

SEMINAR ON ENFORCEING TELECOMMUNICATIONS LAW, POLICY AND REGULATION

Session IV

Consumer Issues and Dispute Resolution

8th March' 2005

Geneva

Presentation by:

A.Sinha

Principal Adviser (Legal),
Telecom Regulatory Authority of India,
New Delhi (India)

An effective dispute resolution mechanism is necessary for promoting growth in telecom sector. If disputes are not resolved expeditiously, the result will be uncertainty in the sector, which in turn, may affect investment climate. .

This paper attempts to look at an ideal dispute settlement mechanism in the telecom sector. The idea is to evoke different points of view so that a suitable model emerges. The issues are being discussed in the background of the provisions in this regard under the Indian regulatory law.

In India telecom sector is regulated mainly under the Telecom Regulatory Authority of India Act, 1997. Prior to the year 2000, the regulator, i.e., the Telecom Regulatory Authority of India (TRAI), was also responsible for settlement of disputes. It adjudicated disputes between service providers and between service providers and a group of consumers, on issues such as technical compatibility and inter-connection, quality of telecom services and consumer interest. Issues of competition and individual consumer complaints were outside the scope of TRAI Act then as they are now. These issues are dealt with under laws relating to competition and consumer grievance respectively.

By an amendment made in the TRAI Act in the year 2000, a specialized tribunal known as the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) was created. The dispute settlement function of TRAI was transferred to TDSAT. This tribunal is headed by a judicial member and has a technical and an administrative member. This tribunal not only settles disputes which used to be earlier settled by TRAI, but also hears appeals against the decisions of TRAI.

In this background a number of issues arise for consideration. First, telecom is a technical field. As such, dispute settlement between service providers would often require understanding of technical issues, for successfully resolving them. The regulator which possesses technical expertise, would appear to be the most competent body to resolve such disputes. As against this, it is also possible to argue that the tribunal could be composed in such a way that it comprises technical as well as judicial members. Thus a properly constituted tribunal will not suffer from the handicap as apprehended.

Another argument could be that the regulator makes the rules and policies to regulate the sector. If it were to adjudicate disputes also, it would be interpreting rules made by itself. The regulator may have preconceived notions. So, if dispute resolution is done by another independent body, that body can be more objective and impartial, and would command better confidence of the parties.

In a sector like telecom, disputes between operators must be settled with speed. As we know, in a multi-operator environment, inter-connection is a key issue. If an interconnection dispute is not resolved expeditiously, it may adversely affect the network. A stalemate may result in network congestion or call dropping. The consumer will be the worst sufferer in such a situation. We know that adjudicatory proceedings before courts and tribunals often take a long time to come to finality. An inter-connection dispute is thus best settled by the regulator.

Another issue that needs to be looked into is that courts and tribunals assume jurisdiction only when parties approach them. They can not on their own undertake the exercise of dispute resolution. On the other hand, the regulator can suo moto take up such matters and issue necessary directions. A proactive regulator can, in fact, prevent disputes among operators to assume such proportions where it starts affecting the consumer interest.

It appears that ideally the disputes should be settled in the first instance by the regulator. But the regulator performs multifarious administrative, legislative and adjudicatory functions. People are bound sometimes to feel aggrieved by the decisions of the regulator. This makes it necessary that decisions of the regulator are appealable before a court or a tribunal. Telecom being a technical field, a tribunal will be a preferable appellate forum. Remedy before a court exercising powers of judicial review would also be necessary to examine the constitutionality of rules and decisions made by the regulator, and to look into its decision making process.

-- X --