Why sector-specific regulatory agencies since the 1990s? Were the objectives achieved?

Rohan Samarajiva

In public utility industries, such as electricity, water, transport and especially in telecom, the past few decades have seen the proliferation of sector-specific, ex-ante regulatory agencies. Why did this happen? What were the outcomes?

The thesis that the World Bank/ADB/Washington Consensus forced the creation of regulatory agencies is simplistic. Yes, it was part of the tool kit of the World Bank in the 1980s and 1990s. But why did this tool emerge during this time period and not before? Why was sector-specific regulation not accepted, for the most part, in the postal industry? If the World Bank was so powerful, why did it fail, for the most part, to impose this model on the postal industry?

The answer is private investment. In most cases, foreign direct investment. It is in the context of private investment being seen as a viable option for expanding supply of electricity, water, transport, telecom but not postal services that the imperative for "independent" regulation emerged.

The central issue there was administrative expropriation. Conventional government departments and ministries were seen as incapable of shielding investors from risk of administrative expropriation.

Thus, whenever private investment was on the table (with the significant exception of electricity regulation in India), "independent" regulatory agencies were created. Even in Indian electricity, there were major private investments in Orissa and Maharashtra in the 1990s. The expectation was that there would be more. The investment momentum died. But the momentum for creating state electricity regulatory commissions did not. Thus we have the odd phenomenon of fully government owned entities being regulated by government regulatory agencies in electricity in South Asia. The one good thing that could be said about this the reduction in opacity.

Did the creation of sector-specific, ex-ante regulatory agencies achieve the intended objectives? If the objective was to change perceptions of regulatory risk and thereby attract private capital on better terms, yes, especially in telecom. Lots of capital was invested and the voice connectivity story in South Asia is a major public policy success. Consumers clearly benefited, with greater connectivity, lower prices and greater choice, if not always, good quality of service. Much less success in all aspects in other sectors.

But even in telecom, the new regulatory agencies did not abolish administrative expropriation. In Sri Lanka, the Telecom Regulatory Commission is by far the highest contributor to the exchequer among all government organizations, including the Colombo Port, the Petroleum Corporation, and the state banks. It may as well be called the Telecom Revenue Commission of Sri Lanka. But there are more ways to engage in administrative expropriation than through the ex-ante regulatory agency. Over time, governments have become adept at extracting revenues in all sorts of ways, including sector-specific taxes. The attempt to create islands of good governance in the ocean of bad governance has had mixed success at best.

But now that the regulatory agencies exist, what can be done? How can the ship be fixed while it's moving? Time permitting, I will talk about some new work we are doing in Bhutan on regulatory agency internal reforms. But most likely, time will not permit. So most likely, I will end on a down note.