



Anti-Competitive Practices in the Telecommunications Sector




The Sri Lankan Experience

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The process of liberalization in Sri Lanka

- Initiated in 1977 to shift the economy in a liberal, market driven and export oriented direction
 - Industrial restructuring process was strengthened by a privatization program initiated in late 1989
 - The main objective of which was the reduction of the fiscal burden and generating revenue for the govt.
 - Took the form of granting monopoly status to foreign investors
 - The abuse of market dominance, which became evident at various stages during the 1990s, prompted the enforcement of competition policy
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Sri Lanka - a “Small Economy”



- Definition:

- Economies with relatively small GDP and population, which are marching towards a market-oriented system. They include all small island economies, but not all LDCs.

Adhikari, Ratnakar (2002)





Sri Lanka - a “Small Economy”

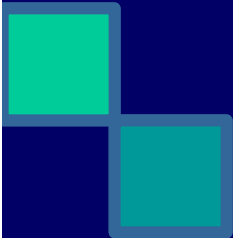

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- Characterized by:
 - Small size of the market and therefore failure of import substitution industrialization
 - A highly liberalized investment regime
 - Large non-monetized sector
 - Continued liberalization largely due to pressure from BWIs
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Sri Lanka - a “Small Economy”

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- Implications for competition policy:
 - Creation of private monopolies through privatization, resulting from:
 - Short term horizons through an emphasis on government revenue requirements
 - Anti-competitive practices which are fostered due to the size of the market:
 - the formation of cartels;
 - collusive tendering; and
 - abuse of dominance.
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The Telecommunications Sector

- Posts and Telecommunications Department (P&T) responsible for entire sector until 1980
 - In 1980, P&T divided into separate local, domestic long distance and international long distance services
 - Sri Lanka Telecom (SLT) converted into Govt. owned corporation in 1991 – Sri Lanka Telecommunications Act, 1991 enacted
 - Office of Director General of Telecommunications set up in 1991 as regulator
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The Telecommunications Sector

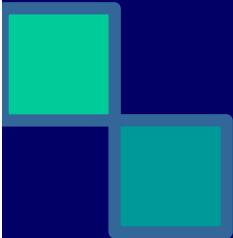

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- Sri Lanka Telecommunications (Amendment) Act, 1996 enacted
 - Telecommunications Regulatory Commission of Sri Lanka (TRCSL) set up
 - SLT converted to a public company, Sri Lanka Telecom Ltd. (SLTL) – initial step to privatization
 - SLTL divested 35% of its shares to NTT of Japan (1997), and a further 12.5% through an IPO in 2002 (Government controls 49.5% currently)
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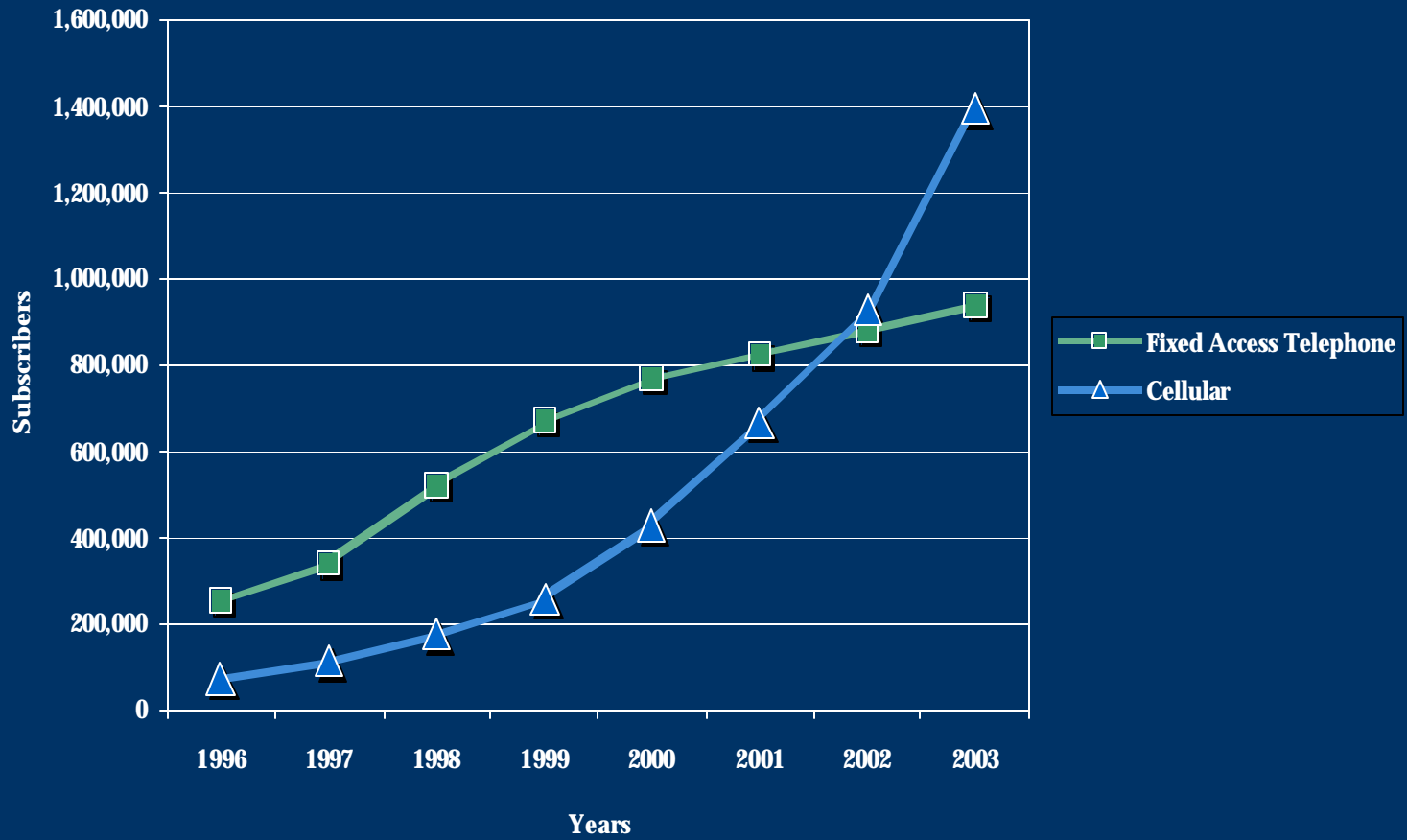


The Telecommunications Sector

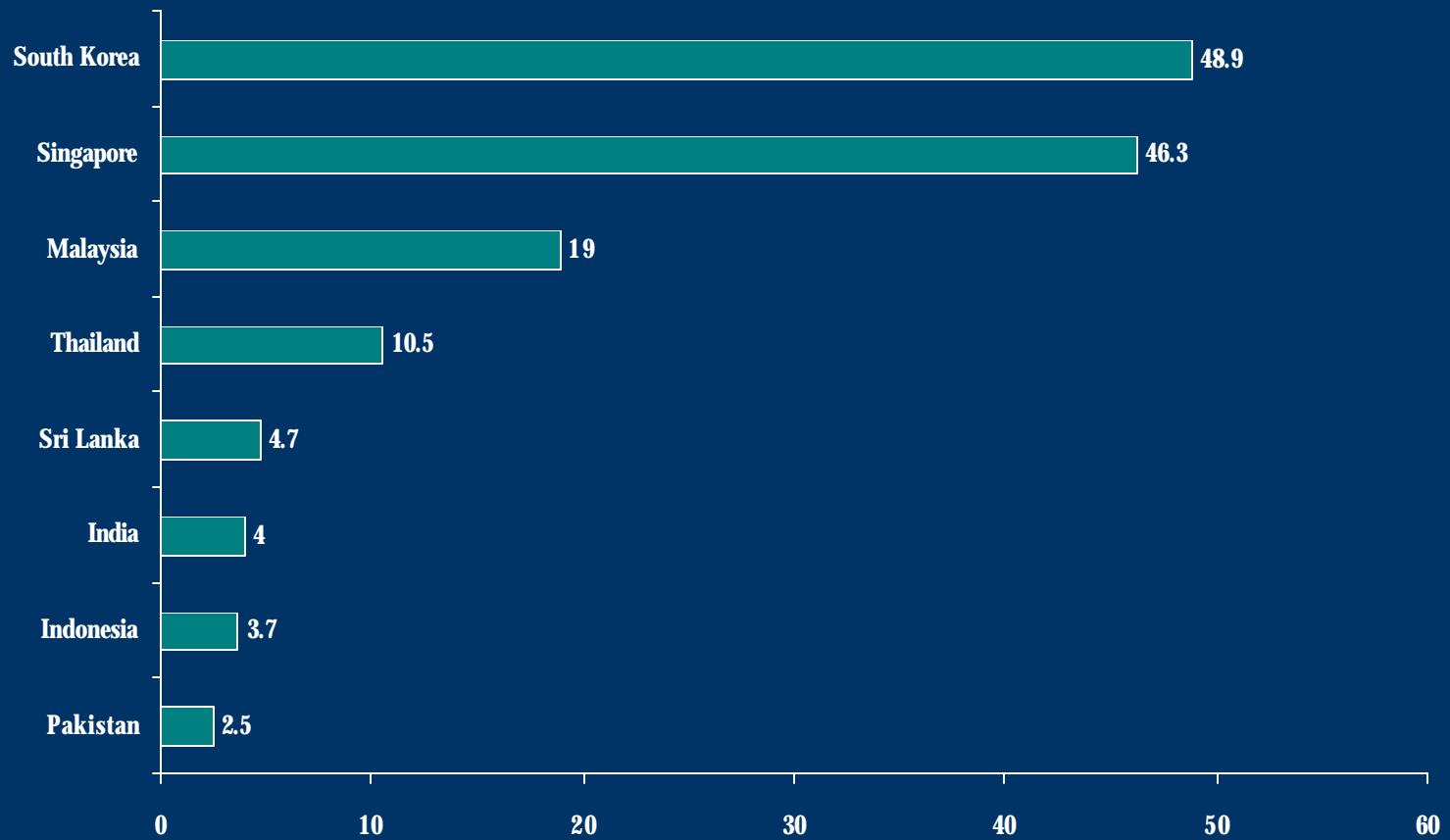
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- Current structure of the market:
 - Monopoly in the fixed wireline sector (SLTL)
 - Duopoly in the fixed wireless sector until 2000 (licenses issued in 1996)
 - Possible extension of duopoly if performance targets are met
 - Competition in the mobile sector – four operators
 - One of which was recently acquired by SLTL
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Subscriber Base (1996 - 2003)




*Telephone Denisty (Fixed Acces): Selected Countries 2003
(Telephones per 100 persons)*






***SLTL* – The Dominant Player**

- Main focus is the fixed access market (currently holds 87% of the market)
 - Until recently was the sole external gateway operator
 - Monopoly of undersea cables
 - The leading Internet Service Provider (ISP)
 - Operates its own payphones, and provides leased circuit and data communication services
 - Recently acquired full ownership of a mobile operator – Mobitel
 - A massive corporate entity – revenue for 2003 was equal to 1.63% of Sri Lanka's GDP
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Anti-Competitive Practices in the Telecommunications Sector

- Various problems stem from the fact that SLTL is the dominant player
 - Two WLL operators broadly follow the prices set by SLTL as the market leader – *tacit price collusion*
 - SLTL does not pay mobile operators for calls terminated on their networks – apart from other interconnection problems
 - The poor regulatory environment aids the continuation of anti-competitive practices
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The Issues

- Competition policy and law in relation to other laws and policies
 - Competition Authority vs. Sector Specific regulator
 - Interconnection
 - Spectrum Allocation
 - SLTL furthering its dominant position
 - TRC of Sri Lanka
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Competition Policy

- Relegated to second place:
 - Government revenue is usually the key determinant in the process of privatization
 - The “Development Dimension” is also gaining precedence
 - Concurrent Jurisdiction
 - Competition Authority vs. Sector Specific Regulation
 - So far, however, no “turf wars” between the competition authority and the TRC.
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Competition Policy

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- Specifically in terms of the Telecom sector:
 - Divestiture of 35% of SLT was to Nippon Telegraph and Telephone (NTT) - reputed for anti-competitive behavior (*Economist, July 2000*)
 - Granting of 5yr monopoly in the fixed access service to SLT, as well as on international traffic
 - Duopoly granted to the two WLL operators, but with performance targets and rural expansion conditions
 - Broad consensus that there is adequate competition among the mobile operators
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Interconnection

- As per the WTO principles on Interconnection, it must be provided:
 - on non-discriminatory terms, rates & of a quality no less favorable than for the incumbents own supply
 - However, the Telecommunication Act failed on three fronts in this regard:
 - Interconnection was not made mandatory
 - No stipulation was included that charges should be on a cost oriented basis
 - Failed to provide a mechanism for resolving interconnection disputes
 - These were addressed through the Interconnection Rules of 2003
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Interconnection

– some of the problems


- Failure of SLTL and the new WLL operators to reach an agreement in 1996 and then again in 1998
 - No payment to the WLL operators for international calls terminating on their networks
 - The WLL operators have also claimed that SLTL was blocking calls originating from the WLL networks
 - Mobile operators pay a fee to SLTL for terminating calls on its networks but the reverse does not take place
 - Mobile operators complain of the current insufficiency of interconnection capacity – leads to congestion problems during peak hours
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Interconnection


– some of the problems

Contd.

- Calling Party Pays (CPP) system as opposed to existing Mobile Party Pays (MPP):
 - Proposed more than 5 yrs ago
 - Various deadlines have been missed, the most recent being 1st Jan 2003 and 1st March 2004
 - Heavy resistance from the fixed access operators
 - Current proposals indicate that tariffs may have to increase by a 100%
 - Even though there was complete agreement on the need for charges to be cost oriented, fixed access operators were unhappy with the outcome of the assessment
 - Most recent delay caused by the TRC not having given sufficient notice to the public concerning implementation
 - Next deadline of the 22nd of April has also been missed
 - Postponed indefinitely until costs are reassessed
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Other Issues

- Spectrum Allocation
 - Poor regulatory mechanism for spectrum management.
 - Claims by operators that the process is riddled by high politicization and the resulting favoritism
 - Delays in application processing and subsequent allocation of frequencies
 - SLT furthering its dominant position
 - Acquisition of Mobitel
 - Possible future take over of Lanka Bell, the smaller of the two WLL operators
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TRC of Sri Lanka

- Setup to advise the government on the granting of licenses, pricing and subsidy policies, manager of the frequency spectrum, achievement of universal service provision, and protecting consumer interests.
 - Problems:
 - Secretary to the Minister is ex-officio chairman – compromised independence
 - Hired most of its staff from SLT – compromised legitimacy
 - Poorly manned in areas other than engineers – compromised efficacy
 - Regulatory manual was drawn-up and then shelved – lack of systematic processes in decision-making
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TRC of Sri Lanka

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- Positive developments:
 - Establishment of a non-discriminatory interconnection framework
 - Open licensing policy for external gateway operators, the sole reason that forced SLTL to lower its international calling rates
 - Further support for the expansion of telecom facilities in rural areas by increasing the subsidy per installation of payphones
 - Possible enforcement of “Asymmetric Regulation” in the near future
 - Based on the possibility that certain operators may be able to operate independently of competitors, buyers and sellers and/or control essential facilities. Thus the ability to constrain the development of competition.
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National Communications Policy

- The highlights of the Proposed Policy are to:
 - Transform the telecommunications market structure and regulation towards a more liberalized, technology-neutral model;
 - Establish an explicit Universal Access policy;
 - Strengthen the frequency management services of the TRC
 - Confer greater independence and authority on TRC and introduce transparency into its procedures; and
 - Confer on TRC the power to regulate tariffs and minimize barriers and to develop and enact a new Convergence Act, which will include Information and Communications Technology, media and telecommunications among others.
 - Passed in Cabinet in November 2002
 - Suspended and may undergo further changes
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Conclusions

- What needs to be done:
 - Imposition of more effective & stringent regulations (for a short period) to develop a market-based industry to foster more competition in the market
 - Monitoring of the market forces by the TRC in order to maintain a competitive market (possibly through the use of asymmetric regulation)
 - Review, improvement and subsequent enforcement of the National Communications Policy
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Thank you

