

Box 6.8: Scenario Two: The Interconnection Dispute

Country “A” has recently implemented reforms to liberalize and deregulate its telecommunication sector, but progress toward competition has become bogged down in disputes over interconnection with the incumbent. The regulator decides to resolve the disagreements by publishing interconnection guidelines, as the country’s recently adopted Telecommunications Act mandates. The regulatory agency drafts proposed guidelines, and it decides to engage in public consultation. The agency solicits written comments, holds a formal hearing, and then decides to hold an informal seminar, which is open not only to the operators, but to all stakeholders and the general public.

At the seminar, valuable pricing and technical information is made available to the regulatory agency, supplementing the material submitted in comments and at the hearing. Because the seminar is less formal, it also provides a forum for various market players to tell the commission about their experiences regarding the incumbent’s intransigence on interconnection.

Through the seminar, the regulator is better able to identify potentially controversial and litigious issues before publishing final guidelines. In addition, the incumbent and its rivals have an opportunity to share information and concerns with each other, in a moderated and relatively informal setting.

consumer awareness of their roles, functions and activities on behalf of consumers.

Many, if not most, regulatory agencies maintain press offices, which specifically focus on establishing professional and cooperative relationships with the media, including trade journalists. Certainly, the press is unpredictable, and balanced perspectives are not always reflected. Negative coverage can damage the credibility of the agency – but that is perhaps the best reason to actively engage the media in an effort to ensure that the facts are properly reported. Moreover, there are many ways to use the press as an effective publicity and promotional tool. Regulators should be encouraged to issue press releases and foster honest and constructive dialogue with the press. Robust and open access to the media is one of the best ways to ensure transparency and accountability, to the benefit of all parties.

6.3.2.3 Workshops, Seminars and Alternative Dispute Resolution Mechanism

During the transition to competition, regulators often operate under conditions of limited knowledge. Economic, social, and in some cases, political concerns need to be addressed, and a diverse range of opinions and concerns must be considered. In keeping with transparency, regulators must make as much information available as possible. In turn, they are dependent on receiving important information from industry and the broader sector to realize their goals. The two-way flow of information inevitably demands a wide range of processes for information gathering and dispute resolution.

The scenario illustrated in Box 6.8 shows how important it can be to augment formal consultations and hearings with informal methods of information gathering and mediation. One such approach is commonly known as “alternative dispute resolution” (ADR), a set of procedures that may include extensive consultation, mediation and even arbitration, if necessary. The approach places a premium on giving all parties an opportunity to present their arguments in an environment conducive to achieving resolution. ADR can take place in a number of settings. The regulator can choose to hold relatively informal round-table meetings, workshops or seminars to gather data and discuss issues in a non-confrontational manner. In Sri Lanka, for exam-

ple, regulators embarked on an ADR process to resolve interconnection disagreements among fixed-line operators.²⁵

In some cases, regulators may have legislative mandates to adjudicate certain disputes by mediation or arbitration. This is often the case with regard to interconnection. For example, the Moroccan and South African telecommunication laws both require the regulatory agencies to resolve interconnection disputes when parties fail to reach agreement through their own negotiations.

While these forums may produce delays, ultimately they can reduce and resolve conflicts that otherwise would fester for months and years. Moreover, they may be less expensive than formal proceedings, and they serve a useful purpose in promoting transparency, because workshops and seminars function best when there is a free flow of data among parties. While such forums may be less formal than hearings, they should always adhere to the principles of natural justice and reflect principles of due process.

6.3.2.4 Rules of Practice and Procedure

It is also useful to standardize and publish rules of practice and procedure so that interested parties know how to approach regulators. This not only enhances transparency, it also ensures that procedural rigour will prevail, no matter who staffs the agency. FCC in the United States, for example, has published a detailed “practice manual” on its website, explaining how to participate in regulatory proceedings and interact with the agency’s staff.²⁶ This manual includes: all FCC procedures; timetables on key decisions; criteria for decision-making; guidelines for third-party representation; and an explanation of how hearings are conducted.

Once again, the list of guidelines can be expected to vary from one country to the next. The list could include:

- office hours and proper times to communicate with the staff;
- a schedule of public meetings, with rules on quorums and voting;
- information on inquiries, hearings and appearances before the agency (including expert examinations, the withdrawal of papers, appeals of decisions, summons or subpoenas);