



Dispute Resolution as a Tool for Effective Market Regulation

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Why Dispute Resolution?

Failure to resolve disputes quickly can

- limit competition,
- cause delays in the introduction of new services and infrastructures,
- block or reduce investment in the sector, and
- impede liberalization and development of the sector

Template for Dispute Resolution?

Dispute Resolution mechanisms vary depending on:

- the stage of a country's telecommunications market and regulatory development,
- regulatory framework and approaches,
- general business culture.

Types of Disputes

- Interconnection and other relations between various network, service, application and content providers;
- Liberalization;
- Foreign investment and trade; and
- Radio frequency use (e.g., harmful interference or spectrum refarming).

Interconnection Disputes

- Regulators need to balance between the need to protect the interests of new market entrants while also leaving room for parties to negotiate agreements on their own
- Approaches include:
 - prescribing interconnection arrangements on an ex ante basis;
 - establishing interconnection guidelines;
 - approving reference interconnection offers (RIOs) or model interconnection agreements;
 - policing operators with significant market power; and
 - overseeing the interconnection process

Investment Disputes

- **Investment disputes typically stem from:**
 - complaints by investors, operators, and service providers about early termination of exclusive rights,
 - licensing of new competitors,
 - new rate-setting structures
 - changes to licenses
 - international investment disputes – role of WTO

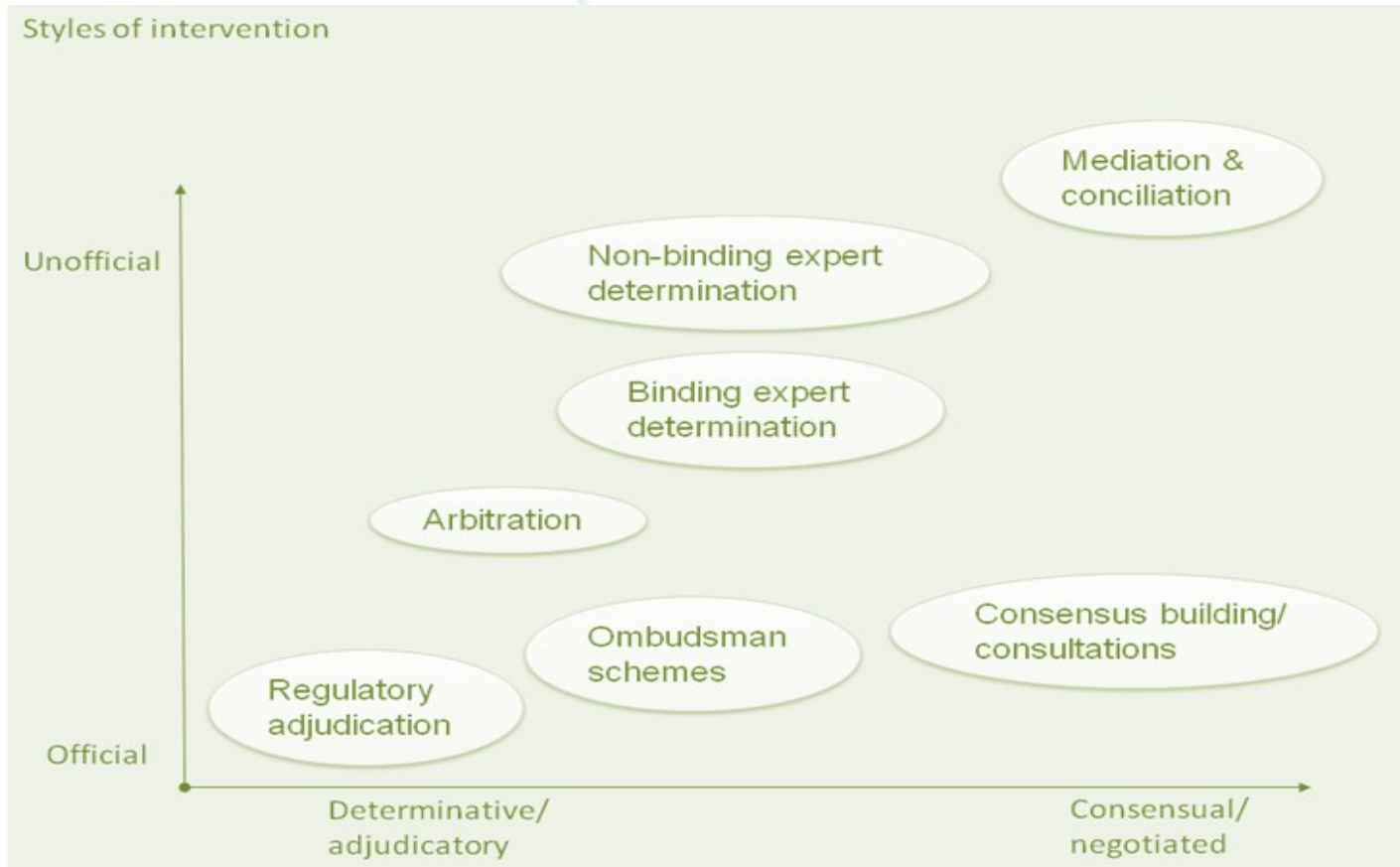
Radio Frequency Allocation and Assignment Disputes

- International disputes - ITU Radiocommunications Bureau (ITU-R)
- Domestic disputes may arise from:
 - interference,
 - licence conditions, and
 - pricing

Dispute Resolution Approaches

- Official Mechanisms
- Non-Official Mechanisms or ADR

Styles of Intervention in dispute resolution



Source: ITU Trends in Telecommunications, 2010

Basic role types in dispute resolution

Liberalization and unbundling of dispute resolution

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Official sector
Private sector

	Courts/ regulatory adjudication	Arbitration	Binding expert determination	Non-binding determination	Mediation/ conciliation
Determines issue for resolution	Official	Arbitrator & Parties	Parties	Parties	Parties
Selects 3 rd party neutral	Official	Parties / Official	Parties / Official	Parties (sometimes Official)	Parties (sometimes Official)
Controls process	Official	Arbitrator & Parties	Expert & Parties	Expert & Parties	Mediator & Parties
Makes finding of fact	Official	Arbitrator	Expert	Expert	None
Decides result	Official	Arbitrator	Expert	Parties	Parties
Reviews process/result	Official	Official	Official	Unusual	Probably none
Enforces	Official	Official	Official	Official (if agreement)	Official (if agreement)

Source: ITU Trends in
Telecommunications,
2010

Dispute Resolution Approaches

- Key Considerations:
 - Less about rigid lines between official and non-official sectors, and
 - More about seeking the roles in which the official sector can best use its efforts and presence to assist in the speedy resolution of disputes – and in a manner consistent with regulatory policy, the rule of law, and due process:
 - Drawing on "non-official" resources
 - Quality control over official and non-official processes
 - Confidence factors in relying on non-official approaches

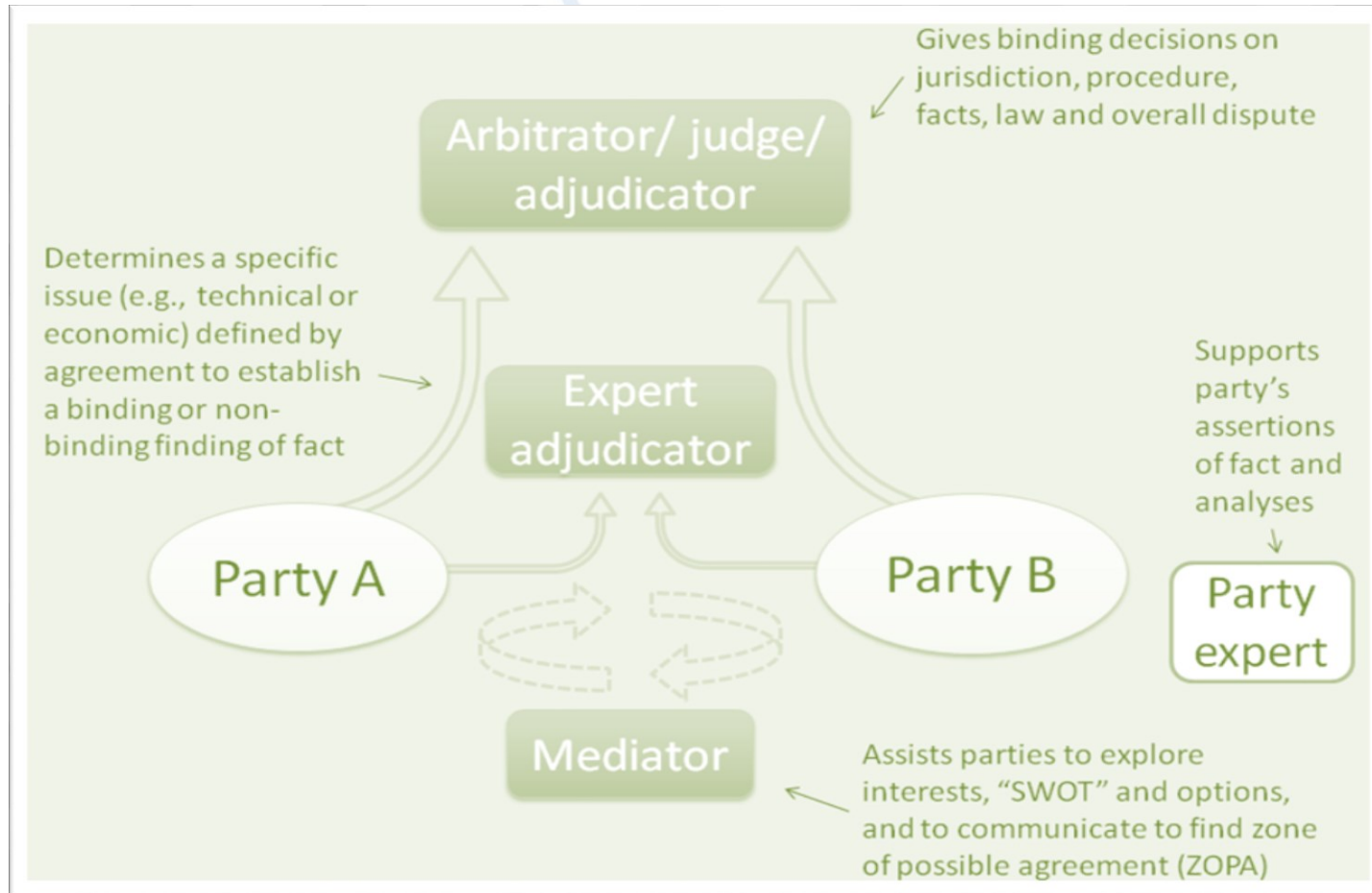
Dispute Resolution: the role of the regulator

- Regulatory adjudication is recognized as the cornerstone of dispute resolution in telecommunications sector
- The role of the regulator depends on MANDATE

Dispute Resolution: advantages of regulatory adjudication

- legitimacy of the official sector, as well as the benefits of its enforcement mechanisms
- A well-staffed regulatory agency can access staff resources with different expertise (e.g., technical, economic, and legal) to provide input into decisions
- The adjudication process can give the public a channel to provide input into the decision-making process

Basic role types in dispute resolution



Source: ITU Trends in Telecommunications, 2010

Dispute Resolution: disadvantages of regulatory adjudication

- lengthy and cumbersome procedures;
- Possibility of misuse of regulatory intervention by market-players, particularly incumbent operators, as part of a strategic response in order to hinder competitive conditions;
- Legislative mandates dealing with issues of sector development, such as convergence, can reduce the regulator's flexibility in confronting significant disputes and sector issues; and
- A tendency of regulatory bodies to fragment or compartmentalize decisions into separate proceedings, as regulatory adjudication is the response of a single regulatory body, based on a narrow jurisdictional mandate and limited enforcement powers, to individual claims defined by parties on specific legal grounds.

Dispute Resolution: advantages of ADR - mediation

- It may preserve long-term relationships upon which the telecommunications industry is based;
- Mediation costs are usually lower than adjudication or litigation;
- Parties can select a compatible mediator, usually without regulatory intervention;
- Mediation processes are more structured than negotiation (specific rules and procedures are available);
- Professional organizations are available to assist;
- Mediation allows the selection of a mediator with specific technical experience on the issue;
- Mediation facilitates resolution without public adversarial processes; and
- judicial support for established mediation services and institutions.

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Dispute Resolution: disadvantages of ADR - mediation

- The success of this method depends on the willingness of the parties to work together in good faith; and
- Mediation can also be subject to abuse by parties seeking to protract a dispute or obtain information that may be relevant at another stage of a dispute resolution process.

Dispute Resolution: advantages of ADR - arbitration

- better privacy and secrecy
- the fear of a negative precedent may be reduced
- flexibility - parties can combine arbitration with informal negotiations or mediation
- less time than conventional litigation or regulatory adjudication because of several factors, including the following:
 - Ability to design and schedule the steps needed at an early stage of the proceedings;
 - Ability to reduce steps that are otherwise mandatory in conventional litigation; and
 - Increased availability and flexibility of arbitrators

Dispute Resolution: disadvantages of ADR - arbitration

- adversarial process- often does not create “win-win” solutions or improve relationships;
- more expensive than litigation when the issues in dispute are complex and a considerable amount of time is required to hear the dispute; and
- proceedings cannot be consolidated into one action without the consent of all the parties, thus they create a risk of contradictory decisions on closely related issues.

Dispute Resolution: what choice?

- Is there a choice?



Dispute Resolution: what about consumers?

- The main type of disputes arising between consumers and service providers derive from the following causes:
 - service charges;
 - billing;
 - payment of charges; “slamming”;
 - quality and terms of service; violation of privacy; and
 - false or deceptive advertising

Dispute Resolution: what about consumers?

- **Mechanisms:**
 - requiring service providers and consumers to initially resolve disputes themselves
 - using ombudsmen type institutions
 - employing the broadcast media

Reading Materials and Sources

- ITU infoDev ICT Regulation Toolkit, available at: <http://www.ictregulationtoolkit.org/en/home>
- ITU Trends in Telecommunication Reform 2010-2011: Enabling Tomorrow's Digital World, available at: <http://www.itu.int/ITU-D/treg/publications/trends10.html>



Thank you!

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Enforcement vs DR

Regulators should be able to **MONITOR** the performance of telecommunications companies and **ENSURE COMPLIANCE** with the telecommunications regulation and other subordinate rules

OVERSIGHT FUNCTION

Enforcement vs DR

To ensure compliance and enforcement of regulations and license conditions, the regulator must **ALSO** have the authority to **INVESTIGATE** the activities and company records of all service providers when needed, and to **IMPOSE PENALTIES** for violation of laws, regulations or license conditions