Article can be accessed online at http://www.publishingindia.com

Comparative Analysis of Regulatory Frameworks: A Study of Three Sector Regulators in India

Abhishek Dhiman*, Vishal Parimo*, Giri Hallur**

**MBA, IInd Year student, Symbiosis International University, Symbiosis Institute of Telecom Management, Pune, Maharashtra, India*

***Assistant Professor, Symbiosis International University, Symbiosis Institute of Telecom Management, Pune, Maharashtra, India. E-mail: girihallur@sitm.ac.in*

Abstract

This paper aims to study and analyze the institutional framework of three Indian sector regulators Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), and Telecom Regulatory Authority of India (TRAI).The study highlights the differences and commonalities in regulatory frameworks for different sector regulators in India. It broadly addresses the two important attributes of regulatory systems (1) Institutional Framework and (2) Extent of autonomy given to the Regulator. The research methodology adopted is qualitative comparative analysis (QCA). Among the three regulators, it is found that the TRAI is relatively less empowered in terms of reporting structure, tenure of the Chairman, funding mechanism and capacity building. Participation of DoT in TRAI consultation process, publication of minutes of meeting and the need for institutions for capacity building in telecom regulation come out as the key recommendations for improving the policy & regulation process in Indian Telecom.

Keywords: Infrastructure Regulation, Legislation, Policy, Transparency

1. Objectives of the Paper

This paper presents the comparative analysis of three sector regulators in India namely, the RBI, SEBI & TRAI on two important attributes of regulatory systems (1) Institutional Framework and (2) Extent of autonomy given to the Regulator. The attempt is to understand the functioning of first two regulatory agencies mentioned abovein order to bring outsimilarities and diversity in comparison with Telecom Regulatory Authority of India (TRAI) in their functioning, structure and authority and come up with recommendations that may be incorporated by TRAI to make it an effective telecom regulator.

2. Introduction

Over the years telecom industry in India has witnessed numerous irregularities in policy formation & implementation. Industry leaders and investors have expressed their opinion that the telecom sector is no longer an attractive option for investment on account of policy uncertainty. In a survey conducted (Samarajiva et.al, 2007) for five Asian countries by Lirneasia on Telecom Regulatory Environment (TRE) ranks India below other Asian countries like Pakistan, Sri Lanka in parameters like independence, transparency, consistency, pro- competitiveness, however, it scored highest marks for tariff regulation, wherein the TRAI has authoritative powers.

India has a number of sector regulatory bodies which regulate the specific sectors with an aim to safeguard the interests of various stakeholders, monitor the adoption of standards and safety, or to oversee fair use of public goods and regulate commerce. Every regulator has been designed to cater to its specific sector and has its own methods & processes. However, literature on regulatory systems and in particular a World Bank report present certain attributes that regulator (irrespective of the sector) should possess so that it is able to perform its regulatory function transparently and efficiently. So, aim of our research is to compare the three Indian sector regulators using the regulator's parameters as mentioned in World Bank report (Jon Stern et.al, 2007) as a benchmark. We have focused on regulators from liberalized sectors in India and hence we have selected Reserve Bank of India (RBI)- regulator for banking sector in India, the Securities and Exchange Board of India (SEBI) that regulates the securities marketand Telecom Regulatory Authority of India (TRAI) that regulates the telecom industry. Our objective is to understand the working of first two regulatory agencies mentioned to ascertain as to how similar or different they are from Telecom Regulatory Authority of India (TRAI) in their functioning, structure and authority and come up with recommendations that may be incorporated by TRAI to make it an effective telecom regulator.

3. Background & Need for this Research

The regulatory framework can be said to be divided into two parts: structures and process. Structure includes the distribution of regulatory tasks to different levels of the government, the objectives, scope and power given to each of these agencies and the procedures for choosing the regulatory agents.

With reference to the initial design of the regulatory system, its structure is more important than regulatory process. As has been seen in some countries such as Brazil (Prado, 2008) that the different sector regulators have different levels of autonomy and authority, although their Act of establishment have been ratified by the Parliament of the country. Secondly, at the time of establishment of the sector regulator, the minister & officials involved play a major role extent of autonomy given to the regulators. Thirdly, sector regulators have certain good practices that have yielded results for them, by doing a comparative research; these good practices can be studied and adopted by other sector regulators.

Hence, there is a need to undertake a comparative study of sector regulators in India. Moreover, review of published research shows that there is no cross- sector regulatory comparative study.

3.1. Need for Qualitative Research

Most of the research involving multiple countries and their regulatory environment has been quantitative in nature.The methodology for such research is based on generalizing the regulatory environment in a large sample of countries on the basis of certain common parameters. However, every regulator differs from the other in terms of commitment to regulations, extent of autonomy and availability of competent human resources etc. And hence for deeper understanding of the regulatory environment of a specific sector in presence of certain sector-specific conditions qualitative research method is used. Qualitative research methods (Ragin, 1994) help to bring forth the similarity as well as the diversity in the regulatory set-up of the various sectors. So, the researchers have used Qualitative Comparative Analysis as their research methodology.

3.2. Selection of Variables for Comparative Analysis

The World Bank Handbook(Jon Stern et. al, 2007) has highlighted certain key factors of an Infrastructure Regulatory Systems such as Independence ,relationship between the regulator and policymaker (s), Autonomy given to the regulator, regulatory, transparency of decision-making by the regulator, predictability of regulatory decision-making, organizational structure and resources available to the regulator.

The authors have also selected the variables on the basisof main institutional characteristics as stated by Levy and Spiller (Levy & Spiller,1994) in their 1997 paper in which they compare the institutional characteristics of four South American countries and the United Kingdom.

Deriving from the above mentioned papers and the fact that the aim of the authors is to study the other regulatory systems in India, the selection of the key variables was done.

The variables have been divided into three categories:

(1) Institutional framework
   - (a) Regulatory entities involved in the decision making.
   - (b) Scope and authority of the regulator,
   - (c) Role duplication among the regulatory entities.
   - (d) Extent of involvement of the Government/ Ministry.
   - (e) Ombudsman/ ConsumerAppellate .

(2) Policy & Regulation formulation
   - (a) Contribution of concerned stakeholders
   - (b) Transparency and accountability in process of regulation/ policy formulation
   - (c) Extent of Adoption of Self-Regulation

(3) Autonomy given to the regulator

(a) Financial Autonomy

(b) Process of Recruitment of top officials of the Regulator.

(c) Autonomy for recruitment.

(d) Representation of stakeholders in the Regulator's officials.

The authors have compared the three sector regulators namely, IRDA, RBI & TRAI on the basis of the above-mentioned parameters.

3.3. Selection of Sector Regulators

The attempt of the researchers was to study the sectors regulators of sectors in in India that have been privatized and liberalized. So, the following sector regulators were selected. The researchers have studied five sectors regulators; however, they have presented the findings for only three regulators in this paper.

RBI: the Reserve Bank of India (RBI) was established in 1935 in accordance with the provisions of the Reserve Bank of India Act, 1934. RBI regulates the banking and financial sector and is the oldest sector regulator in India

SEBI: the Securities and Exchange Board of India (SEBI) established in 1992 is the national regulatory body for Securities Market.

TRAI: Telecom Regulatory Authority of India (TRAI) has been established in India in 1997. It regulates the telecom, IT and Broadcasting sectors in India.

4. Discussion of the Findings

4.1. Regulatory Framework

1. Clear role definition between the policy making body and policy implementation body is one of the most important characteristics which makes a regulator effective, sinceas it can concentrate on the implementation of the policies. The two regulators RBI and SEBI have exhibited this particular characteristic. The policy formulation role in case of all the studied regulators is performed by the sector ministry including the telecom ministry. But, in case of TRAI, even the regulatory role of TRAI is not clear as it is being shared with DoT and Telecom Commission.
2. As recommended by International agencies like World Bank, all the three regulators have been established by an Act passed in Parliament, this is said to give the regulator credibility in the eyes of the investors.
3. The RBI and SEBI have been empowered to undertake licensing as well as policy implementation. But, the TRAI has the authority to implement regulations in few areas like Interconnection, Quality of Service & Tariff fixation. In other areas like Spectrum auctions, technology adoption the Department of Telecom and Telecom Commission have been empowered to administer. And Telecom Licensing has been totally kept out of the purview of the TRAI. This also means that TRAI is not the sole authority for policy & regulations implementation in the telecom sector.

4.2. Process of Policy Formation

1. RBI and SEBI represent an inclusive consultation process involving active participation of all the stakeholders. In case of TRAI, the DoT does not participate in the stakeholder consultation process.
2. RBI and SEBI receive their funding from two sources (1) part of the fees from sector companies (2) funding from the Government. Moreover, the funding from the Government for all the regulators comes from the Consolidated Fund (the disbursement from which is done without the active control of the Government in power). The arrangement of industry participants contributing to the regulator fund is totally absent in case of TRAI which is solely funded by the Department of Telecom with the funds being released from Consolidated Fund of India(CFI)
3. The RBI, SEBI & TRAI chairmen are all tenured only for 3 years. This is a commonality observed in all sector regulators. Longer tenure is associated with the institution building of the regulator.
4. All the sector regulators share a commonality in terms of the profile of Chairmen and board members. All three have/ had Chairmen as former IAS or Officials of State Owned Enterprises (SOEs). This suggests the existence of ministerial-bureaucratic–makingmodel. The UPA government has,

Parameter	***Reserve Bank of India (RBI)***	***Securities and Exchange Board of India (SEBI)***	***Telecom Regulatory Authority of India (TRAI).***
Act of Establishment	RBI Act 1934 & amendment in 1953	SEBI Act 1992 & amendment in 2002	TRAI ACT, 1997 & amendment in 2000
Regulatory entities (apart from the regulator)involved in the decision making.	None	Ministry of Finance	Ministry of Telecom & IT, Ministry of I & B, Dept. of Telecom(DoT), Telecom Commission.
Division of the authority and scope of the regulator,	Bank of Issue (Banker to Government), Controller of Credit and Interest Rates, Custodian of Foreign Reserves (supervisory Functions), Licensing, Initiating new regulations(RBI website)	Regulation and Licensing.	Policy Formulation is done by DoT and Telecom Commission. Policy implementation in certain cases is done by TRAI and the rest of the cases it is done by DoT. Licensing is entirely done by DoT.
Role Duplication	No(Sole Regulator)	No(Sole regulator)	Yes, The recommendations of the TRAI are scrutinized by both the Telecom Commission as well as the DoT and in case of spectrum pricing the Empowered Group of Ministers(EGoM).
Role of the Ministry and bureaucracy.	The RBI governors are appointment by the Central Government. Although RBI states that the Central Government may give directions to the Bank, after consultation with the Governor, where considered necessary in public interest, there has been no instance so far of the Government exercising its this power.(RBI website)	SEBI reports to the Ministry of Finance. Policy formulation is done by Ministry of Finance.	The TRAI reports to the Ministry of Communications & IT. Policy formulation is done by Ministry of IT & Telecommunications.
Office of Ombudsman/ Consumer Protection	Yes , 15 Banking Ombudsmen mostly in state capitals (RBI Ombudsman)	No ombudsman. SAT (Securities Appellate Tribunal) is there.(SEBI Ombudsman)	Yes, TRAI has instructed the Telecom Operators to constitute a two- member Grievance Redressal Committee that has a member each from the Telecom operator and registered consumers organizations.(Telecom Consumers Complaint Redressal Regulations, 2012)

Parameter	RBI	SEBI	TRAI
Process of Policy & Regulation formation	Monetary policy decisions are made by the Governor. The Governor holds structured discussions &consultations with the four Deputy Governors. Final decision is taken by the governor. The Governor also consults with banks, financial market representatives, trade bodies and industry associations. Close to the policy decision, the Governor meets the Prime Minister and the Finance Minister informally. RBI Policy Formation) No voting done.	Very transparent system. Before notifying any Regulations, SEBI issues a public concept note (or policy paper) of the proposed regulationswhich is posted on SEBI's website.The responsesare collected from public and are then internally debated within SEBI. The revised draft is then circulated for consideration andapproval of SEBI board. (SEBI also has committees, consisting of experts and policy makers, torecommendcontents ofregulations. Theystudy the matterand present theirrecommendations in a reportwhich is firstplaced beforepublic for aperiod of time for comments. Atthe end of thisperiod, SEBItakes a decisionand theregulations areamended).Afternotification in the official Gazette, the regulations are placed in the house of Parliament.(SEBI Policy Formation)	The TRAI through process of policy - making invites the participation of stakeholders. The recommendations are then submitted to the Telecom Commission for approval. Neither discussions with TRAI nor those in the Telecom Commission are made public.
Financial Autonomy	Totally self-funded.(RBI Annual Report,2013)	Funds come from Central Government and from its working (e.g. service fee, annual fee, listing fee, regulatory fee, registration fee, application fee, FII registration fee, etc.)	The TRAI is funded by the Consolidated Fund of India but the budget is approved by Department of Telecom. There is no provision in the present system for any other source of funds for TRAI.(TRAI Act, 1997)
Leadership & Tenure of Chairperson of the regulator	Prime Minister/ Finance Minister decides the Governor. Tenure is 3 years (extendable by 2 years) and retirement age is 62.(RBI Governor Tenure)	Chairman and the Whole Time Members may hold office for a period of 3 years (can be re-appointed by the Government). Max age limit is 65 years. (SEBI Chairman Tenure)	Central government elects the TRAI chairman is appointed for a period of three years (not extendable).(TRAI Act, 1997)

Profile of the past & current chairmen	Leading Economists, highly qualified usually masters or doctorate in Economics, usually IAS officers, several years of experience in financial sectors at national and international level (RBI Governor Profile)	Generally, the Chairman is an IAS and/ or served as a Chairman or MD in a Financial body (like UTI Mutual Funds, LIC, etc) and having at least 25 years of experience in their field.	The past chairman of TRAI have been former IAS officers of the Government or retired Judges.
Capacity building for Human Resources	National Institute of Bank Management (NIBM),Indira Gandhi Institute of Development Research (IGIDR), and Institute for Development and Research in Banking Technology (IDRBT)and The Centre for Advanced Financial Learning in Mumbai are some of the RBI-funded institutions for advance training and research on banking issues, economic growth and banking technology.	Vacancies are advertised on SEBI's website (then a test and Personal Interview is conducted). For Chairman the vacancy is advertised by Ministry of Finance. National Institute of Securities Markets (NISM) is a public trust, established by SEBI. NISM offers a course of 1 year full-time Post Graduate Program in Securities Management. But SEBI does not make recruitments directly from NISM.	Existing officials in TRAI receive continuous professional trainings in the emerging areas through collaboration with premier institutes in India & abroad.

however, changed this trend by appointing an academician as the RBI governor. This practice should be adopted by other sector ministries.

5. Another common characteristic observed is that the Chairman of all the regulators can be dismissed by the Government without the need for approval from any other constitutional body. This means that none of the regulator heads are constitutional appointments as is the case with regulators like Federal Communications Commission (FCC) in the US and Office of Communications (OfCom) in UK. This undermines the functional autonomy given to the regulator.

5. Conclusion & Recommendations

1. As is the case with all other regulators, Licensing and the policy implementation function needs to be given to the TRAI. This will enhance the autonomy and credibility of TRAI as the sector regulator.
2. The Regulator can also be shielded from political influence and interference if it reports directly to the Parliament. The TRAI should be reporting to the Parliament directly instead of the current system of reporting to the Department of Telecom and the Minister.
3. In the consumer redressal mechanism, the TRAI has relied on self-regulation for satisfactory redressal, this is a novel method used whose effectiveness will be ascertained over a period of time.
4. The Department of Telecom (DoT) or the Telecom Commission (TC) does not participate in the consultation process and hence the stakeholders are not aware of their opinion on a particular issue. This will be overcome if the DoT and TC participate in the consultation process.
5. The transparency of decision making can be enhanced if the minutes of the regulator meeting are maintained and board members vote for/against. This increases the credibility and accountability of the regulator incase the decision is contested. This is a good practice and it needs to be adopted by TRAI.
6. Like other regulators, the TRAI should also be funded directly from the Consolidated Fund of India and not through the DoT as it is currently funded. It should also be funded through regulatory fees contributed by industry. This will help lessen the burden on the Government.
7. TRAI does support any academic institutions for capacity building. In the absence of this, it has to rely on the services of officers of DoT and Bharat Sanchar Nigam Ltd.

6.1. Limitations of the Study

The authors have chosen to study only three regulators in this paper. This even in the case of qualitative comparative analysis may not be enough for generalization. As this research is based on published data about the selected sector regulators, informal/unwritten issues may have been ignored.

References

Brown, A. C., Stern, J., Tenenbaum, B., & Gencer, D. World Bank. *Handbook For Evaluating Infrastructure Regulation*. Retrieved from http://siteresources.worldbank.org/EXTENERGY/Resources/336805-1156971270190/Handbook For Evaluating Infrastructure Regulation 062706. pdf

Levy, B., & Spiller, P. (1994). The institutional foundations of regulatory commitment: A comparative analysis of telecommunications regulation. *Journal of Law, Economics & Organisation*, 10(2).

Ragin, C. (1994). Using qualitative methods to study commonalities. *Constructing social research: The unity and diversity of method*. Charles Ragin, Sage Publications, pp. 84

http://www.sebi.gov.in/chairmen.pdf

Information on the profile of the chairman of RBI. Retrieved from http://www.rbi.org.in/scripts/governors.aspx.

Information on the tenure of the chairman of RBI is available at http://rbidocs.rbi.org.in/rdocs/Publications / PDFs/RBIA1934170510.pdf.

Information regarding the financial autonomy of RBI can be found at http://rbidocs.rbi.org.in/rdocs/Annual Report/PDFs/01FLAR22082013.pdf.

Information regarding the ombudsman for RBI. Retrieved from http://rbidocs.rbi.org.in/rdocs /Content/PDFs/67933.pdf.

Information regarding the ombudsman for SEBI. Retrieved from http://www.sebi.gov.in/cms/sebi_data/attachdocs/1293102862086.pdf.

Information regarding the policy formation of RBI. Retrieved from http://rbidocs.rbi.org.in/rdocs/Content/PDFs/ FUNCWWE080910.pdfhttp://rbidocs.rbi.org.in/rdocs/Publications/PDFs/RBIB140520012.pdf.

Information regarding the policy formation of SEBI. Retrieved from http://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf

Stern, J. (1997). What makes an Independent Regulator Independent? *Business Strategy Review,* 8(2), 67–74.0

Prado, M. M. *The challenges and risks of creating independent regulatory agencies: A cautionary tale from Brazil.*

Samarajiva, R., Galpaya, H., Goswami, D., & Ratnadiwakara, D. (2007). Telecom Regulatory Environment (TRE) assessment: Methodology and implementation results from five emerging economies", Presentation at the 35th Telecom Policy Research Conference, Fairfax VA, USA

Scope of RBI as a regulator. Retrieved from http://rbidocs.rbi.org.in/rdocs/Content/PDFs/FUNCWWE080910.pdf.

Wallsten, S. Regulation and Internet Use in Developing Countries. World Bank e-library. Retrieved from http://elibrary.worldbank.org/content /working paper /10.1596/1813-9450-2979

Telecom Consumers Complaint Redressal Regulations. (2012). Retrieved from http://www.tccms.gov.in/ accessed on 30th September 2013.

Telecom Regulatory Authority of India. Retrieved from http://www.trai.gov.in/Content /act_1997.aspx

The role of the finance ministry in the regulator. Retrieved from http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/RBIA1934170510.pdf