Page 2173 - 2181 **DOI:** *https://doij.org/10.10000/IJLMH.116976*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 1

2024

Regulating and Monitoring of Telecom Industry under Competition Law Regime in India

ARSHA FATHIMA NAZAR[1], ADHIL A.[2] AND PARVATHY B.S.[3]

ABSTRACT

Sector-specific regulations and competition laws meet in a special way in India. The last several years have witnessed a sharp growth in the Indian economy. The tremendous rate of advancement has lifted millions of people out of poverty, but it has also led to the emergence of new issues. Throughout its period of economic expansion, India experienced numerous economic and other crises. During this time, the Indian legal and economic system has seen the emergence of regulatory entities. There's a chance that some of the responsibilities of these newly established regulatory entities will overlap. It is crucial to comprehend the background of the Indian regulatory tradition. The argument over whether the Competition Commission of India (CCI) should have control over the Telecom Regulatory Authority of India (TRAI), which regulates the telecom sector, is of great interest to academics. It's probable that CCI will also be given "cutting wings" by the government. The two primary regulators of the telecom industry, TRAI and CCI, are briefly described in this article along with an analysis of the issues that sometimes develop between them. This study also explores the issue of whether two regulators are required and concludes with some recommendations for the telecom industry.

Keywords: *CCI : Competition Commission of India ; FSPs : Fixed Service providers.*

I. INTRODUCTION

A vital component of life has been communication since the dawn of human history. The Latin term "communico," from which the English word "communication" is derived, also means "sharing," as opposed to only sending messages. Communication through speech, writing, or another type of media can exchange or share information. The use of telecommunication technology is one of the newer methods for improving communication. The definition of it is "transmission of information, such as sounds, images, or words, usually over very long distances in the form of electromagnetic impulses, such as by radio, television, telegraph, or

[1] Author is a LL.M. student at CSI College For Legal Studies, Kottayam, India.
[2] Author is a LL.M. student at CSI College For Legal Studies, Kottayam, India.
[3] Author is a LL.M. student at CSI College For Legal Studies, Kottayam, India.

 [ISSN 2581-5369]

telephone." The telecom sector has changed from being seen of as a natural monopoly to one that is competitive and multi-player.

II. DEVELOPMENT AND FUNDAMENTALS OF TELECOM INDUSTRY: CONCEPTUAL FRAMEWORK

The Indian Telecom Sector has the fifth-largest network in the world that complies with international standards. At present, the Indian Telecom Network is expected to contribute roughly 1% of India's GDP. It currently has the fastest rate of growth and offers special prospectus for our companies in the context of a stagnating global economy. Due to the favorable association between internet and mobile service adoption and a nation's GDP growth, the Indian telecom industry has become one of the most important drivers of economic growth necessary for the nation's overall socio-economic development. According to Joshi (2014)[4], the World Bank believes that more and broadband penetration raises per capita GDP in developing countries by 0.81% and 1.38%, respectively. India's telecom industry has experienced exponential expansion since post- liberalization, which has actually aided the nation's economic progress (Nasit, 2011). Earnst and Young (2011) asserted that Indian Telephony is poised to become an economic miracle. They claimed it was a remarkable accomplishment for a country's socio-economic development to link such a thriving economy of more than a billion people with one another and with the rest of the world. Shah (2008) asserts that throughout the course of the previous 10 years, policy reforms made by the Indian government led to a significant transformation in the growth, technological makeup, and market structure of the Indian telecom sector. Following liberalization, the industry underwent a significant shift from a monopolistic government system to one in which several private firms could enter and begin providing services to clients. The sector's growth and development have greatly improved as a result of the government and private actor's collaborative efforts. The telecom sector experienced extraordinary growth in the nation in large part to the active involvement of private businesses, foreign direct investment, a series of reform initiatives launched by the government and wireless technology. It is now a vital service required for the swift development and modernization of many sectors of the nation's economy. The Indian Telecommunication sector can be divided into two main components that make up India's telecommunications industry (CSPs), they are Fixed Service providers (FSPs) and Cellular Service Providers. Some fundamental telecom services, including telephone, radio, television, and the internet, are provided by the Indian

[4] Dr. Papori Baruah & Rashmi Baruah: "Telecom Sector in India: Past, Present and Future", Volume-I, (Issue-III), International Journal of Humanities & Social Science Studies (IJHSSS),Page No. 147-156, (2014).

 [ISSN 2581-5369]

telecom sector. In addition to Fixed Line, PMRTS (Public Mobile Radio Trunking Services), and WLL (Wireless Local Loop), the Indian Telecom Sector now places a specific emphasis on the newest technologies like GSM (Global System for Mobile Communication) and CDMA (Code Division Multiple Access).

(A) Major Players of Telecom Industry

In the telecommunications industry of India, there are three main groups can be distinguished:

1) The State-owned Firms (BSNL and MTNL)
2) The Private Indian owned companies (Reliance Infocom, TATA Teleservices, etc.)
3) The Foreign invested companies (Hutchison Essar, Bharti Tele Ventures, Escotel, Idea Cellular, BPL Mobile, Spice Communications)

III. HISTORY OF TELECOMMUNICATION IN INDIA

Globalization, privatization and liberalization sped up comprehensive reforms across many fields, particularly in developing economies. In the latter decades of the 20th century, developing nations like India came to understand the value of communication. By implementing the necessary rules, the Indian government has effectively pushed the telecom industry to expand into the country's new markets. As a result, it has been determined that this industry is on the rise and given its potential, will do so in the future as well. In 1880, The Oriental Telephone Company Ltd and The Anglo- Indian Telephone Company Ltd are the only two telephone companies operating in India petitioned the Indian government about setting up telephone exchanges[5]. The authorization was denied on the grounds that the government already owned the monopoly on telephone installation and would handle the project itself. The Oriental Telephone Company Limited of England was given a license by the government in 1881 to open telephone exchanges in Kolkata, Mumbai, Chennai (Madras) and Ahmedabad after the government reversed its prior decision. A Red-Letter Day in India's telephone history is January 28, 1882. Major E. Baring, a member of the Council of the Governor General of India, opened the telephone exchanges in Kolkata, Chennai and Mumbai on this day. The Central Exchange of Kolkata is located on the upper level of No.7 Council House Street. A total of 93 people were using the Central Telephone Exchange. In 1882, the Bombay Telephone Exchange first opened books for business. There has been a significant uptick in telecommunications in India over the previous decade. There have been efforts to improve the infrastructure from both governmental

[5] Hiranmoy Roy & Hemanth Babu. P, "Telecom Growth Trajectory in India" (August 21, 2009).

 [ISSN 2581-5369]

and non-governmental organizations. The goal is to make the vastly different people of India more comfortable with and adopt at using current forms of communication technology. The first telegraph line between Kolkata and Diamond Harbour was inaugurated in 1850. In 1851, the Post and Telegraph Department was a modest section of Public Works. When Telegraph services were opened to the public in 1854, a separate department was established. The first working landlines were installed by the British Government in Kolkata in 1851, marking the beginning of the Indian telecom industry. By making telegraph facilities accessible to the public, a separate telephone service was launched in 1881. In the year 1883, the telephone and postal systems were combined. Rajdhani of the East India Company was first located in Kolkata; however, in 1911, the capital was moved to Delhi and remained the nation's capital ever since. With its headquarters in New Delhi, the Public Works Department (PWD) managed the telecom activities at the time. The Department of Telecommunication (DoT), the Director General of Postal and Telegraph (DGP&T), the Department of Telecom Service (DTS), and ultimately Bharat Sanchar Nigam Limited gained responsibility over telecom operations over time (BSNL). For all these years, the Telecom Sector's headquarters remained in New Delhi. It was in 1914, at the start of World War 1, that the Postal Service were combined. The Indian Posts and Telegraph's accounts were rebuilt in April 1925 so that a more accurate financial picture could be analyzed.

Indian Radio Telegraph Company (IRT) was founded in the year 1923. India has come a long way from 1948, when there were only approximately 0.02 telephones for every 100 people in the country. Until December 31,1948, the Posts and Telegraphs Department oversaw the Country's mail, telegraph and telephone networks. Separate agencies for telecommunications and postal services were established in January 1985. They are namely the Department for the Posts (DoP) and the Department of Telecommunications (DoT). Separation of these two government agencies marked the beginning of real change in this sector[6]. Mahanagar Telephone Nigam Ltd. (MTNL) is a Public Sector Undertaking of the Government of India that was formed in 1986 after the separation of Bombay and Delhi Telephones. Just after India gained independence in 1947[7], all foreign telecommunications firms were nationalized to form Telephone, Telegraph and Post (PTT), which was monopolistically controlled by the Indian government's Ministry of Communications. The Indian Telecom Sector has been placed under governmental supervision in an effort to improve performance. The telecommunications

[6] Dharmendra Kumar Singhal, "Telecom Policies in India (A Comparative Study of Public and Selected Private Companies), 2015.

[7] Dun & Bradstreet, "Indian Telecom Industry" under the "D&B Sectoral Round Table Conference", series available online.

 [ISSN 2581-5369]

industry began to undergo transformation in 1980 when the private sector was permitted to manufacture telecom equipment. However, in the 1990s, the telecom revolution in many other nations spurred Indian policymakers to undertake a transition process that led to the privatization of telecom services. Until 1984, the Indian telecom business was wholly government-owned. In 1994, the telephone density was 0.8 per hundred people, compared to the global average of 10. It was lesser than China, Pakistan, Malaysia and others. GSM (Mobile Services) arrived in India in August 1995. Kolkata pioneered mobile technology. The handset initially cost Rs.40,000 and call tariff was Rs. 17/min.

TRAI (Telecom Regulatory Authority of India) was established in 1995 to decrease government involvement in rates and policies. It was opposed by DoT. A.B Vajpayee's 1999 government was more pro-reform and liberalized. They split DoT into a policymaker and a service provider (DTS, later BSNL). Leftists and the opposing parties opposed boosting foreign investors share from 49% to 74%. Domestic businesses wanted VSNL privatized. The Telecom Regulatory Authority of India was established to ensure fair competition and consumer protection. TRAI has sufficient authority to direct service providers under Section 13 of the TRAI Act[8] Under Section 14 of the Act, the TRAI can adjudicate service provider disputes. Government (as licensor) and license disputes are arbitrated by TRAI. Finally, in April 2002, the government sold VSNL to private companies after reducing its holding from 53% to 26%. TATA acquired 25% of VSNL. This allowed several international investors to enter the Indian telecom market. The government grew more open in policymaking and licensing private operators after March 2000. Cellular service providers license fees were cut and international corporations were allowed 74% stakes. All these reasons reduced service fees and call expenses, allowing every Indian middle-class household to afford a cell phone.

IV. DEVELOPMENT OF INDIAN TELECOM INDUSTRY

Telecommunication infrastructure development is essential to the national socio-economic development. India is offering incentives to infrastructure companies and private investors. Thus, the Telecom sector is growing rapidly in the country. Since 1850, Indian telecom has been more than 165 years old[9]. 196 Princely state telephone exchanges were absorbed in 1950. The Department of Telecom (DoT) and P & T were divided in 1975. Until 1985, when Mahanagar Telephone Nigam Limited (MNTL) was established to manage the telecom services in Delhi and Mumbai, DoT was in charge of the nation's telecom services. As part of its

[8] The Telecom Regulatory Authority of India Act, 1997.
[9] Supra 7

 [ISSN 2581-5369]

Liberalization, Privatization, and Globalization (LPG) Programme, the government opened up the telecom sector to private participation in the 1990s. As a result, it was necessary to divide the government's operations and policy wings. On October 1st, 2000, the Indian government corporationized the DoT's operations division, giving it the name Bharat Sanchar Nigam Limited (BSNL). Numerous private companies, including Reliance India Mobile, Tata Telecom, Vodafone, BPL, Bharti and Idea have successfully entered the lucrative Indian telecom sector. Many political parties with varying views made up India's governing body. A sizable minority (the moderates) supported completely opening the market to international competitors, while a sizable majority (the radicals) advocated for stringent government regulation of infrastructure and the participation of foreign firms. With this kind of political climate, advancing telecoms liberalization proved extremely challenging. As there were several political groups with varying beliefs, it was often difficult to get a majority vote in parliament for a bill to become law.

In 1981[10], Prime Minister Indira Gandhi began liberalization by merging the state-owned Telecom Company (ITI) with the privately- held Alcatel CIT of France in an endeavor to install 5,000,00 lines annually. However, the idea quickly collapsed under the weight of resistance from the heads of the opposing political party. Sam Pitroda, a non-resident Indian living in the United States, was invited by her to establish a Center for Development of Telematics (C-DOT), but the initiative ultimately failed for political reasons. Many government agencies, such as the Department of Telecommunications (DoT), VSNL, and MTNL, were established during this time under Rajiv Gandhi's leadership following Indira Gandhi's assassination. Despite the regime's technological advancements, outsiders were barred from the country's telecommunications market. There was constantly a greater need for telephones. In 1994, under the leadership of P.N. Rao, the government adopted the national telecoms policy (NTP), which altered the status quo in the areas of ownership, service, and regulation of the nation's telecommunications network. They also established effective partnerships between state-owned telecom businesses and multinational players. Nonetheless, only government-owned enterprises were allowed to have full ownership of their facilities. Up to 49% of the stock could be owned by foreign companies. Multinational's only role was in transferring technology; they had no say in policy formulation. During this time, the World Bank and ITU encouraged the Indian Government to liberalize long-distance services to break the DoT and VSNL monopoly and allow competition in the long-distance carrier business, which would lower tariffs and boost

[10] "Indian Telecom History", Volume – 1 by Telecom India Daily, available online at http://www.telecomindiaonline.com.

 [ISSN 2581-5369]

the economy. After five years, the Rao government liberalized local services and assured foreign investment in the long-distance market. Basic telephone was separated into 20 circles and mobile services into 18 circles. These circles were categorized A, B and C by revenue. One private enterprise and one DoT per circle were invited to bid. Two cellular service providers per circle were licensed for 15 years. The government overcame objections from ITL, DoT, MTNL, VSNL and other labour unions during these improvements. The telecom sector saw rapid expansion in the year 2006. The market had a significant increase in the number of new subscribers as new policies, regulations, and faces appeared. India outpaced China in monthly additions, and the country's teledensity topped 20. With 73.40 lakh new members, July 2007 was the largest global subscriber addition. After that, teledensity increased exponentially until 2011. Teledensity in India increased from 9.11 to 76.86 during the telecom revolution. After 2011, the rate relative to 100 people stabilized at 75.

V. CURRENT STATUS OF INDIAN TELECOM SECTOR

India is the world's fastest growing telecom market due to its vast population, low telephony penetration, and rapid economic growth, which has raised consumer income and spending. The state-owned incumbent BSNL is the world's 7th largest telecom firm. The Department of Telecommunication Services (DTS), which provided telephone services, was corporatized to form BSNL. After the telecom policy was changed to allow private operators, Bharat Telecom, Tata Indicom, Vodafone, MTNL and BPL became prominent Indian operators. Rural India's infrastructure is still weak. India's telephone network is the world's largest and continues to expand rapidly. With over 190 million connections, India's telecommunications network is the third largest in the world and the second largest on rising Asia (TRAI)[11]. Growing at a pace of 20-25% up until 2002-2003, the telecom industry is now averaging over 40% annual growth[12]. The Government's constructive and proactive policies, as well as public and private sector contributions, have all played a role in this impressive expansion. The success of this telecom industry can be attributed in large part to the private sector's involvement and India's generally liberal governmental system. There were 897.02 million telephones in use as of April 31st, 2013. Similarly, on March 31st 2013, 164.81 million people were using the internet, with TRAI reporting that 70% of those people used their mobile devices to access the web. In the previous fiscal year, there was a total of 143.2 million internet users. The number of persons using broadband services rose to 15.05 million as of March 31st, 2013, from 14.98 million as of December 31st, 2012. There has been an increase of 0.16% in the number of people who access

[11] Supra 5
[12] Ibid

 [ISSN 2581-5369]

the internet just from a computer, without a mobile device[13]. There has been a dramatic decrease in tariff rates since the telecom industry was liberalized, which has benefited consumers greatly. Both phoning and web browsing have been hampered by the high costs. Companies need to make investments in internet and other infrastructure facilities and market competition to be able to sell and obtain returns on their investments as the focus on the internet shifts to browsing and download speeds. The phrase "Teledensity" is shorthand for "the number of telephones per one hundred people". This metric measures the expansion of telecommunications infrastructure and end-users, providing insight into promising markets. Teledensity in India dropped from 76.86% in December 2013 to 73.16% in April 2013 due to inflation or tariff hikes after the 2G scam 15. The introduction of Smartphones, internet and licensing liberalizations transformed telecom operations significantly[14]. Moreover, 3G is emerging as the norm for today's youth. Since 1997, the telecom industry has been the subject of research utilizing techniques such as Data Envelopment Analysis (DEA)[15]. These models have been refined throughout the years and applied to the task of assessing the financial and operational effects of potential business moves[16]. The Company's management must also start from scratch to deal with the myriad problems brought on by the new technology and the way business is conducted. This gradual adjustment is largely driven by change management strategies.

The Present scenario of Indian Telecom Industry is as follows:

- With 1.17 billion subscribers in 2022, India's telecom industry is the second largest in the world. 85.11% of India is connected.
- Affordable prices, wider availability, Mobile Number Portability (MNP), expanding 3G and 4G coverage, and changing subscriber consumption patterns have fueled the industry's exponential expansion over the previous few years.
- The telecom sector accounts for 6.44% of total FDI inflows and directly employs 2.2 million people and indirectly employs 1.8 million.
- Between 2014 and 2021, telecom FDI inflows increased 150% to USD 20.72 billion from USD 8.32 billion.
- The telecom sector now allows 100% FDI under the automated approach.

[13]Jain R, "A Review of the Indian Telecom Sector", India Infrastructure Report, Chapter 8, 2001.
[14] Kapil Yadav, Shashank Tiwari and Rajiv Divekar, "Impact of Technological Changes in Telecom Sector in India", Vol 8(S4), Indian Journal of Science and Technology, 194-199, February 2015.
[15] Nigam V, Thakur T, Singh VK, Singh RP, "Benchmarking of Indian mobile telecom operatorsusing DEA with sensitivity analysis", 19(2), Benchmark Int J;219–38, 2012.
[16] Ibid

- By 2025, India will have 1 billion installed smartphones and 920 million unique mobile subscribers, including 88 million 5G connections.

VI. CONCLUSION

In today's modern information-based global economy, telecommunication has become an essential factor in fostering growth in all spheres of society. The cellular market is particularly significant since it serves low-density areas such as rural and semi-urban regions. Consistent use of technology may help alleviate many of the world's most pressing problems in the fields of education, healthcare, job creation, economic inclusion, and more. One of the quickest emerging telecommunications markets is India today.

*****