

**Rory Macmillan**

**Dispute Resolution in Practice:  
Role-Play Exercise**

ITU/BDT

European Regional Workshop on Dispute Resolution

Geneva Switzerland

31 August – 2 September 2004

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## Disputes are an inevitable aspect of today's increasingly complex telecom sector

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- Proliferation of infrastructure and service providers
- More varieties of inter-woven and competing business relationships
- Collisions of new and old business models
- **Divergent interests produce disputes!**

## Disputes can be a healthy sign but ultimately the key is to ensure they are well resolved

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- At one level, the presence of disputes evidences activity and sometimes competition in the market
- However, where they remain unresolved, disputes indicate inefficient use of resources and a sector cost

## Telecom dispute resolution is a strategic concern for regulators and policymakers

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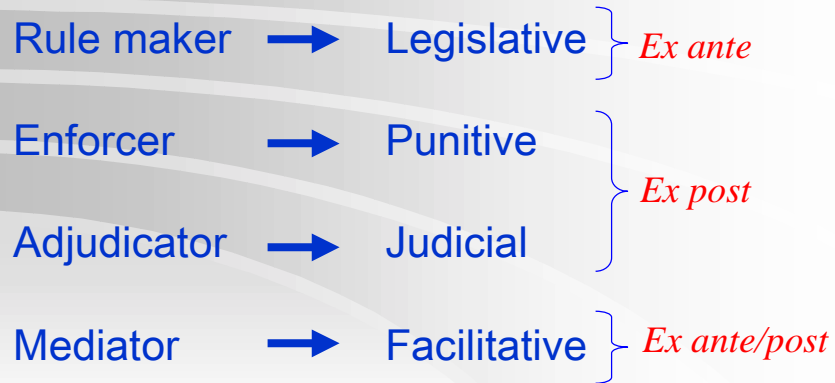
Failure to resolve disputes effectively and efficiently



- Retards the introduction of new services and infrastructure
- Limits investment and restrains competition
- Results in higher prices and lower quality
- **Ultimately impedes economic and technical development**

## What are the regulator's roles and what tools or resources may be available?

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## One of the most valuable dynamic resources is the parties' own interests

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- Commercial return on investment
- Opportunity to grow (or defend)
- Covering the risk premium
- Predictable legal/regulatory rights

The role-play is designed to help gain insight into working with the parties' incentives

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- Designed as a mediation
- Explore the various interests at play
- Exploit parties' interests for the sector regulatory policy agenda

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## The purpose

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- Explore dynamics and structural issues in dispute resolution
- Provide a flavour of the various roles, perspectives, interests and incentives
- Gain insight into problems and solutions

## The context

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- Tokland, a new EU member
- Undergoing transition and EU harmonization, changing law and licensing regime
- Telecom Authority with regulatory and dispute resolution mandate

## The disputing parties

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- Tokalot, a privatized incumbent fixed line operator with mobile and ISP/media subsidiaries
- Wannatok, a successful new entrant CPS provider wanting to expand into local access

## The official complaint

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- Tokalot's retail tariffs for local access
- Tokalot's wholesale LLU access prices
- Margin squeeze
- Other issues in the air

## The issues

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- Commercial, operational, technical
- Legal, jurisdictional, institutional
- Policy, power asymmetry, personal

## Adjudicator/mediator

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- Telecom Authority's Dispute Resolution Procedure
- Adjudicator/mediator
- Dispute now referred to mediation



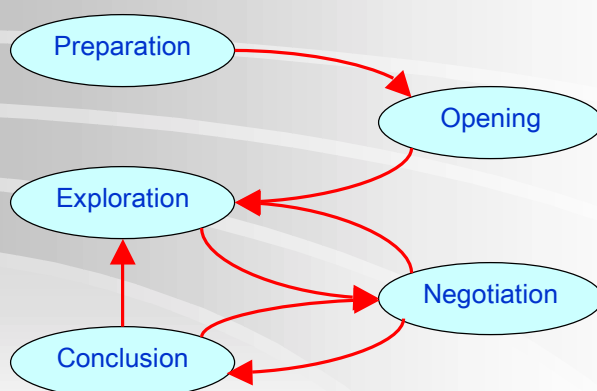
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## Elements of a mediation

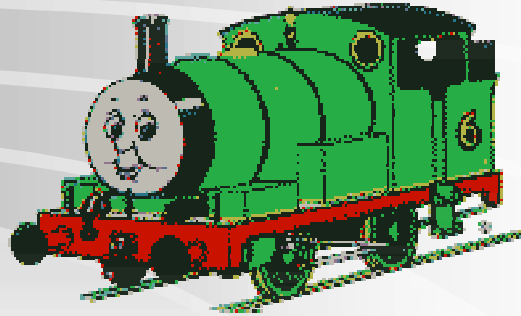
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Source: CEDR

## Toy Engines demonstration

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## Toy Engines demonstration (contd.)

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- Mr. Satola: Owner of WB Games, a toy trains manufacturer
- Ms. Bogdan: President of ITU Toys, a toy shop
- Contract: WB Games to deliver 100 toy trains to ITU Toys on 1<sup>st</sup> December, payment against delivery

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## Toy Engines demonstration (contd.)

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- WB Games delivered 50 trains on 20<sup>th</sup> December
- ITU Toys claims it could only sell 20 before Christmas and so lost sales
- ITU Toys has not paid WB Games
- They have hired a mediator...

## Preparation

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- Understanding the parties' claims
- Understanding the parties' interests
- Understanding the parties' alternatives

## Opening

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- Establishing process and ground rules
- Establishing authority of and confidence in the mediator and rapport with parties
- Setting a tone and environment conducive to negotiation
- Opening statements by the parties

## Exploration

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- Focus on interests rather than positions
- Open-ended questioning, probing for underlying issues and reflecting back
- Reality testing, BATNA, WATNA and the other parties' shoes

## Negotiation

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- Finding convergent interests
- Principled negotiation instead of positional bargaining
- Beyond the “point of despair”

## Conclusion

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- Identifying and recording points of agreement
- Ownership of result by the parties
- Workable and durable

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## The participants

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- 2 or 3 representatives from Tokalot, the privatized incumbent operator
- 2 or 3 representatives from Wannatok, the fixed line new entrant
- 2 TA-appointed adjudicator/mediators

## The process

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- Two role-play sessions
- Shared and confidential briefings
- Briefings for Session II will be handed out after Session I

## Forming your teams

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- Read the briefings carefully
- Gather with your fellow team members
- Discuss the facts, interests, strategies and roles

## Identify the issues

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- What are the primary claims and defences in dispute?
- What secondary issues could come up?

## Identify the interests

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- What are your short-term and long-term interests and how are they prioritized?
- What are other players' likely interests and how might they be prioritizing them?
- Where do interests converge and where do they conflict?



## Identify the choices

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- What are your main choices, your BATNA and your WATNA?
- What are the other parties' choices, their BATNA and their WATNA?

## Adopt your strategies

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- What is your strategy to pursue your interests given the choices available?
- What are your fall-back strategies?
- What might other parties' strategies be?

## Guidance during the exercise

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- Each group will have one or more assistant who can help in case you have questions
- Generally try to accept the facts as they are stated and run with them
- If necessary, make some facts up (but be consistent with the overall fact pattern)

## Getting the most out of the exercise

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- No one approach or solution is correct
- Assume your character and your interests
- Remember, it's a game and we are here to learn!

## QUESTIONS FOR THE WORKSHOP

### Questions at the beginning of the workshop?

- What questions are you bringing to this workshop?
- What challenges are you facing at home that the workshop can help with?
- What issues would you like addressed?