ROLE OF TELECOM REGULATORY AUTHORITY OF INDIA IN POLICY MAKING AND REGULATIONS APROPOS MULTI-SYSTEM OPERATORS

ANKUR SHARMA, LLM
GALGOTIAS UNIVERSITY

ABSTRACT

Every sector or area of operation requires a Regulatory Authority to guide them, implement rules and regulations, and protect theirs as well as the interest of the consumers. The TRAI i.e., the Telecom Regulatory Authority of India was constituted under the TRAI Act of 1997 With a view to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests.[1]

The present paper emphasized the problems faced by the Multi System Operators in the Telecom Sector due to the regulations provided by the TRAI.

It is pertinent to mention here that the present paper is based on the Author's knowledge gained from almost 3 years of practice before the Hon'ble Telecom Dispute Settlement and Arbitral Tribunal.

INTRODUCTION

[1] https://tdsat.gov.in/admin/introduction/uploads/TDSAT%20INTRO.pdf

Telecom has become an integrated part of our society as almost every member of the society is directly or indirectly associated with it. "Telecommunication Service" is a wide term that includes electronic mail, voice mail, data services, audio text service (allows callers to select prerecorded messages from a menu), videotex services (data is transmitted and then displayed on screen), radio paging and cellular mobile telephone services. These services are made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means.

In such a wide ambit of services, it is evident that the consumer using these services may have grievances from time to time regarding the quality of service, increase in service charge, disconnection of services etc. So, protecting consumers in such circumstances is inevitable for the Government. Consumers around the world are protected through various legislations and rules laid down to protect the interest of consumers and with the fast growth of the Telecom sector in India, we need to ensure that Telecom consumers are properly protected and safeguarded.

Now, with the entry of several service providers providing various services across the country in each sector, there is a need to regulate and provide uniform, unambiguous and effective guiding principles and rules that would minimize customer grievances and ensure the satisfactory provision of Telecom Services by the Service Providers. The Telecom Regulatory Authority of India (TRAI) was constituted under the TRAI Act of 1997 to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of

consumer interests.[2] Also from January 2004, the Government has included broadcasting and cable services also within the purview of the TRAI Act.

One of the key functions of TRAI is to regulate Price fixation as Telecom operators have to follow guidelines issued by TRAI from time to time in relation to tariffs for basic telephony, cellular services, DTH services, cable services, etc. It is a mandate for all telecom operators to keep TRAI updated with their tariff schemes as implemented by them in accordance with the TRAI guidelines. Also, it restrained itself from the price fixation in some cases.

Another key function of the TRAI is that they issue guidelines for telecom operators in relation to standards for quality of service on regular basis. We can also see the enhanced steps toward consumer protection by "Direction on the provision of value-added services to customers" wherein, TRAI directs Access Service Providers on the provision of Value-Added Services for enhanced transparency concerning taking explicit consent of consumers and for preventing accidental subscription to value-added services.

Further, TRAI plays an effective role in regulating the Telecom Players through regular open house discussions, framing of regulations, Issuing Notifications and Tariff orders and awareness by organizing seminars at various places in the country including remote areas. TRAI also register Consumer Organizations/NGOs and support them to create awareness among consumer on Telecom-related issues with these brief details, we can say that TRAI has been doing an excellent job through its continuous operation in areas of Telecom regulation.

[2] Telecommunications Reform in India by Rafiq Dossani, Quorum Books, 244

PROBLEM FACED BY THE MULTI-SYSTEM OPERATORS

Telecom Regulatory Authority of India (TRAI) is the regulatory authority of the Telecom and Broadcasting Sector in India with the objective to provide a fair and transparent policy environment. The TRAI was supposed to bring out the Regulations for the orderly growth of the Telecom Sector and to safeguard the interest of all stakeholders.

Before discussing the problems faced by the Multi-System Operator, we must know who or what is a Multi-System Operator. The Multi-System Operator is the operator who takes signals from different Broadcasters and provides signals to the Local Cable Operator who then provides signals to the customers/consumers. In simple words, the Multi-System Operator is the link between the Broadcaster and the Local Cable Operator to provide signals of different channels to the consumers.

As per the regulations of the TRAI, an MSO i.e., Multi-System Operator is under an obligation to provide its digital encrypted signals to the LCOs (Local Cable Operator) under the standard interconnection/model interconnection agreement mandated by the TRAI under Interconnect Regulations, 2017. As per the aforesaid Regulations, there is a "**Must Provide**" Clause without any proper due diligence. In other words, it is said that an MSO could not refuse to provide signals to any LCO. But by bringing such regulations, the TRAI has ensured the safeguard of the LCOs but in this case, they have forgotten to bring enough safeguards to protect the investment of the MSOs, who have invested an enormous amount of monies on

the behest of the Regulator because of the mandate of the Government of India. It can be said as it is the duty of the MSOs to provide the set-up boxes to the LCOs and other infrastructure and because of the TRAI regulations, an MSO cannot deny signals to an LCO. It is pertinent to mention here that there are regulations wherein, the MSOs have given a right not to provide signals to the defaulted LCOs but even though due to such an inequitable regulation, the LCOs take undue advantage which causes a loss of a huge amount of monies and infrastructure to the MSOs. The regular practice in the market is that the LCO who is getting signals from one MSO will jump to another MSO without following the procedure established by law i.e., to serve a notice to the said MSO who was providing signals initially. The said practice is done without any fear of disconnection as the MSOs are obligated to provide signals to the LCOs under the TRAI regulations. Since the MSOs are the ones who have invested a huge amount of monies by providing STBs and VCs to the LCOs and once an LCO jumps from one MSO to another, those investments goes into vain. The assets and the infrastructure provided by the MSOs can never be recovered as the STBs and the VCs are lying with the consumers.

JURISDICTION TO SETTLE DISPUTES

TRAI Act, 1997, was amended in January 2000 and Telecom Disputes Settlement and Appellate Tribunal (TDSAT) was established with both original and appellate jurisdictions. It is a special tribunal set up exclusively to adjudicate any dispute between two or more service providers or the Department of Telecommunication (DoT) and a licensee, or between a service provider and a group of consumers etc. However, TDSAT is not authorized to adjudicate any dispute relating to the

jurisdiction of the Monopolies and Restrictive Trade Practices Commission or the Consumer Disputes Resolution Forum. [3]

It is important to note that there is only one Telecom Disputes Settlement and Appellate Tribunal in the whole of India and the same is situated in the Nation's Capital. Disputes related to the Department of Telecommunication (DoT) and a licensee, or between two or more service providers, or between a service provider and a group of consumers etc. from any part of the country are adjudicated before the Hon'ble TDSAT, Delhi only. However, the interim order passed in the matter can be challenged before the Hon'ble High Court either in Delhi or in the state where the dispute originally arose but only the Apex Court i.e., the Supreme Court has the Jurisdiction against the Judgement / Final Order passed by the Tribunal.

AUTHOR'S RECOMMENDATION

Being a sector regulator, the TRAI must protect the interest and investment of the MSOs. The TRAI must provide enough safeguard to the MSOs by way of regulations so that their interest can also be protected, to do so; the TRAI can amend the Regulations or introduce new regulations containing a clause wherein, the MSOs can register a complaint with the sector regulator upon the LCO who violates the regulations by not providing notice to the MSO before the disconnection. If the said complaintis registered against the LCO, no MSO shall provide signals to the said LCO or the License of the operator may be cancelled.

CONCLUSION

[3] https://tdsat.gov.in/Delhi/Delhi.php

Telecom and broadcasting sectors play an important role in our day-to-day lives. We are consistently dependent upon these sectors whether it is for entertainment purposes or to gain knowledge about the ongoing events happening across the globe.

The role of a sector regulator is to ensure and govern a smooth functioning of the sector and to provide enough safeguard to the interest of all stakeholders which can be done by the amendment in the present regulations or introducing new regulations because of the practices performed by the stakeholders during their course of business.