



The Competition Regime as a Determinant of Consumer Welfare: Focus on Indian Telecom

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*“Recall the face of the poorest person you have seen,
and ask yourself if the step you contemplate is going to
be of any use to them...”*

*Mahatma Gandhi, when asked how policy makers should
judge the merits of any action*

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1

Introduction

According to neo-classical theory, production and distribution of goods and services in competitive markets maximises social welfare. These lead to productive and allocative efficiency respectively – the former leading to minimisation of costs of production and the latter resulting in goods and services being made available at the lowest possible prices. Thus, both help in lowering the prices at which products are available to consumers.

Competition, by facilitating the production and consumption of goods at the lowest possible resource cost through the attainment of these two types of efficiency, also maximises the quantity, quality, and variety of goods produced and widens access to goods and services. It thus helps in maximising total welfare though often the resulting distribution of total welfare across classes and sectors in the economy might be far from ideal. But such distribution is primarily determined by the distribution of endowments. In the case of an inequitable distribution of endowments competition has a limited role in fostering equality in distribution of total welfare. Quite often a drastic redistribution of endowments/incomes might be necessary.

Enhancement of consumer welfare implies different things to different strata of society. For those who are relatively rich and can afford all the comforts of life it implies a greater choice of goods and services as well as enhanced quality. For those who find it difficult to make both ends meet, consumer welfare enhancement leads to greater access to basic goods and services. In this context, consumer protection from unscrupulous sellers who charge exploitative prices certainly enhances consumer welfare. In countries all over the world, policies have been designed and legislations enacted to promote consumer welfare as conceived under both these points of view.

In India, promotion of competition, safeguarding consumer interest, ensuring a balance between need and supply, and other similar policy objectives are postulated as objectives in government policy documents from time to time, indicating that these continue to be high on the government's list of priorities. However, it is the extent of implementation that needs to be evaluated.

This Monograph is structured as follows. Section 1 presents a brief introduction. Section 2 elaborates on how the concept of consumer welfare has been concretised and delineated in the form of consumer rights; Section 3 examines how such rights can

be furthered through a competition regime. Section 4 evaluates how the formulation and implementation of Government policy in India has affected the pursuit of competition and consumer welfare enhancement. Section 5 offers a case study of the telecom sector in India – the examination of competition issues is juxtaposed against an evaluation of the extent to which the mentioned consumer rights are being satisfied. Section 6 concludes and lists policy recommendations for enhancing consumer rights/welfare through changes in the competition regime.

2

Consumer Welfare and Rights

Consumer welfare is facilitated by a set of rights, clearly delineating the entitlements of consumers. The United Nations Guidelines on Consumer Protection¹ (UNGCP), which was adopted by the UN General Assembly in 1985, and amended in 1999, provides this framework of consumer rights. Consequently, Consumers International has used this framework to postulate a set of eight rights, the totality of which guarantee consumer welfare. These rights are:

- Right to Basic Needs
- Right to Safety
- Right to Choice
- Right to Redress
- Right to Information
- Right to Consumer Education
- Right to Representation
- Right to Healthy Environment

Right to Basic Needs

All consumers have the right to basic goods and services such as adequate food, drinking water, shelter, clothing, health care, electricity and education. These rights lay a foundation to lead a life with dignity and, therefore, give a meaning to citizen's rights.

The key aspects are as follows:

- The right to basic goods and services, which guarantee survival.
- The responsibility to use these goods and services appropriately.
- To take action to ensure that basic needs are available.

Right to Safety

This right means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed should not only meet their immediate needs, but also fulfill long term interests. The following are the key aspects:

- right to be protected against goods or services that are hazardous to health and life;
- responsibility to read instructions and take precautions; and
- choose safety equipment, use products as instructed and teach safety to children.

Right to Choice

This right means right to be assured, wherever possible of access to variety of goods and services at competitive prices. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. The key elements of this right are:

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices.
- To resist high-pressure sales and to comparison shop.

Right to Redress

This right means right to seek redressal against unfair trade practices (UTPs) or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. The key aspects are:

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided.
- To complaint effectively and refusing to accept shoddy workmanship.

Right to Information

This right means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against UTPs. The key aspects are:

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labelling.
- The responsibility to search out and use available information.
- To read and follow labels and research before purchase.

Right to Consumer Education

This right contains the provision to acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.

- The right to acquire the knowledge and skills necessary to be an informed consumer.
- The responsibility to take advantage of consumer opportunities. Take action by attending seminars and workshops, work to ensure consumer education takes place in schools.

Right to Representation

This right means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The main aspects of the right are:

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known.
- To join an association such as the Consumer Council to make their voice heard and to encourage others to participate.

Right to Healthy Environment

To live and work in an environment, which is non-threatening to the well-being of present and future generations. The right contains the following elements:

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimise environmental damage through careful choice and use of consumer goods and services.
- To reduce waste, reuse products and to recycle whenever possible.

These eight rights can be clubbed under three broad categories, namely Access, Quality and Participation:

Access: (Right to) Basic Needs, Choice

Quality: (Right to) Safety, Healthy Environment

Participation: (Right to) Redress, Information, Consumer Education, Representation

In the next chapter, these clusters are used as tools to analyse the impact of the competition regime on consumer welfare.

3

Competition Regime and Consumer Rights

3.1 Competition Regime and Access

The rights to basic needs (e.g. two ‘goods’ and six ‘services’: Food and Clothing; and Healthcare, Drinking Water and Sanitation, Shelter, Energy, Education and Transportation) and choice constitute the principal elements of the access cluster. This is an important right in the Indian context because of the high incidence of poverty. The competition regime can have significant impact on consumer access to goods and services if the use is made of its capabilities. Similarly, the regulatory policy of the Government can also have an impact on access.

From a social point of view, it is desirable that all consumers, regardless of their income status, have access to basic needs. In the absence of an adequate purchasing power of a large section of the population their participation in the market to satisfy such basic needs is often not possible; thus state intervention in the market mechanism, without suppressing it, to provide such needs might be imperative. This requires the State to take up the role of a facilitator (and regulator).

Certain essential services have expanded due to relaxation in control and new technologies. The Telecom sector is a brilliant success story in terms of widening access. Similarly, there has been substantial growth and expansion in various services, such as health, education, banking, transportation, housing etc. However, regulators in various sectors have had only mixed success in bringing competitive discipline among various actors in the market. The reasons for limited success could be resource constraints as in the case of Monopolies and Restrictive Trade Practices Commission (MRTPC) or structural anomalies which blunt the regulator’s powers to promote competition.

Universal service obligations, which are a part of sector regulatory policies (as in electricity or telecom), can be used to promote a healthy synergy between rights to access and competitive forces if these apply to all players in a relevant sector. In this regard, it should be noted that many competition abuses that affect the access cluster occur at the local level. This needs local solutions, and so there is the need for local

level competition agencies along with a vigilant and well-resourced consumer movement to take up issues on behalf of the consumer.

3.2 Competition Regime and Quality

The competition regime through ‘standards policy and legislation’ can play an important role in strengthening the right to safety, which is an element of the quality cluster. Such legislation/policy is an essential component of competition law/policy as it promotes fair competition and is sometimes necessary to check abuse of dominance/cartelisation which short changes the consumer in terms of quality.² A competition regime can also hasten safety innovation by checking anti-competitive practices (see Box 1).

Box 1: Anti-competitive Practice Thwarting Safety Innovation

In the *Allied Tube* (Allied Tube & Conduit Co. v. Indian Head, Inc., 486 U.S. 492 (1988)) case, the US Supreme Court found that a subgroup of the standard setting organisation effectively “captured” the whole group, and harmed competition by excluding an innovative product. In this case, an association that published a code of standards for electrical equipment required the use of steel conduits in high-rise buildings, but a new entrant into the market proposed to use plastic conduits. The new product was allegedly cheaper to install, more pliable, and less susceptible to short-circuit.

The incumbent steel conduit manufacturers agreed to use the association’s procedures to exclude the plastic product, from the code, by sending new members to the association’s annual meeting, whose sole function was to vote against the new product. As a result, the potential entrant’s ability to market the plastic conduit was significantly impaired, and consumers were denied the benefit of a potentially significant product innovation.

Source: Joseph J. Simons (2003), “FTC Initiatives in Intellectual Property”, presentation at the American Intellectual Property Law Association Spring Meeting, May 15.

The Bureau of Indian Standards (BIS) created by the Bureau of Indian Standards Act, 1986 has been setting quality and safety standards for various products, some of which are mandatory. The existence of an authority like BIS helps in laying down the rules, especially in a situation of low consumer awareness about quality. In fact, mandatory standards can help in enhancing quality awareness and help protect the consumer. A large number of mandatory standards are in force but the desired extent of enforcement has not been facilitated. More effort in enforcement as well as improvement in standards is required. Generally, business is more partial to standards developed by them – the so called voluntary standards.

In India, there is very little evidence to suggest that competition in its existing form has had a positive impact on quality. In certain cases, there is free competition without adequate consumer information and awareness about quality. This leads to price competition being associated with scant attention paid by firms to quality – a state of

affairs which is far from ideal despite the presence of competition. On the whole, it can be said that standards with public oversight can be a useful tool for the competition regime to guarantee pro-consumer outcomes. In some cases, strict regulation of quality might be necessary. The regulatory authorities laying down standards (safety, performance etc) should have the teeth to implement these standards and penalise the providers/sellers for non-compliance. A related problem with standards is the low level of consumer awareness on issues such as safety, which means there is not enough demand pull to make industry interested in implementing safety standards.

In sectors like telecom and electricity, there is a visible regulatory initiative to improve quality but without adequate legislative backing. The Telecom Regulatory Authority of India (TRAI) has outlined 'Quality of Service' guidelines for service providers and publishes periodical survey reports assessing quality of service and customer satisfaction. Competition has also led to improvements in certain aspects of quality, such as connectivity regarding which consumers and other agents have access to reliable information. While this is a step in the right direction, overall quality of service in the telecom sector still remains a problem. Novel approaches based on economic incentives (like the use of Availability Based Tariff by the electricity regulator) can sometimes be beneficial in improving standards in a sector.

3.3 Competition Regime and Participation

The participation cluster covers the right to consumer education, representation, information, and redress; the status of these rights in a competition regime is discussed below.

Consumer Education

Consumer education is the process of transferring knowledge and skills to consumers to empower them to take welfare enhancing action. Consumer education helps to maximise personal satisfaction at minimum cost as it facilitates consumer involvement in ensuring low prices, quality goods and avoidance of seller deception at the market place. However, the Monopolies and Restrictive Trade Practices Act (MRTPA) has never bothered about consumer education. Instead, consumer education has been taken care of mainly by consumer groups with funding from the Consumer Welfare Fund (CWF) of Government of India.

However, what has been done so far is not enough. The media has taken an active role in educating consumers by carrying grievance redress and syndicated columns from consumer experts. Some of the sector regulators also have consumer education programmes and these provide information to consumers through newspapers as well as electronic media. The new competition law – Competition Act 2007 – has provisions for competition advocacy under which the Competition Commission of India (CCI) is supposed to do awareness generation and training programmes for stakeholders.

Consumer Representation

The purpose of consumer representation in ensuring competition regime is to improve regulation and ensure that regulation takes into account consumer interests. In India, a few sector regulators like Central Electricity Regulatory Commission (CERC) and

TRAI have created a representation mechanism by constituting Advisory Committees with representation from consumers and other stakeholders. The telecom sector, among other things, has a Common Charter of Telecom Services, which requires service providers to promote consumers' right to education, choice, representation and redress. In electricity, even state level regulators have some consumer representation in certain cases.

Apart from such representation mechanisms of sector regulators, the Competition Act has not created any formal representation mechanism for consumers. The representation mechanism of the CCI is informal and inadequate. This is a serious lacuna as the CCI is supposed to advise the Central Government on policy issues, when asked. However, the CCI has formed an Informal Advisory Committee where consumer organisations are represented. The CCI has also established a Competition Forum to build and further strengthen the capacity of the functionaries of the Commission, where experts (including consumer leaders) are invited for presentations. However, informal committees and forums are not enough and what is needed is a robust representation mechanism.

Consumer Information

A consumer without information is seriously disadvantaged as of free flow of information is also essential for fair competition. The MRTPA has mechanisms in strengthening this right through its provisions on Unfair Trade Practices (UTPs) which include provisions against misleading advertisements (see Box 2). Voluntary mechanisms, like the Advertising Standards Council of India (ASCI) also provide some degree of protection to the consumer in a competitive environment. There have been instances, where consumer groups have successfully used the mechanism provided by ASCI to deal with misleading advertisements³. The Competition Act⁴ however does not cover UTPs⁵ which now comes under the ambit of Consumer Protection Act, 1986 (COPRA). Thus, consumers are protected though not through the competition law mechanism.

Box 2: Competition, Lucky Draws and Right to Information

These days there are a variety of schemes in the market like exchange schemes, lucky draw schemes, single product schemes, multi-product schemes, easy finance, loyalty etc. Competition makes it necessary for producers/sellers to run such schemes but consumers need to be careful as often much is hidden within the fine prints and the real benefit that s/he gets out of it. So this is basically a question of the consumer getting the right information about the meaning of these apparent advantages. There is no formal mechanism to monitor such offers and it is not clear what is to be regulated and how. Many of these schemes are in the nature of UTPs which would now fall under the ambit of the COPRA. There should be a system of regulation through registration, monitoring and penalisation applicable to such schemes.

Another important aspect of the consumer right to information is the right to know about the functioning of competition and regulatory authorities and other government departments dealing with competition and the consumer. The MRTPC, however, did not facilitate this process and consumers could know very little about its functioning.

Moreover, no special mechanisms have been created by the Competition Act to facilitate consumer right to information. Other than the usual requirement to place its annual report and accounts before the Parliament, the Act does not allow much. In fact, there are restrictions on disclosure of information about enterprises.

The Right to Information (RTI) Act can play a useful role for consumers in this regard. In fact, the CCI is bound by section 4(1)(b) of the RTI Act to furnish information about its functioning etc. The RTI Act can also be used by consumers to get information about the functioning of public sector undertakings (PSUs) that are involved in a variety of services.

Consumer Redress

A redressal mechanism is an essential component of the competition legislation of any country. In India, too, the MRTPA has in built grievance redressal provisions. However, over the years, because of factors like inadequate budgetary allocation and lack of autonomy the MRTPC has not been very effective in providing redress and consequently pending cases have kept piling up. Moreover, the MRTPC's prioritisation of cases (as reflected by the cases which were selected for action) was often not based on the relative magnitude of damage caused by these. In dealing with restrictive trade practices (RTPs) and UTPs' related cases, the MRTPC has been somewhat more successful though huge numbers remained pending⁶. The percentage of cases taken up where prejudice to public interest was established still remained small in that period⁷.

The CCI is expected to serve consumers better as far as redress is concerned. Among other things, the Competition Act allows individual consumers or their associations to present their grievances for redress before Competition Forum of the CCI. However, cost considerations and other factors may deter individual consumers or local consumer groups from approaching the CCI. The need for regional benches of the Commission is again felt in this context.

Other than competition law, COPRA provides a three-tier, simple, quasi-judicial machinery – at the national, state and district levels – for the purpose of redress⁸. While COPRA is a comprehensive piece of legislation its enforcement is plagued by inordinate delays in the delivery of justice, implementation of orders etc. There are cases at all levels that are pending for more than 10 years. A recent amendment of the COPRA, among other things, provides for confiscation and subsequent sale of the property of a person not complying with an order.

Other than COPRA, redress mechanisms are also found in the Arbitration and Conciliation Act 1996, and codes of business ethics. Some sector regulators like telecom, electricity and insurance also have redress mechanisms: generic complaint redress by TRAI, telephone *adalats*, grievance redress mechanisms of state electricity commissions, the consumer grievance redress cell of the Insurance Regulatory Development Authority (IRDA), insurance ombudsman, banking ombudsman etc.

State electricity regulators in Himachal Pradesh, Haryana, Karnataka and other states have set up consumer grievance redress mechanisms including electricity ombudsman in some cases. The Ministry of Consumer Affairs has also set up a national consumer

help line to provide information and register complaints. Some big companies including those in the banking, airline and hotel sectors have their own customer feedback and customer 'solutions' mechanisms. With increased competition the need for customer feedback on the part of companies would no doubt increase.

A suggestion for setting up a consumer ombudsman has often been voiced by consumer activists. A consumer ombudsman or a state level competition and regulatory agency could be helpful in dealing with local-level monopolistic/collusive practices which a consumer often encounters. A consumer ombudsman will also take the pressure off consumer courts and formalise and strengthen the prevalent practise of out-of-court settlements mediated through consumer groups. The banking and insurance sector already has such a system.

Summary

To summarise, the role of MRTPC in providing redress or guaranteeing information for the consumer is nothing to write home about. Redress has been slow with huge backlogs and usually been provided in cases that are less damaging for the consumer. However, some initiative has been shown in dealing with RTPs and UTPs which in a way strengthen the right to information. In providing information about its own functioning MRTPC has fared poorly while the CCI is expected to perform better. The CCI by allowing class action and private action has created better opportunities for the consumer (individual or group) to get redress. However, because many competition abuses occur at state or local levels there remains the need for regulatory apparatus at these levels.

3.4 Effect of Policy Formulation/Implementation on Competition and Consumer Welfare

It is generally not accepted in India that anti-competitive outcomes often arise due to Government policies not being in line with market principles. Even when the Government is ostensibly committed to introduce competition in the market, the outcome is generally the opposite. Mostly, this happens because of efforts to reconcile too many conflicting objectives. Too many good intentions often result in bad outcomes.⁹ Effective and fair competition and a consumer protection regime are enough to protect consumer's rights and enhance consumer welfare though their effect might be nullified by the introduction of other policies.

Most Government policies are oriented to affect outcomes, rather than processes. This pursuit of 'fair' outcomes through policies can often jeopardise competition which is a neutral process. It is imperative to ensure that policy instruments which try to redistribute wealth/incomes across classes and sectors do not frustrate the market process.

The Raghavan Committee report on 'Competition Policy and Law' administers a note of caution and gives a direction when it says, "In the name of public interest, many Governmental policies are formulated which are either anti-competitive in nature or which manifest themselves in anti-competitive behaviour. If the consumer is at the

fulcrum, consumer interest and consumer welfare should have primacy in all governmental policy formulations”.

Furthermore, the Raghavan Committee report makes a clear distinction between commercial interests and purely consumer interests when it says, “consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. Consumers are affected by pricing policies, financing practices, quality of goods and services and various trade practices. They are clearly distinguishable from manufacturers, who produce goods and wholesalers or retailers, who sell goods”.

The thrust of reforms in India has been to allow for more competition and for the Government to play the role of a facilitator rather than the controller of economic activity. However, in spite of this kind of speak, the influence of past practices persists and often prevents the Government from interpreting existing policies and constructing new ones that are in sympathy with market processes. The design and implementation of numerous policies, to avowedly favour public interest while actually promoting entrenched/vested interests, distort the market process and impede competition. Such distortions and the resultant lack of healthy competition and fair trading in the market affect the consumer by infringing on the mentioned rights.

4

Telecom Sector – A Case Study

The telecom sector provides an interesting case study of sector competition and consumer welfare. The expansion of the telecom sector has been a huge success story: tele-density has increased from 4 in 1996 to 20 in August 2007, and is expected to increase to 22.5 in 2008. As of August 2007, the country had as many as 232.87 million telecom connections (192.87 million wireless and 40 million wired). This vast expansion has been accompanied by a significant reduction in tariffs for telephone calls, both local and long distance.

The telecom industry remains one of the fastest growing industries in the country, with around 5-6 million new customers getting added to the mobile users club every month. Growth in the number of fixed line users, by contrast, has been much slower, with the number of fixed line phones actually declining, from 41.3 million in May 2006 to 40.3 million in May 2007. The total number of Internet connections, including dial ups, is around 9.22 million and around 17.8 percent of the population use the Internet. It indicates the success of market reforms undertaken and huge potential available in this sector. While the broadband sector is still small, growth appears to be picking up at last, with the total number of broadband connections in the country finally reaching the 2.5 million mark as against 1.4 million in March 2006.

As market reforms have significant implications for consumer welfare, it is necessary to assess whether such implications are positive or negative. Such assessment, for policies, regulations and legislations that are likely to affect consumers, can be made through Consumer Impact Assessment (CIA). The assessment is also helpful in devising corrective measures to enhance consumer welfare.

4.1 Consumer Impact Assessment (CIA): Relevance

The measurement of consumer welfare involves the evaluation of alternative economic situations from the point of view of the consumer's well being. Traditionally, such measurement has required some ethical standards and interpersonal comparisons. For example, the traditional measure of consumer surplus assumes that one person's gain can be compensated by another person's loss. Unfortunately, such measures do not pay sufficient attention to individual access to freedoms and facilities for generating human capabilities.

The eight rights recognised by the United Nations Guidelines on Consumer Protection (UNGCP) are not only essential for the welfare of the consumer but also serve as a basis for developing tools to assess the impact of policies and regulations on consumers. One such tool is CIA, designed to help policy makers evaluate policies and practices through a consumer lens. CIA envisages the examining of impact of a particular proposal/policy/ decision on different groups of consumers in terms of variables such as price, quality, safety, redress, and choice in the short, medium and long-term.

CIA enhances the accountability of regulators and government departments towards consumers. Making government agencies carry out CIAs would lead to more consistent and transparent decision making. This would help to ensure that Government agencies fulfill their objective of protecting consumer interest. CIA also helps in identifying inequities that might arise if certain policy options are pursued. CIA helps consumers and consumer organisations play a positive role in changing and shaping markets and improving public services by providing information about the impact of present/potential policies/systems.

4.2 CIA Methodology

CIA methodology works on two approaches: an *ex-ante* approach, which predicts the impact of a proposed policy or regulation on consumers and is often used to compare policy alternatives; and the *ex-post* approach used to evaluate a policy or regulation after its implementation. Here, we use the *ex-post* approach to evaluate the effect of market reforms in the telecom sector in terms of consumer welfare.

To conduct CIA the market reform policy issues and the objectives of policies and regulations in the telecom sector in India were studied to see how they are linked to consumer welfare. TRAI conducts extensive surveys¹⁰ on quality of services (QoS)¹¹ and customer satisfaction¹² throughout the year. The information gathered by TRAI has been used to examine the impact of regulatory reform in this sector on Access (A), Quality (Q) and Participation (P) and thus consumer welfare.

The effects of regulatory reforms on consumer welfare were identified with the help of available data which facilitated comparison of the pre-reform and post-reform periods in terms of number of subscribers, quality of service, consumer consciousness about quality and consumer participation in the regulatory process. Such comparison also helped in arriving at recommendations for further reform in the regulatory process to facilitate better satisfaction of consumer rights.

4.3 Polycsapes of the Telecom Sector

The initial laws guiding telecom sector were framed before the country's independence: Indian Telegraph Act, 1885 and Indian Wireless Act, 1933. Till the 1990s¹³ the Government controlled all the licensing, policy making, regulation and operation of services in the sector tightly. The first wind of competition touched this sector in the early 1990s with the Government allowing private players to provide value added services. Cellular services were included under the definition of these 'value added services'. TRAI, the

regulator, was created in 1997 sometime after private players had entered the market for cellular (mobile) services.

In order to enhance consumer protection and protect the interest of telecom customers, TRAI has initiated the following steps:¹⁴

- directions regarding misleading tariffs, stability of tariffs, consumer rights to migrate between schemes, service providers' obligation to inform consumer about schemes and changes etc;
- directions about rights of pre-paid customers, terms of providing value added services;
- directions about clear advertisements or information about possible monthly bills, costs of premium rate services etc;
- regulations to provide rebate for delays in fault repair;
- regulations relating to credit limit and disconnection, provision of detailed bill, refund of security deposit, roaming etc;
- directions for registration and maintenance of wait list (for fixed lines);
- recommendations to consumers for getting redress and a recommendation to Government to set up a telecom ombudsman; and
- promotion of a Common Charter for telecom services. The Charter, *inter alia*, acknowledges the rights of the citizens to have a free choice in selecting service providers as well as the right to education, representation and redress of complaints.

4.4 Status of Telecom Competition

A policy change in telecom sector has attracted many private players for the provision of various kinds of services but Government entities, *Bharat Sanchar Nigam Limited* (BSNL) and *Mahanagar Telephone Nigam Limited* (MTNL) still enjoy huge advantages. BSNL has retained the number two slot as a cellular mobile provider despite all the handicaps that come with Government ownership. This shows how it has managed to re-focus to take on the competition as well as the regulator's inability to force the company to open up. Even today, BSNL does not allow others to roam on its network, necessitating expensive rollouts by private firms if they wish to remain in business in smaller cities/towns. However, BSNL is considering roaming agreements with private companies but till date, it has not opened up its networks for roaming deals. Some of the significant trends and facts that relate to competition in this sector are enumerated below:

Market Share and Consolidation

- Very little serious competition in fixed line business as BSNL and MTNL among them control about 82.5 percent of subscribers (March 2006). This, however, is an improvement from March 2003, when their combined share was 97.7 percent.
- Most private players are keeping away from fixed line services
- Bharti leads (in market shares) in mobile business with BSNL and Reliance a close second Mobile market is intensely competitive with at least six operators in most circles¹⁵
- Reliance¹⁶ made spectacular gains in its share in the mobile market in 2003-04, mainly because of competitive price, *de-facto* mobile services¹⁷ and economies of scale stemming out of national presence

- Smaller players are struggling to retain market shares in cellular services
- Competitive pressures in long distance calling have led to a fall in excess of 75 percent in national and international long distance rates
- Fixed line incumbents (BSNL, MTNL) are still dominating the Internet market
- There are too many operators in some circles leading to uneconomical operations
Several small players have already exited the industry

Anti-competitive Practices

While there has been a fall in long distance rates, increase in consumer choice and growth among other developments, anti-competitive practices are still conspicuous. There is a conflict of interests as the Government which owns one of the largest operators (BSNL) is also involved in licensing, policy making and operations for the sector. Allegations of collusion among private operators have also been made (see Box 3).

Box 3: Private Cell Companies Ganging Up: TRAI

The TRAI has said that private cellular operators had formed a cartel against the Government-owned MTNL and BSNL. They were charging higher tariffs from customers for the phone calls terminating in the networks of the two public sector units. Information to this effect was submitted by the regulator to Telecom Disputes Settlement and Appellate Tribunal (TDSAT) at a hearing in a case involving the issue of differential tariff being charged by the Global System for Mobile communication (GSM) operators.

“These GSM operators are acting as a cartel against state-owned MTNL and BSNL... and are accusing BSNL of having a monopolistic attitude”, TRAI counsel Meet Malhotra said before TDSAT. The Government has permitted direct connectivity between Mumbai and the rest of Maharashtra, Kolkata and West Bengal, Chennai and the rest of Tamil Nadu and two parts of UP (East and West).-

Source: The Economic Times, December 2006

The situation becomes worse (at least structurally) because TRAI also reports to the Ministry which owns BSNL and is financed by grants from the Government¹⁸. The line ministry is also the approving agency for TRAI’s budget. Moreover, TRAI depends on staff borrowed from DoT at almost all levels and always had a Member on its Board who is a part of DoT or BSNL. Some of the following practices point to the existence of anti-competitive forces:

- **Skewed licensing norms:** BSNL provides countrywide integrated service without paying any licence fee while competitors have to get a licence for each region. (This will change with the introduction of the unified licensing scheme.)
- **ADC and USO:** BSNL collects Access Deficit Charge (ADC) from competitors who have to compensate BSNL for fixed line rentals and call charges that are loss making

but are justified on grounds of public interest. Objectives of ADC are not different from those of universal service obligation (USO) and it has been suggested that these be merged¹⁹.

- **Infrastructure sharing:** In spite of regulation calling for sharing of infrastructure, BSNL refuses to do so with its competitors (see Box 4).
- **Economic regulation:** BSNL has successfully fought or stayed economic regulation²⁰.
- **Reference Interconnect Offer (RIO):** No RIO offer from BSNL which would bring transparency and predictability to seekers of interconnection has been forthcoming.
- **Accounting:** TRAI has had no success in bringing about transparent accounting from BSNL that identifies cross subsidies.

Box 4: BSNL Acts as a Barrier to Access

The TRAI has not been able to force BSNL to allow private operators to roam on its network. So, if you are an Airtel user, and want to travel to an area where only BSNL has a network, your phone will not work. In contrast, if an Airtel customer travels to a place where there is, say, only a Hutch network, chances are that two companies will have an agreement which allows roaming. It can be argued that such arrangements are commercial ones, and the regulator has no say in them, yet it is equally true that the lack of such arrangements pushes up the cost of telephony in the country and acts as a barrier to access.

4.5 The Consumer Scorecard – AQP analysis

The Access-Quality-Participation (AQP) analysis and the preceding discussion can give us an idea about how competition in this sector has affected consumer welfare. On the whole it can be said that the effects on consumer welfare have been mixed with some good regulations and policies, but with trenchant anti-competitive elements. How does all this affect Access (A), Quality (Q) and Participation (P) and thus consumer welfare? To answer this question, some of the results of surveys on quality of services (QoS) and customer satisfaction and other results are used to get a snapshot view of the state of the consumer.

Access

Access, as defined by the number of subscribers increased by almost five times (492 percent) during 2000-06 with an average annual growth rate of 83 percent. The credit for enhancing access goes to mobile telephony which constitutes almost two-thirds of the total number of subscribers. With rise in competition and adoption of reforms, tariffs also declined sharply and are presently at a level which is one of the lowest in the world. The average revenue per user declined from Rs 1319/month to Rs 366/month

during this period indicating enhancement in consumer welfare in terms of access and price.

However, the mentioned enhancement in access has been skewed and unevenly distributed. It is tilted in favour of urban and semi-urban areas. Populations living in areas which are not convenient in terms of physical conditions or those with low paying capacity have not been able to reap the benefits of competition to the same extent as other communities. Though national tele-density has increased sharply growth is quite slow in poorer states. The subscriber base in ²¹ C circles is still very small and call charges are high. One important but stalled potential development which can widen access, choice and therefore consumer welfare is mobile number portability across service providers.

Thus, there has been marked progress in Access but this has not been evenly distributed. Competitive pressures in long distance have reduced prices. Market dominance in rural fixed lines by the incumbent BSNL is a matter of concern as far as choice and quality are concerned. However, the advantages of mobile telephone technology compared to expensive wired (fixed line) networks and also the portability of mobile phones have helped in deepening access in rural areas of the country. The fact that village public telephones have covered more than 90 percent of villages is also surely an achievement.

Box 5: Access

Policy

- Creation of TRAI (TRAI Act, 1997) and strengthening of TRAI (NTP-99)
- Universal Service Obligation (NTP-99)
- Statutory status granted to the Universal Service Obligation Fund²² [The Indian Telegraph (Amendment) Act 2003]
- Operators could move to a revenue sharing regime from the one where they paid fees bid by them (NTP-99)
- Cable operators were allowed to provide and use their infrastructure for telecommunications service, if they obtained a licence (NTP-99)
- Convergence between services was encouraged (NTP-99)
- Exclusive mandate to fix and regulate tariffs and interconnection and removal of all government interventions in these two functions (TRAI Amendment Act 2000)
- Unified licence recommendations-Provisions for niche operators (TRAI)
- Recommendation to reduce unified licence fee gradually
- Guidelines for M&As
- Private players were given access to USO fund for provision of services
- Innovative methods of infrastructure sharing for remote areas, for mobile

Table 1: Impact ²³		
Positive	Negative	Progress Needed/Mixed
<p>Subscriber base²⁴: March 2006: 140.32 million (over 90 million mobile connections) March 2000: 28.53 million Avg Annual Growth of subscribers: 83 percent (2000-06) Tariffs(March 2006) GSM: Lowest²⁵ of Rs 1.01 for post-paid and Rs. 1.21 for prepaid per minute Code Division Multiple Access (CDMA): Lowest of Rs 0.71 for prepaid and Rs 1.09 for post-paid per minute Average Revenue per User (ARPU)²⁶: Rs 1319/month (2000 - GSM) Rs 469/month (200a4 - GSM) Rs 366/month (2006 - GSM) Rs 256/month (2006 - CDMA) Revenue per minute: Declined by an average of 77 percent (2000-04) Long Distance: Over 75 percent fall in rates Tele-density growth: 40 percent over previous year Rural Coverage: 90.5 percent villages have VPTs²⁷ Convergence has increased choice Teledensity²⁸ exceeding 20</p>	<p>Teledensity: Rate of teledensity growth slower in poorer states Subscriber base: Much fewer subscribers in poorer C circles (they pay higher call charges²⁹) Mobile number portability between service providers: Not happening. This would increase choice</p>	<p>The following issues need attention:</p> <ul style="list-style-type: none"> ◆ Rural outreach ◆ Competitive neutrality to improve the access to and quality of service ◆ Dealing with cross subsidy ◆ Ensuring access with quality

Quality

The report card on Quality, however, leaves much to be desired. Performance of most mobile service licencees meets benchmarks for only five out of 18 parameters. Similarly, performance of all basic service licencees is significantly below benchmarks for all parameters. BSNL networks have shown poor performance across circles on quality related aspects including network performance; overall customer satisfaction and fault incidence (see Box 5). Bharti's billing credibility also leaves much to be desired. Though overall consumer satisfaction is very low, cellular operators perform better on this score than operators of basic services.

A lot more needs to be done in terms of Quality. On parameters like congestion, provision of telephones, customer satisfaction etc; more efforts should be expended. However, TRAI cannot penalise operators for not meeting QoS benchmarks. Penalties can be imposed only by TDSAT if a matter warranting penalties is brought before it. TDSAT can adjudicate any dispute between a licensor and licensee, between two or more service providers, between a service provider and a group of consumers, and hear and dispose of appeals against any decision or order of TRAI. This window for consumer groups to file complaints of a generic nature before TDSAT is an option that should be used.

Box 6: BSNL Responsible for Poor Quality of Service

Few years ago, the biggest reason for the poor quality of services offered by private operators was also due to BSNL. At that point, private operators were not allowed to exchange signals directly, like say from Idea to Spice, but had to do it through BSNL. In July 2005, the TRAI's Quality of Service monitoring showed that there were 86 Points of Interconnection (a Pol is the junction where, for instance, a Hutch phone connects to a BSNL one) where the congestion levels were as high as 10 percent, a figure that is itself 20 times as bad as the benchmark ideal. This, however, increased to 122 Pols the next month itself. The TRAI had cited 918 cases of pending demands by private operators and of these 367 had been pending for more than a year. The TRAI had ordered that such interconnection, which is the lifeblood of the telecom industry, be provided within 90 days, but BSNL challenged the TRAI's jurisdiction at the TDSAT which ruled in BSNL's favour.

Box 7: QUALITY

Policy

- Creation of TRAI (TRAI Act, 1997) and strengthening of TRAI (NTP-99)
- QoS regulations including setting of benchmarks by TRAI
- No direct penal powers of TRAI.
- Common Charter of Telecom Services³⁰ (covers QoS compliance) and its joint review.³¹
- Exclusive mandate to fix and regulate³² tariffs and interconnection and removal of all government interventions in these two functions (TRAI Amendment Act 2000)

Table 2: Impact

Positive	Negative	Progress Needed/Mixed
<p>QoS Benchmarks³³ – Performance of most mobile service licensees meets benchmarks for a few³⁴</p>	<p>QoS Benchmarks – Performance of all basic service licensees significantly below benchmarks for all parameters³⁵: Fault incidence for basic services: BSNL's performance significantly below benchmark³⁶ for A, B and C circles. Percentage satisfied with network performance: BSNL's mobile service fares well below customer satisfaction (percent satisfied with network performance) benchmark for all four circles Overall customer satisfaction: BSNL's mobile service fares well below benchmark for three out of four circles (except A) Metering and Billing Credibility for basic services: Bharti's performance consistently below benchmark for Metro, A and B circles Provision of telephone after registration of demand: Only 2 percent of basic service operators meet benchmark Point of Interconnection congestion: Only 32.84 percent of mobile licensees meet benchmarks Overall customer satisfaction with basic service operators: Only 3.77 percent operators meet benchmark Overall customer satisfaction with cellular operators: Only 9.52 percent of operators meet benchmark</p>	<p>◆ Improving quality of service including network performance and billing credibility</p> <p>◆ Need for consumer groups to take an initiative to file complaints of a generic nature before TDSAT</p>

Participation

Two important parameters of redress are: the speed with which billing complaints are resolved and refunds/payments due to customers are issued. Most of the cellular operators meet the benchmarks for these parameters. Surveys indicate fairly good performance in billing complaint resolution. An important parameter which measures availability of information to the consumer is the customer's satisfaction with the help services of operators. The surveys show very poor results in this regard, with cellular operators performing better than basic services operators: no cellular operator is significantly below the benchmark in more than two circles but in the case of basic services, Reliance is significantly below the benchmark in all circles and BSNL in three circles.

Box 8: Policy
<ul style="list-style-type: none"> - TRAI Act (Creation of TRAI) - Common Charter of Telecom Services³⁷, which says Service Providers agree to 'promote the consumer's right to education, choice, representation and redress,' 'achieve QoS benchmarks,' among other things (Voluntary mechanism but under joint review³⁸) - TRAI direction to service providers to establish consumer grievance redress mechanism - Steps taken by TRAI to protect telecom customers³⁹ (Tariff-Related Issues, Advertisement, Detailed Bills etc) - Recommendation to government for setting up Ombudsman for speedy grievance redress ⁴⁰ (TRAI) - Consultations with consumer groups (TRAI) - Mechanisms for empowered representation⁴¹ - Availability of various kinds of information about the sector on TRAI website

Table 3: Impact		
Positive	Negative	Progress Needed/Mixed
<p>TRAI organises regular consultations</p> <p>Parameters⁴²: Parameter tries to capture lack of trust between provider and consumer and therefore is an indicator of participation. Percentage of billing complaints resolved within 4 weeks: 93.18 percent; of cellular operators meet benchmark for this parameter. Period from the date of resolution within which refunds/payments due to customers are provided: 92.2 percent of cellular operators meet benchmark for this parameter. [Both the above parameters are measures of speedy redress] Metering and billing credibility: 63.82 percent basic service operators meet this benchmark.</p>	<p>TRAI consultations limited to urban areas</p> <ul style="list-style-type: none"> ◆ Very few consumer groups participate in consultations and send comments ◆ Redress is lacking. Consumer courts are overburdened. <p>Parameters: Percentage of customers satisfied with help service of cellular operators: Only 21.2 percent of operators meet benchmark (No operator is significantly below benchmark in more than two circles). Percentage of customers satisfied with help services of basic service operators: Only 13.2 percent of operators meet benchmark (Reliance significantly below benchmark in all circles, BSNL in three circles) [Both the above parameters are measures of availability of information to the consumer]</p>	<ul style="list-style-type: none"> ◆ Consumer participation needs to be improved by enhancing the participation of consumer groups in TRAI consultation meetings. ◆ The COPRA mechanism provides an additional avenue for grievance redressal for consumers but the burden of related courts needs to be reduced.

Parameters like metering and billing credibility approximate the level of trust between provider and consumer and therefore are indicators of participation. Almost two-thirds of basic service operators meet the benchmark in this regard but Bharti is significantly below the benchmark in three out of four circles.

Box 9: Even a Single Consumer Can Approach TRAI for Generic Complaint

Authorised Reliance Infocom dealers have been potentially raking in crores across the country by selling – at full cost – recharge coupons meant to be given out free. They have also allegedly been selling second hand phones that they claim are new.

Dilip Chakravorty, a retired electrical engineer from Kolkata in a complaint to TRAI pointed out that Reliance Infocom dealers were selling at full cost recharge coupons that were meant to be given free to consumers. Mr Chakravorty bought 34 ‘free’ cards from Reliance Webworld outlets in Bihar, UP, Jharkhand, Madhya Pradesh, Uttaranchal, Chattisgarh, West Bengal and Orissa. The phone he was sold as new from a Reliance outlet was also found to be second hand.

On repeated complaints to the service provider, the PMO and finally to TRAI an inquiry was initiated. TRAI wrote to Chakravorty that Reliance had informed them that they have initiated action against such dealers selling complimentary vouchers on the open market. TRAI’s letter to the complainant also said that Reliance Infocom Ltd had tightened up its subscriber verification process.

Source: The Statesman, October 29, 2006

TRAI has made efforts to buttress participation by regularly consulting consumer groups among other things (see Box 9). But consumer participation is lacking as mostly service providers attend these meetings and very few consumer groups participate actively and send their comments on the discussions. Now a Common Charter has been suggested in place of an Ombudsman. The COPRA mechanism provides an additional avenue for grievance redressal for consumers but the related courts are overburdened. TRAI cannot impose penalties and therefore all its directives are not followed by operators⁴³.

Box 10: Consumer Scorecard

Access – Good but with certain gaps
Quality – Miles to go
Participation – Some gains but more could be done

5

Conclusions and Recommendations

Consumer welfare maximisation or near maximisation does not automatically follow from the working of the competition regime, as it exists in India today. Yet a robust competition regime in tandem with parallel mechanisms and a strong civil society can go a long way in buttressing the rights of the consumer. While access has shown considerable improvement and is now at a satisfactory level there is much room for improvement in terms of quality of service and consumer participation. The case study of the telecom sector helps us realise that mere competition without adequate regulation of quality in the absence of adequate information for the consumer might not even approximate a consumer welfare maximising set up: the outcome often is price competition but without any quality assurances. The discussion has pointed to the existence of gaps in policy design and implementation as well as structural anomalies that still keep consumers open to abuse. The COPRA and the extensive system of consumer courts do serve the consumer, but this mechanism also runs a huge backlog.

While a more appropriate umbrella Competition Act has been adopted, it does not have the provision of regional benches to check anti-competitive practices at regional or local levels. Nor is there a formal mechanism born out of COPRA (which often handles grass root competition abuses), which serves as an interface between the competition authority and consumer courts. This is essential if the two systems are to work in tandem for the protection of the consumer. There is a need for wider civil society involvement relating to competition and consumer protection.

On the basis of the earlier discussions, a few recommendations which would help competition work better for consumer welfare are given below:

- There should be state level competition authorities to prevent anti-competitive practices at the local level that result in abuse of consumers.
- Governments at all levels should consult consumer groups before framing policy which affects consumers directly and involve them in implementation.
- Sector regulators should be strengthened and government interventions through control of budget, appointments, issuing of policy directives and power to supersede should be stopped/reduced.
- Innovative competitive elements in the provision of essential goods should be injected while meeting the needs of the poor sections of the population.
- All regulators should set up well functioning consumer representation and redress mechanisms (will take the pressure off consumer courts).

- Universal service obligations (USO) for sectors where these are necessary but non-existent should be built into competition policy and law.
- There should be public oversight in the formulation and use of standards.
- Sector regulators should put more pressure on service providers/operators etc; to meet quality objectives (like QoS, Standards of Performance) while setting benchmarks and doing performance evaluations on a regular basis.
- Consumer groups should jointly galvanise 'Competition Watch' initiatives at various levels, pass on information regarding abuses and register complaints with regulators/competition authorities/voluntary mechanisms/consumer courts and conduct research, advocacy and awareness raising programmes on competition issues that have a bearing on consumer welfare.
- Consumer impact assessment should be conducted in different sectors.

Endnotes

- 1 UNCTAD (2001), United Nations Guidelines for Consumer Protection, United Nations, New York and Geneva
- 2 Pradeep S Mehta, *Competition Policy and Consumer Welfare*, in *Towards a Functional Competition Policy for India* edited by Pradeep S Mehta, CUTS, 2006
- 3 See Arjun Dutta, Green Advertisements – Are They Telling the Truth? CUTS, 2002
- 4 For a comparison of MRTPA and Competition Act, 2002 see S Chakravarthy, *Evolution of Competition Policy and Law in India* in *Towards a Functional Competition Policy for India* edited by Pradeep S. Mehta, CUTS, 2006
- 5 Except for a very special class of UTPs where a seller disparages the products or services of another seller
- 6 For RTPs, some recent figures give an idea of the backlog: Under Section 10 (a)(i) dealing with a class of RTPs, 289 enquiries were handled in the calendar year 2004, including 268 brought forward from the year before. Only 19 enquiries were disposed of in that year while 270 remained pending. For UTPs (under Section 36(B)(a), 432 enquiries including 352 from the previous year were considered in 2004. Only 34 were disposed off and 398 remained pending at the end of 2004.
- 7 For a detailed discussion, see Sandesara J C, IIMA Working Papers number 1180, Indian Institute of Management, Ahmedabad
- 8 COPRA (Consumer Protection Act, 1986 amended 1993, 2002) - Enacted for the specific purpose of protecting consumers' rights and providing a simple quasi-judicial dispute resolution system for resolving complaints. Among other things the law deals with unfair and restrictive trade practices (like manipulation of price), which are anti-competitive in nature. The COPRA and MRTP Act between themselves play a complementary role with respect to unfair trade practices.
- 9 Competition and Regulation in India, 2007 edited by Pradeep S. Mehta, CUTS, 2007
- 10 Surveys conducted by M/S TUV South Asia, an independent agency commissioned by TRAI
- 11 For QoS audit of Basic Service, TUV Officials visited 394 Basic Telephone Exchanges (94 Urban and 300 Rural Exchanges) while auditing 50 Basic Operators (Licensees). Further, the operation of 102 Cellular mobile service operators (Licensees), were verified as a part of this exercise. In the case of Basic operators, sample mixes of Urban and Rural exchanges (that are representative of the circle) were selected across 10 percent of SDCAs (Short Distance Charging Areas) of Operators (Licensees).
- 12 Samples of about 20832 basic and 35046 cellular mobile service subscribers were surveyed to assess their satisfaction with basic and cellular services provided by Basic and Cellular Mobile Telephone Service Providers (CMSPs). Telephonic as well as personal interviews were carried out for this exercise. Subscribers were selected based on their age, gender and usage. QoS Performance Monitoring Report (PMR) for the period September 2005 was

considered as reference for coverage during execution and PMR for March 2006 was considered for comparison of data.

- 13 Some of the descriptive passages of this section draw heavily from Mahesh Uppal, *Competition Issues in Telecommunication Sector in Towards a Functional Competition Policy for India* edited by Pradeep S Mehta, CUTS, 2006
- 14 Covering various directions and orders, Press Release no 95/2005, 1st Dec, 2005, TRAI
- 15 Indian telecom sector: Sustainable growth ahead, CRISIL study, Financial Express, December 17, 2006
- 16 A telecom provider
- 17 Reliance had to pay a penalty of Rs 150 crores later
- 18 Though the law allows regulator to raise funds through levies etc.
- 19 Will be done in five years time according to TRAI
- 20 Attempts by TRAI to impose modest asymmetric regulations (earlier reporting of tariffs) have been thwarted
- 21 For service provision the entire country is categorised into A, B, and C circles on the basis of their revenue potential. The C Circle consists of areas with the -least revenue potential.
- 22 The Universal Service Support Policy came into effect from April 01, 2002. The Indian Telegraph (Amendment) Act 2003 giving statutory status to the Universal Service Obligation Fund (USOF) was passed in December 2003. The Fund is to be utilised exclusively for meeting the Universal Service Obligation. The Universal Service Levy is presently 5 percent of the Adjusted Gross Revenue (AGR) of all telecom service providers except the pure value added service providers like Internet, Voice Mail, E-Mail service providers etc. Credits to the Fund are through Parliamentary approvals. The balance to the credit of the Fund is not to lapse at the end of the financial year.
- 23 Only some of the more broad or significant impacts are enumerated. For details see QoS reports.
- 24 Mobile and Fixed phones. Mobile includes GSM and CDMA while Fixed Lines include WLL (F) connections. For details and disaggregated data see The Indian Telecom Services Performance Indicators for Financial Year Ending March 31, 2006, TRAI, June 2006.
- 25 Lowest per minute effective charges available. See Performance Indicators, TRAI, 2006 for details.
- 26 The source of data in this table is The Indian Telecom Services Performance Indicators for Financial Year Ending 31st March, 2006, TRAI, June 2006 unless otherwise mentioned.
- 27 VPT-Village Public Telephone at the end of March 2006
- 28 Number of telephones per 100 population
- 29 Mahesh Uppal, *Towards a Functional Competition Policy (ed. Pradeep S Mehta), CUTS, 2006*
- 30 There are indications that TRAI will come out with regulations to make compliance to Common Charter provisions mandatory. Among other things it will allow consumers to initiate legal action for failure to comply and the government to slap financial penalties for violations on operators. See Economic Times, December 02, 2006.
- 31 See next table
- 32 TRAI however follows a light-handed approach in tariff fixing leaving this more to competitive forces in this sector
- 33 QoS data source: TRAI QoS report, March 2006. The data in this and following two tables are from Objective assessment of QoS provided by operators and a Subjective Customer Satisfaction Survey both done by M/S TUV South Asia and commissioned by TRAI.

- 34 Five out of 18 benchmarks
- 35 Some of the relevant QoS and customer satisfaction parameters (and their associated benchmarks).
- 36 There are other operators with similar poor performance but not for all the circles. In a single circle an operator's performance may or may not be poor for all states covered by that circle. This applies for all the results/data presented in these tables. For further details, see QoS reports.
- 37 Consumer groups were consulted in preparation of charter
- 38 The latest meeting (March 16, 2006) to discuss adherence to the Charter and compliance to the directive on establishing redressal mechanisms. In that meeting it was found that major operators like BSNL, Reliance and Idea among others had failed to submit detailed reports on adherence to the Charter within the decided date.
- 39 See previous discussions on telecom sector policy
- 40 The COPRA mechanism of consumer courts is a forum for redressal that is also suggested by TRAI and has been used somewhat effectively
- 41 Several regulatory legislations such as that for telecom provides for appointment of a person who is representative/expert on consumer issues as regulator, however this has not been exercised so far
- 42 Some of the relevant customer satisfaction and QoS parameters (and their associated benchmarks) used in this table.
- 43 Although TRAI can recommend to the Government to take penal action for violation of license conditions, including failure to meet QoS standards stipulated by TRAI, neither the TRAI Act nor the license provides any specific powers to TRAI to take penal action in case the Quality of Service standards stipulated by TRAI is not adhered to by the service providers. This has considerably weakened the regulation and among other things makes service providers reluctant to invest in network improvement. The most recent TRAI direction on QoS (August 23, 2006) has asked providers to furnish certificates of compliance with the directions, on a regular basis.