the primary function of the utility, it is its supporting function. Therefore, the city agency will ensure that the placement of the public utility is done keeping in mind its public purpose, not its advertising viability. In addition, the agency will ensure that the primary function of the "street furniture" is being maintained and if not then suitable punitive action must be taken against the advertising concessionaire.

In many cases, EPCA has noted that the advertisement has become the sole function in the location of public toilets or garbage collection areas. It is also clear that these 'utilities' are not working in many cases – garbage is piled up near the collection centre or that toilets are non-functional. In this case, it would seem that the sole purpose being served by the public utility is to mount the advertisement and not to provide service. This is not acceptable and will negate the purpose of the policy. The policy needs to be revised to ensure that such strict enforcement is done and remedial and punitive action taken against the concessionaire.

8.4.1 EPCA's decision

The policy has been modified to change the size and bring clarity in the specification of the two categories of the outdoor hoardings.

The policy has also been strengthened in terms of the provisions to ensure that the hoardings provided on public utilities are used to maintain the function of the utility.

8.5 In the matter of advertisement mounted on mobile vans and roof tops of residences

It has been submitted by MCD that advertisements should be allowed on mobile vehicles to be stationed at select locations. It has further argued that as advertisements are allowed on other mobile vehicles, like public buses or taxis, the vehicles stationed with the sole purpose of advertisements should also be allowed.

It has also been submitted that householders should be allowed to mount roof top hoardings.

8.5.1 EPCA's decision

It is fallacious to argue that mobile vehicles deployed for the sole purpose of advertisements can be equated with public utility and intermediate public transport vehicles. The policy is premised on the condition, that advertisements are used to provide public utilities and services. Furthermore, it has been brought to EPCA's attention that these vehicles are parked in different parts of the city and create traffic hindrances. Other cities have also voiced their concerns regarding the enforcement of these moving vehicles.

In the same light, it is difficult to enforce that the proliferation of rooftop hoardings will not lead to visual pollution and safety hazard. The Delhi Urban Arts Commission has also ruled against roof top hoardings in its guidelines.

EPCA is also constrained to state that it is already difficult to enforce the existing provisions of the policy and therefore, there is no reason to accept that the two new types of hoardings, even more difficult to regulate and enforce, should be allowed.

8.6. Contract period and terms

It has been submitted to EPCA that the introduction of the changed policy for outdoor advertisements has led to the termination of many existing contracts. This has led to losses for many advertising concessionaires and they would like to be compensated or allowed to continue to advertise even if their devices are in contravention of the newly introduced policy.

MCD and NDMC have informed EPCA had all existing contracts found in contravention of the policy have been given alternative sites. The policy provides that “It is suggested that whenever there is reallocation of an existing advertising device, the current advertiser should be given the option to accept or reject the reallocated site without any alteration in fee structure. In case he refuses to accept the offer, it may be put to tender or other method of selected the preferred bidder. The advertiser, however, will not be entitled to any compensation on account of shifting of the site due to adoption of new policy.”

8.6.1 EPCA’s decision

Firstly, EPCA would like to make it very clear that the city did not have a policy, which promoted outdoor advertisements in the city. In fact, the Hon’ble Supreme Court and the Hon’ble High Courts have issued directions time to time disallowing hoardings on the city roads and therefore, all permissions that were being given were against the directions.

It will be recalled that the Hon’ble Supreme Court directed in its order of November 20, 1997 and then reiterated on 10.12.1997 (M C Mehta v Union of India) that safety of road users is paramount. It had clarified that hazardous hoarding, which are disturbance to safe traffic movement, are those which are visible to traffic on the road. It accordingly directed for removal of these hoardings.

The Delhi High Court in its order, dated 26.03.2007 (Court on its motion vs Union of India) directed that “hoarding and/or advertising boards near and facing the roads are traffic hazards.” The Hon’ble High court reiterated the Hon’ble Supreme Court order of November 20, 1997. It rejected the application of the Delhi Outdoor Advertisers Association and made it clear that the officers of the government, who have taken a decision to permit hoarding in the teeth of the Hon’ble Supreme Court order, have “clearly misread” the direction and this “ex-facie amounts to violation of the orders of the court.”

In fact, the current policy has been submitted to the Hon’ble Supreme Court by the Municipal Corporation of Delhi (MCD) on 9.5.2007, in its appeal against this order in the Supreme Court. It cannot be argued that the contracts were given in accordance with any existing policy.

Secondly, the policy itself provides that the concessionaires will be allocated alternative sites. With this provision, there is no reason to delay the implementation of the policy.

The policy must come into effect immediately. The municipal bodies must be required to remove all non-conforming structures within 2 months of the date that the policy is in effect.

8.7. Other issues

In submissions to EPCA, parties have raised a number of other issues. As far as possible, the concerns have been addressed and changes made in the final policy. It is also important to note that the policy is a delicate exercise in negotiation and considerable effort has gone into balancing the different but important imperatives: road safety, city aesthetics and the need for revenue. If any element of the policy is displaced or modified, it requires considerable effort in re-negotiation of all other aspects.

For instance, an issue has been raised that category 4 devices have been given time to come into effect. This has been done keeping in mind the scale of the number of devices, which are involved.

9. Directions sought from Hon'ble Supreme Court

1. The MCD policy for Outdoor Advertising as amended after discussions with stakeholders and finalized on July 2008 (submitted to the Hon'ble Court) should be accepted so that its enforcement can begin.
2. It should be made clear that this policy will be applicable to the entire city. The city agency will only be allowed to modify the policy if it is more stringent and protective for road safety as well as city aesthetics.
3. The policy will be governed by strict adherence and enforcement. In case, the allowances given in this policy are misused, then it will be withdrawn and the directions already given by the Hon'ble Supreme Court in its order of November 20, 1997 will be put into effect immediately.
4. The Hon'ble Supreme Court may also direct that this policy is the matter of the apex court and no court can give directions and stay, which are contrary to the policy. After the introduction of this policy all stay orders granted by courts will be vacated in order to ensure strict adherence to its guidelines and provisions.
5. The policy will be put out in the public domain so that it provides citizens an opportunity to intervene in cases of misuse.
6. The implementation of the policy will be reviewed in terms of its adherence to the guiding principles and specific provisions at the end of the next calendar year and reported to the Hon'ble Supreme Court.
7. The Hon'ble Supreme Court may also direct that before any new outdoor advertising tender or contract is signed based on this policy, all the non-conforming hoardings on the city roads, will be dismantled and removed. A period of 2 months will be given for the dismantling of the non-conforming devices from the date the revised policy is approved.