

LEGAL AND OTHER IMPLICATIONS OF REGULATORY REFORMS IN SRI LANKA

Introduction:

Due to the transformation and rapid technological development that are taking place in the region today, National Regulatory Agencies (NRA) in this part of the world are facing colossal challenges. For example the liberalization and privatisation of the telecommunication sector and the convergence of technologies and services are new to many.

This rapidly changing environment has created a very vulnerable situation for policy-makers and regulators. With the advent of new technologies and the convergence of existing technologies, the situation becomes more complex for regulators to deal with such as when the dominant operators commence mergers or enter into joint ventures and /or acquire existing businesses.

With the rapid development of the internet and the upcoming Information and Communication Technologies (ICT), it is important for policy makers and regulators to address issues relating to the ever widening gap between the information rich and poor. However, unlike in developed countries where services are provided by a number of providers and their interconnectivity is well managed, in a developing country like Sri Lanka bridging this gap has become a difficult task.

Independent Regulator:

The establishment of an independent regulator has been a crucial factor in the success of the liberalization of the telecommunications sector. Once the decision to liberalize is made,, it is essential to create an impartial referee to formulate the rules and guidelines under which market players need to provide services. Like in most countries during early times, the state owned operator in Sri Lanka was self regulated and at that time regulating the telecom industry was not considered a priority.

Telecommunication regulations were first introduced in Sri Lanka in 1991 under the Sri Lanka Telecommunications Act No. 25 of 1991 in the form of a single regulator separating regulatory functions from operational functions. Regulations were modelled on the British regulatory system.

Institutional changes were made under the Sri Lanka Telecommunications Act No. 27 of 1996 by creating a five Member Commission and by vesting a certain degree of independence to that Commission. For effective implementation of telecommunication reforms, it is important to have an independent regulator who is autonomous from those it regulates and from direct political influence. It is important that the regulator is given the full ability to regulate the market by implementing and enforcing policy decisions. “Independence of regulators from Operators” is a commitment made by the Government of Sri Lanka to the World Trade Organizations’, Telecom Reference Paper on Regulatory Principles Fourth Protocol to the GATS.

Transparency:

It is equally important to have a transparent decision making process that ensures open review by all parties. There are no explicit provisions in the present telecom law for public processes. However, independence is ensured by presenting working papers or discussion documents to the public for comments on specific issues. To a great extent we have been able to make professional decisions which are transparent and independent without being influenced by politicians and regulated companies. Transparency is thus the basis for public accountability.

Enforcement and adjudication:

The process by which the regulator ensures that telecommunications providers comply with rules and regulations is referred to as enforcement and adjudication. To successfully enforce compliance with rules and regulations, the regulator should have powers to investigate the actions and records of all telecommunication service providers in addition to possessing the authority to impose sanctions and penalties for the violation of such rules or regulation. In

other administrations, sanctions can include fines, civil forfeiture, imposition of new operating conditions or revocation of licenses. Certain enforcement provisions are embedded in the present telecom legislation in Sri Lanka. Whether new reforms are introduced or not however, it is pertinent to set ground rules to adopt an enforcement regime that will police actions dealing with issues such as anti-competitive practices. This will be essential in order to encourage a healthy environment for all telecommunication service providers.

Management of Scarce Resources:

Telecom reforms and legal systems should take into consideration the regulator's important responsibility to ensure that scarce resources such as radio frequencies, numbers etc are allocated in a fair and transparent manner. In order to protect against abuse and influence, the persons responsible for allocating such resources should not have any connection to the users of these resources. The assignment must be open, transparent and available for public comments.

It is necessary for the telecommunication regulator to address the issue of rights of way where incumbents must provide access to poles and conduits on a fair and reasonable basis to new entrants. Rules are necessary for open network requirements and owners of bottleneck facilities must make space in these facilities available to their competitors at reasonable prices.

Human Resources:

Under current regulatory reforms, the human factor has become extremely important for the effective function of the regulatory agency. Highly qualified personnel who are able to address many complex issues, will have to be hired and retained. When the agency is not manned by the "right kind of people" it becomes a huge problem to take and implement regulatory decisions. Thus when reforms are being introduced, regulators should also consider human capacity building in order to meet the challenges of a changing environment.

The staff of the regulatory agency must be trained to carry out their duties in an open fashion. Publishing consultation documents, having hearings etc. will increase public faith in the regulator and also help reduce the likelihood of regulatory capture.

Competition:

It is essential that before reforms are introduced competition laws and a formal competition regime be established. In order to achieve effective reforms, it is important to clarify the respective roles of the telecom regulator or the government agency responsible for competitive policies. While guidelines or methods that could be used to control potential abuses have to be devised, it is also important to design laws that prevent market conduct which restrict competition.

This is not to say however, that the regulator should impose unnecessary regulation. The regulator should focus instead on lifting barriers to entry. A stable legal framework has to be created in order to encourage private investment. The regulator will have to face the new entrants' demands for clear terms and conditions, fair prices for interconnection and access to scarce resources for these are critical factors that investors use to decide whether to forgo opportunities in a given market.

Merger evaluation is an integral part of competition law but enforcement is hotly debated in many countries. In most countries, merger reviews are not in place because of the complexity of merger evaluation which depends on economic analysis. The high costs involved in merger evaluations are eventually borne by customers in the form of high prices in goods and services or by the government in the form of taxes. A 'merger review' nevertheless, serves to protect and promote consumer interests. Consumer interests should reign supreme in a merger review process and therefore the process should be carried out at minimum cost.

Public Benefits:

Policy-makers and regulators will have to give due consideration to the protection of consumer interests as well as to the national economy of the country. By promoting competition the consumer will be provided with better quality services at affordable prices.

By effecting reforms in the area of communication, the regulator will have to act as facilitator in order to ensure that the benefits of information age are available to rural and remote areas, people of all educational and income levels, without gender discrimination and to people with special needs due to disability.

The telecom industry in Sri Lanka is not market driven. It is imperative therefore, for the regulator to step into fill in this void left by the market.

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