THE EVOLUTION OF TELECOMMUNICATIONS POLICY-MAKING: COMPARATIVE ANALYSIS OF CHINA AND INDIA

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ABSTRACT

This paper is a comparative analysis of the telecommunications policy-making process in China and India. As two of the largest emerging market economies, the telecommunications systems in the two countries have attracted an enormous amount of research attention. However, much of the existing literature focuses on the specifics of telecommunications policies. Relatively less attention has been paid to the transformation of the telecommunications policy-making process—the institutions and formal procedures by which policies are framed in the two countries.

In this paper, we adopt an institutionalist perspective to comparatively analyze the formal structures, rule-making procedures and interest groups involved in telecommunications policy-making in the two countries, in terms of their evolution over the last two decades. The policy-making system in the two countries began this period in a somewhat similar situation, being based on ministerial-bureaucratic decision-making. Since then, both countries have faced similar environmental conditions and organizational challenges as they sought to modernize and develop their telecommunications infrastructures, with technological convergence and economic liberalization as the background. Both countries faced similar problems of assimilating new interest groups and responding to international pressures.

Yet the decision systems in the two countries have evolved in significantly different directions. In China, the model that evolved has been labeled as inter-ministerial competition, marked by deep-rooted political involvement, frequent bureaucratic bargaining, and weak legal institutions. China’s telecommunications decision-making is much more affected by the macro level political rearrangement. In India, confronted by an increasingly litigious environment and a more fractious interest group culture, ministerial decision-making faced unprecedented challenges and responded by creating new regulatory institutions, and moving towards more transparent and participatory decision-making. Nevertheless, numerous challenges remain, including institutional capacity and excessive regulatory deference to political authority. Both models succeed to an extent in broadening the participation in telecommunications policy-making, but do so using different procedures and by involving different interest groups. We conclude
by evaluating the experiences of the two countries and suggesting what they can learn from each other.

1. INTRODUCTION

According to the International Telecommunications Unions, with 747 million and 525 million subscribers respectively, China and India had become the two largest telecommunications markets in the world in terms of number of wireless connection as of 2009\(^1\). As two of the largest emerging market economies, the telecommunications systems in the two countries have attracted an enormous amount of research attention. However, much of the existing literature focuses on the specifics of telecommunications policies. Relatively less attention has been paid to the transformation of the telecommunications policy-making process—the institutions and formal procedures by which policies are framed in the two countries. Particularly, although those two countries have invited comparisons since their statehood, surprisingly little attention has been given to explain how those two countries with dramatically different development paths have reached similar prosperity in telecommunications.

In this paper, we adopt an institutionalist perspective to comparatively analyze the formal structures, rule-making procedures and interest groups involved in telecommunications policy-making in the two countries, in terms of their evolution over the last two decades. The policy-making system in the two countries began this period in a somewhat similar situation, being based on ministerial-bureaucratic decision-making. Since then, both countries have faced similar environmental conditions and organizational challenges as they sought to modernize and develop their telecommunications infrastructures, with technological convergence and economic liberalization as the background. Both countries faced similar problems of assimilating new interest groups and responding to international pressures.

This paper is organized into three parts. The first section provides a review of existing research on China’s and India’s telecommunications policies. We then present a theoretical framework. Following that, one case from each country will be studied and a comparison will be presented. We will then conclude our paper by evaluating the experiences of the two countries and suggesting what they can learn from each other.

2. CHINA AND INDIA: COMPARATIVE OUTLINES

Comparatives studies between China and India are not rare in academic research and are becoming popular in public media. With nearly 40 percent of the world's population between them, China and India are among the fastest growing economies in the world. Both ancient civilizations, they came into their current forms of statehood in the late 1940's. India is a typical Western-style democracy, having formed itself largely on the British model, while the Chinese political system is based on communist principles. Some portray the two countries as rivals ("A Himalayan rivalry; India and China," 2010; Macdonald, 2010). Others use the word “Chindia” to reflect the complementarities of the two economies ("Chindia at a Crossroads," 2006; Dowling, 2005). Politically speaking, China and India have been regarded as representative of their respective political systems and their progress has been taken to indicate the possibilities and constraints of the political-economic paths that they have chosen. Scholars have
conducted intensive comparative researches in the two countries’ economic reform (Chai & Roy, 2006) and the impacts to the global economy (Winters & Yusuf, 2007).

Particularly in telecommunications, both countries have attracted an enormous amount of research attention. In China’s case, there is a growing body of literature on China’s telecommunications policy and regulation, which can be broadly divided into two strands. First are exploratory studies tracing the major developments in the industry and specific policy issues. Scholars have studied the early liberalization process (Harwit, 1998; Pitt, Levine, & Yan, 1996; Tan, 1994; Ure, 1994), the impact of China’s membership in the World Trade Organization (WTO) (DeWoskin, 2001; Mattoo, 2003; Mueller & Lovelock, 2000; B. Zhang, 2001), the efficacy of regulatory reform in achieving policy objectives (Yu, Berg, & Guo, 2004), the evolution of mobile services (Qiu, 2007; Y. Yuan, et al., 2006), the comparison of the Chinese model with other countries (Fink, Mattoo, & Rathindran, 2001b; Singh, 2000; X. Yan, 2001), interconnection policy (X. Yan, 2001) and universal service policy (Harwit, 2004; Xia & Lu, 2008). The second strand of literature takes a more macro perspective and seeks to investigate the driving forces underpinning the explosive growth in the telecommunications sector. It has been argued that the pursuit of economic growth promised by information technologies was the main reason that the Communist Party gave the telecommunications sector preferential treatment in the 1990s—liberalization, when it happened, was largely an unintended byproduct (Mueller & Tan, 1997). In addition, Loo (2004) cites the call from foreigners to open China’s telecommunications industry, and the overwhelming demand of the Chinese residential and business customers as two other driving forces behind liberalization. Gao and Lyytinen (2000) found that macro level political rearrangement also had profound impact on China’s telecommunications transformation. For the policy making process, Zhang (2002) argued that China’s telecommunications policy making was identified with deep-rooted political involvement, frequent bureaucratic bargaining, and weak legal institutions.

On India too, a substantial body of literature now exists, addressing issues such as growth in the mobile telephony sector (Singh, 2008); and universal service programs (Jain, 2010; Noll & Wallsten, 2006). There are also several books (Dossani, 2002; Desai, 2006) and research papers (Jain & Sridhar, 2003; Mukherji, 2008; Malik, 2009) addressing changes in the industry over the last decade and a half. As in the case of China, there is a voluminous literature exploring the causes and the consequences of telecommunications deregulation (Vercruyssse 1990; McDowell, 1997; Petrazzini, 1996; Singh, 1999; Mani, 2008). In an early article Vercruyssse (1990) argues that “Western-style” deregulation was initiated in India under the pressure of persistent underdevelopment and lack of investments for infrastructure growth. Petrazzini (1996) argues that once reforms were initiated, they moved only very slowly due to the heavily-contested nature of Indian politics, and the relative lack of insulation of state decision-makers from interest group pressures. Singh (1999) laid down a theoretical framework for international comparisons of telecommunications reform, based on the capacity and nature of the state. Mani (2008) examined the impacts of telecommunications growth, specifically, the possibility that it could aid the emergence of India as a manufacturing hub for electronics hardware.

Among the few studies that comparing China and India’s telecommunications policy, Fink, Mattoo and Rathindran (2001a) found that “managed competition” appeared to be
the key theme of Asian telecommunications policy where governments had introduced both competition but were unwilling to eliminate certain restrictions, particularly on the number of firms and the extent of foreign ownership. In a series of studies of the state of the Internet in India and in China, it was found that China had a clear lead because the Chinese government’s strong position in policy setting (Press, Foster, & Goodman, 1999; Press, Foster, Wolcott, & McHenry, 2003). Telecommunications has also been one of the industries covered in more general comparative analyses of the two countries’ economies (Saha, 2004; Cooper, 2006).

The brief literature survey above identifies two gaps in the literature. First, though China and India have been compared extensively to each other in the scholarly literature and in the popular press, comparisons specific to telecommunications are relatively rare. It is quite evident that there is much value in such a comparison, given the many similarities (and a few prominent differences) between the two countries and the similar challenges that they face in modernizing their telecommunications infrastructures. The second gap is that though much research attention has been devoted to the analysis of specific telecommunications reform, relatively less has been given to the institutional environment of policy-making, and the evolution of the institutional structures in response to changes in the industry and the competitive landscape. In this paper, we adopt an institutionalist perspective to comparatively analyze the formal structures, rule-making procedures and interest groups involved in telecommunications policy-making in the two countries, in terms of their evolution over the last two decades and predict how they will likely to advance in the age of converging communications.

The organization of the paper is as follows. In the next section, we begin by briefly introducing the institutionalist approach. In the next section, we discuss the emerging field of policy theory, which aims to conceptualize how policies change within institutional environments. The contrast is between theories that predict only incremental change, and those that admit the possibility of radical change. We then present two case studies, one each from China and India. The Chinese case deals with policy-making for internet protocol television (IPTV) services, and the Indian case with the conditional access system, or *a la carte* pricing for cable television services. Through these case studies, we seek to demonstrate the influence on the institutional environment on policy-making; but we also argue that the contentions and conflicts surrounding policy formulation and implementation can sometimes result in institutional change as well. We thus hope to present through our comparative analysis a more dynamic theory of policy change, of more general applicability. In the final section, we present our conclusions and recommendations for telecommunications policy-making in China and India.

### 3. THEORETICAL FRAMEWORK: THE INSTITUTIONALIST APPROACH

The field of telecommunications policy research is multidisciplinary in nature. Taxonomically, there were traditionally three theoretical approaches: the interest-group approach, the ideological approach, and the technology-centered approach (Galperin, 2004a). It is however not uncommon to find studies that span more than one approach. This paper draws on the institutional approach. The institutional approach did not ignore ideological factors (informal institutions) or interest-group pressure (formal institutions)
as important determinants of policy outcomes (Galperin, 2004a). Thus, to an extent, it can be viewed as a superset of interest-group approach and ideological approach.

The institutional approach finds its theoretical root in the new institutionalism that emphasized the importance of non-market factors and human interaction on economic performance (North, 1990). According to North, institutions referred to, the “composite of rules, informal constraints (norms of behavior and conventions) and their enforcement characteristics” (1990, p. 364). North continued: “together they define the humanly devised constraints that shape human interaction. They are the rules of the game and therefore define the way the game is played” (1990, p. 364). Focusing on law, policies, bureaucracies, and other non-market structures, new institutionalism aimed to understand how organizations and governance played a role in either facilitating or prohibiting certain economic activities (Bates, 1995).

The institutional approach was not uncommon in communications policy research and was found to be particularly useful for international comparisons (for example, see Levy & Spiller, 1996; Noll & Rosenbluth, 1995; Galperin, 2000; and Thatcher, 1994) and the study of long-term policy patterns (eg., Cranor and Widerman, 2003; Galperin, 2004b) because it takes a collective and holistic view of policy making process and incorporates key aspects of path dependency theory (Galperin, 2004a). This approach has also been applied to study the Chinese telecommunications policy making process (Gao & Lyytinen, 2000; B. Zhang, 2002). This previous research has provided a solid theoretical and methodological guidance for this study. However, these studies do not explicitly address the possibility of institutional change brought about by policy conflict. This is especially relevant in the context of convergence, which has brought new interest groups and policy actors into play, changing the very institutions of policy-making.

The institutional approach is therefore concerned with the formal and informal structures of rule-making, and the identity and relative power of the participants, and the operation of these institutions within a wider social-economic context. It therefore provides an ideal framework for the discussion of policy and policy change. Why does a policy question rise on the political-administrative agenda? Who participates in the decision process and what are their relative roles? How are alternative solutions framed for a policy question? And how is policy, once it has been framed, implemented? We now turn to the emerging field of policy theory to answer these questions.

4. THEORIES OF POLICY CHANGE

For years, it was considered that the policy-making process was too complex, contingent and uncertain to be amenable to theorization. It was too beset by political, organizational and social particularities; dependent on unpredictable events; and subject to complex interdependencies that it simply could not be formally explicaded. All we can hope to do is “muddle through,” as an early and often-cited paper put it (Lindblom, 1959, 1979). The closest approximation to a theory was what has been called the “stages heuristic” in which the policy process is divided into a sequence of stages: agenda setting; policy formulation; implementation; and evaluation (for a succinct discussion and critique of this approach, see Sabatier, 1999, pp 6-7). However, this has been criticized as not being a theory since it makes no causal linkages, and as
too simplistic since policy-making rarely moves in an orderly fashion from stage to stage (Sabatier, 1999).

Nevertheless, a significant and growing body of theoretical work has gradually evolved that attempts to conceptualize and model the policy-making process. Charles Lindblom’s influential theory of “disjointed incrementalism” is probably the first of these attempts (Lindblom & Woodhouse, 1993). Critiquing the then-dominant rational choice model of decision-making, Lindblom describes a policy maker functioning with insufficient information and bounded rationality; in an uncertain environment; constrained by other influential actors, and with formal checks and balances on the exercise of power. In these circumstances, Lindblom argues that it is simply impossible to achieve what he calls the “rational-comprehensive ideal”—a complete and single-step solution to a policy problem based on a full understanding of all the parameters involved. Instead, decision-making will be a series of trials-and-errors, incremental modifications to existing policy that gradually advance the movement towards the ideal solution, even as our understanding of the ideal itself undergoes modification as a result of our experiences. Lindblom concedes the possibility of large-scale policy change, but considers this to be a relatively rare occurrence in response to an external shock to the system, or a dramatic change in the identity or relative power of the participants in decision-making.

Lindblom’s theory of incremental policy change has been elaborated and commented on by others. Hayes (2006) for example finds that incremental change is very likely in political systems such as that of the United States, marked by multiple state institutions, separation of powers, checks and balances, and federalism. In such “composite republics,” it is easier to raise issues on the policy agenda because of the multiplicity of available forums, but more difficult to arrive at decisions due to the need for concurrent assents from multiple actors. In such an environment, any decision will be the result of compromise and adjustment, with the result that changes will be gradual and incremental.

In contrast to disjointed incrementalism and its variants, other theories give more credibility to the possibility of non-incremental change. John Kingdon (2002) has elaborated the “multiple streams framework” that differentiates between three independent action domains of actors and processes: a “problem stream” of social issues, needs and subjects requiring serious policy attention; a “policy stream” of subject experts and partisan advocates advancing possible solutions; and a “politics stream” of elected officials and bureaucrats. Kingdon notes that the three streams usually operate independent of each other, until a “policy entrepreneur” usually a top-level official, for example the President of the United States or his advisers senses an opportunity to bring the three streams together. This is possible only within a narrow window of opportunity, for instance when a major external event crystallizes public opinion—but at those times, there is the possibility of major policy change. But it is also possible for policy entrepreneurs to misjudge the timing or scope of a policy initiative, resulting in its failure. Thus, in the multiple streams framework, the policy process could be marked by sharp discontinuities, abrupt reversals and external influences.

Another non-incremental theory is based on interest group dynamics (Hayes, 2006, see especially Chapter 4, pp. 44-62). It argues that the participants in the policy process are
interest groups with conflicting agendas and differential endowments of power and influence. In contrast to the incremental models that see policy-makers essentially collaborating to find the best solutions to policy problems, group theory sees group interactions as much more combative and zero-sum. Since groups will not be willing to accept anything less than what they can secure through contention, "any model that treats mutual accommodation as an end in itself will fail to do justice to the intensity of the group conflict" (Hayes, 2006, p. 45). Groups aim not only to exercise power to obtain advantageous policy outcomes, but also to enhance their power vis-à-vis other groups. In this framework, non-incremental change is not only more likely but perhaps also the norm, as groups seek not accommodation but maximalist outcomes. Capture theory, in which one group, usually industry, manages to co-opt and dominate policy-makers is one example of interest group maximalism.

A more optimistic version of interest group theory argues that the competition for advantage will eventually attract all potential groups, and thus the outcome of their contention will yield results that approximate the public interest. A requirement for this is that competition has to be “atomistic,” that is, pluralistic competition in which no one group or coalition of groups is able to dominate the process. This position, often labeled interest group liberalism, is commonly traced to the work of Theodore Lowi (1979). This is the ideal outcome, but self-evidently difficult to achieve in practice since not all groups are equally well-represented in the policy process.

The theory of punctuated equilibrium, borrowing from evolutionary dynamics, seeks to explain the observation that policy often displays long periods of stasis and incremental change, interrupted by occasional episodes of dramatic shifts (Baumgartner & Jones, 1993; True, Jones & Baumgartner, 1999). With a parallel to Kingdon’s multiple streams framework, punctuated equilibrium theory posits two interrelated spheres of action, a macro-political arena and a policy subsystem. Issues initially gain prominence in the public agenda, catalyzed by an event, personality or social trend. No political system is able to give attention to all the issues that demand policy action—the sphere in which this initial issue definition takes place is labeled the macro-political arena. But no political system is able to give attention to all the issues that rise on the public agenda. Therefore, eventually most issues are delegated to a policy sub-system comprised of subject specialists, policy analysts and other interested parties. Structurally and functionally, policy subsystems are conservative environments, resistant to entry and external influence, where the parties are more interested in preserving the status quo than in effecting radical change that will affect their own relative positions. In the extreme case, a policy subsystem can become so dominated by one interest, that it becomes a “policy monopoly;” but even when multiple parties retain influence, policy subsystems have been characterized as change-resistant, self-reinforcing “iron triangles.” This accounts for the long periods of stasis and incremental change observed in most policy areas. But dramatic change can occur, when as a result of a new mobilization or political realignment at the macro-political level, a new set of actors is introduced into the policy subsystem; large-scale policy changes are likely occur at these times.

Most recently, the theory of elite competition has gained attention in the policy literature (Genieys & Smyrl, 2008). This theory makes a sharp break with past frameworks of public policy theory by rejecting the notion that the search for the optimal policy solution,
or even the pursuit of material advantage, underlies the policy-making dynamic. Instead, advocates of this theory argue that policy is motivated by the “struggle among a small number of elite actors for legitimate authority” (Genieys & Smyrl, 2008, p. 10), where legitimate authority is defined as the right to command others to one’s bidding with a concomitant duty on the part of others to obey. Ideas are very much at the heart of this struggle for dominance. Elite policy-makers (including elected officials and bureaucrats, but also consumer groups, industry and labor organizations), and alliances of these elites advance cognitive and normative frameworks, not as ends in themselves but as tools to redefine the terms of discourse, and to reinforce their own position and authority vis-à-vis other actors. Thus, in this view, policy-making is as much, if not more, about who gets to make the decision, than about the allocation of material rewards or about the search for the optimal policy.

This brief survey is not intended to be an exhaustive listing of policy-making theories. Instead, the attempt has been to present a listing of theories that directly address the possibility of non-incremental change in institutional arrangements. This is especially relevant in the context of technological and business convergence, which admits new interest groups and unleashes new dynamics into the policy-making forces opening up the possibility of institutional change. Both of the case studies we discuss below highlight the role of convergence. In the case of China, we discuss the introduction of internet protocol television (IPTV), made possible by the convergence between television and broadband networks. In the case of India, the case we discuss relates to the conditional access system (CAS)—again made possible by digital content and the availability of greater computing power in the network periphery, in the form of set-top boxes. In both cases, we show that these policy initiatives resulted in a transformation of policy-making institutions: but given the governing logic of the two systems, it was a deliberate, top-down transformation in China, whereas it was largely unintended and tentative in the case of India. Thus, the theories above collectively provide an organizational and sense-making framework for the case study that follows in the next section.

In the sections below, we first discuss China’s IPTV and then the introduction of CAS in India. We use multiple sources of evidence to ensure the validity of the study. The data primarily comes from three sources: scholarly research (in English and Chinese), trade magazines (in English and Chinese) and government documents (mainly in Chinese for the IPTV case). In addition, we use the speeches of top executives and officials, as well as other influential persons. To enable comprehension for readers not too familiar with the political systems of the two countries, we begin each case study with a description of the institutional setting for telecommunications policy-making in that country, specifically focusing on the key actors.

5. THE CASE OF CHINA: IPTV

5.1. INSTITUTIONAL SETTING

Socialist market economy with the Chinese characteristics is the official term used to refer to the economic system of China. Under the banner of this policy, the Chinese government often takes a pragmatic and flexible position in dealing with economic
affairs, which results in a highly dynamic but arguably unpredictable policy and regulatory environment. Particularly in telecommunications, since the major players are all state-owned enterprises, the government has been a key driving force in regulatory and market reform\textsuperscript{3, 4}.

**The Chinese Communist Party**

At the top is the Communist Party, which sets out fundamental national policies, guidelines, procedures, and directions. The Chinese government must formulate policies in accordance with the Party’s overall framework. The Party also has the authority to appoint and remove the most important personnel of ministerial departments as well as state-owned enterprises. Therefore, the Party has been, and will be, playing the directive role in telecommunications policy making and other industrial reform in China.

**The National People’s Congress and the People’s Court: the Legislative and Judicial System**

China lacks formal and independent legislative and judicial systems. The National People’s Congress and its Standing Committees exercise legislative power. However, the unique position of the Party in the People’s Congress makes the legislative process in China inherently different from that of the West. Furthermore, being regarded as the enforcement branch of the Party, China’s judicial system has never been independent. Although the Chinese government has launched the so-called ‘legalization’ campaign, the effect is limited.

**The State Council: the Executive Body**

The State Council, the head of the executive branch, is playing an increasingly important role in policy-making. The Ministry of Industry and Information Technology (MIIT, formerly the Ministry of Information Industry, MII; and the Ministry of Posts and Telecommunications, MPT) is responsible to the State Council and obligated to implement rules and decisions made by the State Council. The State Council deals with general issues and the different ministries administer their own sectors. However, it is not rare that the State Council coordinates with several ministries and enacts regulations directly. We should also not underestimate the Party’s influence on the State Council. Although, supposedly, the Party is now gradually retreating from routine government affairs, in reality, the separation of the Party from the government is far from complete\textsuperscript{5}. Almost all the top and middle government officials are members of the Party.

**Ministries and Commissions**

The MIIT and the State Administration of Radio, Film and Television (SARFT) regulate telecommunications and broadcasting respectively. Two other ministries, namely the State-owned Assets Supervision and Administration Commission\textsuperscript{6} (SASAC) and the National Development and Reform Commission (NDRC), also play important roles in this industry.

The SASAC has responsibility to oversee all State investments. Since all Chinese telecommunications operators are state-owned enterprises (SOEs), they are directly
under the supervision of the SASAC. The SASAC does not manage and operate state-owned enterprises directly. Rather, it exercises its influence in two ways. First, the SASAC can directly “dispatch supervisory panels to some large enterprises on behalf of the state and take charge of daily management of the supervisory panels”; second, it can also “appoint and remove top executives of enterprises, and evaluate their performances through legal procedure”. One of the most important missions of the SASAC is to “supervise and administer the preservation and increment of the value of state-owned assets”. Thus, should competition cause the SOEs to lose “the value of state-owned assets”, the SASAC should intervene in order to “preserve” and “increase” the “value of state-owned assets”.

The NDRC is responsible to “formulate pricing policies, regulate the general price level and the prices of major state-controlled commodities and standardize fees”. The price for basic telecommunications and cable television services are regulated by the NDRC. In the old PTT model where telecommunications and cable television systems were owned by their parent ministries, it was unnecessary for the NDRC to be involved in pricing regulation. However, particularly in telecommunications where the MIIT is supposed to be independent of any telecommunications carriers, the MIIT has to coordinate with the NDRC in pricing regulation.

**Formal Legislation on Telecommunications**

China did not have a formal set of telecommunications regulations or laws until the late 1990s. One significant step that the MII took after its establishment was to draft new regulations in order to meet prospective international competition. In September 1999, the MII issued the “Temporary Regulation on Telecommunications Network Interconnection.” A formal telecommunications regulation, the “People’s Republic of China Telecommunications Decree” was issued by the State Council and became effective in September 2000. The Decree consists of 6 chapters and 79 articles, which cover most of the important issues regarding telecommunications resources allocation, network interconnection, licensing, safety, arbitration and so on. Though it is far from complete, China’s Telecommunications Decree has reduced regulatory uncertainty and improved transparency to some extent. In addition, shortly after China’s accession to the WTO, the State Council issued “Provisions on the Administration of Foreign-Invested Telecommunications Enterprises” (Decree No.333), which became effective on January 1, 2002. Consisting of 21 articles, the Decree No.333 is formulated in accordance with other relevant laws and administrative regulations governing foreign investment in order to satisfy the WTO requirement to open up the telecommunications industry.

**5.2. THE RISE AND FALL OF IPTV**

Since 1949, television networks and telecommunication networks have been regulated by different government agencies. With the advent of new digital technologies, both TV networks and telecommunication networks are able to provide high-speed broadband services. Both networks and their regulators are trying to maintain monopoly power over their traditional service domains and, at the same time, trying to penetrate into each other’s areas. In 1999, State Council Decree 75 reiterated the national ban on network convergence. No licenses were to be issued by the MII to television/cable/radio
companies to offer telecommunications service, or by SARFT to telecommunication carriers to enter the television market.

The ban on convergence did not last long. In 2002, China Telecom was divided into two companies that led to an oligopolistic market structure in the wireline sector. Both China Telecom and China Netcom, struggling with decreasing profit margins and increasing competition, aggressively rushed into the video market via the IPTV technology. At first glance, IPTV seemed to have successfully exploited loopholes in the obsolete national ban. In 2003, the SARFT issued an administrative order titled “The Management Measures for Dissemination of Audio-Visual Programs on Internet” that established a licensing regime for audio and video content transmitted over the Internet (SARFT, 2003a). Subsequently, by the end of 2003, over 80 organizations obtained a 2-year permit to transmit audio-visual programs over the Internet. However, by the middle of 2004, the SARFT quickly reversed itself from this relatively open position by exercising rigorous control over IPTV. It issued Decree 39 with the same title as the previous year’s, but with a totally different regulation. In the 2004 decree, the SARFT specifically articulated that only television stations and other media companies under the SARFT’s umbrella were eligible to deliver the IPTV service to the regular television set. Telecommunications operators were allowed to relay audio-visual content over their networks, but were prohibited to integrate content with conduit (SARFT, 2004).

The quick turn-around of the SARFT’s attitude toward the IPTV can be attributed to the increasingly strong position of telecommunications carriers, and the slow progress made in the marketization of its own cable business. The telecommunications industry had become a giant business with annual revenue of RMB 572 billion, compared to television, radio and film’s RMB 76 billion in the year of 2004\(^8\). The revenue from cable subscription was merely RMB 12 billion. More importantly, the establishment of the SASAC further strengthened the bargaining power of telecommunications carriers. With the set-up of the SASAC, the ownership of the major telecommunications carriers was transferred from the MII to the SASAC. As noted before, one of the most important missions of the SASAC was to “supervise and administer the preservation and increment of the value of state-owned assets”. Thus, inherently, the SASAC has the imperative to stand on the side of telecommunication carriers should they happen to face “vicious competition” from cable operators, in order to prevent the loss of state-owned assets.

It has been argued that foundation of the SASAC signifies that the primary objective of government regulation has changed from creating a competitive market to strengthening the dominant carriers (Yeo, 2009a). A most notable instance of this was that of the Personal Handy-Phone Service (PHS). Although the MII initially took a strong antagonistic attitude, it later had to approve its legitimacy due to strong pressure from the SASAC-backed telecommunications carriers partly because of the huge amount of money already invested (Liu, 2003; Tan, Chen, & Liu, 2006). By the same logic, it is evident that if telecommunications carriers were allowed to freely invest in the IPTV market and the market then grows to critical mass, the SARFT would have faced great pressure from the SASAC to legitimize IPTV as evidenced by what happened in the PHS case. Thus, the best strategy for the SARFT to keep exclusive control of the television market was to take protective measures at the very beginning.
In addition to the external competition from telecom carriers, internally, the SARFT’s own effort to modernize its cable business had faced a lot of problems. In the Decree 82 of 1999 in which the State Council closed the door for convergence, it also directed the SARFT to speed up the development of its cable sector. The State Council ordered that the cable operators must be consolidated and incorporated at the provincial level. Later the SARFT adopted the policy called “separation of transmission and programming” which further divested the programming function from cable operators. The ambitious plan called for 3,000 cable operators to be regrouped into 32 province-based operators and the creation of one national cable backbone network (Redl & Simons, 2002). It was expected that the regrouped cable systems, which did not have any programming function and thus avoided the propaganda regulation, could get license from the MII and become a major competitor to telecommunication carriers.

One of the technical requirements to enable cable networks to offer telecommunications service is that they should be upgraded from a mono-directional medium to a bidirectional one. In 2003, the SARFT announced an even more ambitious digital-conversion timetable in which it declared that television networks should be digitalized in most of China by 2010 and analog televisions would be phased out completely by 2015 (SARFT, 2003b). The digital conversion made little progress initially. By the end of 2005, the number of Chinese digital TV subscribers was merely 5.35 million, much less than the 10 million expected by the SARFT (“Digital TV Meets Cold Reception in China,” 2005). A lot of problems, such as high monthly and installment fees, fragmented market structure and ambiguity in standards setting, hindered the development of digital TV. In order to protect its digital transition from competition, the SARFT raised the issue of propaganda control as another rationale for blocking IPTV. A senior officer of the SARFT told reporters that although the SARFT admitted that IPTV was a very promising technology, it was not appropriate for telecommunications carriers to get involved because IPTV network was interconnected with the public Internet which made it difficult for the SARFT to control the content being transmitted and brought potential threats to national security and culture integrity (Shun, 2005).

To date, the SARFT has granted only seven IPTV licenses to state broadcasters such as CCTV and the Shanghai Media Group while China’s 4 million IPTV users, mostly with China Telecom, were still on the “trial” basis for several years (Clark, 2010). On the other hand, according to the “China Cultural Industry Development Report 2010”, an annual report by the Chinese Social Science Research Institute (CSSRI), China was expected to have 62 million digital TV subscribers by the end of 2009, approximately 30 percent of all cable subscribers, and of which only 7 million were paid users (X. Zhang, Hu, & Zhang, 2010). By now, both IPTV and digital TV have made less than expected growth in its confined market.

In 2008, the People’s Congress approved another round of governmental reform called “super-ministry restructuring”. The idea was to transform the principal role of government from economic planning and controlling to public service (F. Yuan, 2010). The objective for this government reshuffle was to streamline government department functions, to strengthen macro-economic regulation, to maintain national energy security and to integrate information development and industrialization. In telecommunications, the MII was downgraded to sub-ministerial level (Ma, 2009). The
new Ministry of Industry and Information Technologies (MIIT) absorbed all the functions of the MII and become a super regulator for China’s industrial sector. The long-rumored merging of the MII and the SARFT into a single FCC-like regulator was proved to be bogus.

The 2008 institutional rearrangement has several immediate impacts on the information industry. The position of the SARFT has seemingly been strengthened. The State Council issued a Decree titled “Several Policies on Encouraging the Development of Digital TV” in which it reiterated the SARFT’s digital TV transition timetable and gave several preferential policies to accelerate digital deployment (General Office and the State Council, 2008). On the other hand, the MII’s final act before ceding its regulatory functions to the new MIIT was to consolidate China’s operators into the so-called big three, namely China Telecom, China Unicom and China Mobile.

The governmental reshuffle laid down the institutional foundation for restarting the stagnant convergence process. On January 13, it was reported that Premier Wen Jiabao had announced at the general meeting of the State Council the decision to accelerate the convergence of telecom, broadcast TV and internet (Xinhua News Agency, 2010). On April 14, the State Council announced the Decree 5 titled “The Overall Plan for Convergence” (State Council, 2010). In the plan, the government articulated technological, economic and political rationales for convergence. Technically speaking, the government admitted that convergence was a natural result of advances in information technologies. Economically, it was expected that convergence would satisfy consumers’ diverse production, living and service demands, promote domestic consumption, form new economic growth areas and become part of China’s strategic response to the global financial crisis. Politically, convergence would create new ways of disseminating propaganda and expand its scope in order to firmly control public opinion and protect the national culture (State Council, 2010). The plan also set forth a timetable for convergence. From year 2010 to 2012, selective trials would be conducted. From year 2013 to 2015, convergence would be extended to the nationwide market. Later on, after five drafts were rejected, a sixth version of the pilot program for the convergence of three networks in China was approved by the government on July 1, 2010, in which 12 cities were selected\textsuperscript{15}.

In terms of regulation, the government’s objective has been to establish a regulatory regime that is logical, efficient and scientific. However, surprisingly, in the “Overall Plan”, the government reiterated that China would continue to take the “silo” approach, in which the MIIT and the SARFT would continue to regulate telecommunications and television respectively (State Council, 2010). However, citing the slow progress made in the marketization and upgrading of China’s cable business, the State Council gave some preferential polices to the SARFT. First, the SARFT was given another three years to continue consolidating its thousands of cable operators into competitive ones and finish the technical upgrading. Second, the SARFT was granted the authority to regulate the IPTV platform which essentially did not change the status quo of this sector. While the effect of this newly government-driven convergence remains to be seen, there has been little change in the regulatory regime. The incompatibility between the old regulatory model and the expected new converged industry regulated has not yet been solved.
6. THE CASE OF INDIA: CAS

6.1. INSTITUTIONAL SETTING

In contrast to the socialist market economy of China, India is a Westminster-style parliamentary democracy with multiple political parties that compete in regular and largely free and fair elections at the federal, state and local levels. An independent judiciary and a free press act as checks on government power. The country’s bureaucracy, though professional and talented at the higher levels, is also marred by rampant corruption and inefficiency. The economy is relatively open but underdeveloped. Free market reforms undertaken since the early 1990s have resulted in a dramatic upswing in economic growth rates, but the country still has wide income disparities and regional imbalances. In the case of the conditional access system (CAS), the key players are described below.

The Ministry of Information and Broadcasting (MIB)

The Ministry of Information and Broadcasting is one of the ministries of the federal government, usually headed by a minister of cabinet rank and operated by a professional bureaucracy led by members of the Indian Administrative Service. Until 1990, the MIB was directly responsible for operating the television and radio networks, with Doordarshan and All India Radio as its media units. With the Prasar Bharati Act of 1990, a new “statutory autonomous corporation” called Prasar Bharati was created and the two public broadcasters were transferred to it. Thereafter, the MIB has taken on a regulatory role, especially after the advent in the 1990s of private FM radio stations, satellite broadcasters and cable systems.

Ministry of Communication and Information Technology (MCIT)

Another ministry of the federal government, the MCIT is composed of three departments, which oversee posts, telecommunications and information technology respectively. It also oversees the state-owned corporations in the telecommunications sector, including service providers Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL), and the equipment manufacturer Indian Telephone Industries (ITI). Prior to 2000, the MCIT, through the Department of Telecommunications (DOT) was also directly the service provider. After operations were spun out to BSNL formed in 2000, MCIT has taken on more of a policy-making and regulatory role.

TRAI

Created by the Telecommunications Regulatory Authority of India Act of 1997, TRAI is a regulatory agency that combines executive, judicial and policy-making functions. The Authority comprises one chairperson and not more than two full-time members and not more than two part-time members appointed for terms of five years. Usually, the members are retired senior bureaucrats, justices from the Supreme Court or the High Courts, or technocrats.

MSOs
The MSOs in India function as both cable system operators in some markets, as well as redistributors of programming to smaller independent cable systems that are their affiliates. In the latter sense, they are intermediaries between cable systems and the broadcasters. Indian MSOs rarely produce their own content, but some of the larger MSOs are vertically integrated with broadcasters. There are eight main MSOs, with Wire and Wireless India (formerly Siti Cable) owned by Zee Entertainment Enterprises, Hathway, Incable, Chennai-based Sumangali Cable Vision and the smaller regional player Ortel being some of the largest. Zee Entertainment Enterprises, the corporate parent of Wire and Wireless India in the foremost broadcaster in India with an impressive line-up of very popular cable networks.

Local cable operators: India has an enormous number of small cable operators, many of them individually owned small businesses serving as few as 300-400 homes. Recent estimates put the total number of independent local cable operators (LCOs) at 60-70,000, with The Cable Operators Federation of India, the main lobbying group for the local cable operators, claimed a membership of 23,000 operators. These collectively serve about 70 percent of the total market of 87 million cable homes. The rest of the market is served directly by cable systems owned by the major MSOs. Local cable operators do not have in-house programming capabilities, nor do they generally negotiate directly with broadcasters for programming rights. Instead, most local cable systems rely on affiliation agreements with the MSOs to obtain bouquets of programming. For example, Wire and Wireless India (formerly Siti Cable), the largest MSO has 4000 local cable affiliates (Zee Entertainment, 2006).

Broadcasters: India’s broadcasting space has a number of public and private television program providers, including both terrestrial and satellite providers. For long dominated by the state-owned (now corporatized) Doordarshan, Indian television now has multichannel broadcasters such as Zee Entertainment Enterprises (formerly Zee Telefilms) and Rupert Murdoch’s Star Television.

Consumers: Consumer activism and advocacy in India is a relatively recent phenomenon, with organized groups emerging only in the 1960s. As a result of these early efforts, a Consumer Protection Act was passed in 1986 putting in place some protections against unfair business practices and creating consumer disputes courts at the district, state and national levels. However, the track record of these courts has been far from perfect and the overall level of consumer protection in the country remains abysmal. On the CAS issue, in the absence of a national consumer rights movement, advocacy has often been taken up by neighborhood groups called Residents’ Welfare Associations, especially in the big cities such as New Delhi. While not lacking in energy, these groups have rarely been able to speak with one voice on any issue.

Courts: India has a multi-tier judicial system, with the Supreme Court of India at the national level, the High Courts at the state level, and District and Sessions Courts at the district level. Key decisions on CAS were taken by the Delhi High Court and the Madras High Court, based respectively in New Delhi and in the southern city of Chennai. In addition to the courts, the Telecommunications Disputes Settlement and Appellate Tribunal (TDSAT) is a specialized appellate tribunal created under Article 14 of the TRAI Act, as amended by the Telecom Regulatory Appellate Authority of India
(Amendment) Act of 2000. The three-member Tribunal adjudicates disputes between a telecommunications licensor and licensee, or between service providers, or between service providers and consumers, and is also empowered as an appellate authority for any decision or order of the TRAI.\textsuperscript{17}

6.2. **THE ORIGINS OF CAS**

Until 1992, there were practically no cable systems in India except a few satellite master antenna television (SMATV) systems in the remote corners of the country. The arrival that year of pan-Asian satellite broadcasting pioneered by Hong Kong-based Star TV contributed to a huge increase in the popularity of cable. However, most systems that emerged during this period were small-scale, low-quality neighborhood networks concentrated in the densely populated urban areas, carrying programs that were often pirated from satellite networks or broadcasters (Jayakar, 1994). The chaotic nature of this fledgling industry prompted parliament to legislate the Cable Television Network (Regulation) Act of 1995, requiring registration of all cable operators, and extending to cable the government’s broadcast programming and advertising codes.

The 1995 Cable Act marked a significant departure from prior practice in Indian media regulation. First, the formalization of one nation-wide registration system for cable operators ended the legal ambiguity surrounding the entry of private actors into Indian broadcasting, which had been dominated till then by a government-owned monopoly broadcast network. Second, by extending the broadcast programming and advertising codes to cable, the Act was labeling cable as primarily a medium for the retransmission of audiovisual programming. The legal consequence of this was to place cable under the regulatory ambit of the Ministry of Information and Broadcasting (MIB). As the account below makes clear, this choice was fateful, since the MIB was not well-equipped to regulate cable, resulting in controversy and legal challenges.\textsuperscript{18}

The movement toward a conditional access system began with a task-force appointed by the MIB in September 2001 to explore the possibility of addressable cable. Factors behind the move were complaints from consumer groups of large and unpredictable rate increases for cable service, and from program providers that cable systems routinely cheated them of royalty payments by understating the number of subscribers accessing different cable networks (Task Force, 2001). The Task Force had members from private commercial broadcasters (represented by the Indian Broadcasting Federation); cable multiple system operators (MSOs); program providers; small cable operators; an official from the Ministry of Consumer Affairs; consumer activists and technical experts. In its report presented at the end of December 2001, the commission recommended that the 1995 Cable Act should be amended to make an addressable cable system mandatory for pay channels, while allowing consumers to access a “basic tier” of free-to-air programming without a set top box. The price of the basic tier should be regulated by the government, while the composition and pricing of the pay channels and their bundling into “bouquets” would be left to market forces (Task Force, 2001).

Armed with the task-force report, the MIB tabled a proposal for amending the 1995 Cable Act before the cabinet of ministers, which approved it on May 7, 2002 (CAS gets union cabinet clearance, 2002). Accordingly, a bill was introduced in parliament and was passed by both upper and lower houses by December 2002, with relatively little
parliamentary opposition.\textsuperscript{19} It amended the Cable Act adding a new section 4A that mandated the “transmission of programs of a pay channel through an addressable system [hereinafter referred to as Conditional Access System (CAS)].”\textsuperscript{20}

As the bill was working its way through parliament, key stakeholders came out in favor of or against the measure. On one side, in favor of CAS, were consumer groups and cable MSOs—an uneasy alliance given that one of the motivators for CAS was consumer complaints against local cable operators for hiking subscription rates, and many cable operators were aligned with MSOs through direct ownership or distribution arrangements.\textsuperscript{21} Consumers were primarily motivated by the prospect of lower cable bills. But MSOs too saw advantage in CAS, expecting it to level the playing field for themselves against program providers,\textsuperscript{22} and protect them against unpredictable royalty rate increases by the latter.\textsuperscript{23} On the other side, in opposition to CAS, were the program providers: but differences of opinion soon emerged between the more popular advertising-funded networks and the pay networks, respectively led by Zee TV and the Hong Kong-based Star TV group (Zee TV chieftain Subhash Chandra backs government’s CAS initiative, 2002; IBF move to oppose CAS does not constitute voice of broadcasting fraternity: Sahara TV, 2002).\textsuperscript{24} With Zee TV coming out publicly in favor of CAS, the Indian Broadcasting Federation representing the program providers too fell in line.\textsuperscript{25}

Thus, by December 2002, it appeared that the MIB had achieved all of its policy and political objectives. In the space of a little over a year, the Ministry had navigated the cable amendment through India’s byzantine bureaucracy, obtained parliamentary approval even in the opposition-dominated upper house, convinced the electorate of its pro-consumer credentials, and quelled dissent from powerful industry players. But the controversy was far from being laid to rest. Initial rulemaking by the MIB pursuant to the cable amendment was announced in early in 2003 (MIB, 2003a) requiring cable operators in the four major metropolitan areas of Chennai, New Delhi, Kolkata and Mumbai to transmit/retransmit programs of all pay channels through an addressable system within six months, i.e. by July 15, 2003. The expectation was that once CAS was successfully implemented in the four major metros in this “pilot” phase, it would be extended over the rest of the country.

\textbf{6.3. CAS STAGNATES}

But as details began to emerge about the proposed system from the government and from the media, the firestorm of controversy was reignited. Cable operators complained about the unavailability and high cost of set-top boxes, lack of technicians trained in installation, and insufficient time for the negotiation of new programming contracts. The cable operator constituency essentially split in two, with the larger MSOs and affiliated operators continuing to be in favor of CAS, while smaller systems switched to an opposing stance. Consumer groups, once the staunchest supporters of CAS, also began to voice apprehensions about the pricing of cable networks, the financial outlay for equipment such as set-top boxes and the additional fees that cable operators may impose for equipment rentals. All of these complaints were related directly or indirectly to, and compounded by, the short time frame for the transition—six months. With practically no cable system ready to implement CAS by the prescribed July 15 deadline, the MIB had no choice but to extend the deadline by two and a half months to
September 1, 2003 (MIB, 2003b). In another climb-down, the MIB conceded that CAS would not be implemented throughout the four metros, Chennai, New Delhi, Kolkata and Mumbai, but only in selected areas within these cities.

But even this extension proved inadequate to effect the transition. Opposition from small cable operators was especially stiff in the capital city of New Delhi. With the extended deadline only hours away, the MIB knuckled under and officially withdrew the implementation of CAS in the capital territory (MIB, 2003c). In Kolkata and Mumbai too, opposition from city officials effectively aborted the move to CAS even though legally the requirement was still in place. The only metro where CAS became operational on September 1 was the southern city of Chennai (Chennai only taker for CAS, 2003).

Both supporters and opponents of CAS now moved their battles into court. On a pro-CAS petition filed by MSOs and some MSO-affiliated local cable operators in the Delhi High Court, the justices ruled on December 4 against the Ministry, and quashed the government notification withdrawing the implementation of CAS in New Delhi (CAS ball back in government court, 2003). CAS opponents had no success. A public interest case26 filed by the Consumer Coordination Council, a consumer advocacy group, was rejected by the Delhi High court on December 26 (Consumer Coordination Council v. Union of India, 2003). The Court ruled that the government should within a period of three months assess and take remedial measures for “all the loopholes, difficulties of consumers, effects of implementation and problems, if any, arising out of the implementation” (quoted in MIB, 2004). With no alternative but to implement CAS, the small cable operators (non-MSO-affiliated) signaled their displeasure by temporarily withdrawing pay channels from their systems in New Delhi on December 15: since the law stated only that all pay channels shall be delivered over an addressable system, they would adhere to the letter of the law by not offering any pay channels at all. But a public outcry soon forced them to reverse course and offer pay channels again.

With controversies and legal difficulties showing no signs of abating, the government abruptly decided to remove the MIB from direct supervision of the CAS issue. The most immediate catalyst of this move was the Delhi High Court’s December 26 ruling on the civil writ petitions, in which it had opined that “there has to be some regulatory body in terms of the synopsis of comments which have been filed by the respondent to see [to] the implementation” (TRAI, 2004). The Telecommunications Regulatory Authority of India (TRAI) appeared to be a likely candidate. Accordingly, the government issued a new notification on January 9, 2004, transferring authority over aspects of CAS from the MIB to TRAI (MCIT, 2004a). The notification expanded the definition of “telecommunications services” under Section 2 of the TRAI Act to include broadcasting and cable services as well, thus transferring cable regulation to TRAI (MCIT, 2004a).27 The same day the Ministry of Communication and Information Technology (MCIT) specified the additional functions assigned to TRAI: implementation of CAS; the determination of the maximum time allowed for commercials on pay channels as well as other channels; and the specification of norms for determining the rates for pay channels and the periodicity of rate revisions (MCIT, 2004b).28

Soon after this official notification, TRAI issued a call for consultation to the principal stakeholders in the cable industry to begin its own rule-making process.29 The note identified a set of eleven issues on which TRAI sought comments, principally dealing
with the rates that consumers will pay to cable system operators, and the sharing of pay channel revenues between local cable operators, MSOs, and broadcasters.\footnote{For the first time, a government notification differentiated between CAS areas (the selected regions within the four major metropolitan areas where CAS was expected to be introduced in the near future) and the non-CAS areas (all other regions of the country, including regions within the four major metros where the MIB’s September 2003 order had excluded the implementation of CAS).} The consultation note requested comments to be filed with TRAI by January 30, 2004, just a little over two weeks after the note was publicized. On the same day that the consultation note was released, TRAI announced the Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004 stating that in the interim period until a final determination of rates was made, the charges paid by cable subscribers to cable system operators, by cable operators to MSOs, and by cable operators and MSOs to broadcasters will be capped at the rates prevailing on December 26, 2003, the date of the Delhi High Court’s order (TRAI, 2004c). For most territories, the basic cable rate was Rs. 72 per month (approximately $1.50 at the then-prevailing exchange rate), while the rate inclusive of pay channels could be approximately Rs. 200 (about $4.20).

On February 23, 2004 TRAI produced its Interim Recommendations, based on the comments received from various stakeholder groups such as cable operators, broadcasters, MSOs and consumers (TRAI, 2004). Given the complexity of the policy choices, TRAI recommended that the implementation of CAS be denotified or kept in abeyance indefinitely until all aspects are finalized. Accepting this recommendation, the government withdrew all its prior notifications on CAS with effect from February 27, 2004 (MIB, 2004). In April 2004, TRAI produced another comprehensive Consultation Paper, No. 9 of 2004, summarizing feedback from all stakeholders, examining addressable cable systems and cable price regulation in foreign countries, and identifying a host of issues to be resolved before a final CAS notification could be produced (TRAI, 2004e). But in spite of the voluminous information collected, progress on CAS implementation was effectively stalled. One newspaper declared that the “issue had finally been buried” (Implementation of CAS put off indefinitely, 2004).

But the critics of CAS had been too hasty in composing its epitaph. In the southern city of Chennai, the only metro to make the transition to CAS, local MSOs were up in arms at the indefinite postponement of the system because they had already made substantial investments in their networks and ordered set-top boxes to supply to consumers. One of these local companies, Sumangali Cable Vision, along with the Cable TV Operators Welfare Association of Tamil Nadu\footnote{And two others filed four writ petitions in the Madras High Court and obtained a stay on the implementation of the federal government orders. This stay ensured that CAS would continue to be operational in Chennai, while no other place in the country made the transition.} and two others filed four writ petitions in the Madras High Court and obtained a stay on the implementation of the federal government orders.\footnote{Meanwhile, TRAI produced a series of tariff orders in 2004-2006 supplementing the original Telecommunication (Broadcasting and Cable) Services Tariff Order (the “First Tariff Order”), which gradually put in place a rate regime for cable without effecting any forward movement on CAS. The first of these supplementary orders was the so-called “Second Tariff Order” of 2004, which specified rates for new pay channels and for existing free-to-air channels relaunched as pay channels. TRAI explained that these pricing regulations were taken to allow cable service providers the flexibility to introduce new pay channels and to ensure that the rates remained competitive with the rates paid by consumers for basic cable services.}
new pay channels while protecting consumers by capping rates at December 2003 levels. In November 2005, TRAI issued a new Tariff Order amendment initiating an inflation adjustment to the price caps (TRAI, 2004h). Simultaneously, TRAI clarified that the cable price caps would remain in place only until competition developed in the market, for instance from DTH. Eventually, a total of eight amendments to the Second Tariff Order were issued. The last of these, issued in October 2007, is worthy of special mention. It contained new regulations on the per subscriber rates that MSOs would be required to pay broadcasters. Broadcasters were also required to offer a la carte the networks they earlier offered as a bundle to the MSOs and cable systems.\textsuperscript{36} TRAI was moving a la carte pricing, originally meant only for the retail pricing of cable networks to subscribers, “upstream” to the program provider’ distribution of networks to cable operators.

Despite these frequent regulatory directives, no actual movement on CAS implementation was witnessed for more than two years since cable was brought under TRAI jurisdiction. Impatient with this, a group of MSOs led by Hathway Cables again approached the Delhi High Court to seek a time-bound implementation of CAS. On March 10, 2006, the Court ruled in favor of the plaintiffs and directed the federal government to implement the CAS within four weeks in the three metros of Mumbai, Kolkata and Delhi (\textit{Hathway v Union of India}, 2006). In a strongly worded judgment, Judge Vikramjit Sen wrote that “The government has palpably ignored Court Judgments/Orders of two Division Benches of this Court and two Learned Single Judges of the High court of Madras and has followed the advice of the TRAI, which the Constitution does not permit. … The failure to implement CAS tantamounts \textsuperscript{sic}, prima facie, to contempt of the Orders of this Court as well as of the High Court of Madras.” (\textit{Hathway v Union of India}, 2006). With not many options left, the government filed an appeal requesting an extension of time for implementation up to 31st January 2007.\textsuperscript{37} On 20\textsuperscript{th} July, 2006, the Court ordered an extension of the implementation deadline to 31st December 2006. On July 31, the government issued a new notification identifying the areas in the three major metros where CAS would be implemented with effect from 31st December 2006 (MIB, 2006). In Chennai, the fourth metro, CAS was already in force; therefore it was not a subject of these new orders. This—limited CAS implementation in selected areas of the four major metros—is the status quo as of this writing.

7. COMPARATIVE ANALYSIS

Government decisions and activities are shaped collectively by organizations that “bear tracks of their own history” (North, 1990, p. 114). Policies and the processes by which they are framed are guided by constitutions, political institutions, state structures, state-interest group relations, and policy networks. Simply put, the institutional approach argues that history matters. Building on the review of China’s and India’s uneven path to policymaking in the two cases reviewed, we present some lessons that can be learned from these experiences.

First, the level of involvement of government in the policy making varies significantly due to different institutional arrangement. In China, government agencies, with little challenges from other stakeholders, lever the policy making to compete for more power
and resource, while, in India, government is less aggressive because of constraints posed by the political system.

In China, the model that evolved has been labeled as centralized inter-ministerial competition. In the case of IPTV, both the SARFT and the MIIT (formerly MII) have striven to retain control over this emerging industry. Inter-ministerial competition has usually required intervention from the top leadership to settle disputes. Thus, policy change always follows the institutional change. For example, SASAC, established in 2003 as the new supervisory body for state-owned telecommunications carriers, soon emerged as their champion in policy conflicts. SASAC was to some extent instrumental in forcing the SARFT to block the market-driven growth of IPTV. A second example is the 2008 super-ministry reform, which strove to streamline government functions and strengthened macro-economic regulation. It restarted the nearly stagnant convergence process with a strong nudge from the top leadership. It is worth noting that institutional change and policy change do not occur simultaneously; there is a consistent pattern that policy change more often than not lags behind institutional change. Clearly, the macro institutional change has been the major driving force for the policy change that follows. In addition, since all the major players in China’s information industry are state-owned enterprises, the real regulatory power of both the MIIT and the SARFT are rather limited contrary to what is generally expected. Given the fragmented institutional arrangements, it is not surprising and, as a matter of fact, politically expedient to effectuate major policy changes through radical change in institutional arrangements. These settlements are initiated and directed by the top leadership.

On the other hand, in India, where ministerial decision-making faces unprecedented challenges from various stakeholders, particularly the courts, government agencies seem to be less aggressive in the policy making process. The MIB, as an old-line ministry more attuned to the public service broadcasting era, was not accustomed to its new role as a regulator. For instance, it has no institutional mechanisms for regular consultations with industry stakeholders though the CAS proposal itself emerged out of an industry-government joint task force. It also betrayed a lack of understanding of the technical complexity of the transition, and possibly because of that a tendency to set unrealistic deadlines. The MIB’s persistent legal difficulties eventually led to a transfer of authority over CAS to TRAI. However, having witnessed the legal and public relations problems of the MIB, TRAI was a reluctant regulator with regard to CAS, as evidenced by one of its first acts: to recommend an indefinite postponement of its implementation. TRAI nevertheless launched a consultation process, in keeping with its statutory responsibility to ensure transparency in decision-making. But the only outcome in 2004-2006 was a series of tariff orders that incrementally put in place a price cap regime for cable subscription prices and affiliate fees. Eventually, only a series of unambiguous court judgments could induce TRAI to act in the second half of 2006; even then, coverage was limited only to select territories in the four major metros.

Second, in China’s top-down, centrally controlled political system, policy objectives seem to be consistently held and programmatically advanced, but only insofar as they advance the legitimacy and power of the state. In India’s case, the more open, participatory and confrontational style of policy-making creates more tentative, changeable and, weaker policies, but the outcomes are more amenable to consumer interests.
It has been argued that the main objective of telecommunications reforms in China was to enable the sector to play a leading strategic economic role and to deliver economic benefits to the Chinese people in order to legitimize the Communist Party’s leadership (Roseman, 2005). Every telecommunications policy objective was instrumental in confirming the legitimacy of the state: network deployment because it would enable the system to serve all people; increasing revenues because it would contribute tax income for the government; network security and sovereignty because it would enable telecommunications to serve the political needs of the Party and the government (B. Zhang, 2002).

This continuity is evident in the IPTV case as well: every policy choice seems to be guided by the goal of economic expansion. The Chinese government has favored digital cable instead of IPTV, because the latter is essentially a value-added service of the existing telephone network with less revenue potential than digital cable. Economically, the government has consistently sought to create viable inter-platform competition. It has not deviated from the goal of modernizing the cable industry, although little progress has been made due to complex reasons. The newest convergence plan too reiterated the goal of consolidating China’s fragmented cable networks into a few big ones which will be better positioned to compete face-to-face with telecommunications operators after the three-year trial period. Politically, every institutional change appears to be part of a singular effort to remove the bureaucratic obstacles for network expansion. As early as 1998 during the first governmental reform, the Chinese leadership had tried to put both telephone and cable networks under the same regulatory umbrella. The establishment of the SASAC further disconnected the telecommunications carriers from its regulator, the MII. Had the corporatization of the cable industry proceeded faster, it is possible that the cable industry too would have been disconnected from the SARFT by now. As stated by the State Council, the new convergence plan aims to create a new economic growth area and was regarded as one of China’s strategic responses to the global financial crisis (State Council, 2010). Clearly today, as it was 20 years ago, economic growth is still the top priority of the Chinese government.

While the driving impulses remain the same, so do the impediments. Concern for the national security and ideological control are probably the most powerful arguments made against specific policies. In the IPTV case, this argument was made particularly by the SARFT. Since cable networks are traditionally affiliated with television stations in China, the cable industry is essentially part of China’s propaganda system. Although the policy of separating content from conduit was formulated in 1998 in order to bypass the sensitive propaganda issue, little headway has been made partly because of the low government-mandated price has prevented the cable industry from generating sufficient revenue. If the cable industry need to continue as one of the most important propaganda outlets for the Party's voice, it needs to charge a low subscription fee to make it accessible to the mass audience—but this prevents the industry from raising the huge capital investments required to deploy advanced information services. IPTV, which supposedly has the potential to bypass the censorship system, clearly has not invited warm encouragement from the government.

In contrast to the singularity of purpose evident in the Chinese case, policy choices in India have been contingent and subject to reverses. Originally, CAS was billed as a
consumer friendly measure that will give subscribers more choice, and help control cable subscription prices that were spiraling out of control. It was also expected to introduce much needed transparency into the industry and permit more accurate subscriber counts and allow broadcasters to recover a fair share of revenues through cable affiliate fees. As the chief government agency responsible for broadcasting and cable and the originator of the CAS proposal, it fell to the MIB to spearhead its implementation. However, the MIB proved to be completely unequal to the task. Given its orientation toward broadcast content, the MIB saw cable regulation in terms of programming and advertising codes. It proved completely inadequate to the task of governing a technology system, and set unrealistic deadlines for the transition that gave insufficient time to cable operators to upgrade their systems, procure set-top boxes and educate subscribers. The MIB’s initial haste in CAS implementation was compounded by the lack of well-defined consultation mechanisms. The MIB, as an old-line ministry more attuned to the public service broadcasting era, has not developed the institutional policies and procedures for its new role as a regulator.

While TRAI’s decision-making mechanisms are clearly superior to those of the MIB, its role in CAS too is open to criticism. First, in spite of TRAI’s statutory status as an independent regulatory agency capable of interpreting and implementing the law on its own initiative, the Authority displayed a reluctance to act without political directive. Once the new government that came to power in the 2004 elections stepped back from its active backing for the CAS initiative, TRAI too ceased its rulemaking efforts preferring to gradually put in place a price cap system for cable rates. This was perhaps prudent, but it made TRAI a temporizing force in the CAS debates; it also defeats the advantage of having an independent regulator take the lead in implementing policies and programs. Second, TRAI too was no immune to the MIB’s tendency to set unrealistic deadlines. In its first request for comments on the CAS issue, TRAI gave stakeholders a period of two weeks to submit comments. Third, TRAI betrayed in some instances a tendency to issue tariff orders without due consideration of all aspects, only to issue hasty revisions later on the receipt of complaints from stakeholders. While this demonstrated a healthy openness to outside inputs, TRAI’s decision-making processes may benefit from more deliberation in the run-up to decisions.

8. CONCLUSIONS

In China, the model that evolved has been labeled as inter-ministerial competition, marked by deep-rooted political involvement, frequent bureaucratic bargaining, and weak legal institutions. China’s telecommunications decision-making is much more affected by the macro level political rearrangement. In India, confronted by an increasingly litigious environment and a more fractious interest group culture, ministerial decision-making faced unprecedented challenges and responded by creating new regulatory institutions, and moving towards more transparent and participatory decision-making. Nevertheless, numerous challenges remain, including institutional capacity and excessive regulatory deference to political authority. Both models succeed to an extent in broadening the participation in telecommunications policy-making, but do so using different procedures and by involving different interest groups. We conclude by evaluating the experiences of the two countries and suggesting what they can learn from each other.
First, both countries should pay more attention to the importance of public communication and awareness-building preparatory to major policy initiatives. In India’s case, much of the confusion surrounding the CAS issue was a result of lack of communication, compounded by contradictory reports in the media. The government could have anticipated many questions (for instance about the cost of set-top boxes) and taken preparatory steps to allay consumer concerns. Haste in the initial stages, followed by long periods of inaction, did much to turn subscribers against what was originally billed as a consumer-friendly initiative. For instance, it has no mechanisms for regular consultations with industry stakeholders. It has a tendency to govern by fiat, which is less effective on highly contested policy questions. TRAI in contrast has its “consultation note” process—similar to the FCC’s NPRMs—through which it periodically solicits comments from stakeholders, and releases them to the public for further discussion. Statutorily, TRAI is legally obligated to ensure transparency in its decision-making. As a regulatory agency, it also has the mechanisms for summoning witnesses and seeking formal testimony from individuals and firms. Thus, contrasted to the MIB, TRAI functions in a richer and more broad-based information environment.

Whereas in China, telecommunications policy making is largely still an in-house exercise within the government. Informal institutions, such as interest groups and public opinion, mainly play a limited role via bureaucratic bargaining and public criticism, which are usually sporadic and ineffectual. Public media is one form of public expression. Generally speaking, there is heavy censorship imposed on the media in China and most programming critical of China’s government or policy is not allowed to be broadcast. There are occasionally programs that investigate problems that are less sensitive and discuss them in a critical way. Fortunately, telecommunications policy making has become one of the most openly discussed topics in recent years. However, since there is no formal mechanism to convey messages from the major non-governmental stakeholders to the government, China’s policy making is still mysterious to the outside observer. Thus, the policies made from the top are often centered on the interests of the state, instead of the consumer. Such policy, to some extent, might prove to be ineffective because of resistance from the public, as exampled by the slow progress made in the digital TV program.

Second, a new regulatory approach to replace the old “silo” model is much needed in both countries. Historically, broadcasting and telecommunications are regulated differently based on the nature of technologies. However, with the advent of new technologies, both cable and telecommunications networks are now readily available for broadband applications. There is now no clear technological divide between broadcast and telecommunications networks. Both China’s SARFT and India’s MIB, given their orientation toward broadcast content, tend to regulate IPTV/cable in terms of programming and advertising codes and lack expertise in regulating a technology system. Similarly, the MIIT and the TRAI are somewhat reluctant, if not deterred, to regulate the content-rich industry, although they are experienced in regulating networks. As we observed in China, propaganda concern is the biggest obstacle that prohibits the MIIT to take control over IPTV. In India, where censorship control in comparatively loose, the TRAI displayed a reluctance to act without political directive.

Despite obstacles, convergence is inevitable. Although the formal political structures are different, the same conundrum presents itself in both China and India. The temporary
placement of IPTV under the SARFT and CAS under the TRAI does not solve the fundamental issue of how to regulate converged service. New regulatory approaches are needed in both China and India. One solution might be to adopt the so-called layered model, which replaces the service-based approach in the current model with an approach based on the technical nature of the underlying, multi-purpose networks used to provide those services. Irrespective of which alternative is chosen, it is clear that some kind of major, possibly radical, reform is needed in the structure of the regulatory agencies to adapt to technologies like IPTV and CAS, and that given the global momentum of these technologies, these fundamental decisions need to be taken sooner rather than later to give direction to the market and the public.

Third, some institutional adjustment is necessary in both countries. In India, the courts have a long history of judicial independence, and activism in public causes. In the case study, the courts took an active role in promoting CAS, haranguing and threatening the government to secure the speedy implementation of the CAS amendment. However, they have also shown a tendency to order implementation by tight and unrealistic deadlines. While some of the Court’s impatience is rightfully due to the government interminable delays and obfuscations, it may also be caused by a lack of appreciation for the technical and managerial challenges involved. Thus, courts better versed in the complexities of the industry and the specifics of policy might be able to render more realistic judgments: the TDSAT, created as an appellate tribunal in 2000, is a welcome development in this respect. It may also be desirable to designate one of the High Courts or a special bench in one of the High Courts to exclusively hear appeals on telecommunications policy.

In China, a more conducive institutional adjustment is the creation of an independent regulator. The 2008 government reform plan, while acknowledging the problems of the traditional “silo” model in regulating converging services, continues to leave telecommunications and cable to different regulators mainly due to ideological concerns. A likely institutional change is creating a new independent regulator to supervise both telecommunications and cable; thus, IPTV will naturally fall into its jurisdiction. There is a common misunderstanding in China that an “independent regulator” is some renegade agency outside the control of the state and the Party, which is inconsistent with their culture and their guiding governmental policies (Taylor & Zhang, 2005). Ironically, one of the primary objectives of the formation of the former MII was to separate the government from the telecommunications carriers, which, to some extent, was the effort made by the Chinese government to meet its WTO commitment. Since the SARFT in fact does not own any cable operators, it is theoretically easier to delink them by simply transferring cable operators to the SASAC, leaving SARFT as a content-only regulator.

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2 Theories not listed here include the institutional choice models; Advocacy Coalition Framework (ACF); policy diffusion and lesson-drawing; constructivist frameworks, the policy domain models, etc. See Sabatier (1999) for a broad survey.

3 It must be highlighted that the function of the Communist Party often intertwines with that of the government. In addition, the authority of different ministries might overlap with each other and some administrative powers are shared by central and local governments.

4 Since the convergence is primarily a domestic issue, the impact of foreign institutions is not included in the discussion.

5 As a matter of fact, all ministers are the members of the Political Bureau or Central Committee of the Party. In fact, the Political Bureau, the Party’s highest policy making body, is functionally organized to parallel the government ministries, with members specializing in the various governmental activities (Wang, 2002).

6 Founded in 2003.

Usually, monthly subscription fee for digital TV service is higher than that of regular cable service.

Initially, the users needed to purchase their own set-up boxes. Later, with the aid of a government subsidy, operators usually supplied the set-up boxes for free and were allowed to charge a higher monthly fee to recover the cost (Z. Yan, 2010).

For example, China Development Bank, which had an agreement with the SARFT to finance the digital TV transition project, told the press that it had tremendous difficulty evaluating applications from numerous operators and urged the SARFT to make a coherent national plan ("CDB Falls Into Trouble in Making Loans to Cable TV Industry," 2005).

By the end of 2004, European’s DVB-T had gained 9 contracts in China, while the domestic Tsinghua University’s DMB-T had signed 7. Shanghai also began to test trial Shanghai Jiaotong University’s ADTB-T standard.

CSSRI is a government think tank.

One study has pointed out that the reform of the NDRC, which was to the key to remaking the Chinese state into a macroeconomic regulator, was lacking in the 2008 reform (Yeo, 2009b).


Ministers have sometimes been of junior rank, called Ministers of State, such as Priya Ranjan Das Munshi who led the Ministry 2005-09.
Chapter IV, section 14(a) of the TRAI Act, as amended. The full text of the TRAI Act, as amended by the Telecom Regulatory Appellate Authority of India (Amendment) Act, 2000 is available at http://www.tdsat.nic.in/NEW%20compendium/Vol.1%20Part-1%28bare%20acts%29.htm

A more appropriate choice might have been to place oversight of cable television an expert regulatory body such as the Telecommunications Regulatory Authority of India [TRAI], but this option was not available to legislators in 1995, because TRAI was created only in 1997 by the Telecommunications Regulatory Authority of India Act.

The Cable Television Networks (Regulation) Amendment Bill, 2002 was passed by the Lok Sabha, the lower house on May 15, 2002, and by the Rajya Sabha, the upper house on December 10, 2002. While passage through the lower house was relatively smooth, a vote on the bill in the upper house was delayed a few times due to extraneous events. Also, unlike the lower house where the government had a majority, the upper house was dominated by the opposition. But eventually, the upper house too passed the bill with 15 of the 16 speakers in the debate supporting the bill. (CATV Act CAS amendment gets Lower House’s nod, 2002; CAS bill passed, 2002; The Rajya Sabha CAS debate: A report, 2002)

An addressable system is defined as “an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorization made, on the choice and request of such subscriber, by the cable operator for that purpose to the subscriber” (MCIT, 2004a).

One tactic adopted by the MSOs/local cable operators may have alerted consumers to the fragility of this uneasy coalition: after the cable amendment bill failed to come to a vote in the upper house of parliament repeatedly despite being listed on the agenda (though this was for unrelated reasons), MSOs in the capital New Delhi announced that their local distributors would implement a one-hour blackout of cable service during prime time, to bring pressure on the government to enact CAS quickly. Delhi cable TV operators plan TV blackout as protest against CAS delays, July 18, 2002 (visited August 16, 2009), <www.indiantelevision.com/headlines/y2k2/july/july100.htm>. This was soon emulated by MSOs in Mumbai, another large metro market. Mumbai MSOs join Delhi colleagues in 1-hour blackout, plan indefinite stir from 24 July, July 22, 2002 (visited August 16, 2009), <www.indiantelevision.com/headlines/y2k2/july/july118.htm>.

Program providers are the large terrestrial and satellite-based television program producers and distributors. For more detailed description and analysis, see infra Section 5, Incremental or non-incremental change?

Popular advertising funded networks may be expected to survive the implementation of CAS relatively unscathed, because their popularity would ensure continued subscription by a large number of consumers. But less popular advertising networks would lose subscribers if they were no longer offered as part of a popular bundle. Pay networks on the other hand, might potentially benefit from CAS, in the sense that the system would eliminate the cable systems’ underreporting of subscribers and increase their royalty revenues. But they too would be negatively impacted by the loss of subscribership and the prohibition of bundling under a la carte pricing. These calculations were also complicated by the fact that several networks used a combination of pay- and advertising- funding. Thus, only the most popular advertising funded program providers welcomed CAS: Zee TV and Sahara TV were among this group, which broke with the rest of the program providers and came out in support of CAS early (Zee TV chieftain Subhash Chandra backs government's CAS initiative, 2002; IBF move to oppose CAS does not constitute voice of broadcasting fraternity: Sahara TV, 2002).

The concession came only days before the CAS amendment passed in the upper house of parliament, when further opposition might have appeared futile. IBF comes out in support of CAS, December 5, 2002, (visited August 16, 2009) <www.indiantelevision.com/headlines/y2k2/dec/dec27.htm>

Public interest litigation in India may be filed by any individual, whether they are directly affected or not, or by the court itself in situations where a public interest is at stake. For a review of public interest litigation in India, see Cassels (1989).

Section 2(1)(k) of the TRAI Act, 1997 states that “telecommunication service’ means service of any description (including electronic mail, voice mail, data services, audiotex services, videotex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electronic, magnetic means but shall not include broadcasting services. Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.” The legislative intent here seems to be that, whereas broadcasting services in general or in toto may not be classified as telecommunication services, specific broadcasting services may be reclassified as telecommunications services. The government notification reclassifying cable service as a telecommunications service seems to conform to this legislative intent.
Section 11(1)(d) of the TRAI Act allows TRAI to “perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.”

Unlike an old-line ministry like the MIB that often administered by fiat, the TRAI is a regulatory body whose enabling legislation incorporates a requirement for transparency in decision-making. Chapter III, Art. 11(4) of the TRAI Act, 1997 states that “The Authority shall ensure transparency while exercising its powers and discharging its functions.” TRAI (2004c) quoted the said section when calling for comments and inputs from stakeholders.

The full set of issues were the following (1) the norms for fixing rates for cable subscribers, cable operators, MSOs for individual pay channels, bouquets thereof, and free-to-air channels, whether this should apply uniformly or differently to areas under CAS and non-CAS areas, and other principles for determining rates, including periodicity of revision; (2) regulation regarding rates of cable operators, including how frequently and by what maximum percentage the monthly cable charges should be allowed to change in non-CAS areas (3) principles governing the sharing of pay channel revenues between broadcasters, MSOs and cable system operators; (4) principles for laying down limits as to the extent of bundling of pay channels (5) terms and conditions for the sale/rental of set top boxes may to subscribers in CAS areas; (6) conditions under which consumers may return set top boxes sold or rented to them by service providers and ask for a refund; (7) compensation to be paid by cable operators to pay channel subscribers if transmission is interrupted for more than a specified portion of prime time (e.g. 10%) in a month or in the case of a sports channel, a similar portion (10%) of the time during an important sports event, and the principles for recovering this compensation from broadcasters, MSOs and local cable operators; (8) quality of service standards for cable operators, MSOs and broadcasters; (9) measures to increase competition, promote efficiency and encourage wider consumer choice; (10) measures for the development of broadcasting and cable services technology (including Direct-to-Home and Broadband); and (11) the maximum advertising time to be permitted per half-hour on free-to-air channels, whether these limits should be in reference to the tariffs for the channels; and whether the restrictions should apply uniformly or differentially to both CAS and non-CAS areas. See TRAI (2004c).

TRAI soon realized that the nationwide denotification of CAS by the MIB’s February 27 order would obviate the legal distinction between “CAS areas” and “non-CAS areas.” Accordingly, TRAI produced an amended tariff order on March 10, 2004 removing the distinction between CAS and non-CAS areas, and explaining that in the “erstwhile notified mandatory CAS areas where CAS was implemented, the Authority recognizes that CAS may continue on a voluntary basis,” but in all areas the ceiling shall be uniformly the rates prevailing on December 26, 2003 (TRAI, 2004d). A minor amendment was later introduced to account for new tax laws (TRAI, 2004f).

Tamil Nadu is the name of the state in which Chennai is located.


In an added twist, the government of the state of Tamil Nadu got itself impleaded as a party to the petition, and argued before the Madras High Court that the federal government’s notification indefinitely postponing CAS
throughout the country should become operational in Chennai as well. The Court on May 1, 2004 rejected the state government’s plea, arguing that the court did not find “any prima facie compelling reasons or overriding public interest which prompted the [federal] government to make a departure from the existing policy of implementation of the CAS in Chennai city. On the contrary, the petitioners have established that the impugned notification affected them and deprived them of some benefits which they had been enjoying in the past, and which they legitimately expected to continue until they are given valid reasons for withdrawal and the opportunity to oppose it” (quoted in *CAS to continue as court reject’s state’s plea*, 2004)

35 New pay channels could not be included in the pre-existing “bouquets” (bundles), but had to be offered as free-standing choices or as part of new bouquets including only other new pay channels. Rates for these new pay channels have to be commensurate with rates for comparable channels as of December 26, 2003. Total monthly consumer subscription prices could increase to the extent of the additional rates for the new pay channels. If a pay channel formerly part of the original bouquet is re-launched as a free-to-air channel, the price of the bouquet has to be reduced by the rate charged for the original pay channel (TRAI, 2004g).

36 In addition to the First and Second Tariff Order series, TRAI also produced a set of Interconnection Regulations during this period beginning with TRAI (2004i).

37 LPA No. 985/2006

38 For those who are not familiar with the Chinese political system, state-owned enterprises are often given a comparative political status. For example, major Chinese telecommunications carriers are regarded as “Vice-Ministry” level enterprises.

39 An example is TRAI’s amendment to the Second Tariff Order differentiating between residential and commercial cable subscribers (hotels, restaurants etc.), and fixing a different price cap for the latter. But when it was pointed out that TRAI’s action may have given legal sanction to commercial distribution of content not authorized by the broadcaster license holders, TRAI issued a new amendment clarifying that the price cap applied to “contractually agreed” subscription arrangements.