

# EUROPEAN WORKSHOP ON DISPUTE RESOLUTION

## Overview of current practices in ADR



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David Satola  
Senior Counsel  
dsatola@worldbank.org

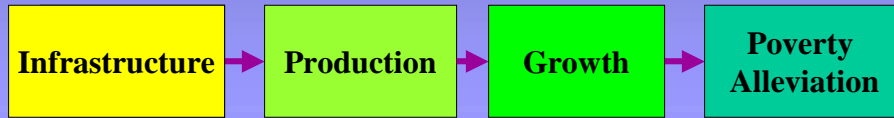
## Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions

available at:

[http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/Documents/DRS\\_Final\\_GSR\\_5.pdf](http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/Documents/DRS_Final_GSR_5.pdf)



## Efficient Regulatory Approaches to Dispute Resolution affect Development Strategy



- Remove barriers to entry
- ↑ efficiency ↓ cost
- Pro-entry regulation
- Legal & Regulatory certainty



## But Regulatory Framework alone is not enough to evaluate or manage risk:

**Maturity of Markets**

**Tradition of “independent” authorities**

**Outlets to redress grievances, enforce rights , settle disputes**



## Why focus on Dispute Enforcement

### Disputes:

- Cause delay
- Distort Costs
- Can create uncertainty
- Limit Competition undermining sector policy objectives



Regulatory policy, including dispute resolution and enforcement, can shape markets through the incentive structures it creates



## Resolution and Enforcement of Disputes is more complex

- Industry is more complex
  - Mix of telecom, broadcast, media, others playing in the same space
  - Networks, services, industry structure is currently changing through broadband, Wi-Fi and VOIP, new generation of interconnection redefining access charges
- Requires change in regulatory procedure and process
  - Create incentives that change industry actors' behavior
  - Align decision-making with new networking dynamics
  - Emphasize Competition in and for the market
  - Consider innovative approaches for the early identification and resolution of disputes
- Trends effect "enforcement"



## Traditional Types of Disputes

### *Liberalization*

Change of exclusive rights has frequently led to legal and regulatory disputes

### *Investment and trade disputes*

Exclusive rights, licensing of new competitors, new rate-setting structures and changes to licenses

### *Interconnection disputes*

Technical, operational and pricing disputes are key to the development of competitive markets. Asymmetric market power

### *Radio frequency disputes:*

Internationally (ITU Mechanisms)  
Domestically - interference license conditions and pricing



### *Consumer disputes*

Between service providers and customers

## New/Future Areas of Disputes

Non/ Regulated Services/Infrastructure

Access Charging

Regulatory Competence/Jurisdiction

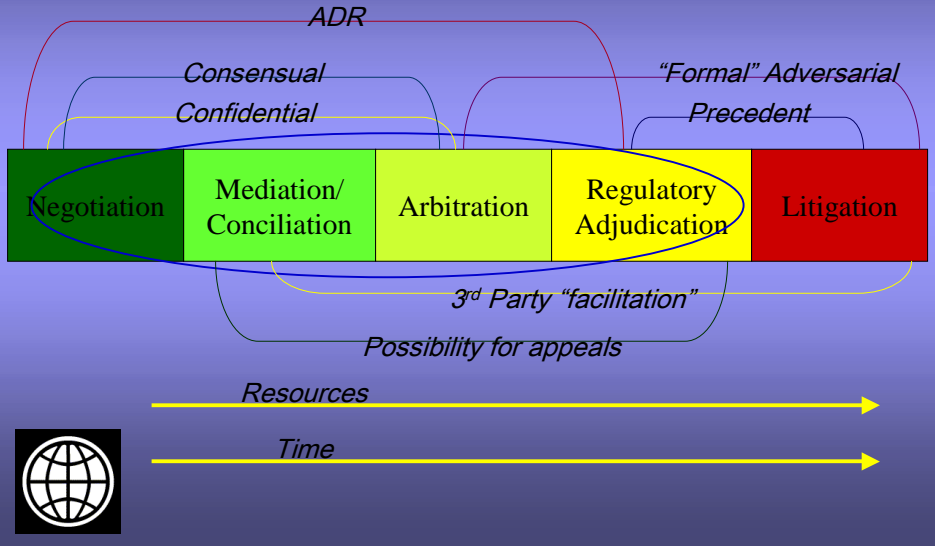
Subject Matter

Extraterritoriality



# Dispute Resolution Continuum

## Characteristics Affecting Enforcement



## ADR Attributes

- Create incentives for non-adversarial resolution to disputes to boost confidence
  - Effectiveness of ADR vs. Litigation in changing market place behavior
    - Integrated vs. Distributional
    - Recognition within existing national legal systems
    - Flexible and scalable
    - Industry orientation
    - Permits rapid introduction of best practices, related, relevant experiences
    - Addresses situations not dealt with by existing law
    - Transparency!
    - Enforcement!
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## ADR Regulatory Design Considerations



## Examples

COUNTRY	INSTITUTION	ILLUSTRATIVE FEATURE
<i>India</i>	TDSAT	Bifurcated structure, formal
<i>New Zealand</i>	Commerce Commission	Flexibility to formalize informal processes
<i>Denmark</i>	NITA	<i>Ex ante</i> consultative procedures
<i>Malaysia</i>	MCMC	Industry self-regulation
<i>Jordan</i>	TRC	Formal mediation/arbitration
<i>Nigeria</i>	NCC	Consumer Court

