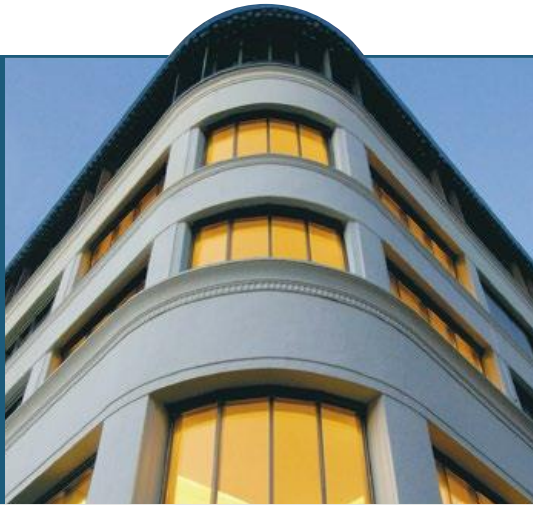


LALIVE



Arbitration in the Telecommunications Sector

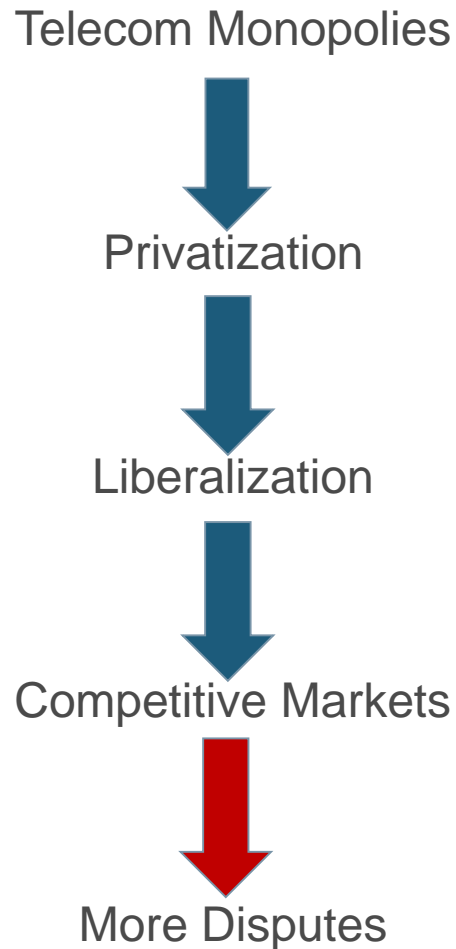
CEA Belgian Chapter

Arbitration in Highly Regulated Sectors : Energy, Telecom, Pharma, Banking & Finance

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Brussels, 17 February 2017

Growth of telecoms arbitration



Discussion outline

1. Types of disputes
2. Common characteristics of telecom disputes

Types of disputes

Disputes related to liberalization

**Incumbent's desire to
protect their dominant
position**



Reduction or termination of exclusive rights



Disputes

Example: Dominica

Interconnection disputes

New entrants require interconnection to the incumbent's network



Incumbent has an economic incentive to make interconnection more difficult and costly



Main types of interconnection disputes

- Failure by dominant operator to develop a Reference Interconnection Offer (RIO) or standard interconnection arrangements
- Failure to conclude negotiations on a timely basis
- Disagreement on interconnection charges
- Disputes over quality of interconnection services
- Failure to comply with the terms of a negotiated interconnection agreement
- Poaching of customers by new entrants through improper customer transfers (“slamming”)
- Improper use of competitively sensitive customer information by incumbent operators

Consumer disputes

- **Service Charges:** Disputes over the types and amounts of charges that are levied on consumers for services.
- **Billing:** Disputes over the charges billed to a consumer for various services or for calls that have been made.
- **Payment of Charges:** Disputes over the terms of payment for telecommunications services – and the time frame for disconnection after the non-payment.
- **Slamming:** Slamming is the practice of changing a consumer's service provider without the consumer's authorization.
- **Quality and Terms of Service:** Disputes over poor quality of service, and terms for connection and disconnection of service.
- **Privacy:** Disputes over privacy e.g. use of personal consumer information (home addresses, credit information and calling patterns).
- **Advertising:** Disputes regarding misleading advertising.

Investment disputes

- Early termination of the incumbent's monopoly
- Rate rebalancing
- Mandatory interconnection
- Introduction of a new rate-setting structure
- Changes to the terms and conditions of licenses

Example: Telefonica v Argentina

Competition disputes

Disputes over service packages or “bundles”:

- Service packages offered by incumbents to new customers only
- Dominant operators bundle highly competitive services with near-monopoly services

Disputes between regulators and service providers

- Claims that regulators have exceeded their powers
- Challenges to new regulations or terms of competitive licenses
- Disputes over due process in enforcement

Example: Turkcell and Telsim in Turkey

Private contractual disputes


- Licensing agreements over IP rights
- JV or shareholder agreements
- Technical cooperation agreements

Common characteristics of telecoms disputes

Fast-paced markets

- Fast-paced markets
- Driven by intense competition
- Need to resolve problems quickly
- ✓ Arbitration : A faster process (?)

Confidential information

- Confidential business information with significant economic value
 - ❖ engineering methods
 - ❖ computer programs (particularly source code)
 - ❖ algorithms
- Reluctance to disclose this information to public or to other competitors
- ✓ Arbitration: Protecting confidentiality (?)
 - Private process
 - Possibility of confidentiality agreements
-  Caveat: enforcement/challenge proceedings

Complexity

- Liberalization and rapid transformation of a wide range of telecommunications markets
- Emergence of many new players
- Rapid technological change
- Increasing technical complexity of telecommunications services
- Inadequate or insufficiently detailed regulations or license conditions on major issues such as interconnection charges, the scope of licensed services, and spectrum use.
- Additional layer of government and regulatory oversight
- ✓ Arbitration: Specialist Expertise (?)

Specialist expertise

Lack of expert decision makers in litigation



Judges with heavy caseload and limited time



Complex telecoms disputes better suited to arbitration



Users' key factor in choosing arbitrator:
commercial understanding of the industry sector

Specialist expertise – Limitations and suggestions



Limited pool of specialized arbitrators



This was the main improvement* that users suggested for telecoms arbitration:

- Neutral system for the accreditation of specialist arbitrators (43%)
- Creation of specialised rosters of arbitrators (42%)
- Appointment of more industry experts (40%)

* *Other than costs*

Thank you

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