STATUS OF DISPUTE SETTLEMENT MECHANISM IN TELECOM AND BROADCASTING SECTORS IN INDIA

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DISPUTES SETTLEMENT MECHANISM

FOUR PHASES - CHEQUERED HISTORY

- **INITIAL PHASE** – TRAI to be an Independent Body or an Adjunct to DoT
- **CONFUSED PHASE** – TRAI’s adjudicatory power over Licensor
- **UNIMPLEMENTED PHASE** – TRAI to act as an Arbitrator or as an Adjudicator
- **CURRENT PHASE**
INITIAL PHASE
(1990 -96)

- Telegraph Act, 1885 - DoT’s monopoly - No competition, so no Regulator or Adjudicator

- Privatisation (1990s) – NTP-94 - competition introduced - Independent Regulator required

- TRAI proposed as a 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
- Service Provider defined as meaning the Government including a Licencee
- TRAI exercised adjudicatory powers qua DoT in latter’s capacity as Licensor
- **DoT challenged** TRAI’s powers contending that DoT as Licensor cannot be equated to a Service Provider
- High Court held that TRAI had no such powers qua DoT in latter’s capacity as Licensor
- Two years of Litigation - Mostly License issues - virtual Vacuum
UNIMPLEMENTED PHASE
(June 1999 - January 2000)

- No separate dispute settlement Forum was available 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 this policy.
- TRAI never acted as Arbitrator
- Government withdrew this Notification
CURRENT PHASE

✓ TRAI Act was amended in January 2000
✓ TDSAT was 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
  ‣ Appeals now lie directly to Supreme Court
✓ In January 2004, TDSAT was empowered to settle disputes in Cable and Broadcasting sectors also
CURRENT PHASE - TDSAT ‘s POWERS

- Settle “any dispute” - Wide Powers
- Original Jurisdiction
- Appellate Jurisdiction
- Power to review
- CPC not to apply
- Regulate its own procedure
- Principles of Natural Justice to apply
- Orders executable as decree of Civil Court
- Civil Court’s jurisdiction is barred
- Appeals lie directly to Supreme Court on questions of law
- TDSAT does not have jurisdiction over: Express Exclusions
  - Monopolistic / Restrictive / Unfair Trade Practices
  - Individual Consumer Disputes
  - Disputes u/s 7B of the Telegraph Act
CURRENT PHASE - VARIOUS ISSUES

TDSAT has entertained matters relating to

- Licensing & Policy - Level Playing Field - Interpretation of Policy
- Interconnection issues – now mostly in Cable and Broadcasting Sectors – basically Subscription Fee & disconnections etc.
- Spectrum charges issues etc.
- Jurisdictional issues
- Competition issues
LANDMARK JUDGMENTS

Far Reaching Consequences

- Level Playing Field - from theoretical concept to implementation
- Dispute Settlement by TRAI - No such power
- TRAI’s Directions cannot amend / override the License terms
- TRAI’s Regulation making powers are restricted to specific items – TDSAT cannot entertain disputes arising therefrom. But ADC etc, being executive decisions and not legislative - TDSAT can entertain disputes.
- Consumer is the ultimate user of services and intermediaries like Hotels are not consumers.
- Cable Operators etc. are Service Providers under TRAI Act
- Signal Seeker to approach TDSAT if he claims that the terms are unreasonable.
- TDSAT to determine the unreasonableness of contractual terms.
- All Channels be available on all platforms
- Broadcasters cannot appoint competing MSO as their exclusive Agent
OTHER FORUMS

- **MRTPC** - TDSAT can entertain disputes based on rights and liabilities arising out of TRAI Act / Directions issued thereunder, even if Directions incidentally trenches on the subject of MTP or RTP. But TDSAT cannot entertain disputes pertaining solely to a complaint of MTP, RTP or UTP.

- **Arbitrator** - does not have jurisdiction to entertain telecom disputes.

- **High Court** - S.14 N of TRAI Act transferred all pending appeals to TDSAT - High Courts have been disinclined to interfere in telecom matters even under their writ jurisdiction.
SOME SUGGESTIONS

- To maintain the advantages of a Specialised Tribunal, continuity in the knowledge and expertise gained during litigation needs to be passed on to the succeeding Chairperson and Members.

- To avoid plethora of litigation, important aspects of telecom issues should be codified with clarity to avoid ambiguity and uncertainty.
THANK YOU