

Regulating service providers to ensure protection of consumer interests in the provision of telecommunication services.

Telecommunication policies in Sri Lanka have been changing rapidly during the past few years. Liberalization commenced in 1980 with the bifurcation of telecommunications from postal services.

With the enactment of the Sri Lanka Telecommunications Act No.25 of 1991, as in many other administrations the regulatory functions were separated from operational functions and a single person Regulatory Authority was established similar to that of Great Britain. The main Public Telephone Operator, Sri Lanka Telecommunications Department was made a Corporation.

With an amendment made to the Principal Act by enacting Sri Lanka Telecommunications Amendment Act No. 27 of 1996 the single person Regulatory Authority was replaced with a five member Commission with a certain degree of administrative flexibility.

In the ever changing, ever developing telecom environment in Sri Lanka the telecommunication service options are no longer with the business community and the privileged few alone. The telephone has become a necessity for many households and it is imperative to safeguard the consumers' interests.

When regulating a dynamic industry like telecommunications naturally, the regulator will have to face many challenges.

For examples:-

- Consumer Protection.**
- Facilitating Universal Access.**
- Ensure that effective enforcement mechanisms are in place.**
- Help to promote public interests where market principles override public good.**

- **Fair allocation of scarce resources.**
- **Formulate clear and unambiguous rules and regulations.**
- **Establishment of Technical Standards.**
- **Human Resources Development etc.**
- **Transparency in licensing etc.**

For effective regulation it is important to have an independent regulator, an impartial referee to formulate rules and guidelines under which market players will provide services to the public.

Independence is the ability to act in public or social interest without regard to specific or ephemeral political interests which are liable to jeopardize long-term policy objectives. To enforce the decisions effectively, independence becomes a vital factor.

It is important for us to ensure that the Members of the Commission and the Staff of the Regulatory agency should not have any direct or indirect interest in a regulated company or a user of scarce resources. “Managing scarce resources effectively” is an important responsibility of a regulator. Scarce resources include radio frequency spectrum, rights of way and numbering. These scarce resources must be allocated in a fair and transparent manner. It is not that we have a big basket of spare spectrum to hand out like Halloween Candy. To protect against abuse and influence, the persons responsible for allocating such resources should not have any connection to a user of these resources.

There are pressing demands for the radio frequency spectrum. Requests for bandwidth, interferences/wrongful emissions, under-utilized and unutilized spectrum are some of the issues the regulators will have to face when managing the radio frequency spectrum. There are debates over each slice of the spectrum, with some grabbing as much spectrum as possible merely to sit on it. Some hold the spectrum hostage and make money out of it by holding it out as ransom. The last thing they ever want to do is to

admit they could make do with a lesser slice of the spectrum but users will generally fight tooth & nail against giving-up any spectrum.

Interference with radio frequencies assigned to users, by other users is a problem for the regulator to resolve as it creates bad signals. In Sri Lanka the eco sounders given to fishermen are not tuned to the frequencies assigned. Very often these interfere with air traffic controls. In many other countries such as USA, UK and Canada the problem is different. Interference is caused by the use of “baby alarms”.

Where numbering is concerned it is important to ensure competitive neutrality in administering the issue of numbers. Unlike the radio spectrum, numbering has only recently come to be recognized as a scarce resource meriting public attention. Each country should have its own national numbering plan. In Sri Lanka the National Numbering Plan was successfully implemented in the year 2002.

It is important for the Regulator to get involved with numbering. The national numbering plan is a national resource which must be managed in the overall national interest.

Service providers have challenged many of our directions in Courts of Law. It is nothing to be perturbed about. An effective regulator will have to face these challenges. We publish working papers for public comments. We have been transparent in our decision making processes and passing laws is just the first step, it is up to the regulator to put flesh on the bones.

We follow a transparent dispute resolution process with regard to resolution of consumer complaints.

Section 9 of the Act gives immense powers to the Commission to inquire in the complaints made by the Consumers or the general public and where

appropriate the Commission could direct financial redress to be provided to rectify the cause which gave rise to the complaint.

In order to enforce the provisions in Section 9 of the Act the Commission appointed a Committee to inquire in to and resolve complaints made by consumers and the public. Under these provisions the telecommunications regulator has the power to investigate the actions and records of all service providers in addition to the authority it has to impose sanctions and penalties for violations.

Violations come to the attention of the regulator when a complaint is filed by an operator, a consumer, a member of the public or by any other interested party. In addition, self initiated investigations are conducted in order to ascertain compliance.

In this regard it is necessary to highlight a few examples of the enforcement powers used by the regulator to resolve complaints made by consumers and members of the public. The Commission, on several complaints made by the public, initiated a process under Section 11 of the Sri Lanka Telecommunications Act in May 1999 – with regard to delayed telephone installations.

According to the tariff determination made in the year 1999 April Sri Lanka Telecom was required to pay an applicant for a telephone who had not received service within 30 days a complete refund or a credit of Rs.1000/= for every week without service commencing from the 30th day after the installation fee was paid.

In this process we even considered unjust enrichment on the part of the service provider having charged an installation fee, depositing it in a bank and generating interest for a service which was not provided as agreed. The Commission ordered Sri Lanka Telecom to pay the penalty as indicated in the determination for all those who had to wait for telephone connections.

Sri Lanka Telecom had to pay Rs.68 million to the public as a result of this enforcement action taken by the regulator.

We resolved complaints made by subscribers with regard to Modem Hijacking Internet dumping and it is also known as Trojan horse virus. There are websites which usually deliver entertainment, sports, music, content and also dumps in to the user's computer without the consent of the user, modem hijacking dialer software. This dialer software lay dormant in the computer and it becomes activated if a switched-on computer is not used for a specific time, assuming that lack of activity means the user is not around the modem hijacking occurs. To resolve this complaint a notice was published in the newspapers that international direct dialing facilities to certain countries in the pacific region would be temporarily stopped for 3 months and advising as to how a person could take care to avoid being a victim of this virus which is similar to a biological virus i.e. to block the IDD facility with the secret code when using e-mail facilities or browsing the Internet.

We have not received complaints after this action was taken but the financial loss was felt by the Pacific Islands Telecommunication Association. They finally admitted that after the blocking of IDD calls to the countries in the pacific islands these illegal practices moved to another international jurisdiction which is not blocked or to another type of fraud.

As a result Sri Lanka Telecom management agreed to waive-off the outstanding amounts in the IDD bills of the complainants. Rs.1,383,460/47 was the amount waived-off. There was a similar issue with Suntel Ltd. This was also a complaint related to modem hijacking. In this case the main issue was the lackadaisical attitude of the staff which was apparent in relation to his problem and he was about to walk-away from the Suntel connection. The complaint was resolved and the consumer was satisfied and he decided to remain with Suntel.

There are varied types of complaints.

Majority of the complaints are related to billing for telecommunication services.

We commenced a public hearing under the provisions in Section 12 of the Act in relation to Improvement of Subscriber Bills and Resolution of Billing Related Disputes.

Issuance of itemized billing information was part of this order. This facility could enable a consumer to ascertain as to whether the calls were in fact originated by him.

In order to encourage re-sellers of telecommunication services to settle dues, Sri Lanka Telecom published a notice in the papers offering a bulk-user discounts scheme and a classification of revenue blocks for the scheme.

For example:

Rs.15001 – Rs.25000/- the discount is 5%

Rs.25001 – Rs.100,000/- the discount is 7%

A consumer made a complaint to the Commission that his company did not receive the discount as indicated in the notice. The Commission ordered that the payment made in excess with effect from the appointed date should be refunded to the complainant giving the full benefit of the scheme.

A complaint from a member of the public could be in relation to an installation of a telephone post or a wire being drawn across his premises. To resolve problems of this nature we have to visit the site and to decide on how best the post could be installed without causing a hindrance to the anyone. In all these instances the service provider has complied with our orders.

Complaints are also made by consumers who are not satisfied with the services provided by cellular mobile operators. A complaint was made against Dialog Telekom Ltd, for disconnecting the telephone facility when he had not even reached the credit limit. On the order made by the Commission, Dialog Telecom agreed to inform the consumer by SMS when he reached 90% of the usage. He was given the tariff package of his choice without an extra payment.

Proper enforcement of the provisions in the Act would help to maintain order in the sector, facilitate stability, progress and encourage investment to maximize social and corporate welfare. Enforcement powers if used properly would help to protect consumer interests, foster competition and efficient use of scarce resources.

Policy makers and national regulators will have to give due consideration to protection of consumers' interest and public interest as well as the economy of the country.

Regulation is not an end in itself. It is a tool alongside market forces for achieving social, economic and general policy objectives. The individual consumer should be the ultimate beneficiary of technological developments and reforms.

Regulation is not easy. The telecom industry is not yet market driven and we as regulators have to step in to fulfil the void left by the market place.

There were many instances, where regulatory directives were challenged by service providers in Courts. Ultimately, the actions instituted by them were withdrawn by themselves, proposing better settlement terms.

Sri Lanka Telecom filed Writ Applications restraining the regulators' powers of enforcement.

- (i) A directive given by the regulator with regard tariffs for calls from Sri Lanka Telecom fixed telephone to another fixed telephone. These calls which were in fact local calls were charged at long distance rate. The case was settled and the issue is addressed in the present tariff proposal.**

- (ii) Sri Lanka Telecom filed action against the directive issued by the regulator to reduce tariffs on CDMA services. SLT has now made a new proposal to reduce tariffs for CDMA Services.**

With these actions the overall winner would definitely be the Sri Lankan consumer.

The distrust between regulators and incumbent operators is inevitable and is common to many countries. As pointed by William Wigglesworth former Chief of Oftel - “The operators’ interests are diverse and they differ from regulator’s interests. There is bound to be conflicts and disputes. We had them all in Britain”.

Therefore, the task of a utility regulator is that which requires wisdom of Solomon patience of job, hide of rhinoceros and the determination of a bulldog.

**Mrs. Pushpa Réne Amarasiri
Director of Legal Affairs
Telecommunications Regulatory Commission of Sri Lanka**