Efficacy Of Dispute Resolution in Broadcasting & Cable Sector

© & Presented By: Ashok Nambissan

Note: Views expressed are those of the author alone.
Achieving the “regulatory agenda”

Regulatory agenda = development of a liberalised telecommunications and broadcast sector with stable and sustainable competition between operators delivering benefits to consumers.
The increase and nature of disputes

- Interests
- Power
- Rights

Disputes

- Between companies in contractual relations
- Between consumers and companies
- Arising out of tort
- Existing operators
- Regulators
- New entrants

Source: Charles Russel
Dispute resolution framework

Dispute resolution mechanisms

Voluntary settlement

Binding arbitration

Negotiation

Mediation and conciliation

Institutional

Ad hoc

Court Proceedings

TDSAT
DISPUTES

LCO

- Service Quality
- Billing/Price discrimination
- Interruption in cable services
- Change in channel placements
- Absence of effective consumer redressal system

Consumer
DISPUTES

- Subscriber Nos.
- Signal piracy.
- Territory
- Non payment/under payment.
- Renewal of service agreements.
- Unpaid dues of LCO migrating to different MSO.
DISPUTES

Broadcasters • MSO

• Subscriber verification
• Territory
• Non payment of fees
• Renewal of service agreements
• Piracy /copyright protection
• Limited bandwidth capacity
• Channel placements
• Interruption of cable services
Dispute Resolution

➢ Major causes of disputes:

• INTERCONNECTION
  • PAYMENT
  • SUBSCRIBER VERIFICATION
  • TERRITORIAL

• PIRACY
Institution of Petitions/ Appeals before TDSAT

No Of Cases

Year

2001 2002 2003 2004 2005 2006

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<th>Description</th>
<th>Filed</th>
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Source: TDSAT Registry
UK regulatory landscape – Dispute resolution mechanism
Telecoms Adjudicator (TA)

- **Facilitation**
  - Facilitate discussions
  - Make recommendations (0-1 wk)

- **Dispute resolution**
  - TA rulings
    - Under TA Agreement (0-3 wks)
  - TA adjudication
    - Under Communications Act (0-4 wks)

- **Binding**
  - Enforceable in courts

- **Referred to Ofcom** if significant financial issue

Source: Charles Russel
Also private dispute resolution organisations, approved by Ofcom

- Ombudsman-type negotiation e.g. OTELO:
  - Independent and impartial
  - User-friendly
  - Transparent
  - Effective
  - Free of charge to customer
  - Able to properly investigate disputes and award appropriate compensation.
Alternate Dispute Resolution
Important objectives for dispute resolution

- Speedy Redressal
- “Affordable”
- Efficacy in enforcement
- Certainty
Importance of effective mechanisms

• Dispute resolution integral part of TRAI Regulations.
• Efficient regulation and dispute resolution lead to ‘equal’ rights and obligations- ‘Level Playing Field’.
• Consistency needed, to level the playing field and encourage further investment.
• Mediation and other ADR mechanisms to be encouraged.
• Cooperation of Judicial bodies to ensure consistency across the industry.
Ideal Model

- Reduces legal uncertainty.
- Provides regulators means and powers necessary.
- Ensures disputes resolved as *quickly* as possible, within statutory limits.
- Has clear rules on *confidentiality* of business secrets.
- Establishes effective appeals procedures.
- Establishes prompt review of admin decisions.
- Has clear rules on *locus standi* and 3rd party rights.
- *Limits appeals* on merits to one instance.
Suggestions

- Facilitation of alternate dispute resolution by use of Mediation.

- Disputes on subscriber base be determined on basis of data in public domain. E.g. Census data, IRS, NRS.
Sea TV Network Ltd. Case

- TRAI vide its recommendation dated 1.10.2004 mandated a register of subscribers to be maintained by LCO/MSO to identify and arrive at the correct number of subs-base, to be considered by TDSAT, in disputes regarding area of operation and subs-base.
CONCLUSION

“Discourage litigation; persuade your neighbours to compromise whenever you can. Point out to them how the normal winner often loses in fees, expenses, cost and time.”

Expanding the scope of dispute resolution will go a long way to facilitate constructive settlement of disputes by ensuring that the regulatory obligations of the Broadcasters and the MSO / LCO and other Platforms are being strictly followed in a fair and even handed manner.