







*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 Licensee
- ❖ 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