DISPUTE SETTLEMENT MECHANISM IN TELECOM SECTOR IN INDIA

MANJUL BAJPAI
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DISPUTES SETTLEMENT MECHANISM

- FOUR PHASES - CHECKERED HISTORY
  - INITIAL PHASE – Independent Body or Adjunct to Department of Telecommunications
  - CONFUSED PHASE – Adjudicatory power over Licensor
  - UNIMPLEMENTED PHASE – Arbitrator or Adjudicator
  - CURRENT PHASE
INITIAL PHASE (1990 -96)

- Telegraph Act, 1885 - DoT’s monopoly - 1957 - S. 7B - No Regulator or Adjudicator.
- Privatisation (1990s) – NTP-94 - Fair competition - Independent Regulator required
- TRAI proposed as non-statutory body
- Standing Committee recommended statutory status to ensure independence and effectiveness.
- Supreme Court emphasized TRAI’s independence
- TRAI Act 1997 enacted.
CONFUSED PHASE
(January 1997-June 1999)

- TRAI had limited adjudicatory powers - Service Providers inter se or between Service Providers and Group of Consumers - on -Interconnection- Revenue Sharing - Quality of Service -Consumer Interest.
- Power to issue directions (S.13) - issued to DoT as Licensor
- DoT challenged TRAI’s powers
- High Court held - TRAI had no power to issue directions to DoT as Licensor
- Two years of Litigation - Mostly License issues - virtual Vacuum
UNIMPLEMENTED PHASE (June 1999 - January 2000)

- No separate dispute settlement Forum to entertain disputes between Licensor and Licensees.
- NTP-99 – TRAI to act as Arbitrator for settling disputes between Licensor and Licensee.
- Government issued notification to implement it.
- TRAI never acted as Arbitrator
CURRENT PHASE

- TRAI Act amended in January 2000
- TDSAT is established
- Significant changes over earlier law:
  - Separation of Regulatory and Adjudicatory functions.
  - Vested with both Original and Appellate jurisdictions.
  - Can adjudicate upon “any dispute”.
  - Empowered to adjudicate disputes between Licensor and Licensee
  - Appeal now lies to the Supreme Court
- TDSAT empowered in January 2004 to settle disputes in Cable and Broadcasting sectors.
CURRENT PHASE

- Settle “any dispute” - Wide Powers
- Original Jurisdiction
- Appellate Jurisdiction
- Power to review
- CPC not to apply
- Regulate own procedure
- Orders decree of court
- Principles of Natural Justice to apply
- Civil Court’s jurisdiction barred
- Appeals directly to Supreme Court on questions of law.
CURRENT PHASE

CONT.....

TDSAT has entertained matters relating to
  - Licensing & Policy - Level Playing Field - Interpretation of Policy
  - Interconnection - Non-Discriminatory - Fair - Cost Based - Revenue sharing - Disconnections
  - Spectrum etc. - Charges.

TDSAT’s historic judgments - Far Reaching Consequences
  - Level Playing Field - Theoretical Concept to Implementation - UASL & USL
  - Locus standi - License Amendments - Third Party Rights
  - Disputes Settlement by TRAI - No such power
CURRENT PHASE

CONT…..

✓ TDSAT does not have jurisdiction over: Express Exclusions
  ‣ Monopolistic / Restrictive / unfair trade Practices.
  ‣ Individual Consumer Disputes
  ‣ Disputes u/s 7B of the Telegraph Act

✓ High Court’s Approach - S.14 N - Transferred all pending appeals to TDSAT - Appropriate Forum - Article 226 - High Courts Disinclined to Interfere
THANK YOU