

ART
Adjudication, Regulation,
Telecommunication
of
Convergence

**Regulatory and Licencing Regime in a Converged
Environment**

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NTP 2012

- Convergence means that all transmission networks and services should be covered by a single regulatory framework.
- Strategy of Government in NTP 2012 is to review and harmonise the legal, regulatory and licensing framework and seeks convergence of services, networks and devices.

PROPOSED CONVERGENCE LAW

- Government is proposing to enact a single regulatory framework.
- Constitute a new Communications Commission and a Communications Appellate Tribunal.
- Communication Commission will retain functions and powers of TRAI and also be involved in the affairs of some of the other Regulators like the Censor Board, the Competition Commission of India and DoT.
- It will regulate content also.
- Government will focus on issues such as security, morality, public safety, disaster management and ensure adequate competition and optimal usage of spectrum.
- New Bill aims to repeal various existing laws.
- Proposed convergence law is being built upon 2001 Convergence Bill.

RECAP

- ❑ Private players have been there since 1994 with separate licensing regime for both Broadcasting and Telecom.
- ❑ Under TRAI Act 1997, TRAI had jurisdiction only over telecom. It had limited adjudicatory powers. There was no TDSAT.
- ❑ March of technology and resultant convergence was recognised by National Telecom Policy 1999, which also contemplated replacement of Telegraph Act of 1885.
- ❑ TRAI Act was amended in January 2000.
- ❑ Created window for inclusion of Broadcasting within the regulatory ambit of TRAI.
- ❑ Separated adjudicatory and regulatory powers and established TDSAT.
- ❑ TDSAT has both original and appellate jurisdictions and jurisdiction over disputes between Licensor and Licensee.

ORIGINAL AND APPELLATE JURISDICTION

- ❑ Convergence Bill 2001 proposed to divest the original adjudicatory powers from the Adjudicatory Tribunal and give it to the Regulator – Communications Commission of India (CCI).
- ❑ Proposed adjudicatory Tribunal to have only appellate powers i.e. entertain appeal from orders of CCI and Adjudicating Officers.
- ❑ Adjudicatory system in Telecom and Broadcasting has worked well for 15 years.
- ❑ Objective of establishing a separate expert Adjudicatory Tribunal has been met.
- ❑ Separation of adjudicatory and regulatory powers will instil confidence in the system.
- ❑ So TDSAT should continue to have original jurisdiction also.

LICENSOR LICENCEE DISPUTES

- ❑ TRAI Amendment Act of January 2000 specifically empowered TDSAT to adjudicate disputes between licensor and licensee.
- ❑ This power should continue with TDSAT.
- ❑ CCI is proposed to be Licensor also.
- ❑ Grantor of Licences should be different from interpreter of Licences.
- ❑ CCI is proposed to grant Licences, enforce terms of Licence, adjudicate on breach of Licence terms.
- ❑ It tantamount to CCI sitting as a Judge over its own licensing decisions.
- ❑ Not advisable.
- ❑ Government expected to take care of this situation.

JURISDICTION OVER COMPETITION ISSUES

- ❑ Two separate Authorities should not have jurisdiction over the same subject matter.
- ❑ CCI had adjudicatory powers on practices restrictive of fair competition.
- ❑ Under the Competition Act, statutory Authority like Communications Commission can refer such matters to Competition Commission for its opinion and decide the issue upon receipt of such opinion.
- ❑ Also if an issue on restrictive practices arises in a matter before Competition Commission, then this Commission can also refer it to Communications Commission for its opinion and decide the issue upon receipt of such opinion.
- ❑ There appears to be two Commissions having jurisdiction over the same issue, depending upon where the proceedings are filed.
- ❑ Not desirable.
- ❑ CCI should only regulate and not adjudicate.
- ❑ Telecom Tribunal should be empowered to deal with competition issues in Telecom.

SPECTRUM MANAGEMENT

- Government retains (through Spectrum Management Committee) rights over Spectrum assignment to strategic users like Central, State Governments, Defence, national security and Public Service Broadcaster.
- Maximum possible balance Spectrum to be given to CCI for further assignment to users or non-strategic and commercial purposes.
- There is merit in this arrangement. Regulator can examine and decide requirement of all commercial stakeholders and also ensure level playing field.
- This arrangement should find place in the proposed Convergence Law.

CONVERGENCE OF BROADCASTING REGULATOR

- In 2004, Government notified TRAI as Regulator for Broadcasting also.
- This converged the carriage of both telecom and Broadcasting in one single Regulator.
- A very forward-looking decision towards convergence.
- A single Regulator for both these sectors can encourage better use of physical and financial resources of the two in public interest, particularly if their Licences are also unified.
- This is a better situation than the earlier proposal of creating a separate Broadcasting Regulator in Broadcasting Services Regulation Bill, 2007.

CONTENT AND CARRIAGE

- Issue raised repeatedly whether there should be convergence of content and carriage regulation.
- Broadcasting Bill proposed these to be converged.
- Whereas TRAI had recommended in 2006 that regulation of carriage and content should be separate.
- Regulation of carriage is more concerned with technical and economical aspects.
- Content regulation has to take into account its impact on sensibilities, morals and value system of the society.
- Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation.
- These should be separately regulated.

CONVERGED LICENSING

- Licensing in Broadcasting and Telecom should be converged.
- In Telecom, Unified Licensing Regime was introduced in 2013.
- It is time for a service neutral licensing Regime together with a converged regulatory regime for Telecom and Broadcasting services; particularly since spectrum has already been separated from Licences.
- Synergies of these sectors can be better harnessed under one Licence.
- Issue of number of licences / competition etc can be dealt with by the Regulator.

WAY FORWARD

- Convergence law is tall order and the process is time-consuming.
- Government can issue a Green Paper or TRAI can issue a detailed Consultation Paper.
- First raise fundamental issues like who should have which power and second what all has to be converged that is whether both content and carriage or only carriage and licensing et cetera.

OPINION

- Converge all Licences, with General Terms and Conditions applicable to all Licences and specific terms, where required;
- Regulator should be one and the same for all services;
- Let the content be within Government's control;
- Let the strategic Spectrum be within Government's control and commercial Spectrum within Regulator's control;
- There should be clear and complete separation of regulatory and adjudicatory powers, the latter vested in independent Tribunal – TDSAT.
- New Regime must ensure that existing stakeholders are not put to worse off situation.
- Make new convergence law to ensure certainty and predictability but implement it in a phased manner so that all stakeholders have advance notice and time to prepare.

EPILOGUE

- At the end we must remember that technology is marching and will not wait for a law to be enacted.
- After all the ultimate beneficiary of convergence is the consumer.
- Should we make them wait?

THANK YOU

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