



3rd IJLT-CIS Lecture Series on Telecom Laws and Regulation

REPORT ON THE 3RD IJLT – CIS LECTURE SERIES:

LECTURE BY MR. ROHAN SAMARAJIVA¹

Mr. Samarajiva, by his own admission, is a ‘jack of all trades’. His breadth of regulatory and teaching experience is only matched by his ability to turn a potentially complex topic like ‘Tariff Regulation’ into a beautifully weaved story punctuated with generous doses of wit and humour.

Location: Fourth Year Classroom, 2nd Floor, Academic Block, NLSIU

Mr. Samarajiva’s lecture was divided into two sessions. In the first session, he introduced the ICT policy and regulation think tank, LIRNEasia, which was founded by him and also described the various capacity-building measures that it regularly undertakes. He went on to discuss various aspects of the policy-making process with the participants, including how they could engage with the same. He also introduced the CPR*South* conference – a capacity building initiative to develop young ICT scholars in the Asia-Pacific region. With the 2013 edition of conference scheduled to take place in Mysore, Karnataka, Mr. Samarajiva invited all present to participate and contribute towards making it a success. Towards the end of the session, Mr. Samarajiva also fielded questions from students on different aspects of engagement with the policy making process in areas of telecom, infrastructure and e-governance projects.

A short break for tea followed, during which students got the opportunity to interact with Mr.Samarajiva in a more informal setting. The range of topics discussed during the break stretched from nuclear power and its pitfalls to diverse aspects of intellectual property and environmental law.

¹ Rohan Samarajiva is founding Chair and CEO of LIRNEasia, an ICT policy and regulation think tank active across 12 emerging Asian economies. He has served in numerous roles including as the Director General of Telecommunications in Sri Lanka (1998-99), a founder director of the ICT Agency of Sri Lanka (2003-05), Honorary Professor at the University of Moratuwa in Sri Lanka (2003-04), Visiting Professor of Economics of Infrastructures at the Delft University of Technology in the Netherlands (2000-03) and Associate Professor of Communication and Public Policy at the Ohio State University in the US (1987-2000). Samarajiva was Policy Advisor to the Ministry of Post and Telecom in Bangladesh (2007-09).

The second session of Mr. Samarajiva's lecture dealt with 'Tariff Regulation in India and Abroad'. The lecture began with Mr. Samarajiva showing students some astonishing facts regarding levels of awareness about internet penetration into the lives of those living in the Asia-Pacific. The statistics showed fundamental misconceptions regarding the internet and a need for greater awareness programs to ensure knowledge-parity across different strata of society.

The discussion about 'Tariff Regulation' itself began with an introduction to the theory of regulation itself. Delving into his rich experience, Mr. Samarajiva spoke about the differing approaches to regulation that exists across the Asia-Pacific region. Citing examples from Sri Lanka, Myanmar, Bhutan and India, he explained how a tariff regulator's success is typically measured and remarked that the Indian regulator's approach of forbearance has been linked to its low tariff rates - one of the cheapest mobile call and broadband rates in the world. In this regard, he stressed on the characteristics a regulator should seek to ensure the following attributes in a market: information symmetry, lack of barriers to entry/exit, the multiplicity of buyers and sellers, the presence of substitutable products and rational market players. Explaining how concentration of market power can lead to consumer exploitation, he proceeded to address the various regulatory tools used to ensure a more equitable distribution of market power. These include: rate of return regulation, price cap regulation and benchmark regulation.

Taking India's situation specifically, Mr. Samarajiva showed students various statistics including data from the Nokia Total Cost of Ownership Study 2011, data concerning fixed and mobile broadband prices in South East Asia and South Asia as well the Tariff Regulation scores from the 2011 Telecom Policy and Regulatory Environment Survey. Furthermore, he introduced students to the Herfindahl-Hirschman Index (HHI) – a mathematical tool that serves as an indicator of prevailing levels of competition in a particular market. Using these inputs, he showed how the extremely high levels of circle-level as well as overall competition in the Indian telecom segment coupled with a policy of regulatory forbearance had ensured India's mobile call and broadband rates were the one of the lowest in the region as well as the world. This, he posited, was the primary reason for the policy of forbearance being such a success in India. This peculiar market structure is also the reason why a similar approach might not work in every country that is similar demographically and location-wise.

Drawing upon his personal experience as a consultant on the regulatory policy for the Maldives, which has a duopoly in the telecom market, Mr. Samarajiva outlined the relevant factors in formation of a regulatory policy in such a market. The regulator should be interested in incentivising efficiency, while also keeping tariffs at a level that allows operators to make sufficient returns. The critical factor in the computation of tariffs is the cost incurred by the telecom company in providing these services. The ease of regulation and procuring licenses and approvals often proves to be a decisive factor, and a potential entry barrier to the market. After highlighting these issues, Mr. Samarajiva explained how the optimal solution for the regulator was to take a slightly hands-off approach and provide for a band, within which service providers would fix the tariff. This form of asymmetric regulation would serve the dual purposes of regulating unfair competition as well as protecting

consumer interests. The benchmark for banded forbearance would be fixed on a comparison of the tariffs and market conditions. Mr. Samarajiva discussed the different relevant factors for setting the benchmark, including selection of mobile services basket and comparison with neighbouring countries, or demographic peers. For any tariff to be fixed outside the bounds of the band, approval would have to be taken from the regulator, and in the resulting inquiry the regulator would rely upon the commonly used economic indicators and justifications to determine if the same should be permitted.

With the vote of thanks, the inaugural lecture of the 3rd IJLT-CIS Lecture Series 2012 on Telecom Law and Regulation in India drew to a close.

[The slide set used during the presentation may be accessed at: http://lirneasia.net/wp-content/uploads/2012/05/Samarajiva_NLSI_May121.pdf]