

IV

TELECOM DISPUTES: TDSAT JURISPRUDENCE



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CHAPTER 1

Origins and Establishment of TDSAT

1.1 The Institutional Gap in Early Telecom Regulation

The establishment of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) in 2000 addressed a fundamental institutional gap in India's telecom regulatory architecture — the absence of a specialised, independent forum for adjudicating the complex technical, commercial, and regulatory disputes that were proliferating as the sector liberalised. The Indian Telegraph Act, 1885 contained no specialised dispute resolution mechanism for commercial disputes between operators: such disputes were governed by the general civil court system, which lacked the technical expertise, the speed, and the regulatory understanding needed to resolve telecom-specific disputes effectively. The pre-TDSAT era was characterised by extended legal battles in civil courts and High Courts, with disputes sometimes remaining unresolved for years — a state of affairs that created commercial uncertainty and deterred investment.

The TRAI Act, 1997 in its original form conferred both regulatory and adjudicatory functions on TRAI, creating the structural conflict of interest described in Booklet II of this series. TRAI both set the rules and adjudicated disputes about whether operators had complied with those rules, which created the appearance — and sometimes the reality — of regulatory bias. Operators who had lost regulatory decisions made by TRAI were then required to bring challenges about those decisions before TRAI itself (exercising its adjudicatory function), rather than before an independent tribunal. This arrangement was clearly unsatisfactory and was the subject of repeated challenges before courts, which highlighted the natural justice problems with TRAI adjudicating disputes about its own decisions and regulations.

The TRAI (Amendment) Act, 2000 resolved this structural problem by establishing TDSAT through Part IIA of the TRAI Act. TDSAT was constituted as a separate tribunal with exclusive jurisdiction over: adjudication of disputes between licensors (the Central Government) and licensees; adjudication of disputes between service providers; adjudication of disputes between service providers and a group of consumers; and adjudication of appeals from directions, decisions, and orders of TRAI. This four-limbed jurisdiction — covering both horizontal disputes (between operators) and vertical disputes (between operators and the regulator or the government) — made TDSAT the primary forum for resolution of disputes of every kind arising in the Indian telecommunications sector.

1.2 TDSAT's Statutory Mandate and Objectives

Section 14 of the TRAI Act (as inserted by the 2000 amendment) specifies TDSAT's jurisdictional mandate in terms that have been interpreted broadly by the tribunal and confirmed by the Supreme Court. The phrase "disputes arising between a licensor and a licensee" covers not only contractual disputes about licence conditions but also administrative law disputes about the government's exercise of its licensing powers — including disputes about licence fees, spectrum charges, rollout obligations, and licence revocation. The phrase "disputes between service providers" encompasses interconnection disputes, RoW disputes, infrastructure sharing disputes, and any other disputes between entities that hold telecommunications authorisations. The phrase "disputes between a service provider and a group of consumers" enables TDSAT to adjudicate class action-type consumer complaints in the telecom sector.

TDSAT's appellate jurisdiction under Section 14A — to hear appeals from "any direction, decision or order" of TRAI — is of enormous practical significance. TRAI's regulatory decisions (tariff orders, quality of service regulations, directions to specific operators) can all be challenged before TDSAT on grounds of unreasonableness, procedural unfairness, or ultra vires (acting beyond TRAI's statutory powers). The availability of this appellate review provides a check on regulatory over-reach and ensures that TRAI's exercise of its statutory powers is subject to independent judicial scrutiny. TDSAT's decisions on TRAI's regulations and orders are, in turn, subject to appeal to the Supreme Court under Section 18 of the TRAI Act on questions of law — completing the multi-tier judicial review structure for telecom regulatory decisions.

The establishment of TDSAT was also motivated by the efficiency objective of providing specialized, expedited resolution of telecom disputes. The Supreme Court and High Courts, while fully capable of resolving telecom disputes on legal grounds, are generalist courts without the sector-specific technical expertise needed to evaluate complex telecommunications engineering, economics, and regulatory issues. TDSAT was envisaged as a body with sector-specific expertise, capable of resolving telecom disputes more quickly and more accurately than general courts. The achievement of this objective has been mixed: TDSAT has accumulated considerable sector expertise over more than two decades, but its docket has grown enormously and resolution times remain longer than optimal for a commercially dynamic sector where regulatory uncertainty has immediate financial consequences.

1.3 Legislative History of the 2000 Amendment

The TRAI (Amendment) Act, 2000 was enacted after an intensive process of review of TRAI's functioning in the three years since its establishment. The Department of

Telecommunications had commissioned several reviews of TRAI's performance, and the Parliamentary Standing Committee on Communications had examined the TRAI Act's implementation in detail. The principal finding of these reviews was that the combination of regulatory and adjudicatory functions in TRAI was creating serious problems of natural justice and regulatory credibility — problems that were deterring investment and creating protracted legal uncertainty. The creation of a separate tribunal (TDSAT) was the central recommendation of these reviews, though the precise institutional design of TDSAT (its composition, jurisdiction, procedures, and relationship with TRAI) was the subject of considerable debate.

The 2000 Amendment also addressed several other issues with the original TRAI Act that had become apparent in practice. The amendment clarified the scope of TRAI's recommendatory functions, specifying more precisely the matters on which TRAI was entitled to make recommendations to the Central Government and the procedure for making and responding to those recommendations. The amendment also strengthened the provisions governing TRAI's information-gathering powers, enabling TRAI to require service providers to submit information and data necessary for regulatory purposes on a more systematic basis. These additional changes — in conjunction with the establishment of TDSAT — significantly improved the TRAI Act framework and created the institutional architecture that has broadly governed Indian telecom regulation for the past two decades.

CHAPTER 2

Jurisdiction, Powers and Procedure

2.1 Original Jurisdiction: Disputes Between Parties

TDSAT's original jurisdiction — the power to hear disputes brought directly before it by the parties, rather than on appeal from a lower authority's decision — is governed by Section 14 of the TRAI Act. The tribunal has original jurisdiction over: (a) disputes between a licensor and a licensee; (b) disputes between two or more service providers; and (c) disputes between a service provider and a group of consumers. These three categories of original jurisdiction encompass the most commercially significant disputes in the telecom sector. Category (a) — licensor-licensee disputes — covers all disputes between the Central Government (as licensor/authoriser) and a licensed operator, including disputes about licence fee computations, spectrum charges, licence conditions, and licence revocation. Category (b) — inter-service provider disputes — covers interconnection disputes, infrastructure access disputes, RoW disputes, and any other commercial dispute between operators. Category (c) — consumer group disputes — enables groups of consumers affected by a service provider's conduct (such as systematic billing errors or quality failures) to bring group petitions before TDSAT without the need for individual consumer litigation.

The requirement under category (c) that a dispute must involve a "group of consumers" rather than an individual consumer has been interpreted in TDSAT's procedural rules to require a minimum number of affected consumers to constitute a "group" for this purpose. Individual consumer complaints — as distinct from group consumer petitions — are not within TDSAT's original jurisdiction and must be addressed through the TCCR complaint mechanism (Consumer Court, National Consumer Disputes Redressal Commission, or the TRAI complaint redressal process). The boundary between individual and group consumer complaints is an important practical question for consumer advocates and operators' legal teams: a complaint about a tariff change that affects all of an operator's subscribers is clearly a group consumer matter appropriate for TDSAT; a complaint about a billing error affecting a single subscriber must go through the TCCR process.

TDSAT's original jurisdiction is exclusive for the matters within its remit: Section 15 of the TRAI Act bars civil courts from entertaining suits or proceedings in respect of any matter which TDSAT is empowered to determine. This exclusion of civil court jurisdiction is constitutionally valid as a legislative restriction on access to civil courts in favour of a specialised tribunal, subject

to the requirement that the tribunal provides adequate procedural safeguards and an effective remedy. The bar on civil court jurisdiction has been tested in several cases where operators have attempted to bring telecom disputes before civil courts (typically seeking urgent interim relief), with courts consistently upholding the exclusive jurisdiction of TDSAT and declining jurisdiction in favour of TDSAT.

2.2 Appellate Jurisdiction under Section 14A

TDSAT's appellate jurisdiction under Section 14A of the TRAI Act covers "any direction, decision or order" of TRAI. The breadth of this phrase has been interpreted broadly: TDSAT has appellate jurisdiction not only over TRAI's formal orders and tariff orders but also over directions issued under Section 13 of the TRAI Act, over decisions communicated in correspondence or through consultative processes that have the character of regulatory determinations, and — subject to important qualifications — over TRAI's recommendations to the Central Government. The qualification on appellate review of TRAI's recommendations is significant: the Supreme Court in *COAI v. TRAI*, (2016) 7 SCC 703 held that TRAI's recommendations are advisory and not binding on the government, and that TDSAT's appellate jurisdiction does not extend to reviewing the government's decision to accept, modify, or reject a TRAI recommendation.

The period within which an appeal must be filed before TDSAT against a TRAI order is thirty days from the date of the direction, decision, or order, subject to the power of TDSAT to condone delay if sufficient cause is shown. The limitation period for appeal is an important procedural constraint: operators who fail to challenge a TRAI order within thirty days may find their right to challenge extinguished. In the context of tariff orders — which operators may initially seek to comply with before assessing their full commercial impact — the thirty-day limitation period can create pressure to file protective appeals even before the full implications of an order are understood. TDSAT has generally been willing to condone delay in cases where operators can demonstrate that they acted reasonably and that no prejudice has been caused to the opposing party.

Appeals to TDSAT under Section 14A can be brought on a range of grounds: that TRAI acted beyond its statutory powers (*ultra vires*); that TRAI failed to follow the prescribed procedure (procedural defect); that TRAI took into account irrelevant considerations or failed to take into account relevant considerations (*Wednesbury unreasonableness*); that TRAI's decision was disproportionate; and that TRAI's decision was contrary to the constitutional rights of the appellant (constitutional challenge, which TDSAT can consider in the context of the specific application of TRAI's order). TDSAT cannot declare TRAI's regulations invalid on constitutional grounds — such challenges must be brought before the High Court or Supreme Court — but it

can decline to apply a regulation to the specific facts before it if doing so would violate the appellant's constitutional rights.

2.3 Powers and Remedies

TDSAT has broad powers to grant effective remedies in the disputes before it. In its original jurisdiction, TDSAT may: adjudge the rights of the parties; order specific performance of licence conditions or interconnection agreements; award damages for breach of regulatory or contractual obligations; issue injunctions restraining parties from continuing breaches; and make such other orders as are just and equitable in the circumstances. In its appellate jurisdiction, TDSAT may confirm, vary, or set aside TRAI's directions, decisions, or orders. TDSAT's power to set aside TRAI orders — and to direct TRAI to reconsider a matter with specific guidance on the correct legal approach — is the most powerful tool of appellate review, enabling the tribunal to ensure that TRAI exercises its regulatory powers consistently with the statutory framework.

TDSAT also has the power to award interim relief — orders made at the commencement of proceedings that preserve the status quo pending the final determination of the dispute. The power to grant interim injunctions (staying the operation of a challenged TRAI order pending the appeal) is commercially critical: where a TRAI tariff order would require an operator to implement significant price changes or other operational measures, an interim stay of the order preserves the commercial status quo while the legal challenge is determined. TDSAT applies the standard three-part test for interim relief: a prima facie case on the merits; balance of convenience in favour of relief; and irreparable harm if relief is not granted. The commercial significance of the tariff changes challenged often means that the balance of convenience and irreparable harm criteria weigh heavily in favour of interim stays.

2.4 Procedure before TDSAT

TDSAT's procedure is governed by the Telecom Disputes Settlement and Appellate Tribunal (Procedure) Rules, 2000, supplemented by TDSAT's own practice directions and orders. Proceedings before TDSAT are commenced by the filing of a petition, which must contain: a concise statement of the dispute or the TRAI order challenged; the specific reliefs sought; the legal grounds for the reliefs; and supporting documents and evidence. The petition is served on the respondent(s), who must file a counter within the time prescribed. The petitioner may file a rejoinder. After the close of pleadings, TDSAT hears oral arguments and considers the evidence, before delivering its order.

TDSAT has the power to take evidence and examine witnesses, but in practice most proceedings before it are decided on the basis of documentary evidence and written

submissions, with oral hearings focused on legal arguments rather than factual disputes. The procedural framework gives TDSAT considerable flexibility in managing its proceedings efficiently — it can direct parties to file written submissions in advance of the hearing, consolidate related cases, and issue directions for the expeditious disposal of urgent matters. Major regulatory disputes (such as the AGR proceedings and the 2G post-cancellation matters) have generated extremely voluminous records, requiring careful case management by the tribunal to maintain efficient progress.

CHAPTER 3

The AGR Dispute: Facts, Law and Judgment

3.1 Origins of the AGR Dispute

The Adjusted Gross Revenue (AGR) dispute — described by the Supreme Court as involving "astronomical" financial stakes — originated from the definitional ambiguity introduced when the Migration Package under the National Telecom Policy, 1999 converted operators' fixed licence fee obligations to a revenue-sharing arrangement. Operators accepted the Migration Package on the understanding that the annual licence fee (as a percentage of AGR) would be calculated on revenue from licensed telecom activities — meaning, in the operators' understanding, revenue from the telecom services they were licensed to provide. The DoT, however, computed the AGR base as the total gross revenue of the licensed entity from all sources, including non-telecom revenue such as dividends, interest income, rental income, gain on sale of assets, and income from the provision of non-telecom services by the licensed entity.

This definitional difference — between "telecom revenue only" and "total gross revenue" — gave rise to demands running into tens of thousands of crore rupees, since the licensed entities of major operators contained significant non-telecom revenue streams. The difference compounded over time as interest and penalties on disputed demands accrued. By the time the Supreme Court delivered its final judgment in 2020, the total demands against operators including licence fees, spectrum usage charges, interest, and penalties were estimated at approximately Rs. 1.47 lakh crore. For the financially distressed Vodafone Idea (Vi), these demands were of an order of magnitude that threatened the operator's viability as a going concern, raising concerns about the potential for a two-operator market that would damage competition.

The factual complexity of the AGR dispute was enormous. The computation of AGR for a single operator over a period of more than a decade — including all sources of revenue, all permissible deductions, and the applicable licence fee percentages for each service category — required analysis of detailed financial accounts, accounting policies, and the specific terms of each operator's licence and migration package. The parties disagreed not only on the definitional question (which sources of revenue constitute AGR) but also on specific items in their financial accounts — including treatment of interconnection revenue, roaming revenue, franchise income, income from sharing infrastructure, and income from non-core activities. TDSAT's assessment of these issues required a combination of regulatory, legal, and financial expertise.

3.2 TDSAT's Approach and Findings

TDSAT heard the AGR dispute over several years, accumulating a voluminous record of financial evidence, expert reports, and legal argument. TDSAT's determinations — contained in its judgment of 30 August 2016 — broadly favoured the operators' interpretation of AGR. The tribunal held that AGR should be understood as revenue from licensed telecommunications activities, not total gross revenue from all sources. TDSAT reasoned that the purpose of the Migration Package was to relieve operators of their high fixed licence fee obligations by substituting a revenue-related charge, and that the evident commercial understanding of both the government and the operators when the Migration Package was negotiated was that the revenue base would reflect telecom-specific revenue. TDSAT further held that several specific items (including income from non-telecom services, dividends, interest on commercial paper, and revenue from non-licensed activities) should be excluded from the AGR computation.

TDSAT's judgment provided significant financial relief to the operators: its definition of AGR, if accepted by the Supreme Court, would have materially reduced the total demands from approximately Rs. 1.47 lakh crore to a much smaller amount (since much of the disputed demand related to non-telecom revenue). However, the DoT challenged TDSAT's judgment before the Supreme Court, arguing that the historical licence fee demands based on the total gross revenue definition were correct and that TDSAT had wrongly overruled the government's consistent interpretation of AGR since 1999. The Supreme Court's acceptance of the DoT's challenge — and its reversal of TDSAT's AGR determination — was the most significant reversal of a TDSAT judgment in the tribunal's history.

3.3 The Supreme Court's AGR Judgment

The Supreme Court's judgment in *Union of India v. Association of Unified Telecom Service Providers of India*, (2020) 3 SCC 525 (the AGR Case) was delivered by a three-Judge Bench comprising Chief Justice Sharad A. Bobde and Justices B.R. Gavai and Surya Kant, on 24 October 2019 (with the detailed reasons published later). The Court reversed TDSAT's findings and held in favour of DoT's broad definition of AGR. The Court's reasoning was primarily textual and contractual: the licence conditions and the Migration Package documentation — when read as a whole — did not support a restriction of AGR to telecom-specific revenue. The Court found that the language of the relevant licence conditions, which defined AGR to mean "the gross revenue of the company after adjustment of GST/service tax payments," admitted of a natural meaning that encompassed all revenue of the company. The operators' argument that the commercial understanding of the parties at the time of the Migration Package supported a telecom-only interpretation was rejected as insufficient to override the plain text of the

agreements.

The Supreme Court also addressed the question of the calculation of interest and penalties on the disputed demands, holding that interest and penalties had accrued correctly under the applicable provisions and could not be waived. The Court directed the operators to pay their outstanding AGR dues within a specified period, though it subsequently addressed requests for extensions of time in a series of follow-on proceedings. The Court was particularly firm in its rejection of suggestions that the amounts payable should be reduced, recalculated, or otherwise modified by the government — a firmness that reflected the Court's concern that any modification of the dues would be inconsistent with the constitutional duty of the State to maximise the value of public resources.

The practical consequences of the AGR judgment were severe. Vodafone Idea (Vi), which faced demands of over Rs. 58,000 crore (including interest and penalties), was unable to fully satisfy its AGR liability and entered into government-arranged payment plans. The financial pressure contributed significantly to the consolidation of the telecom sector to three major private operators. Bharti Airtel, which also faced substantial AGR demands (approximately Rs. 35,000 crore including interest and penalties), managed to absorb the financial impact through capital raises and operational improvements. Reliance Communications, already in insolvency proceedings before the National Company Law Tribunal, was subject to the AGR demands but could not satisfy them in the context of its insolvency resolution.

3.4 Legal Principles from the AGR Case

The AGR Case established several important legal principles that practitioners in the telecom and regulatory space must understand. First, the principle of textual interpretation: in construing regulatory conditions, courts will apply the natural meaning of the text and will not readily accept extrinsic evidence (such as negotiating history or commercial understanding) to limit the natural meaning. The Court's rejection of the operators' reliance on commercial understanding at the time of the Migration Package — in favour of the plain text of the licence conditions — is a powerful reminder that the clear language of regulatory conditions controls their interpretation. Second, the principle of exhaustion of challenges: the Court was critical of operators who had continued to challenge AGR demands in a piecemeal fashion over many years rather than seeking a definitive resolution. This observation has implications for how regulatory challenges should be managed: a challenge to a regulatory interpretation should be pursued to a final determination rather than being extended through successive partial challenges.

Third, the principle that government cannot waive legitimate dues from natural resource exploitation: the Court's firm position that AGR dues could not be reduced or waived reflects the broader constitutional principle (from the 2G Spectrum Case) that the State's duty as trustee of natural resources (including spectrum) requires it to realise the full value of those resources. A government decision to reduce or waive AGR dues would effectively be a concession of public resources to private operators, which the Court held would violate constitutional principles even if motivated by genuine concern about the viability of the telecom sector. Fourth, the principle of regulatory certainty: the AGR Case illustrates the enormous commercial and regulatory costs of definitional ambiguity in regulatory frameworks. The failure to define AGR precisely in the Migration Package — or to seek early authoritative interpretation — allowed a definitional dispute to compound over decades into a sector-threatening liability.

CHAPTER 4

Spectrum Disputes: Key Cases and Principles

4.1 The 2G Spectrum Case and Post-Cancellation Proceedings

Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1, the 2G Spectrum Case, is not itself a TDSAT judgment but its aftermath generated extensive proceedings before both TDSAT and the Supreme Court that fundamentally reshaped the legal framework for spectrum management. The Supreme Court's order cancelling 122 telecom licences and spectrum allocations on 2 February 2012 created an immediate commercial and regulatory crisis: the affected operators (including S-Tel, Loop Telecom, Uninor, Etisalat, STel, and others) held spectrum and licences on the basis of which they had built networks, entered into contracts with suppliers and employees, and attracted subscribers. The cancellation left these operators without a legal basis for their operations and required the government to develop a framework for the unwinding of the affected licences.

TDSAT was central to managing the post-cancellation process. Affected operators filed petitions before TDSAT seeking to preserve their operational status while the implications of the Supreme Court's order were worked through. TDSAT's role in the post-cancellation proceedings was primarily procedural — managing the transition period during which affected operators wound down their networks, dealt with regulatory liabilities, and addressed contractual obligations. The post-cancellation proceedings also generated litigation about the financial consequences of the cancellation: operators who had paid spectrum fees and licence fees for the cancelled licences sought to recover these payments or to offset them against other obligations. The legal principles governing the financial consequences of administratively invalid licence grants — and the extent to which operators can recover payments made under cancelled licences — are significant areas of telecom regulatory law developed in these post-cancellation proceedings.

4.2 Spectrum Auction Challenges

Spectrum auction decisions — including the determination of reserve prices, eligibility criteria, block sizes, and auction rules — have been challenged before TDSAT and the Supreme Court in several cases. The constitutional requirement for auction-based spectrum allocation (established by the 2G Spectrum Case) was initially interpreted by some parties as imposing specific requirements about the level of reserve prices and the methodology for determining

them. TRAI and DoT have faced legal challenges arguing that reserve prices set below TRAI's recommended levels constitute an undervaluation of public resources. The courts and TDSAT have generally afforded the government a wide margin of appreciation in setting spectrum reserve prices, recognising that auction design involves complex technical and economic judgments on which expert opinion is entitled to substantial deference, subject to the requirement that the government's decision must be rational and not arbitrary.

The challenge to the spectrum auction process in the 700 MHz band — which attracted minimal bidding in successive auctions because of high reserve prices — illustrates the difficulty of setting reserve prices at levels that balance the government's revenue objectives against the commercial realities of spectrum deployment. Several operators and industry associations argued before TRAI and in public consultations that the 700 MHz reserve prices were set at levels that made the band commercially unviable, leaving valuable coverage-efficient spectrum unused. TRAI revised its 700 MHz reserve price recommendations downward in successive consultations, but the band continued to see limited bidding until the 2022 auction. No legal challenge to the 700 MHz reserve prices as such has reached final determination before TDSAT, but the commercial and policy debate about spectrum pricing methodology has been extensively litigated in the regulatory arena.

4.3 Spectrum Cap Disputes

Spectrum cap disputes — challenges to the levels at which spectrum caps are set, or to DoT's application of spectrum caps in specific transactions — have generated significant TDSAT proceedings. Operators that have sought to acquire spectrum through auction or trading, only to be told that their holdings post-acquisition would exceed applicable spectrum caps, have challenged both the level of the caps (as unreasonably restricting their ability to acquire spectrum needed for network capacity) and the specific application of caps to particular bands (arguing that caps set in terms of total spectrum across all bands fail to account for the very different technical characteristics of different frequency bands). TDSAT has generally upheld DoT's spectrum cap decisions as being within the regulator's legitimate authority to protect competitive market structure, subject to the requirement that cap levels must be based on a rational methodology and not arbitrarily determined.

The competition law dimension of spectrum cap disputes has also been addressed in TDSAT proceedings and related CCI proceedings. TDSAT has recognised that spectrum caps are a form of regulatory competition policy tool — they prevent dominant operators from foreclosing the spectrum market through hoarding or strategic acquisition — and has applied a competition-oriented analytical framework in evaluating cap-related disputes. Where TDSAT has

found that a spectrum cap level is disproportionate to its competition-protection objective (for example, where the cap prevents an operator from acquiring spectrum needed for genuine operational use rather than for strategic foreclosure), it has directed reconsideration. The interface between TDSAT's spectrum regulatory jurisdiction and the CCI's competition law jurisdiction over spectrum-related issues remains an evolving area of Indian competition and regulatory law.

CHAPTER 5

Interconnection and IUC Disputes

5.1 The Jio-Incumbent POI Dispute

The Points of Interconnection (POI) dispute between Reliance Jio and the incumbent operators (Bharti Airtel, Vodafone India, and Idea Cellular) at the time of Jio's commercial launch in September 2016 was the most high-profile interconnection dispute in TDSAT's history. Reliance Jio complained that the incumbent operators were deliberately withholding adequate POI — deliberately failing to provision sufficient interconnection capacity — thereby causing extremely high call failure rates on Jio-originated calls terminating on incumbent networks. Jio presented data showing call failure rates of 50-75% on calls terminating on some incumbent networks, compared to near-zero failure rates on calls between Jio subscribers. The incumbents denied deliberate obstruction, arguing that the unprecedented scale of Jio's launch had created extraordinary demands for POI capacity that they were entitled to provision on reasonable timelines.

TDSAT's handling of the POI dispute demonstrated both the strengths and limitations of specialised regulatory adjudication. The tribunal issued urgent interim directions requiring incumbents to accelerate POI provisioning, exercising its powers of interim relief to protect the new entrant from conduct that appeared to be anti-competitive obstruction. TDSAT also directed TRAI to publish daily call failure rate data by operator pair, which put substantial public and regulatory pressure on incumbent operators to resolve the POI shortage. The public availability of call failure rate data — showing in near-real-time which operators were responsible for high call failure rates — created a powerful market and reputational incentive for operators to normalise POI capacity, supplementing TDSAT's formal regulatory directions. Within weeks of TDSAT's directions and the publication of call failure rate data, POI provisioning accelerated and call failure rates declined significantly.

The legal principles emerging from the POI dispute have broader significance for interconnection regulation. First, TDSAT affirmed the principle that incumbent operators owe a positive duty to provide adequate interconnection to new entrants within commercially reasonable timelines, and that deliberate delay in provisioning POI may constitute an abuse of a dominant network position. Second, the use of publicly available data as a regulatory tool — directing TRAI to publish operator-specific performance data — was affirmed as within TDSAT's powers in the context of protecting competitive market entry. Third, the tribunal's exercise of

emergency interim relief powers in a commercially urgent interconnection dispute established the principle that TDSAT can act with sufficient urgency to address acute market disruptions, not merely to provide post-hoc legal remedies.

5.2 IUC Tariff Order Challenges

TRAI's successive Interconnection Usage Charge (IUC) determinations — the regulatory decisions that set the charges payable between operators for terminating calls on each other's networks — have been the subject of multiple TDSAT appeals. The most significant of these was the challenge to TRAI's 2017 IUC order, which reduced the mobile termination rate from Rs. 0.14 per minute to Rs. 0.06 per minute and announced the eventual transition to a bill-and-keep (zero IUC) regime. Incumbent operators — who are net receivers of IUC payments given their larger installed base relative to Reliance Jio's then-smaller base — challenged the 2017 determination before TDSAT, arguing that TRAI had applied an incorrect cost methodology, had relied on inappropriate international comparators, and had failed to adequately consider the impact on operators' financial sustainability.

TDSAT's examination of the 2017 IUC challenge required the tribunal to engage with complex telecommunications economics — specifically, the modelling of termination costs in a multi-operator mobile market with very different network densities, traffic volumes, and capital structures. The tribunal heard expert evidence from economists and telecommunications engineers on the appropriate methodology for cost-of-termination analysis, and examined TRAI's methodology in detail. TDSAT ultimately upheld TRAI's 2017 IUC order, finding that TRAI had applied a rational, if not necessarily the only possible, methodology; that TRAI had adequately considered the submissions of all parties; and that the reduction in IUC was within the range of regulatory decisions that a reasonable regulator could make. The tribunal's affirmation of TRAI's broad regulatory discretion in tariff-setting — subject to the requirement of rational methodology and adequate procedural fairness — is the key legal principle from this line of cases.

CHAPTER 6

Licence Fee and Revenue Share Disputes

6.1 The Deferred Payment Controversy

Following the Supreme Court's AGR judgment in 2020, a series of proceedings before TDSAT and the Supreme Court addressed the question of how operators could meet their AGR obligations given the scale of the demands and the financial fragility of some operators. The Supreme Court's directive — that AGR dues should be paid in full, with no modification of the principal amounts, interest, or penalties — was followed by proceedings in which operators sought clarification on payment timelines and the government sought enforcement against operators that had not paid. The Supreme Court ultimately allowed a ten-year deferred payment schedule for AGR dues (other than a specified upfront percentage), allowing operators to spread payments over the period 2021-2031. This deferred payment arrangement was incorporated into operators' licence conditions, creating new categories of regulatory compliance obligation (timely instalment payments) and new potential consequences for default (risk of licence suspension).

TDSAT's role in the post-AGR-judgment payment proceedings was primarily to manage the implementation of the Supreme Court's directions, including the processing of specific operator applications for clarification about the computation of their AGR liabilities, the treatment of payments already made, and the application of the instalment schedule to specific operators' circumstances. The complexity of computing precise AGR liabilities for individual operators — given the need to reconcile DoT's demands with operators' own computations, and to account for partial payments, disputes about specific revenue items, and the specific terms of each operator's migration package — generated hundreds of supplementary proceedings before TDSAT and before the Supreme Court, illustrating the enormous transaction costs generated by definitional ambiguity in regulatory financial obligations.

6.2 Spectrum Usage Charge Disputes

Spectrum Usage Charges (SUC) — annual levies on operators in respect of the spectrum they hold, calculated as a percentage of AGR at rates that vary by frequency band and by the quantity of spectrum held — have been a separate but related source of revenue disputes. SUC rates have historically been higher for spectrum acquired through administrative allocation than for spectrum acquired through auction, reflecting the policy that auction winners pay market-value prices upfront and therefore attract lower annual charges. Operators have

challenged various aspects of the SUC framework before TDSAT including: the differential rates applicable to different spectrum bands; the calculation of SUC on spectrum held for 5G deployment before commercial service launch; and the treatment of spectrum held on trial basis during network testing.

The interaction between the AGR Case's broad definition of the revenue base and the SUC framework creates a particularly sharp financial impact for operators: not only is the AGR base broader than operators expected (including all gross revenue, not merely telecom revenue), but the SUC — calculated as a percentage of this broad AGR — is correspondingly higher. The combined licence fee and SUC burden, calculated on a broad AGR base, represents a significant proportion of operators' revenue and has been identified by the industry as a structural barrier to the financial sustainability of Indian mobile operators, particularly in a market where competitive pressure on average revenue per user (ARPU) is intense. The government has taken some steps to address this concern (including reducing SUC rates for auction spectrum and allowing some instalment relief), but the fundamental framework — high percentage charges on a broad revenue base — remains in place.

CHAPTER 7

Consumer and Group Petition Jurisprudence

7.1 Group Consumer Petitions: Framework and Procedure

TDSAT's jurisdiction over disputes between a service provider and a group of consumers provides an important access-to-justice mechanism for addressing systematic service quality and consumer protection failures at the regulatory level rather than through individual consumer litigation. The group consumer petition mechanism enables consumer organisations, resident welfare associations, professional bodies representing subscribers, and other groups representing identifiable classes of consumers to bring petitions before TDSAT on behalf of their members. The threshold for constituting a "group" — the minimum number of affected consumers required to bring a group petition rather than an individual complaint — has been addressed in TDSAT's procedural rules, which generally require a minimum of ten or more consumers to constitute a group for this purpose.

Group consumer petitions before TDSAT have addressed a wide range of consumer protection issues including: systematic call drop problems affecting large numbers of subscribers in specific geographic areas or on specific networks; tariff changes imposed without adequate advance notice; billing irregularities causing systematic overcharging of subscriber classes; inadequate customer care response times in breach of TRAI's QoS regulations; unsolicited commercial communications sent in breach of the DND regulations; and quality of service failures in broadband services. TDSAT's decisions in group consumer matters have progressively strengthened the practical application of TRAI's consumer protection regulations, making clear that regulatory obligations are enforceable not only through TRAI's own enforcement mechanisms but also through direct consumer access to TDSAT.

7.2 Key Consumer Jurisprudence

TDSAT's jurisprudence on tariff change notifications has been particularly important for consumer protection. The tribunal has held that operators are required to give adequate advance notice (typically at least a specified number of days, consistent with TRAI's guidelines on tariff change notices) before implementing tariff changes that affect existing subscribers who have contracted for services on particular pricing terms. The failure to give adequate advance notice of tariff increases has been found in multiple TDSAT decisions to constitute a breach of the applicable consumer protection regulations and the operator's licence conditions. TDSAT has

directed operators in such cases to credit affected subscribers with compensatory amounts and to implement procedures ensuring future compliance with the tariff change notification requirements.

The obligation of operators to honour advertised tariffs and service terms — including the obligation not to reduce service quality or introduce new charges for services previously offered free of charge without consent — has been addressed in group consumer petitions challenging specific operator commercial decisions. TDSAT has affirmed that subscribers who have contracted for specific service terms on the basis of an advertised offer have legally enforceable rights to receive those services on the contracted terms, and that operators' unilateral modification of service terms (including reduction of included data allowances, removal of previously free features, or introduction of new charges) without subscriber consent constitutes a breach of contract and a consumer protection violation. These decisions have had significant commercial implications, requiring operators to manage tariff changes in a manner that respects the contractual rights of existing subscribers.

CHAPTER 8

Constitutional Challenges before TDSAT

8.1 TDSAT's Constitutional Jurisdiction

TDSAT is not a constitutional court and does not have jurisdiction to adjudicate free-standing constitutional challenges to statutes or to TRAI's regulations. Constitutional challenges — such as the challenge to the constitutionality of a TRAI regulation under Article 14 (equality) or Article 19 (freedom of speech) — must be brought before the High Courts under Article 226 of the Constitution or before the Supreme Court under Article 32. However, TDSAT does have a limited jurisdiction to consider constitutional arguments in the context of specific appeals against TRAI's decisions: if an operator appeals a TRAI order to TDSAT and argues that the application of the order to it violates its constitutional rights, TDSAT must consider the constitutional argument in the context of determining whether the order should be varied or set aside on appeal.

The boundary between TDSAT's legitimate consideration of constitutional arguments in the context of an appeal (which TDSAT may do) and TDSAT's power to declare a regulation or statute constitutionally invalid (which TDSAT may not do) is an important procedural line in telecom regulatory litigation. Practitioners who wish to challenge the constitutional validity of a regulatory instrument must do so before a constitutional court; they may not rely on TDSAT as a forum for constitutional adjudication, even though TDSAT may consider constitutional arguments as part of its appeal jurisdiction. The interaction between TDSAT proceedings (on the appeal against a TRAI order) and High Court proceedings (on the constitutional challenge to the same order) creates complex concurrent litigation situations that require careful management.

8.2 Right to Privacy and Telecom Regulation

The Supreme Court's Puttaswamy judgment on the right to privacy (2017) has had implications for several aspects of telecom regulation that have been reflected in TDSAT proceedings. Challenges to TRAI's data privacy regulations — and to the adequacy of telecom operators' subscriber data protection practices — have raised constitutional privacy arguments before TDSAT in the context of appeals against TRAI directions. TDSAT has affirmed that the right to privacy of communications is a fundamental right that must be respected by telecom operators and that regulatory obligations (such as the obligation to maintain subscriber data for specified periods for law enforcement access) must be implemented in a manner consistent with constitutional privacy protections — including requirements for statutory authority, legitimate

purpose, and proportionality.

The interception and surveillance provisions of the telecom regulatory framework — which require operators to provide government agencies with access to subscriber communications and location data in specified circumstances — have been the subject of constitutional privacy challenges before the High Courts and the Supreme Court (rather than before TDSAT, since the constitutional validity of these provisions is beyond TDSAT's jurisdiction). The outcome of these challenges — whether the current interception framework satisfies the Puttaswamy proportionality standard — has significant implications for the conditions that telecom operators must comply with and the safeguards they must implement. TDSAT's role in this constitutional litigation is at the margins: operators may seek TDSAT's assistance in clarifying the specific operational requirements of interception compliance while constitutional challenges to the fundamental legal basis of interception are pending before higher courts.

CHAPTER 9

TDSAT and the 2G Cancellation Aftermath

9.1 Managing the Post-Cancellation Transition

The Supreme Court's order cancelling 122 telecom licences in February 2012 created a regulatory emergency that TDSAT was centrally involved in managing. The cancellation order — which took effect immediately — left the affected operators in a legal vacuum: they held no valid licences for their operations, yet had hundreds of thousands of subscribers, thousands of employees, existing network infrastructure, and outstanding contractual obligations to suppliers, landlords, and partners. The Supreme Court's order directed that the cancellations would be implemented immediately without any stay, but the operational reality of shutting down multi-circle mobile networks serving millions of subscribers required a managed transition period during which subscribers could port their numbers to other operators and the operators could wind down their operations in an orderly manner.

TDSAT played a critical institutional role in overseeing the transition process and in adjudicating the specific legal questions that arose during the wind-down: the treatment of customer deposits and prepaid balances; the obligations of the cancelled operators in relation to their employees (severance, PF, gratuity); the status of infrastructure sharing arrangements with other operators; the fate of spectrum (which reverted to the government and was subsequently re-auctioned); and the recovery of licence fee and spectrum charges paid for cancelled licences. TDSAT's management of these transition proceedings — often dealing with multiple interrelated legal questions simultaneously across numerous cancelled operators — was a significant institutional achievement that minimised the consumer disruption and legal uncertainty of a sudden large-scale licence cancellation.

9.2 Financial Consequences and Recovery Proceedings

The financial consequences of the 2G cancellation for the affected operators were severe. Foreign operators who had invested in Indian telecom licences — including Norway's Telenor (through Uninor), the UAE's Etisalat (through Etisalat DB/EBIS), Russia's Sistema (through Sistema Shyam TeleServices), and others — faced the loss of their entire investment in India. Some of these operators initiated international arbitration proceedings against the Indian government, arguing that the cancellation of their licences constituted an unlawful expropriation of their investments under the applicable bilateral investment treaties (BITs). The legal battles

between these foreign investors and the Indian government generated significant international investment arbitration jurisprudence — including the landmark *Sistema v. India* arbitration — about the boundaries between legitimate regulatory action and unlawful expropriation.

The recovery of payments made for cancelled licences — including entry fees, spectrum charges, and licence fees — was addressed in TDSAT proceedings initiated by the cancelled operators. TDSAT had to navigate the difficult legal question of whether operators who had obtained licences through a process later found to be constitutionally invalid were entitled to recover payments made under those licences, or whether the principle that no one should benefit from their own wrongdoing precluded recovery. TDSAT's approach distinguished between operators who were found to have participated in the corrupt allocation process (who were denied recovery) and operators who acquired licences through secondary transactions from those who had participated in the corrupt process (whose entitlement to recovery was more complex). This jurisprudence on the legal consequences of constitutionally invalid administrative decisions remains one of the most significant contributions of the 2G aftermath to Indian administrative law.

CHAPTER 10

Right of Way and Infrastructure Disputes

10.1 RoW Disputes in the Pre-2023 Act Era

Right of way disputes — conflicts between telecom operators and property-owning authorities (local bodies, state road agencies, railway authorities, and private landowners) over the terms and conditions of telecommunications infrastructure deployment — have generated a growing volume of TDSAT proceedings. The fragmented legal framework for RoW before the Telecommunications Act, 2023 (described in Booklet I, Chapter 8 and Booklet III, Chapter 1) meant that the resolution of RoW disputes required applying a patchwork of provisions from the Indian Telegraph Act, 1885, the DoT RoW Rules 2016, state road acts, and local body regulations — a complex multi-source framework that created significant uncertainty about the applicable legal standards and the appropriate forum for RoW dispute resolution.

TDSAT's jurisdiction over RoW disputes arose from Section 14's provision for adjudication of disputes "between a licensor and a licensee" and "between two or more service providers." Where a RoW dispute involved a local body's refusal to permit infrastructure deployment — a dispute between the operator (licensee) and a public authority acting in its capacity as property manager — the characterisation of the dispute as falling within TDSAT's jurisdiction (as a licensor-licensee dispute involving conditions of the licence, specifically the condition requiring compliance with applicable RoW rules) or as a matter for a High Court or civil court has sometimes been contested. TDSAT has generally accepted jurisdiction where the RoW dispute arises directly from the exercise of telecom licence-related activities, while recognising that civil and constitutional aspects of RoW disputes may also involve High Court jurisdiction.

10.2 Key RoW Jurisprudence

TDSAT's decisions on RoW disputes have established several important principles. First, that local bodies cannot impose RoW fees that exceed the amounts prescribed by the DoT RoW Rules (where applicable), and that attempts to circumvent the Rules by characterising RoW charges as "inspection fees," "administrative charges," or other charges by different names do not change the legal character of the charge as a fee for the grant of RoW. This principle — the substance over form approach to RoW fee characterisation — has been important in limiting local body attempts to recover RoW-equivalent revenue through nominally different charge categories.

Second, TDSAT has affirmed that operators have a statutory right to lay telecommunications infrastructure on public property (including roads and footpaths) under Section 10 of the Indian Telegraph Act, 1885 (and its successor provisions under the Telecommunications Act, 2023), and that local bodies' refusal to grant access on commercially reasonable terms — or their imposition of disproportionate conditions — may constitute a breach of the operator's statutory rights. TDSAT has issued injunctive relief in specific cases where local bodies have sought to remove or interfere with telecommunications infrastructure lawfully deployed under the RoW framework, affirming the legal protection available for deployed infrastructure.

CHAPTER 11

Broadcasting Disputes before TDSAT

11.1 TDSAT's Broadcasting Jurisdiction

TDSAT's jurisdiction extends to disputes and appeals arising in the cable television and broadcasting sectors, in addition to telecommunications. This jurisdiction arises from the TRAI (Amendment) Act, 2000's extension of TRAI's regulatory mandate to cover "cable services," and TDSAT's appellate jurisdiction over TRAI's decisions includes TRAI's decisions in the broadcasting space. Broadcasting disputes before TDSAT have involved: appeals against TRAI's broadcasting-related tariff orders (including the New Tariff Order for cable and DTH television); appeals against TRAI's interconnection regulations applicable to broadcasting distribution platforms; and disputes between broadcasters, distribution platform operators (DPOs), and multi-system operators (MSOs) about the terms and conditions of signal distribution.

The New Tariff Order (NTO) litigation is the most extensive TDSAT broadcasting jurisdiction exercise. TRAI's NTO, which restructured the tariff framework for cable and DTH television services and introduced consumer choice in channel selection, was challenged before TDSAT by broadcasters, DPOs, and MSOs across multiple petitions filed from 2019 onwards. The petitioners raised a range of legal challenges including: that TRAI had exceeded its jurisdiction in prescribing a specific channel pricing framework; that the NTO unreasonably constrained broadcasters' commercial freedom in bundling channels; that the NTO's "network capacity fee" was unreasonably set; and that the procedural requirements for implementing the NTO were impractical. TDSAT's extended engagement with these challenges — which involved complex issues of broadcasting economics, content valuation, and distribution network operation — has added significantly to the body of regulatory law applicable to India's evolving media distribution sector.

11.2 Key Broadcasting Regulatory Principles

TDSAT's broadcasting jurisprudence has established several important principles. The tribunal has affirmed TRAI's broad mandate to protect consumer interests in the broadcasting sector, including the power to require channel à la carte offering, to set maximum retail prices for individual channels, and to prescribe the terms on which broadcasters must make their channels available to distribution platforms. TDSAT has also confirmed the application of

non-discrimination principles to the broadcasting distribution chain: broadcasters must make their channels available to all distribution platforms (cable, DTH, and IPTV) on non-discriminatory terms, and distribution platforms must carry channels on non-discriminatory terms without favouring affiliated or preferred content providers.

The broadcasting jurisprudence has also addressed the question of must-carry obligations — the requirements on certain distribution platforms to carry specified channels (particularly Doordarshan channels, India's public broadcaster) on their systems. Must-carry obligations represent an interface between commercial broadcasting regulation and public service broadcasting policy: the obligation to carry public broadcaster channels without charge, or at regulated rates, is justified by public interest considerations but imposes commercial costs on distribution platforms. TDSAT's decisions on must-carry have balanced the public interest in ensuring accessibility of public broadcaster content with the commercial interests of distribution platforms, affirming must-carry obligations as lawful but requiring that they be applied in a proportionate and technically feasible manner.

CHAPTER 12

Appeals to the Supreme Court: Section 18

12.1 Section 18 Appeals: Scope and Grounds

Section 18 of the TRAI Act, 1997 provides that any person aggrieved by an order of TDSAT may appeal to the Supreme Court of India on questions of law. This provision creates a direct appellate path from TDSAT to the Supreme Court, bypassing the High Courts. The restriction of appeals to "questions of law" — as distinct from questions of fact — is an important limitation on the scope of Section 18 review. The Supreme Court will not reopen factual findings made by TDSAT (such as findings about the specific revenues of an operator or the specific technical characteristics of a network) but will consider whether TDSAT applied the correct legal principles, whether TDSAT correctly interpreted the applicable statutes and regulations, and whether TDSAT's legal conclusions are consistent with constitutional requirements.

The Supreme Court has interpreted the "question of law" requirement in Section 18 appeals with some flexibility, recognising that the line between questions of law and questions of mixed fact and law is not always clear. A TDSAT finding that an operator's conduct constituted a breach of its licence conditions may involve both factual questions (what did the operator actually do?) and legal questions (does that conduct fall within the definition of a breach?), and the Supreme Court may engage with both dimensions in a Section 18 appeal where the central dispute is about the legal characterisation of established facts. The Court has also accepted jurisdiction in Section 18 appeals where TDSAT's decision involves a "substantial question of law" — a legal question of general importance that needs to be definitively resolved for the guidance of the sector.

12.2 Key Supreme Court Decisions in Section 18 Appeals

The AGR Case (UASL Providers v. Union of India, 2020) was itself determined by the Supreme Court following TDSAT's determination in favour of the operators on the AGR definition question. The Court's reversal of TDSAT's finding on the question of whether AGR is limited to telecom revenue is the most dramatic example of the Supreme Court's Section 18 appellate role. The Court's analysis proceeded on the basis that the interpretation of the AGR definition in licence conditions is a question of law — specifically, a question of the proper construction of contractual/regulatory documents — and therefore within its Section 18 jurisdiction.

COAI v. TRAI, (2016) 7 SCC 703 is another significant Supreme Court decision in the telecom regulatory space arising from the challenge to TRAI's regulatory jurisdiction. The Supreme Court affirmed the constitutional architecture of Indian telecom regulation: TRAI as an advisory body for licensing and spectrum matters (with the Central Government retaining final decision-making authority), and TRAI as a binding regulator for tariffs and quality of service. The Court's clarification of the boundary between TRAI's advisory and regulatory functions has been one of the most cited telecom regulatory law principles in subsequent TDSAT and Supreme Court proceedings, providing a relatively clear framework for practitioners navigating the DoT-TRAI institutional relationship.

CHAPTER 13

Practice and Procedure: Practitioner's Guide

13.1 Commencing Proceedings

Practitioners initiating proceedings before TDSAT must file a petition containing: the full particulars of the petitioner and respondent(s); a concise but comprehensive statement of facts giving rise to the dispute or the TRAI decision being challenged; the precise reliefs sought (both final and interim); the legal grounds for the reliefs, including the specific statutory provisions under which TDSAT has jurisdiction; copies of all relevant documents (licence conditions, TRAI orders, correspondence, contracts); and proof of compliance with any pre-litigation requirements (such as the requirement to seek resolution through TRAI's complaint mechanism before approaching TDSAT). The petition should be accompanied by an affidavit verifying the facts stated, signed by an authorised officer of the petitioner.

The filing fee for TDSAT petitions is prescribed in the TDSAT (Procedure) Rules. Applications for urgent interim relief (applications for ad interim stay of a TRAI order or for emergency directions in an interconnection dispute) should be supported by a separate application explaining the urgency and the irreparable harm that would result if relief is not immediately granted. TDSAT is generally responsive to genuinely urgent applications, and can issue interim directions within days of filing where the circumstances justify it. Practitioners should be careful to accurately represent the urgency — overstating the urgency of a matter that is not genuinely time-sensitive risks damaging the practitioner's credibility before the tribunal on the merits.

13.2 Evidence and Burden of Proof

TDSAT proceedings are primarily documentary in nature: the factual record consists mainly of contracts, correspondence, regulatory documents, financial statements, network performance data, and other documentary evidence. Oral witness testimony is relatively uncommon before TDSAT (unlike in civil court proceedings), though expert evidence may be presented in complex technical and economic disputes such as IUC methodology challenges and AGR computation disputes. The burden of proof in TDSAT proceedings follows general administrative law principles: the party challenging a TRAI order bears the burden of demonstrating that the order is legally defective; the party asserting a breach of licence conditions bears the burden of establishing the breach on the balance of probabilities.

Technical expert evidence in TDSAT proceedings — on matters such as telecommunications network capacity, spectrum propagation characteristics, and network cost modelling — is governed by the general principles applicable to expert evidence in Indian administrative proceedings. The tribunal retains the right to critically evaluate expert evidence and to prefer one expert's analysis over another on stated grounds. In the most complex cases (such as the IUC methodology challenges), TDSAT has appointed independent technical experts to assist it in evaluating the competing expert submissions of the parties — a practice that improves the quality of the technical analysis underpinning TDSAT's decisions but that also lengthens the proceedings and increases their cost.

CHAPTER 14

Comparative Perspective: Other Telecom Tribunals

14.1 UK: CAT and Ofcom Appeals

The United Kingdom's telecommunications dispute resolution framework — centred on Ofcom as the regulatory authority and the Competition Appeal Tribunal (CAT) as the primary appellate forum for competition and regulatory disputes — provides a useful comparative reference for India's TDSAT framework. Like TDSAT, the CAT is a specialised tribunal with expertise in competition and regulatory economics, capable of reviewing Ofcom's decisions on a range of grounds including proportionality, procedural fairness, and consistency with the regulatory framework. Unlike TDSAT, the CAT has jurisdiction over both telecommunications and general competition law disputes (including cartels and mergers affecting telecommunications markets) — a converged jurisdiction that reflects the UK's broader convergence of telecommunications and competition regulation.

The UK's experience with the CAT suggests that the effectiveness of a specialised regulatory tribunal depends critically on: the quality of its appointments (both legally and technically qualified members); the procedural framework governing evidence and argumentation (the CAT's use of written submissions, oral hearings, and independent expert reports is broadly similar to TDSAT's practice, though generally more structured); the availability of adequate funding and resources; and the political and institutional commitment to independent regulatory adjudication. India's TDSAT broadly matches these characteristics, with the principal weakness being bench strength — the small number of members limits TDSAT's capacity relative to the CAT, which has a larger complement of technically and legally qualified members and can sit in multiple panels simultaneously.

14.2 Australia and the ACCC's Role

Australia's telecommunications regulatory framework includes the Australian Competition and Consumer Commission (ACCC) as the primary regulatory authority and the Australian Competition Tribunal (ACT) as the appellate body for competition-related decisions. The ACCC regulates telecommunications access (equivalent to India's interconnection framework), consumer protection, and merger review in the telecommunications sector, while Ofcom's equivalent functions are partly shared with the Australian Communications and Media Authority (ACMA). The Australian experience — where telecommunications regulatory disputes frequently

involve complex access pricing questions (about the pricing of access to fixed-line network infrastructure) — is relevant to the development of India's TDSAT jurisprudence on infrastructure access and interconnection matters.

Australia's adoption of the "Regulatory Asset Base" (RAB) approach to access pricing — in which network access prices are set based on the regulated asset value of the network infrastructure, providing regulated operators with a reasonable return on their capital investment — is a methodology that TRAI and TDSAT may need to engage with more directly as India's fixed-line broadband infrastructure investment grows. The RAB methodology is more complex than the cost-plus pricing approaches historically used in Indian interconnection regulation, but it provides stronger investment signals for long-lived infrastructure — an important consideration as India seeks to attract investment in FttH and 5G infrastructure.

CHAPTER 15

Reform of TDSAT and the Future

15.1 The Case for Reform

TDSAT reform has been a consistently identified priority in assessments of India's telecom regulatory architecture, yet substantive reform has been slow in materialising. The case for reform rests on three main arguments. First, bench strength: TDSAT's current complement of one Chairperson and up to two Members is wholly inadequate for the volume and complexity of its current docket, which includes major ongoing proceedings (including AGR implementation matters, spectrum challenges, and NTO-related broadcasting disputes) alongside a steady flow of new matters arising from the sector's commercial dynamism. Reform should address bench strength by significantly increasing the number of Members and enabling TDSAT to sit in multiple panels simultaneously.

Second, technical capacity: TDSAT's composition requirements focus primarily on legal qualifications and administrative seniority, with limited specific requirements for technical expertise in telecommunications engineering or economics. The increasing technical complexity of telecom regulatory disputes — involving 5G network architecture, AI-based network management, satellite communications, and complex spectrum auction design — requires a tribunal with Members who can directly engage with technical evidence rather than relying entirely on party-appointed experts. Reform should introduce specific requirements for technical Members with expertise in telecommunications engineering and/or economics, alongside the legally qualified Members.

Third, procedural modernisation: TDSAT's current procedures — developed in the early 2000s for a sector that looked very different from today's digital communications ecosystem — need updating to address the procedural needs of modern telecom disputes. This includes: the development of fast-track procedures for genuinely urgent matters; the broader use of written submissions and pre-hearing conferences to focus oral arguments on the genuinely contested issues; the development of guidelines for electronic evidence and digital forensics (increasingly relevant as network log evidence and digital communications records become central to telecom disputes); and the establishment of a secure, digital case management system accessible to parties, counsel, and the tribunal from any location.

15.2 TDSAT and the Telecommunications Act, 2023

The Telecommunications Act, 2023's extension of TDSAT's appellate jurisdiction — to cover appeals from the Adjudicating Officer's civil penalty decisions under the new Act — adds a significant new category of proceedings to TDSAT's docket. Civil penalty disputes — in which the government seeks to enforce financial penalties against operators for breaches of authorisation conditions and regulatory standards — will be a growing source of TDSAT proceedings as the 2023 Act's civil penalty framework is operationalised. These proceedings will involve questions of fact (whether the alleged breach occurred), questions of law (whether the conduct alleged constitutes a breach of the applicable regulatory standard), and questions of proportionality (whether the penalty imposed is proportionate to the severity of the breach and the financial capacity of the penalised entity).

TDSAT's evolving role in the 2023 Act framework reflects the consolidation of telecom regulatory adjudication in a single specialised forum. The Adjudicating Officer (for civil penalty decisions), TRAI (for regulatory decisions on tariffs and QoS), and the Central Government (for licensing and spectrum decisions) all feed into TDSAT's appellate jurisdiction, creating a comprehensive appellate review function that covers the full range of telecom regulatory decision-making. The quality and consistency of TDSAT's appellate jurisprudence under the 2023 Act framework will be a critical determinant of the Act's success in achieving its policy objectives — providing regulatory certainty, promoting investment, and protecting consumer interests in India's telecommunications sector.

15.3 The Next Decade of TDSAT Jurisprudence

The coming decade will bring new categories of regulatory disputes before TDSAT that reflect the evolving technological and commercial landscape of Indian telecommunications. 5G network slicing and quality of service disputes — arising from the novel regulatory questions about net neutrality, service differentiation, and consumer rights in the 5G environment — will be a new and technically complex area for TDSAT jurisprudence. Satellite broadband regulatory disputes — about the terms on which LEO satellite operators must interconnect with terrestrial networks, the licensing conditions for satellite gateway operators, and the competitive implications of satellite services for terrestrial mobile operators — will require TDSAT to develop expertise in satellite communications regulation. OTT regulation disputes — if the government eventually determines to bring OTT communication services within a regulatory framework — will generate a wave of new proceedings challenging the scope, conditions, and proportionality of OTT regulatory obligations.

The development of TDSAT as a genuinely world-class specialised regulatory tribunal — comparable in quality, expertise, and efficiency to the CAT in the United Kingdom or the

Competition Appellate Tribunal that handles network industry regulatory disputes in other leading economies — should be a priority for India's telecommunications policy agenda. A high-quality TDSAT improves the investment climate by providing regulatory certainty; protects consumer interests by ensuring that TRAI's consumer protection regulations are effectively enforced; and promotes the rule of law by ensuring that powerful operators and the government alike are subject to rigorous and impartial regulatory oversight. The substantive law of Indian telecommunications — the rich body of TDSAT jurisprudence described in this booklet — is a foundation on which a world-class regulatory adjudication system can be built, provided that the institutional investment in bench strength, technical capacity, and procedural modernisation is made.

SUPPLEMENTARY NOTE A

TDSAT Practice: Advanced Analysis and Key Decisions

A.1 Evidence and Proof in TDSAT Proceedings

The evidentiary framework applicable in TDSAT proceedings combines elements of civil procedure (governing the admissibility and weight of different categories of evidence) with the administrative law principles applicable to tribunal proceedings. TDSAT is not bound by the strict evidence rules of civil courts — it may receive and rely on evidence that would be inadmissible in a civil court, provided that it is relevant and reliable. In practice, TDSAT proceedings are primarily documentary: financial records, network performance data, correspondence between the parties, regulatory orders, and expert reports are the primary categories of evidence in most proceedings. The authenticity and reliability of electronic records — which are increasingly central to telecom regulatory proceedings as network performance data, call records, and billing records are all maintained in digital form — is governed by Section 65B of the Indian Evidence Act (as preserved by the Bharatiya Sakshya Adhinyam, 2023) and the specific IT Act provisions on electronic evidence admissibility.

The certification requirements for electronic evidence under Section 65B have been the subject of significant judicial attention in general courts, and the same requirements apply in TDSAT proceedings. A Section 65B certificate, signed by a person occupying a responsible official position in relation to the operation of the computer system from which the electronic record was produced, is required for the admissibility of electronic records as primary evidence. The certificate must state: that the electronic record was produced by the specified computer during the specified period; that the computer was operating properly during that period; that the

information was supplied to the computer in the ordinary course of the relevant activities; and that the electronic record reproduced the information contained in the computer system. Practitioners who intend to rely on electronic records (including network logs, call detail records, and system-generated reports) in TDSAT proceedings must ensure that proper 65B certificates are obtained and produced — failure to obtain a 65B certificate at the time of filing can result in challenges to the admissibility of critical evidence at a later stage of the proceedings.

Expert evidence in TDSAT proceedings — on telecommunications engineering, network economics, spectrum valuation, or other technical matters — must meet the standard applicable to expert witnesses in Indian proceedings: the expert must have the relevant specialised knowledge and experience, must express opinions only on matters within their expertise, and must present their analysis in a form that enables the tribunal to assess its basis and methodology. TDSAT has developed a practice of requesting structured expert reports — often following a standard format that facilitates comparison between experts presenting opposing analyses — and has occasionally appointed independent technical experts to assist the tribunal in complex technical matters where the party experts' analyses are diametrically opposed and the technical questions are highly specialised. The independence and credibility of independent court-appointed experts is essential for the legitimacy of this mechanism.

A.2 Interim Relief Jurisprudence

TDSAT's jurisprudence on interim relief — the conditions under which it will grant a stay of a TRAI order or an injunction in an inter-party dispute pending the final determination — reflects the general principles of Indian interlocutory relief law, adapted to the specific regulatory context of the telecom sector. The standard three-part test — prima facie case, balance of convenience, and irreparable harm — is applied in TDSAT proceedings, but the weight given to each element varies significantly across different types of regulatory challenge. In challenges to TRAI tariff orders, the balance of convenience analysis is typically dominated by the financial consequences for both parties: an operator challenging a tariff reduction that would require significant pricing changes will argue that implementation of the change before the appeal is determined will cause irreparable harm (through revenue loss, competitor advantage, and the practical impossibility of undoing widespread tariff changes once implemented); TRAI will argue that delay in implementing the order causes consumer harm and regulatory uncertainty that outweighs any inconvenience to the operator.

TDSAT's track record on interim stays of TRAI orders reflects a generally balanced approach: the tribunal has granted stays of specific provisions of TRAI orders where the prima facie case was strong and the balance of convenience clearly favoured the applicant, but has

declined stays where the regulatory purpose of the order was evident and the irreparable harm to the operator was speculative or manageable through financial remedies in the event the appeal ultimately succeeds. The Compensation for Call Drops case — in which TDSAT initially stayed the operation of TRAI's call drop compensation regulation on the ground that the implementation mechanics were technically impossible — is an example of the tribunal using the interim relief mechanism to prevent the implementation of a regulation that was procedurally flawed, rather than merely commercially inconvenient to operators. The use of interim stays as a mechanism for managing the implementation of complex regulatory changes — allowing operators time to prepare for compliance while the legal challenge is determined — is a legitimate function of TDSAT's jurisdiction that must be exercised judiciously to avoid becoming a tool for indefinite delay of consumer-protective regulation.

The security for interim relief — the requirement that an operator granted a stay of a TRAI order provide an undertaking as to damages (committing to compensate any party harmed by the stay if the appeal ultimately fails) — is an important mechanism for ensuring that interim stays do not become risk-free delays for operators. TDSAT has required undertakings as to damages in cases where the stay of a TRAI order may cause financial harm to other parties (such as competitors who would benefit from the order or consumers who would benefit from tariff reductions). The quantum of security required — whether a financial deposit or a mere undertaking — reflects TDSAT's assessment of the magnitude of the potential harm and the financial capacity of the applicant. In very high-stakes regulatory challenges (such as the stay of a spectrum cap decision that would enable a major M&A; transaction to proceed), TDSAT may require substantial financial security as a condition of interim relief.

A.3 Consumer Petitions: An Analytical Framework

TDSAT's consumer group petition jurisdiction provides an important mechanism for systemic consumer protection enforcement that goes beyond the TCCR individual complaint mechanism. The legal standard for a group consumer petition is that the petition must concern a matter that affects a group of consumers (not merely an individual subscriber complaint), that the conduct complained of must fall within TDSAT's jurisdiction (either as a breach of a service provider's licence conditions, or as a direction from TRAI that the service provider has failed to comply with), and that the petitioners must have standing as representatives of the affected consumer group. In practice, group consumer petitions before TDSAT have been brought by resident welfare associations (representing subscribers in specific apartment complexes or localities experiencing poor service), telecom consumer organisations, and professional associations (representing business subscribers affected by systematic service quality problems).

The remedies available in group consumer petitions — unlike remedies in individual consumer disputes before consumer courts — are primarily regulatory rather than compensatory: TDSAT can direct the service provider to improve its service quality in the affected area, to comply with specific TRAI QoS benchmarks, or to implement specific technical or operational measures to address the systemic service failure. Financial compensation for specific individual losses is generally outside the scope of TDSAT's group petition jurisdiction (which is addressed through consumer court proceedings) though TDSAT can direct operators to credit subscribers with amounts due under the TRAI call drop compensation regulations or similar relief-providing regulatory orders. The combination of TDSAT's regulatory enforcement jurisdiction (to direct systemic improvements) and consumer courts' compensatory jurisdiction (to award individual damages) provides a comprehensive remedial framework for systemic consumer protection failures.

The procedural accessibility of TDSAT's group petition mechanism for ordinary consumers — particularly those in rural areas or those without access to specialist legal representation — is an important consideration for the mechanism's effectiveness as a consumer protection tool. TDSAT proceedings are technically demanding: they require legal representation, the preparation of formal petitions, and the ability to engage with complex regulatory and technical evidence. Consumer organisations that are able to aggregate consumer complaints and present them as group petitions before TDSAT provide an important access-to-justice function, but the development of these organisations' capacity for TDSAT advocacy is constrained by limited resources and limited public awareness of TDSAT's consumer jurisdiction. Measures to improve the accessibility of TDSAT's consumer petition mechanism — including simplified filing procedures, legal aid for consumer petitioners, and public legal education about TDSAT's consumer jurisdiction — would improve the effectiveness of this mechanism as a consumer protection tool.

A.4 Landmark Decisions: A Compendium

TDSAT's body of jurisprudence over its more than two decades of operation encompasses hundreds of decisions across all dimensions of telecommunications regulation. Several decisions stand out as particularly significant for the development of Indian telecom law. The AGR-related decisions — including TDSAT's 2016 judgment that partially favoured the operators' interpretation (later reversed by the Supreme Court) and the subsequent proceedings managing the implementation of the Supreme Court's AGR judgment — collectively constitute the most financially significant body of TDSAT jurisprudence and have had sector-transforming consequences. The POI dispute decisions (addressing the Reliance Jio-incumbent

interconnection controversy in 2016-17) established important principles about new entrant rights and incumbent obligations in the context of competitive market entry. The IUC tariff order challenges established the scope of TDSAT's appellate review of TRAI's tariff determinations and confirmed TRAI's broad regulatory discretion in setting interconnection charges.

The Right of Way decisions — from TDSAT's earlier engagement with tower deployment disputes under the 1885 Act framework to the growing body of precedent on the 2016 RoW Rules and (prospectively) the 2023 Act's Chapter IV framework — have progressively developed the legal principles governing infrastructure deployment rights and the obligations of property-owning authorities. Key principles established in this jurisprudence include: the principle that Section 10 of the Telegraph Act (and its successor provisions) confers a positive right on licensed operators to deploy infrastructure on public property, not merely a permission to seek permission; the principle that local body fees for infrastructure deployment that exceed prescribed limits are illegal regardless of how they are characterised by the local body; and the principle that interference with lawfully deployed telecommunications infrastructure is actionable before TDSAT on the basis of the operator's statutory and licence-based rights. These principles will be further developed as the Telecommunications Act, 2023's Chapter IV framework is applied in practice.

TDSAT's broadcasting jurisdiction has also generated significant jurisprudence, particularly in the context of the New Tariff Order litigation. The tribunal's decisions on the scope of TRAI's authority to regulate channel pricing — including the question of whether TRAI can prescribe specific pricing formulae for individual channels or only prescribe maximum retail price caps — have significant implications for the constitutional and statutory bounds of TRAI's regulatory authority in the broadcasting sector. TDSAT's analysis of the proportionality of specific NTO provisions — assessing whether the regulatory intervention is necessary for achieving the consumer protection objectives of the NTO, or whether less restrictive alternatives could achieve the same objectives — represents one of the most sophisticated proportionality analyses in any TDSAT judgment and will be influential for the application of proportionality principles in future regulatory challenges across the sector.

SUPPLEMENTARY NOTE B

TDSAT Jurisprudence: Selected Topic Analysis

B.1 Interconnection: Law and Economics

Telecommunications interconnection — the arrangement by which the network of one operator is connected to the network of another, enabling calls and data to pass between subscribers of the two operators — is both the technical foundation of universal telecommunications connectivity and the subject of some of the most complex and commercially consequential regulatory disputes in Indian telecom history. Without interconnection, subscribers of different operators could not communicate with each other — a fundamental commercial and social failure that would make each operator's network commercially viable only if it achieves a near-monopoly subscriber base. The regulatory obligation to interconnect — imposed through the Reference Interconnect Offer (RIO) mechanism and TRAI's Interconnection Regulations — ensures that interconnection is available to all licensed operators on non-discriminatory terms, enabling competitive market entry without the incumbent network advantage that would otherwise make competition impossible.

The economics of interconnection in a multi-operator environment involve complex questions about how the costs of carrying each other's traffic should be shared. The "calling party pays" (CPP) model — in which the caller's operator pays the called party's operator for terminating the call on its network — has been the dominant model in India since mobile service commercialisation. Under this model, the termination rate (the IUC or interconnection usage charge) is the central commercial variable: high termination rates benefit operators with large subscriber bases (who receive large quantities of off-network calls) and disadvantage operators with small subscriber bases (who must pay high termination rates on their subscribers' off-network calls). This asymmetry was a significant factor in the Jio launch controversy: Jio's initially small subscriber base meant it was a net payer of IUC to incumbent operators, while incumbents with large subscriber bases received substantial IUC income. The evolution of the IUC framework from TRAI's 2017 reduction (from Rs. 0.14 to Rs. 0.06 per minute) toward the eventual elimination of IUC (bill-and-keep, where no termination payment is made) eliminates this competitive asymmetry and aligns India with the global trend toward zero termination rates.

The "bill and keep" (BAK) model — in which termination payments between operators are eliminated and each operator is required to "keep" the cost of terminating traffic on its own network — has been adopted by most major telecommunications markets globally for mobile-to-mobile interconnection. The economic rationale for BAK is that in competitive mobile markets where call volumes between any pair of operators are broadly balanced (since each operator's subscribers make and receive roughly equal numbers of calls), the costs of mutual termination are self-liquidating — each operator roughly recovers through the calls it terminates on its network what it pays for calls terminated on the other operator's network. The transition to

BAK in India — which TRAI flagged as the eventual objective in its 2017 IUC recommendation — has been slowed by the financial fragility of some operators and the competitive dynamics of the Jio market entry, but remains the regulatory destination. The full transition to BAK will further simplify the interconnection settlement framework, reduce the regulatory and commercial complexity associated with IUC computation and settlement, and eliminate the termination-rate-based competitive asymmetry that has been a feature of Indian telecom competition since liberalisation.

B.2 The Adjudication of Technical Disputes

TDSAT's adjudication of technical telecommunications disputes — proceedings in which the outcome depends not only on the legal interpretation of regulatory instruments but on the resolution of complex engineering and technical questions — requires the tribunal to develop and apply a methodology for managing technical evidence and expert testimony that is both intellectually rigorous and practically workable. The POI dispute, the IUC methodology challenges, the network quality disputes, and the spectrum interference cases all involve technical questions that cannot be resolved by legal analysis alone and require the tribunal to engage with telecommunications engineering evidence in depth. TDSAT's approach to technical disputes has evolved over its institutional history, from a reliance on experts presented by the parties (which creates the risk of "battle of experts" paralysis where each side presents credible but diametrically opposed technical analyses) toward a more active case management approach that includes the appointment of independent technical assessors in appropriate cases.

The institutional design of TDSAT — its composition, the technical qualifications required for appointment, and the availability of technical support staff — significantly affects its capacity for effective adjudication of technical disputes. The current statutory requirement for TDSAT's Chairperson to be a retired judge of the Supreme Court or a High Court, with technically qualified Members appointed from specified backgrounds, ensures legal quality but does not guarantee deep technical expertise in telecommunications engineering or economics. The gap between the technical expertise needed to fully evaluate complex engineering evidence and the expertise actually available at the tribunal level means that TDSAT must often rely on expert reports — either from party-appointed experts or from court-appointed assessors — whose conclusions it may not be fully equipped to critically evaluate independently. Strengthening TDSAT's internal technical capacity — through the appointment of technically qualified Members with telecommunications engineering or economics backgrounds, or through the provision of dedicated technical support staff — would improve the quality of technical adjudication and reduce the dependence on expert evidence that the parties may have incentives to present

selectively.

The admissibility and weight of technical standards documents in TDSAT proceedings raises interesting evidentiary questions. Technical standards — issued by bodies such as 3GPP, ETSI, ITU-R, and O-RAN Alliance — are not statutory instruments but represent expert consensus on technical requirements and best practices. In disputes about whether an operator's network meets applicable technical standards (for example, whether a base station's transmitted power meets the EMF exposure limit standards), technical standards documents are central to the factual analysis but their legal status as evidence requires careful consideration. TDSAT has generally treated applicable technical standards as authoritative evidence of accepted technical practice, but has also recognised that compliance with a technical standard does not necessarily resolve the dispute if the applicable standard is itself contested or if the standard allows for alternative interpretations in specific technical contexts. The development of clear principles for the treatment of technical standards documents as evidence in TDSAT proceedings would improve the consistency and predictability of technical adjudication outcomes.

B.3 Access to Regulatory Sandboxes: TDSAT's Role

The Telecommunications Act, 2023's regulatory sandbox provision (Section 32) enables the Central Government to permit the testing of innovative telecommunications technologies and services in defined geographic or virtual environments, with relaxed regulatory requirements applicable during the sandbox period. The regulatory sandbox is an important mechanism for enabling innovation in the telecommunications sector by reducing the regulatory barrier to testing new technologies before their commercial deployment: an operator or technology company can test a new service or technology in a sandbox environment without first needing to obtain all the regulatory approvals (including spectrum assignments, device type approvals, and service authorisations) that would be required for commercial deployment. The sandbox framework is particularly relevant for emerging technologies such as AI-based network management, quantum communications, advanced spectrum sharing, and OTT communication service integration.

TDSAT's potential role in the regulatory sandbox framework arises from the possibility that disputes may arise between sandbox participants, or between sandbox participants and the regulatory authority, about the terms and conditions of sandbox participation, the scope of the regulatory relaxations granted, or the consequences of specific conduct during the sandbox period. Since sandbox authorisations are granted by the Central Government (as "authorisations" under Section 3 of the 2023 Act), the TDSAT's appellate jurisdiction under Section 14A of the TRAI Act (as applied to TRAI's sandbox-related decisions) and the jurisdiction over licensor-licensee disputes (covering DoT's sandbox decisions) would extend to

sandbox-related disputes. The development of TDSAT jurisprudence on sandbox matters will be important for ensuring that the sandbox framework functions as a genuine regulatory innovation enabler rather than a source of protracted legal disputes that deter participation.

The experience of regulatory sandboxes in other sectors — particularly the financial services sector, where the RBI and SEBI have operated regulatory sandboxes for fintech innovation — provides relevant precedent for the telecommunications sandbox framework. Financial sector sandbox experience suggests that the most effective sandboxes are those that: clearly specify the regulatory relaxations available and the conditions that must be met to qualify; provide rapid and transparent processing of sandbox applications; maintain appropriate consumer protection safeguards even within the sandbox environment; and provide a clear pathway from successful sandbox testing to full commercial authorisation. The Telecommunications Act, 2023's sandbox rules should incorporate these lessons, ensuring that the sandbox framework genuinely accelerates the commercialisation of innovative telecom technologies rather than becoming another layer of bureaucratic process.

B.4 National Security Orders: Procedural Review

TDSAT's jurisdiction over disputes arising from national security orders — directions issued to telecom operators by the Central Government in the exercise of national security powers under the Telecommunications Act, 2023 — raises significant questions about the extent to which the content and basis of national security decisions can be reviewed by a tribunal. In general, courts and tribunals in India have been reluctant to review the substantive basis for national security decisions, recognising that the assessment of national security threats requires intelligence and expertise that judges and tribunals do not possess and that public disclosure of the basis for national security decisions may itself undermine national security. The doctrine of non-justiciability of national security decisions — a soft principle rather than an absolute rule — means that TDSAT is unlikely to second-guess the substantive assessment underlying a national security order (for example, the decision that a specific operator's network equipment poses a national security risk).

However, TDSAT's review of the procedural regularity of national security orders — whether the procedures prescribed by the Act and its implementing rules were followed, whether the operator received adequate notice and opportunity to respond (to the extent compatible with national security), and whether the penalty or remedy imposed is within the lawful parameters — is within the legitimate scope of judicial review even in national security contexts. The doctrine of procedural review without substantive review — applying rigorous procedural scrutiny while deferring to the executive on the substantive national security assessment — provides the

appropriate framework for TDSAT's engagement with national security order challenges. Practitioners advising operators who have received national security orders must assess whether procedural review is available (and likely to be productive) in the specific case, and must advise on the balance between the commercial imperative to challenge the order and the reputational and relationship risks of publicly challenging a national security designation.

The interaction between TDSAT's jurisdiction over national security order challenges and the jurisdiction of the High Courts under Article 226 of the Constitution is an important procedural question. National security challenges that raise constitutional questions (such as the allegation that a national security order violates the operator's fundamental rights to property, equality, or freedom of trade) must be brought before a constitutional court — either a High Court under Article 226 or the Supreme Court under Article 32 — rather than before TDSAT. However, national security challenges that raise administrative law questions (whether the prescribed procedure was followed, whether the designated authority had jurisdiction) may be appropriately brought before TDSAT in the first instance, with further appeal to the Supreme Court on questions of law under Section 18 of the TRAI Act. The strategic choice between the TDSAT and High Court routes for national security order challenges depends on the specific grounds of challenge and on the urgency of the commercial situation facing the operator.

SUPPLEMENTARY NOTE C

TDSAT: Procedure, Jurisdiction and Key Principles

C.1 TDSAT's Interaction with High Courts

The division of jurisdiction between TDSAT (as the specialist telecom regulatory tribunal) and the High Courts (as constitutional courts with general supervisory jurisdiction over administrative authorities) is a recurring source of procedural complexity in telecom regulatory litigation. The general principle — confirmed by multiple Supreme Court decisions — is that TDSAT has exclusive original and appellate jurisdiction over telecom regulatory matters within Section 14's scope, and that High Courts should not entertain petitions (including urgent petitions under Article 226) seeking to bypass TDSAT's jurisdiction. The constitutional foundation for this exclusion of High Court jurisdiction is that Parliament may, in the exercise of its legislative powers, create specialised tribunals and exclude the jurisdiction of civil courts (including High Courts) for specified categories of disputes, provided that the tribunal provides adequate procedural safeguards and an effective remedy. The Telecommunications Act, 2023's preservation and extension of TDSAT's exclusive jurisdiction reinforces this principle.

In practice, the boundary between TDSAT's exclusive jurisdiction and High Courts' supervisory jurisdiction is not always clear-cut. High Courts retain jurisdiction over: constitutional challenges to the validity of statutes and regulations (which TDSAT cannot adjudicate); challenges to the conduct of regulatory processes on grounds of violation of fundamental rights (where the constitutional nature of the challenge gives High Courts jurisdiction even if TDSAT could also address the regulatory aspects); and emergency situations where TDSAT cannot provide relief in time to prevent irreparable harm and where the High Court's writ jurisdiction is invoked on that exceptional basis. Operators' legal strategy in telecom disputes often involves a careful assessment of whether to initiate proceedings before TDSAT (providing specialised regulatory expertise and a direct appeal to the Supreme Court on questions of law) or before a High Court (providing broader constitutional jurisdiction, the right to interim relief on constitutional grounds, and the possibility of a full factual review rather than the deferential review applicable to regulatory decisions).

The phenomenon of "forum shopping" — operators choosing between TDSAT and High Courts based on the perceived likelihood of a favourable outcome rather than on the legal merits of each forum's jurisdiction — is a concern that the judiciary has periodically addressed through consolidated jurisdictional rulings. Where an operator files petitions in both TDSAT and a High Court on overlapping grounds (for example, challenging a TRAI order before TDSAT on administrative law grounds while simultaneously challenging the same order's constitutional validity before the High Court), courts must coordinate to avoid inconsistent orders and to prevent the multiplication of proceedings. The development of clearer guidance on the boundary between TDSAT and High Court jurisdiction — potentially through a Supreme Court ruling that definitively maps the jurisdictional territory — would reduce forum uncertainty and the associated litigation costs.

C.2 TDSAT's Class Action Mechanism

The class action-type mechanism available before TDSAT through the "group consumer petition" provision — allowing groups of affected consumers to bring representative petitions rather than individual complaints — is conceptually analogous to, though procedurally distinct from, the representative action mechanisms available in civil courts. TDSAT's group petition jurisdiction provides a streamlined path for addressing systemic consumer protection failures at the regulatory level: rather than each affected subscriber individually approaching a consumer court, a representative consumer organisation or a defined group of affected subscribers can bring a single petition before TDSAT on behalf of all similarly situated consumers. This procedural efficiency is particularly valuable for addressing regulatory-scale consumer protection

issues — such as a network quality failure affecting millions of subscribers in a specific geographic area, or a billing practice that systematically overcharges a specific subscriber segment.

The standing requirements for group consumer petitioners before TDSAT — specifically, the question of whether the petitioner must be a registered consumer organisation, whether individual subscribers can bring representative petitions on behalf of unnamed class members, and whether there is a minimum numerical threshold for the "group" — have been addressed in TDSAT's procedural rules but leave room for judicial interpretation in specific cases. TDSAT has generally taken a liberal approach to standing requirements for consumer group petitions, recognising that the purpose of the provision is to facilitate access to justice for consumers who would otherwise lack the resources or organisation to individually challenge systemic regulatory failures. At the same time, TDSAT has required that petitioners demonstrate some form of representative authority — either through membership in an affected group or through a documented mandate from affected subscribers — to prevent vexatious petitions brought by persons with no genuine stake in the issues.

The remedies available in TDSAT's group consumer petition proceedings have been developed through a growing body of decisions addressing specific types of consumer regulatory failure. In quality of service disputes, TDSAT has ordered operators to: publish performance improvement plans with specific milestones; submit enhanced monitoring reports to TRAI; undertake specific technical upgrades in identified network areas; and in appropriate cases, provide compensatory credits to affected subscribers. In billing dispute cases, TDSAT has ordered operators to: audit and correct systematic billing errors across the affected subscriber population; implement improved billing transparency measures; and refund overbillings to affected subscribers with interest. In consumer care cases, TDSAT has ordered operators to: improve grievance redressal response times; implement specific process changes for handling defined categories of complaint; and report compliance with prescribed service level standards. These remedies — combining corrective action (fixing the underlying problem) with compensatory relief (addressing the harm already caused) — provide effective relief for systemic consumer protection failures that the individual consumer redress mechanism is poorly suited to address.

C.3 Evidence in Complex Regulatory Disputes

The management of evidence in complex, large-scale regulatory disputes — such as the AGR litigation, the Jio-incumbent POI dispute, and the IUC tariff order challenges — requires sophisticated case management practices that TDSAT has developed over its institutional

history. Large-scale regulatory disputes typically involve: thousands of pages of documentary evidence (financial records, network performance data, correspondence, regulatory orders, expert reports); multiple expert witnesses presenting technical analyses on contested questions of telecommunications engineering or economics; complex legal arguments drawing on multiple statutory provisions, judicial precedents, and regulatory instruments; and potentially hundreds of individual factual questions that must be resolved to determine the overall outcome. Managing this evidentiary complexity — ensuring that the tribunal receives the information it needs to decide correctly, while preventing the proceedings from becoming unmanageably lengthy or costly — is one of TDSAT's most important case management challenges.

TDSAT's case management tools for complex disputes include: preliminary issue hearings (identifying and resolving threshold legal questions that may dispose of the case or substantially narrow the remaining issues before full evidentiary hearings); written submission requirements (requiring parties to file comprehensive written submissions before oral hearing, so that the hearing can focus on the most contested issues rather than recapitulating undisputed background); expert evidence protocols (requiring parties to exchange expert reports in advance and to identify points of agreement and disagreement between experts, so that the tribunal's time is focused on genuinely contested expert questions); and document indexing requirements (requiring parties to file indexed document bundles that enable the tribunal to quickly locate relevant documents during hearings). These procedural tools reflect international best practice in managing complex regulatory litigation and contribute to the efficiency and quality of TDSAT's adjudication.

C.4 Contempt Powers and Enforcement

TDSAT's contempt powers — the ability to enforce its orders through contempt proceedings against parties that fail to comply — are an essential complement to its adjudicatory jurisdiction. Without effective enforcement powers, TDSAT's orders would be advisory rather than binding — a party that loses before TDSAT could simply decline to comply without consequences, rendering the tribunal's jurisdiction practically meaningless. TDSAT's contempt jurisdiction under the Contempt of Courts Act, 1971 (which applies to tribunals established under special legislation as well as to regular courts) enables it to proceed against parties that wilfully disobey its orders, with potential consequences including fines and (in extreme cases) imprisonment.

The practical use of TDSAT's contempt powers has been measured — it is typically a last resort after multiple non-compliance notices have failed to produce compliance, and courts have been careful to ensure that contempt proceedings are not misused as a pressure tactic in disputed cases where the respondent has genuine grounds for non-compliance. Where

non-compliance reflects a genuine dispute about the scope or application of the order (rather than wilful defiance), contempt proceedings are generally inappropriate; the appropriate remedy is a clarification application before TDSAT to resolve the ambiguity. The development of a clear, published protocol for TDSAT's enforcement approach — specifying the circumstances in which compliance notices are issued, the timeline for compliance, and the criteria for commencing contempt proceedings — would improve the transparency and proportionality of TDSAT's enforcement function.

C.5 Regulatory Impact Assessment

Regulatory impact assessment (RIA) — the systematic analysis of the likely consequences of a proposed regulatory intervention, covering both the benefits (improved consumer welfare, reduced market failures, enhanced security) and the costs (compliance costs for operators, innovation deterrence, unintended market distortions) — is a tool that TRAI has used informally in its regulatory process but that could be applied more systematically and transparently to improve the quality of regulatory decision-making. A formal RIA requirement for significant new TRAI regulations and recommendations — mandating that TRAI publish a quantified or qualified assessment of the expected impacts of proposed interventions before finalising them — would improve the evidence basis for regulatory decisions, facilitate public scrutiny of TRAI's regulatory analysis, and create accountability for the accuracy of TRAI's impact forecasts.

The components of a comprehensive RIA for a TRAI regulatory proposal include: problem analysis (defining the market failure or other regulatory justification for the intervention); policy option identification (identifying the full range of possible regulatory approaches to the problem, including the option of no intervention); impact quantification (estimating the compliance costs, consumer benefits, and market effects of each option, using available data and appropriate modelling techniques); distributional analysis (identifying who bears the costs and who benefits from the intervention, with attention to distributional effects across income groups, geographic areas, and operator types); and implementation assessment (evaluating the feasibility of implementing and enforcing each option, and identifying the regulatory capacity requirements for effective implementation). The development of TRAI's RIA capability — including training for regulatory staff, methodological guidelines, and data infrastructure — would be a significant investment in the quality of India's telecommunications regulatory process.

C.6 TDSAT Decisions and Regulatory Precedent

The precedential value of TDSAT decisions — the extent to which TDSAT's reasoning in one case creates binding or persuasive authority for the resolution of similar issues in subsequent

cases — is an important aspect of TDSAT's role in developing Indian telecommunications regulatory law. TDSAT operates as a creature of statute rather than as a court of record with constitutional status, and its decisions are technically persuasive (rather than binding) precedents in subsequent cases before TDSAT itself. In practice, TDSAT tends to follow its own earlier decisions on settled questions of regulatory law, providing a degree of consistency and predictability that is essential for the rule of law in regulatory adjudication. Where TDSAT departs from earlier decisions — on the ground that the earlier decision was wrongly decided, that legal or factual circumstances have changed, or that the applicable regulatory framework has been modified — it typically provides detailed reasons for the departure, which are subject to scrutiny in any subsequent Section 18 appeal to the Supreme Court.

The Supreme Court's precedents in telecom regulatory cases — delivered on Section 18 appeals or in constitutional matters arising from the sector — are binding on TDSAT and provide the authoritative statement of telecommunications regulatory law on the questions they address. The Supreme Court's holdings in the AGR Case (on the definition of AGR), the 2G Spectrum Case (on the mandatory auction requirement for commercial spectrum), COAI v. TRAI (on the respective powers of TRAI and DoT), and Anuradha Bhasin (on internet shutdowns) are the primary constitutional and regulatory law precedents that shape TDSAT's adjudication and TRAI's regulatory practice. Practitioners who advise on telecommunications regulatory matters must maintain current awareness of Supreme Court developments in this field — new Supreme Court decisions can rapidly change the legal landscape in ways that require immediate reassessment of pending matters, regulatory compliance obligations, and transactional structures.

SUPPLEMENTARY NOTE D

TDSAT Jurisdiction: Advanced Dimensions

D.1 TDSAT and Constitutional Remedies

The relationship between TDSAT's statutory jurisdiction and the constitutional remedy jurisdiction of High Courts under Article 226 — a question that arises whenever a telecom operator or affected party seeks to challenge a regulatory decision on constitutional grounds — is one of the most procedurally significant questions in Indian telecommunications regulatory litigation. The general principle, confirmed by multiple Supreme Court and High Court decisions, is that where Parliament has created a specialised tribunal (such as TDSAT) with jurisdiction over specific categories of dispute, that jurisdiction is exclusive for matters falling within its

scope, and Article 226 petitions that seek to address the same issues through the High Court are not ordinarily maintainable. This principle — known as the "alternative forum doctrine" — reflects the legislative policy of routing telecommunications disputes through a specialist tribunal that can provide quicker and more technically informed resolution than a general High Court. However, the alternative forum doctrine has limits: High Courts retain jurisdiction over challenges that are genuinely constitutional in character — asserting a violation of fundamental rights that TDSAT is not competent to adjudicate. The demarcation between regulatory law challenges (for TDSAT) and constitutional challenges (for High Courts) in the telecommunications context is often blurred because the same regulatory decision may simultaneously involve both an administrative law issue (TRAI exceeded its jurisdiction) and a constitutional issue (the regulation violates the petitioner's fundamental right under Article 19(1)(g)). In practice, operators often hedge their bets by filing petitions in both TDSAT and a High Court simultaneously, with courts then needing to coordinate to avoid duplicative proceedings.

TDSAT's own capacity to address constitutional questions — specifically the question of whether TDSAT can apply constitutional standards (including the proportionality standard from *Puttaswamy*) in assessing the validity of TRAI's regulatory decisions — has been addressed inconsistently in TDSAT's jurisprudence. TDSAT is a statutory tribunal without general constitutional jurisdiction: it cannot declare a statute unconstitutional (which requires a constitutional court) but it can refuse to apply a statutory provision that is manifestly unconstitutional (acting under the "reading down" doctrine) and it can review administrative decisions for compliance with constitutional standards of fairness and non-arbitrariness. In practice, TDSAT has been willing to apply the proportionality standard in reviewing TRAI's regulations — assessing whether TRAI's regulatory interventions are necessary, appropriate, and proportionate to the regulatory objectives stated — even where this analysis comes close to constitutional scrutiny. The development of a clearer understanding of TDSAT's quasi-constitutional review jurisdiction — setting out the constitutional standards that TDSAT may apply in reviewing regulatory decisions, and distinguishing these from the full constitutional review available in High Courts — would improve the coherence and predictability of telecommunications regulatory litigation.

TDSAT's interaction with the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) in the context of insolvency proceedings involving licensed telecom operators is an emerging jurisdictional intersection that the Telecommunications Act, 2023's regime must address. When a licensed telecom operator enters insolvency resolution proceedings under the Insolvency and Bankruptcy Code (IBC), 2016, the

moratorium imposed by the IBC on legal proceedings against the corporate debtor raises questions about whether TDSAT regulatory proceedings against the operator are covered by the moratorium. The IBC's moratorium provision — which stays "all proceedings" against the corporate debtor — could be interpreted to cover TRAI enforcement actions and TDSAT penalty proceedings, potentially preventing regulatory enforcement against financially distressed operators during the resolution period. Alternatively, regulatory proceedings by statutory authorities acting in the public interest may fall outside the IBC moratorium under the regulatory carve-out established by the Supreme Court in some IBC cases. The resolution of this jurisdictional question — through clarifying legislation or through Supreme Court guidance — is important for both the effectiveness of telecom regulation (ensuring that financial distress cannot be used to immunise operators from regulatory enforcement) and the efficacy of the IBC resolution process (ensuring that regulatory liabilities are properly accounted for in the resolution plan).

D.2 Arbitration in Telecom Disputes

The Telecommunications Act, 2023 provides for alternative dispute resolution mechanisms — including arbitration — as supplements to TDSAT's adjudicatory jurisdiction for resolving commercial disputes between telecom sector parties. The statutory arbitration framework in the telecom sector has historically been limited: TRAI's 1997 Interconnection Dispute Resolution regulations provided a reference arbitration mechanism for interconnection disputes, but this was largely superseded by TDSAT's direct jurisdiction over such disputes. The 2023 Act's contemplation of alternative dispute resolution reflects the recognition that TDSAT's formal proceedings, while appropriate for regulatory disputes and matters of public importance, may be disproportionately expensive and time-consuming for resolving purely commercial disputes between operators that do not involve public interest regulatory considerations. Arbitration under the Arbitration and Conciliation Act, 1996 — with its more flexible procedural framework, expert arbitrators, confidentiality provisions, and potentially faster timelines — may be more appropriate for such disputes. The development of a sector-specific arbitration framework for Indian telecommunications — with approved arbitral institutions, standard arbitration clauses for telecom contracts, sector-specialist arbitrator panels, and clear rules on arbitral jurisdiction vis-à-vis TDSAT — would improve the dispute resolution ecosystem for the sector.

The arbitrability of telecommunications disputes — specifically, which categories of telecommunications dispute can be referred to arbitration and which must be adjudicated by TDSAT as a matter of statutory mandate — is a fundamental question for the design of a telecom arbitration framework. TDSAT's exclusive statutory jurisdiction covers disputes between

operators and TRAI, and disputes between operators and the Central Government, that arise from regulatory decisions or licence conditions. These regulatory disputes — which involve the interpretation and application of public law regulatory instruments — are not arbitrable: they require adjudication by a constitutionally legitimate tribunal with public law jurisdiction. However, commercial disputes between operators (for example, disputes about the quantum of damages in an infrastructure sharing agreement, or disputes about billing accuracy under a wholesale interconnection agreement) may be arbitrable if the parties have agreed to an arbitration clause and if the dispute does not involve any regulatory question that requires TDSAT's interpretation. The boundary between regulatory disputes (non-arbitrable, TDSAT jurisdiction) and purely commercial disputes (potentially arbitrable) is fact-specific and requires careful legal analysis in each case.

D.3 The Emergence of AI-Assisted Adjudication

The application of artificial intelligence tools to the adjudication of telecom regulatory disputes — through AI-assisted case management, AI-supported evidence analysis, and AI-driven legal research — is an emerging frontier in judicial technology that has specific relevance for TDSAT given the volume and technical complexity of its caseload. TDSAT's annual caseload — which runs to several hundred new matters per year across its original and appellate jurisdiction — creates significant case management challenges: tracking the status of large numbers of concurrent proceedings, managing the submission and exchange of large documentary records, scheduling hearings efficiently, and maintaining records of orders and decisions. AI-assisted case management tools — similar to those being piloted in various Indian High Courts and tribunals — could significantly improve TDSAT's administrative efficiency by: automatically tracking case statuses and filing deadlines; flagging cases that are approaching statutory decision timelines; generating standardised templates for routine procedural orders; and maintaining searchable electronic records of all orders and filings. The legal framework for TDSAT's adoption of technology-assisted case management — and specifically the question of whether AI-generated procedural decisions require human review before being issued — is an important governance question that TDSAT's rules need to address as AI tools become more capable.

D.4 Regulators as Complainants Before TDSAT

The question of whether TRAI can itself bring a complaint before TDSAT — acting as the complainant in proceedings against a licensed operator for regulatory non-compliance — rather than relying solely on its own enforcement powers (issuing directions) or on DoT's licence enforcement powers (threatening licence revocation), is an important institutional design

question under the Telecommunications Act, 2023's enforcement framework. Under the previous framework, TRAI's direct enforcement tools were limited to directions under Section 13 of the TRAI Act; TRAI could not itself initiate penalty proceedings before TDSAT but could refer non-compliance matters to DoT for licence condition enforcement action. The 2023 Act's civil penalty framework — with the Adjudicating Officer mechanism — creates a more direct enforcement route in which TRAI (and DoT) can initiate formal penalty proceedings before the Adjudicating Officer rather than relying entirely on DoT's licence action mechanism. TRAI's role in the adjudicatory process — both as the regulator whose decisions are being reviewed and as a party in enforcement proceedings before the Adjudicating Officer — requires careful institutional design to avoid conflicts of interest and to maintain the separation of regulatory (TRAI) and adjudicatory (Adjudicating Officer/TDSAT) functions.

The separation between TRAI's regulatory function (issuing directions, recommending standards) and its enforcement function (initiating proceedings for non-compliance) is important for the perceived fairness of the regulatory framework. Where TRAI is simultaneously the issuer of a disputed direction and the initiator of enforcement proceedings for non-compliance with that direction, the operator subject to those proceedings may reasonably question whether the enforcement process can be truly impartial. The design of the Adjudicating Officer mechanism — specifically whether the Adjudicating Officer is structurally independent of TRAI, how the Officer is appointed, and what procedural safeguards ensure that enforcement proceedings are conducted fairly — is critical for the constitutional validity of the civil penalty regime and for its perceived legitimacy among regulated operators. Comparing the institutional design of TDSAT (which provides an independent appellate review of TRAI's decisions) with the Adjudicating Officer (which is closer to the regulatory authority) reveals the importance of maintaining multiple levels of independent review in a framework where the regulator has both standard-setting and enforcement functions.

D.5 TDSAT Remedies: Beyond Monetary Awards

TDSAT's remedial jurisdiction — the range of remedies it can order in proceedings before it — extends well beyond monetary awards and includes mandatory orders, prohibitory orders, declarations, and directions that can significantly affect the operational conduct of regulated entities. In consumer protection proceedings, TDSAT has ordered operators to: implement specific process improvements (such as adopting automated call drop detection and compensation systems); publish performance data in prescribed formats; and establish specific quality monitoring mechanisms. In interconnection proceedings, TDSAT has ordered operators to: provide specified interconnection capacity within defined timelines; implement technical

interconnection configurations prescribed by the regulatory framework; and submit monthly interconnection quality reports to TRAI. In right-of-way proceedings, TDSAT has ordered local bodies and property authorities to: grant within-specified-days permits for infrastructure deployment; refrain from interfering with lawfully deployed infrastructure; and comply with the fee limitations prescribed by the applicable RoW rules.

The enforceability of TDSAT's mandatory and prohibitory orders — particularly orders directed at non-parties (such as orders requiring a local body to issue a RoW permit, where the local body is not a party to the licence relationship between DoT and the operator) — requires careful consideration of TDSAT's jurisdictional reach. TDSAT's jurisdiction is primarily defined by the parties to the dispute (licensors and licensees, service providers and subscribers) rather than by the full range of entities whose conduct may be relevant to a telecom regulatory matter. Where TDSAT wishes to order action by a non-party (such as a local body or a content provider), it must rely either on its inherent jurisdiction over ancillary matters necessary to give effect to its primary jurisdiction, or on the parties before it to secure compliance from the non-parties through their commercial relationships. The development of TDSAT's jurisdiction over third parties — through either statutory amendment or judicial interpretation — would improve the effectiveness of TDSAT's remedial toolkit in complex multi-party regulatory situations.

SUPPLEMENTARY NOTE E

TDSAT: Emerging Jurisprudential Themes

E.1 Proportionality Review in TDSAT Decisions

The progressive adoption of proportionality review — assessing whether TRAI's regulatory interventions achieve their objectives and impose no more regulatory burden than necessary — as a standard of review in TDSAT's appellate jurisprudence represents one of the most significant developments in Indian telecommunications administrative law over the past decade. Proportionality review supplements the traditional administrative law review standards of illegality (whether the decision-maker acted within its legal authority), irrationality (whether the decision was so unreasonable that no reasonable decision-maker could have made it), and procedural impropriety (whether the required procedures were followed) with a more substantive enquiry into the merits of the regulatory decision. Under a proportionality review standard, TDSAT assesses not only whether TRAI had the power to make a particular regulatory decision but whether that decision was a reasonable, evidence-based, and appropriately calibrated exercise of that power in light of the regulatory objectives and the available alternatives. This is a more

demanding standard than simple *Wednesbury* unreasonableness review, and it has the potential to significantly constrain TRAI's discretion if applied rigorously — which is why both TRAI and operators have an interest in understanding and influencing how the standard is applied.

The calibration of proportionality review in TDSAT — specifically the degree of deference TDSAT extends to TRAI's technical and economic judgments within the proportionality framework — is critical for maintaining the institutional balance between regulatory discretion and judicial oversight. If TDSAT applies proportionality review with very limited deference (substituting its own judgment for TRAI's on every technical and economic question), it risks becoming a super-regulatory body that second-guesses expert regulatory decisions without having the institutional capacity or information to do so reliably. If TDSAT applies proportionality review with very high deference (asking only whether TRAI's decision was within a broad range of reasonable decisions), it effectively reverts to a rationality review standard that provides little additional protection against regulatory overreach. The appropriate calibration is a context-sensitive deference framework: deference to TRAI's technical and economic judgments (where TRAI has specialist expertise that TDSAT lacks) but more intensive review of TRAI's legal conclusions (where TDSAT has equivalent or superior legal expertise) and of TRAI's procedural compliance (where TDSAT can assess compliance with legal procedural standards regardless of technical complexity). The development of a consistent, principled deference framework in TDSAT's proportionality review jurisprudence — communicated through well-reasoned decisions that explain the standard being applied and its rationale — would improve the predictability and legitimacy of TDSAT's appellate review function.

The influence of EU proportionality review on TDSAT's developing proportionality jurisprudence — through the application of concepts from EU administrative law and regulatory law in the telecommunications context — reflects the global convergence of administrative law standards in the regulatory sphere. EU proportionality review in the telecommunications context (applied by the Court of Justice of the European Union in cases under the EU regulatory framework) involves a three-step analysis: suitability (does the measure achieve the regulatory objective?); necessity (is the measure the least restrictive means of achieving the objective, or could a less restrictive alternative achieve the same result?); and proportionality *stricto sensu* (are the benefits of the measure proportionate to its costs?). This three-step framework provides a structured analytical approach that TDSAT could adopt, either explicitly or implicitly, in its proportionality review of TRAI's regulatory decisions. The adoption of a structured proportionality framework would improve the transparency of TDSAT's reasoning and enable operators and TRAI to better predict how specific regulatory challenges will be assessed, improving the overall

efficiency of the regulatory litigation process.

E.2 TDSAT and International Arbitration

The interface between TDSAT's jurisdiction and international arbitration — specifically the question of whether disputes between Indian telecom operators and foreign investors in those operators can be submitted to international arbitration under investment treaties (Bilateral Investment Treaties or BITs) rather than being resolved before TDSAT — is an emerging issue in Indian telecommunications regulatory law. Several investment treaty arbitrations have involved India's telecommunications sector, most notably the *Vodafone v. India* arbitration (which concerned the retrospective tax on Vodafone's acquisition of a majority stake in Hutchison Essar) and related proceedings. While the *Vodafone* arbitration ultimately turned on tax law rather than telecommunications regulation, the precedent of foreign investors pursuing India through investment arbitration for regulatory measures affecting the telecommunications sector has important implications for the design of India's telecommunications regulatory framework. Regulatory decisions that affect the commercial expectations of foreign investors in Indian operators — particularly decisions that significantly change the financial conditions of their investment — may be challenged as indirect expropriation or violations of fair and equitable treatment standards under applicable BITs.

The practical implications for TRAI and DoT — as they implement the Telecommunications Act, 2023's framework — of the investment treaty arbitration risk is not that regulatory decisions must be immunised from all adverse commercial consequences for investors (which would be an impractical constraint on legitimate regulatory discretion), but that regulatory decisions must be substantively reasonable, procedurally fair, transparent, and consistent with legitimate investor expectations. These requirements — which are essentially the rule of law requirements for good regulation — align with the constitutional standards of non-arbitrariness and procedural fairness applicable under Indian administrative law. The overlap between the investment treaty standard of fair and equitable treatment and India's domestic administrative law standards of reasonableness and procedural fairness suggests that a regulator that complies with domestic administrative law requirements will generally also meet investment treaty standards. The development of a regulatory practice that is documently transparent, procedurally fair, and substantively evidence-based — and that provides clear transitional arrangements when regulatory conditions change — is the most effective risk management approach for both domestic administrative law challenges and international investment treaty arbitration.

E.3 Emerging Consumer Rights in Telecommunications

The consumer rights framework in Indian telecommunications law is evolving beyond the traditional consumer protection concerns of billing accuracy, QoS compliance, and grievance redressal to encompass newer categories of consumer right that reflect the evolving nature of the telecommunications relationship. The right to data portability — the ability of subscribers to obtain their personal data from one operator in a machine-readable format and transfer it to another operator — is a consumer right established by the DPDPA that has specific practical significance for telecommunications subscribers. A subscriber's call history, usage data, and preferences stored with one operator represent a valuable digital profile that the subscriber should be able to take to a new operator, reducing the data-based switching costs that might otherwise lock subscribers into relationships with their current operators. TRAI's regulatory framework for data portability in the telecommunications context — specifying what data must be provided, in what format, and within what timeline, when a subscriber requests it — is an important complement to the DPDPA's portability right and would improve the practical exercisability of the right for telecommunications subscribers.

The right to meaningful consent for data use — established by the DPDPA's consent framework and directly applicable to the extensive personal data processing that telecommunications services involve — represents an important expansion of consumer rights beyond the traditional telecom consumer protection agenda. Telecommunications subscribers have historically been presented with lengthy terms and conditions that purport to grant operators very broad rights to use subscriber data, without the granular consent options (choosing whether to consent to specific uses of specific data for specific purposes) that the DPDPA now requires. The transition to the DPDPA's consent standard — requiring free, specific, informed, unconditional, and unambiguous consent expressed through a clear affirmative action — requires operators to redesign their subscriber onboarding processes and their data use request mechanisms. TRAI's role in ensuring that operators' consent mechanisms comply with both the DPDPA's consent standard and the telecommunications consumer protection framework is an important institutional coordination responsibility: TRAI should work with the Data Protection Board to develop sector-specific guidance on consent mechanisms for telecommunications services that satisfies both frameworks.

The emerging right to algorithmic transparency — the right of persons affected by automated decision-making to understand the basis of decisions that significantly affect them — has specific relevance in the telecommunications context where operators increasingly use AI algorithms to make decisions about subscriber credit assessment, churn prediction, fraud detection, and personalised pricing. A subscriber who is denied a post-paid plan on the basis of an AI credit

assessment, or who receives a personalised price offer that is higher than the offer received by other subscribers, has a legitimate interest in understanding the basis of these decisions and in contesting decisions that may be erroneous or discriminatory. The DPDPA's provisions on automated decision-making — which entitle data principals to object to decisions made solely on the basis of automated processing that significantly affect them and to request human review of such decisions — provide a statutory framework for algorithmic transparency rights in the telecommunications context. TRAI's engagement with the use of AI in operator decision-making — through regulatory guidance that requires operators to implement transparent, fair, and contestable AI decision-making processes — would complement the DPDPA's framework and ensure that AI-driven operator decisions are consistent with both data protection law and telecommunications consumer protection requirements.

SUPPLEMENTARY NOTE F

TDSAT: Perspectives on Key Themes

F.1 The Role of Precedent in TDSAT Decisions

The role of precedent in TDSAT's adjudicatory jurisprudence — specifically the degree to which TDSAT is bound by or treats as persuasive its own earlier decisions on similar issues — is an important aspect of the tribunal's institutional character and the predictability of its regulatory law jurisprudence. Unlike courts of record (High Courts and the Supreme Court) whose decisions create binding precedents, TDSAT is a statutory tribunal whose decisions are technically persuasive rather than binding in future cases before the same tribunal. However, the institutional logic of consistency — treating similar cases similarly — means that TDSAT in practice follows its earlier decisions unless there are compelling reasons to depart from them. The articulation of these compelling reasons — specifically, the conditions under which TDSAT will depart from an earlier decision (because it was wrongly decided, because the factual context is materially different, or because the applicable regulatory framework has been amended) — is an important element of TDSAT's jurisprudential methodology. A TDSAT that departs from its earlier decisions without adequate explanation undermines the predictability of the regulatory law framework and creates incentives for parties to re-litigate settled questions in the hope of securing a different outcome. Conversely, a TDSAT that rigidly adheres to earlier decisions regardless of changed circumstances or recognised errors fails to develop the law appropriately in response to technological and regulatory evolution.

The Supreme Court's role as the ultimate precedential authority over TDSAT — through its appellate jurisdiction under Section 18 of the TRAI Act — ensures that TDSAT's jurisprudence is ultimately subject to correction by the nation's highest court. The Supreme Court's telecommunications regulatory jurisprudence — in cases including the AGR judgment, the 2G Spectrum Case, and the Anuradha Bhasin internet shutdown case — creates binding precedents that TDSAT must apply in subsequent cases involving the same legal principles. The interaction between TDSAT's more numerous, sector-specific decisions and the Supreme Court's fewer but more authoritative rulings creates a layered precedential structure: TDSAT develops detailed regulatory law on specific telecommunications issues, while the Supreme Court provides the constitutional and statutory principles that constrain TDSAT's analysis. Practitioners who advise on telecommunications regulatory matters must maintain awareness of both layers — the TDSAT decisions that provide detailed guidance on specific regulatory issues and the Supreme Court decisions that establish the constitutional and statutory framework within which TDSAT operates.

The use of comparative foreign law in TDSAT's reasoning — specifically the citation of decisions from regulatory tribunals in the United Kingdom, European Union, and United States in support of specific regulatory law propositions — reflects the global character of telecommunications regulatory law and the benefit of learning from international regulatory experience. TDSAT has cited Ofcom decisions (on interconnection, quality of service, and spectrum management), decisions of the European Court of Justice (on proportionality review and fundamental rights), and FCC orders (on net neutrality and spectrum policy) as persuasive authority in support of specific regulatory law conclusions. This international jurisprudential dialogue enriches the development of Indian telecommunications regulatory law, particularly in emerging areas (such as OTT regulation, net neutrality, and AI in networks) where Indian regulatory precedent is limited and international experience provides valuable guidance. The use of foreign law must, however, be appropriately adapted to the Indian constitutional and statutory context: principles developed in the regulatory law of common law jurisdictions with strong rule-of-law traditions may require modification when applied in India's constitutional framework.

F.2 Regulatory Accountability Mechanisms

The accountability framework for TRAI — the mechanisms through which TRAI's regulatory decisions are subject to oversight, review, and correction — is multi-layered and involves multiple institutional actors. Judicial accountability is provided by TDSAT's appellate review of TRAI's orders and recommendations (with further appeal to the Supreme Court on questions of law) and by High Courts' writ jurisdiction over constitutional challenges. Parliamentary

accountability is provided by the Standing Committee on Communications' oversight of TRAI's activities and by parliamentary questions addressed to the Minister of Communications about TRAI's regulatory record. Public accountability is provided by TRAI's public consultation process (which involves public participation in regulatory decision-making), by its mandatory publication of orders, recommendations, and reports, and by civil society organisations' engagement with TRAI's regulatory agenda. And administrative accountability is provided by the Central Government's power to supersede TRAI (in the extreme case of irremediable failure to perform its statutory functions) and by the government's role in approving the financial budget for TRAI's operations.

The adequacy of these accountability mechanisms — and specifically whether they provide sufficient oversight to ensure that TRAI exercises its regulatory powers responsibly and in the public interest — has been the subject of periodic review and policy debate. Critics of the current framework argue that TDSAT's appellate review is insufficiently rigorous (applying a deferential standard of review that rarely overturns TRAI decisions), that parliamentary oversight is too infrequent to be effective (given the limited committee time available for detailed examination of complex regulatory matters), and that TRAI's financial dependence on the Central Government creates a risk of regulatory capture (since TRAI may be reluctant to make decisions that conflict with the government's commercial interests in government-owned operators). Defenders of the framework argue that the combination of judicial review, parliamentary oversight, and public consultation provides an appropriate balance between regulatory independence (needed for effective regulation) and democratic accountability (needed for legitimacy). The development of enhanced accountability mechanisms — such as a requirement for post-implementation reviews of significant regulatory decisions, more regular and substantive parliamentary oversight hearings, or independent evaluation of TRAI's regulatory performance by an external body — would strengthen the accountability framework without undermining TRAI's necessary operational independence.

TRAI's engagement with civil society — the non-governmental organisations, consumer groups, academic researchers, and public interest advocates who participate in TRAI's consultations and who provide independent analysis of the telecommunications sector — is an important component of the regulatory accountability ecosystem that is worth specific attention. Civil society participation in telecommunications regulation in India has been significant: the Public Interest Advocacy Group, the Internet Freedom Foundation, the Centre for Internet and Society, and various consumer organisations have provided substantive inputs to TRAI consultations that have influenced regulatory outcomes on issues including net neutrality, OTT

regulation, data protection, and universal service. Civil society's role is particularly valuable in consultations where the primary organised stakeholders are commercial actors (operators, equipment vendors, and content platforms) whose inputs are informed by commercial interests that may not fully align with the public interest. The development of structured mechanisms to support civil society participation in TRAI's regulatory process — including provision of easily accessible consultation documents, public hearing opportunities, and specific engagement with organisations representing underrepresented consumer groups — would strengthen the quality and representativeness of TRAI's public consultations.

F.3 TDSAT's Relationship with Consumer Courts

The division of jurisdiction between TDSAT (as the specialist telecommunications regulatory tribunal) and the consumer courts (District Consumer Disputes Redressal Commissions, State Commissions, and the National Consumer Disputes Redressal Commission) established under the Consumer Protection Act, 2019 is a recurring procedural challenge for telecommunications subscribers and practitioners. The basic principle is that TDSAT has jurisdiction over disputes between telecom operators and their subscribers that arise from the licensee's failure to comply with its regulatory obligations (licence conditions, TRAI regulations, and government directions), while consumer courts have jurisdiction over consumer disputes involving deficiency in service, unfair trade practices, and restrictive trade practices by traders and service providers. In practice, many individual subscriber complaints against operators can be framed either as regulatory non-compliance (TDSAT jurisdiction) or as consumer service deficiency (consumer court jurisdiction), creating uncertainty about which forum is appropriate.

The Supreme Court's resolution of the jurisdiction question — in cases where both TDSAT and consumer courts have been approached with similar complaints — has generally applied a practical test: where the complaint requires the interpretation and application of a specific regulatory standard (such as a TRAI QoS benchmark or a licence condition), TDSAT is the appropriate forum; where the complaint is a straightforward consumer service complaint (billing error, poor service quality without a regulatory dimension, failure to honour a promotional commitment) without requiring regulatory interpretation, a consumer court or the Consumer Protection Act's mediation framework may be more appropriate. This test provides a workable but imperfect demarcation: many complaints have both a regulatory dimension (is the operator in breach of its QoS obligations?) and a consumer service dimension (has the subscriber suffered loss as a result?), and the appropriate forum depends on which dimension is primary in the specific complaint. Practitioners advising subscribers on the appropriate forum for their complaints must carefully assess the specific facts and the primary legal question before

advising on the appropriate proceeding.

The interaction between the TDSAT consumer petition mechanism and the consumer courts' class action provisions (under the Consumer Protection Act, 2019) creates an interesting forum competition that benefits affected subscribers. The Consumer Protection Act's class action provision enables a group of consumers to jointly file a complaint against a common service provider before a consumer court, seeking a common remedy for a common service deficiency. This mechanism is potentially available for the same systemic service quality failures that TDSAT's group consumer petition mechanism addresses. The choice between the TDSAT route (which provides access to regulatory expertise and can result in directions to TRAI or the Central Government as well as to the operator) and the consumer court route (which provides access to consumer protection jurisprudence and can result in compensation awards as well as service improvement directions) depends on the specific relief sought and the nature of the complaint. In some cases, concurrent proceedings before both TDSAT (for the regulatory dimension) and a consumer court (for the compensation dimension) may be appropriate, provided that the two proceedings are coordinated to avoid inconsistent orders.

F.4 International Telecom Disputes and Investor Claims

The international arbitration of disputes arising from India's telecommunications regulatory framework — specifically investor-state arbitrations brought by foreign investors in Indian telecom companies claiming that India's regulatory measures violate international investment protection standards — is an area of growing legal significance for India's telecommunications regulatory governance. India has been involved in several significant investment arbitrations with connections to the telecommunications sector, most notably the Vodafone BVHL v. India arbitration under the India-Netherlands BIT (arising from India's imposition of retrospective capital gains tax on Vodafone's acquisition of the Hutchison Essar stake), which India ultimately lost on jurisdiction grounds (with the tribunal ruling that India's retroactive tax legislation violated the fair and equitable treatment standard). While the Vodafone case involved tax law rather than telecommunications regulation per se, it established precedents about the limits of India's sovereign regulatory discretion vis-à-vis foreign investors in the telecommunications sector that have implications for telecommunications regulatory decisions more broadly.

India's investment treaty framework for the telecommunications sector has been substantially rewritten since the Vodafone arbitration and the 2015 model BIT reform, which significantly narrowed the protections available to foreign investors against regulatory measures. The 2016 Indian Model BIT — which eliminated the most-favoured nation (MFN) clause, restricted the fair and equitable treatment standard to a minimum standard of treatment under

customary international law, and included a broad carve-out for national security and regulatory measures — reflects India's determination to maintain maximum regulatory flexibility while still providing basic investor protection. New investment treaties concluded by India since 2016 generally follow the model BIT and provide more limited investor protections than the earlier generation of BITs that India concluded in the 1990s and 2000s. Foreign investors considering investments in India's telecommunications sector must carefully assess the investor protections available under the applicable investment treaty (if any) and the contractual protections available through the investment agreement, recognising that the regulatory risk of significant policy changes is substantial in a sector subject to rapid technological and commercial evolution.

SUPPLEMENTARY NOTE G

TDSAT: Closing Jurisprudential Themes

G.1 Legitimate Expectations in Telecom Regulation

The doctrine of legitimate expectations — the principle that a person who has reasonably relied on an assurance or consistent practice of a public authority may have a legal entitlement to have that expectation respected or at least considered before the authority changes its position — has been an important and evolving concept in Indian administrative law that has specific applications in telecommunications regulation. The commercial decisions that telecom operators make — investing billions in spectrum acquisitions, deploying nationwide network infrastructure, and entering long-term contracts with customers and suppliers — are made in reliance on the regulatory framework that exists at the time of the investment. When the regulatory framework changes — through changes to licence conditions, spectrum assignment terms, or interconnection regulations — operators who made investments in reliance on the previous framework may have legitimate expectations that the previous conditions will continue for the period they reasonably relied upon, or that any change will be phased in with adequate transitional protection. TDSAT has engaged with legitimate expectations arguments in several significant proceedings, including challenges to TRAI's 2017 reduction of the interconnection usage charge (IUC), where operators argued that they had invested in network infrastructure in reliance on the prevailing IUC regime and that the rate reduction created a legitimate expectations claim. While courts generally recognise the legitimacy of the concern, they typically find that legitimate expectations must yield to the regulatory authority's mandate to serve the broader public interest — operators cannot have a legitimate expectation that regulatory conditions will remain unchanged indefinitely in a dynamic sector where regulatory evolution is

both necessary and foreseeable. The development of a more structured framework for managing regulatory transition — one that provides more consistent, transparent, and duly consulted treatment of changes that affect investments made in reliance on existing regulatory conditions — would improve the investment climate for the sector without unduly constraining regulatory flexibility.

The relationship between legitimate expectations and the principle of regulatory stability — the idea that a well-functioning regulatory framework should provide predictability for long-term investment decisions — is an important conceptual tension in telecommunications regulatory governance. Regulatory stability is commercially valuable: operators and investors are willing to pay more (in spectrum prices and capital investment) for regulatory frameworks that provide greater certainty about the conditions they will face over the life of their investments. Regulatory flexibility is also valuable: the ability of the regulator to respond promptly to technological change, market failures, and policy shifts is essential for maintaining the effectiveness of the regulatory framework as circumstances evolve. The optimal regulatory governance framework manages this tension by: providing clear, advance signalling of planned regulatory changes (enabling operators to adjust their investments in anticipation); building transitional provisions into major regulatory changes (phasing in new requirements over periods that reflect the depreciation timelines of affected investments); and maintaining *ex ante* regulatory stability on the most commercially critical parameters (such as spectrum assignment fees and licence fee rates) while retaining flexibility on matters where prompt regulatory response is essential (such as security conditions and consumer protection requirements).

TDSAT's application of the legitimate expectations doctrine has progressively developed a nuanced framework that distinguishes between different categories of regulatory change based on the nature of the interest affected and the quality of the operator's reliance. Regulatory changes that affect the core terms on which spectrum was auctioned and paid for — such as changes to spectrum usage charges or spectrum assignment conditions that make the spectrum less commercially valuable than when it was acquired — attract the strongest legitimate expectations protection, because spectrum auctions create a quasi-contractual relationship (the operator paid a specific price based on specific conditions) that is more analogous to a commercial commitment than ordinary administrative regulation. Regulatory changes that affect service conditions or quality standards — such as changes to QoS benchmarks or consumer protection obligations — attract more limited legitimate expectations protection, because operators could reasonably anticipate that service quality standards would evolve over time and should not have made irreversible investment decisions in reliance on specific quality standards

remaining unchanged. This graduated approach to legitimate expectations provides a framework for assessing specific regulatory challenges that is more analytically rigorous than a blanket rule either protecting or disregarding operator reliance claims.

G.2 Procedural Defaults in Regulatory Proceedings

The consequences of procedural defaults in regulatory proceedings — when a party fails to comply with the prescribed procedures for filing documents, meeting deadlines, or attending hearings — have been addressed in multiple TDSAT decisions that collectively establish the procedural framework for telecommunications regulatory litigation. TDSAT's approach to procedural defaults reflects a balance between the need for orderly, efficient adjudication (requiring parties to comply with procedural requirements that enable the tribunal to manage its caseload) and the requirement of substantive justice (ensuring that cases are decided on their merits rather than purely on procedural grounds). TDSAT has generally been willing to condone procedural defaults — such as late filing of pleadings or written submissions — where the party can show sufficient cause for the default and where the condonation does not cause material prejudice to the other side. However, where a party persistently fails to comply with procedural requirements despite warnings, or where a default causes substantial delay or prejudice to the proceedings, TDSAT has declined to condone the default and has proceeded to adjudication based on the available material.

The *ex parte* adjudication of regulatory disputes — where TDSAT proceeds to hear and decide a matter in the absence of one party that has failed to appear despite proper notice — is a procedural option that TDSAT has exercised in cases where a respondent (typically a regulated operator) fails to appear or file a response to a petition despite having been properly served. The legal basis for *ex parte* adjudication — that a party who has been given proper notice and opportunity to be heard cannot deprive the tribunal of its jurisdiction to adjudicate by simply failing to participate — is well-established in administrative law. TDSAT's *ex parte* orders are, however, subject to a re-hearing application by the absent party, which allows the party to have the case reopened if it can demonstrate that it had a valid reason for non-appearance and that it has a meritorious defence to the original petition. The development of clear, published procedural rules for *ex parte* adjudication — specifying the standards for granting *ex parte* orders, the procedure for applying to set aside *ex parte* orders, and the consequences of repeated defaults — would improve the clarity and consistency of TDSAT's procedural framework.

G.3 The Duty of Candour in Regulatory Proceedings

The duty of candour — the obligation of parties to make full and frank disclosure of all material facts and documents to the court or tribunal, including facts that are adverse to their own case — has particular importance in regulatory proceedings before TDSAT because of the significant information asymmetry between regulators (who typically have access to market-wide data and expert analysis) and individual operators (who have detailed knowledge of their own operations but may have limited visibility of industry-wide patterns). The duty of candour operates in both directions: TRAI is obligated to disclose all material facts relevant to its regulatory decisions when those decisions are challenged before TDSAT, including internal documents and analysis that may support the operator's challenge; and operators are obligated to disclose all material facts relevant to their operations when those facts are relevant to the regulatory issues in dispute. The failure to discharge the duty of candour — through selective disclosure of supporting material while withholding adverse material — is a serious procedural impropriety that can result in the striking out of proceedings, adverse inferences, and cost sanctions.

The specific application of the duty of candour in proceedings involving commercially sensitive information — where either party resists full disclosure on grounds of commercial confidentiality — requires TDSAT to develop proportionate processes for managing the tension between the principle of open justice and the legitimate interests in protecting commercially sensitive material. The *in camera* review mechanism — enabling TDSAT to review confidential documents privately before deciding whether full disclosure is required — and the confidentiality ring mechanism (restricting access to sensitive documents to specified lawyers and experts who are bound by confidentiality undertakings) are procedural tools that TDSAT has used to manage this tension. The development of comprehensive confidentiality provisions in TDSAT's procedural rules — specifying the categories of material that can be claimed as confidential, the procedure for asserting confidentiality claims, and the balancing test for determining when the public interest in disclosure overrides commercial confidentiality — would improve the consistency and predictability of TDSAT's handling of confidential material.

G.4 Costs in TDSAT Proceedings

TDSAT's approach to costs — the allocation of legal costs between parties in regulatory proceedings — has been characterised by a general reluctance to award significant costs against losing parties, reflecting the public interest nature of many regulatory disputes and the risk that high cost exposure would deter legitimate regulatory challenges. Unlike commercial litigation (where costs typically follow the event, with losing parties paying winning parties' reasonable legal costs), regulatory litigation before TDSAT has generally proceeded on each

party bearing its own costs unless there are special circumstances (such as a frivolous or vexatious petition, or a party's deliberate obstruction of proceedings) that justify a costs order against the losing side. This no-costs-as-a-default approach reduces the financial risk of bringing regulatory challenges and preserves access to TDSAT for parties with meritorious but uncertain challenges that might be deterred by the risk of adverse costs orders. It also, however, reduces the deterrent against bringing unmeritorious challenges that consume TDSAT's limited adjudicatory time and resources.

The development of a more nuanced costs framework for TDSAT proceedings — maintaining a default of no costs in the public interest regulatory disputes that define TDSAT's jurisdiction while allowing for costs orders in cases of clear procedural abuse or where a party has acted in bad faith — would improve the efficiency of TDSAT's docket management while maintaining appropriate access to regulatory justice. Regulatory bodies (TRAI and DoT) should generally be entitled to their costs when they successfully defend decisions that they made in good faith after proper consultation, since requiring them to absorb the costs of defending meritorious regulatory decisions against ill-founded challenges would impose a disproportionate cost on the regulatory process. Conversely, operators that successfully challenge regulatory decisions that were clearly unreasonable or procedurally defective should be entitled to some recovery of their costs from the public body that made the invalid decision, as a form of accountability for regulatory excess.

G.5 TDSAT's Institutional Memory and Knowledge Management

TDSAT's institutional memory — the accumulated knowledge of its judgments, procedural practice, expert evidence, and regulatory analysis that inform the quality of its adjudication — is an important but underappreciated institutional resource that requires active management to maintain and transmit across the tribunal's membership changes. TDSAT's Chairperson and Members serve for fixed terms and are appointed from different professional backgrounds (judicial and technical), meaning that the tribunal's membership turns over regularly and that there is a recurring risk of knowledge loss when experienced Members leave and new Members join. The formal institutional knowledge management mechanisms available to TDSAT include: the publication of a comprehensive digest of TDSAT decisions (enabling new Members and practitioners to quickly identify the relevant precedents on specific issues); the development of a judicial handbook covering TDSAT's procedural rules, adjudicatory practices, and key substantive principles; and the arrangement of induction programmes for new Members that provide systematic exposure to the most important aspects of telecommunications regulatory law and practice. These knowledge management mechanisms complement the institutional memory

carried by TDSAT's permanent staff (who provide continuity across membership changes) and the collective memory of the practitioners who regularly appear before TDSAT.

G.6 The TDSAT Annual Report: Governance and Accountability

TDSAT's annual report — published under the statutory reporting obligations applicable to tribunals established under special legislation — provides important public accountability for TDSAT's institutional performance. A comprehensive annual report should include: statistical data on case filings, disposals, pendency, and average disposal times (enabling assessment of TDSAT's adjudicatory efficiency); qualitative assessment of the major regulatory law developments addressed in TDSAT's decisions during the year (enabling practitioners and stakeholders to track jurisprudential developments); institutional information about TDSAT's composition, budget, and administrative activities; and forward-looking information about planned institutional developments (enabling stakeholders to plan their regulatory litigation strategy). The quality and comprehensiveness of TDSAT's annual report — which is publicly accessible and reviewed by parliamentary committees, civil society organisations, and academic researchers — is an indicator of TDSAT's institutional maturity and transparency. Enhancing the quality of TDSAT's annual reporting — particularly the qualitative analysis of jurisprudential developments — would improve public understanding of India's telecommunications regulatory law and contribute to the broader accountability of India's regulatory governance framework.

SUPPLEMENTARY NOTE H

TDSAT: Final Jurisprudential Perspectives

H.1 Access to Remedies: The Consumer's Perspective

The practical access to remedies for telecommunications consumers — the ability of ordinary subscribers to obtain meaningful redress for harm caused by operators' regulatory non-compliance, deficient service quality, or unfair commercial practices — is the ultimate test of whether the telecommunications consumer protection framework serves its stated objectives. The formal legal remedies available to telecommunications subscribers in India are extensive: individual complaint mechanisms at the operator level, escalation to CGRF and the Appellate Authority, reference to the consumer courts under the Consumer Protection Act, 2019, and group petition to TDSAT for systemic issues. However, the accessibility of these remedies — in terms of the cost, time, and procedural complexity involved in pursuing them — varies greatly between these channels, and many subscribers who have legitimate grievances never pursue

formal remedies because the transaction costs of doing so exceed the value of the expected recovery. The gap between the formal availability of consumer remedies and their practical accessibility is the central consumer protection challenge that TRAI, DoT, and TDSAT must address to ensure that the regulatory framework serves the interests of ordinary subscribers and not merely the interests of sophisticated commercial actors who can navigate complex formal processes.

The development of technology-enabled consumer remedy mechanisms — using mobile apps, chatbots, automated resolution algorithms, and AI-assisted complaint triage — has the potential to significantly reduce the transaction costs of pursuing consumer remedies and to bring formal consumer protection within reach of subscribers who currently lack the literacy, connectivity, or time to navigate traditional formal processes. TRAI's Sanchar Saathi platform represents a significant step in this direction, providing a government-operated consumer protection portal that enables subscribers to report fraudulent SIM activations, verify their registered connections, and access other consumer protection services. The further development of Sanchar Saathi — adding automated billing dispute resolution, AI-assisted complaint assessment, and direct compensation processing — would transform it from an information platform into a genuine consumer remedy mechanism that can handle high volumes of consumer claims efficiently and equitably. The legal framework for automated remedy mechanisms — specifically the due process requirements that must be met before an automated system can make a determination that affects an operator's obligations — requires regulatory development that addresses the accountability and fairness concerns raised by algorithmic decision-making in consumer protection contexts.

H.2 Arbitral Awards and Their Enforcement Against Operators

The enforcement of arbitral awards against licensed telecommunications operators — specifically the question of whether an arbitral award creditor can take enforcement action that affects the operator's licensed operations (such as attachment of spectrum assignments or core network equipment) — involves a complex interaction between the enforcement mechanisms of the Arbitration and Conciliation Act, 1996 and the telecommunications regulatory framework. General civil enforcement mechanisms (attachment and sale of assets under the Code of Civil Procedure) are available for arbitral awards against operators, but the enforcement of these mechanisms against telecommunications assets requires consideration of the regulatory implications: telecommunications spectrum assignments cannot be sold to a buyer who does not hold an appropriate licence; core network equipment that is seized by an enforcement officer cannot be removed from a licensed facility without affecting the operator's ability to provide

services to its subscribers. These regulatory constraints on enforcement do not eliminate the creditor's remedies but require careful navigation to ensure that enforcement action achieves its commercial objective (recovering the debt) without triggering regulatory consequences (licence suspension or consumer harm) that ultimately harm the enforcement creditor's own interests.

H.3 The Role of Expert Evidence in TDSAT

Expert evidence — testimony and reports from qualified technical or economic experts that assist the tribunal in understanding complex factual matters beyond ordinary knowledge — plays a central role in many of TDSAT's most significant and complex proceedings. The quality of expert evidence before TDSAT varies considerably: well-resourced operators can engage leading telecommunications engineers, network performance experts, and regulatory economists to present sophisticated expert analyses in support of their positions, while TRAI — which relies primarily on its own staff analyses and occasionally on expert consultants — may be at a resource disadvantage in cases where the technical issues are most complex. The development of a more structured approach to expert evidence in TDSAT proceedings — including requirements for joint expert meetings (where party-appointed experts identify points of agreement and disagreement before the hearing), independent technical assessors appointed by TDSAT (to provide an unbiased technical assessment in cases where party-expert analyses diverge significantly), and clear standards for the admissibility and weight of different types of technical evidence — would improve the quality and efficiency of expert evidence in TDSAT's complex technical proceedings.

The application of economic expert evidence in TDSAT proceedings — particularly in cases involving allegations of anti-competitive conduct (abuse of dominance, exclusionary pricing, discriminatory access), quantification of damages, or assessment of regulatory impact — requires both economic expertise in the substantive issues and awareness of the institutional context in which TDSAT must apply the economic analysis. Economic models and analyses presented by party-appointed experts in TDSAT proceedings are subject to the critical scrutiny that TDSAT's experienced members can provide, and advocates must be prepared to defend the economic methodology and assumptions underlying their expert evidence under careful questioning. The development of a clear framework for economic expert evidence in TDSAT — specifying the methodological standards that economic experts must meet, the information that must be disclosed about models and data, and the procedure for presenting alternative economic analyses — would improve the quality and comparability of economic evidence in regulatory proceedings.

H.4 TDSAT's Contribution to Indian Administrative Law

TDSAT's jurisprudential contribution to Indian administrative law — beyond its sector-specific telecommunications regulatory law — has been significant in several areas where the tribunal has developed principles that have applicability beyond the telecom sector. TDSAT's development of the doctrine of regulatory forbearance (accepting that market competition can substitute for price regulation in sufficiently competitive markets) has contributed to the broader administrative law understanding of when regulatory intervention is justified and when it should be withheld. TDSAT's application of proportionality review to regulatory decisions has contributed to the development of a more substantive, less deferential administrative law review standard that is being progressively adopted by courts and tribunals across Indian administrative law. And TDSAT's procedural innovations — including structured timetabling, written submission requirements, and active case management — have contributed to the ongoing reform of administrative tribunal procedures across the broader Indian judicial landscape.

The relationship between TDSAT and the broader Indian judicial system — through the appeal mechanism to the Supreme Court, through the interaction with High Courts on jurisdictional questions, and through the precedential influence of TDSAT's decisions on other tribunals and courts that deal with related administrative law issues — has contributed to the development of a more integrated and coherent framework for the judicial review of regulatory decisions in India. The Supreme Court's increasing use of TDSAT decisions as illustrations of good regulatory adjudication practice — in its judgments on administrative law principles — reflects TDSAT's growing stature as an institutional model for specialist regulatory adjudication. As India continues to establish new specialist regulatory tribunals in emerging sectors (digital markets, data protection, AI governance), TDSAT's institutional experience — its successes and its challenges — provides valuable lessons for tribunal design and operation that should be explicitly drawn upon in the development of new regulatory adjudication institutions.

SUPPLEMENTARY NOTE I

TDSAT: Final Analysis

I.1 Commercial Arbitration vs TDSAT: Strategic Considerations

The strategic choice between commercial arbitration (under the Arbitration and Conciliation Act, 1996) and TDSAT adjudication for resolving telecommunications commercial disputes involves a multi-factor analysis that practitioners must conduct carefully in each specific dispute context. TDSAT's comparative advantages include: specialist technical expertise in telecommunications regulation; jurisdiction over regulatory issues that arbitral tribunals cannot

address; a well-established body of telecommunications-specific precedent that provides predictability in regulatory law questions; lower cost than full commercial arbitration for relatively straightforward regulatory disputes; and the public interest accountability that comes with decisions being subject to Supreme Court appeal on questions of law. Commercial arbitration's comparative advantages include: the flexibility to appoint specialist arbitrators with exactly the technical expertise relevant to the specific dispute (telecommunications engineering, financial modelling, contract law); confidentiality (commercial arbitration proceedings and awards are not public, unlike TDSAT decisions); the ability to design bespoke procedural rules for the specific dispute; and the potential for faster resolution in simple disputes where both parties are committed to arbitration.

The practical limitations of each forum create specific contexts where one is clearly superior. For disputes involving the interpretation of TRAI regulations, the conditions of DoT licences, or the application of the spectrum management framework, TDSAT is the clearly superior forum: these are regulatory law questions that require regulatory expertise and that have precedential implications for the entire sector, making TDSAT's specialist jurisdiction and public accountability more appropriate than private arbitration. For disputes arising purely from commercial contracts between operators (such as infrastructure sharing agreements, wholesale service contracts, or equipment supply contracts) where no regulatory question is involved, commercial arbitration may be more appropriate: the parties have chosen their commercial terms, the dispute is private rather than public in character, and the regulatory specialist expertise of TDSAT adds little value compared to the commercial and contract law expertise of a well-constituted arbitral tribunal. The difficulty lies in the large middle category of disputes that have both a commercial and a regulatory dimension: these require careful analysis of which dimension is primary and which forum is best suited to address the dispute as a whole.

The development of a more structured framework for the relationship between TDSAT adjudication and commercial arbitration in the telecommunications sector — potentially through TRAI guidance on the types of disputes appropriate for each forum, and through the development of sector-specific arbitration rules and approved arbitrator panels — would improve the efficiency and quality of dispute resolution in the sector. The arbitration ecosystem for telecommunications disputes in India is underdeveloped compared to major common law jurisdictions such as England and Singapore, where specialist telecommunications arbitrators, established arbitral institutions with telecommunications expertise, and sector-specific arbitration rules provide a mature framework for resolving telecommunications commercial disputes efficiently and credibly. The development of an Indian telecommunications arbitration framework

— perhaps through the Mumbai Centre for International Arbitration or a sector-specific body — would complement TDSAT's adjudicatory jurisdiction and provide a fuller range of dispute resolution options for the sector.

I.2 TDSAT and the Companies Act

The interface between TDSAT's telecommunications regulatory jurisdiction and the corporate law framework under the Companies Act, 2013 arises in several specific contexts that practitioners must navigate carefully. First, when a licensed telecommunications operator undergoes a corporate restructuring — merger, demerger, or business transfer — the corporate law processes (NCLT approval for schemes of arrangement, SEBI compliance for listed companies) must be coordinated with the telecommunications regulatory processes (DoT approval for licence transfers and ownership changes) to ensure that the transaction is completed without regulatory gaps or inconsistencies. Second, when a licensed operator faces insolvency proceedings under the Insolvency and Bankruptcy Code, 2016, the IBC's moratorium on legal proceedings must be assessed against TDSAT's ongoing regulatory proceedings involving the distressed operator. Third, when connected party transactions between a licensed operator and its affiliated companies raise questions about compliance with licence conditions (which may require arm's length pricing for interconnection, infrastructure sharing, and other regulated services), the Companies Act's related party transaction framework and the telecom regulatory framework create overlapping compliance requirements.

TDSAT's approach to corporate law questions that arise in the context of telecommunications regulatory proceedings reflects the tribunal's general practice of addressing regulatory questions within its jurisdiction while deferring to the appropriate corporate law forum (NCLT, NCLAT, or High Courts) for questions of corporate law that exceed its regulatory jurisdiction. Where a telecommunications regulatory question is inseparable from a corporate law question (for example, where the validity of a spectrum transfer depends on whether the corporate restructuring through which it was effected was properly approved), TDSAT must carefully assess which aspects of the question fall within its regulatory jurisdiction and which require a reference to or deferral to the corporate law forum. The development of clear protocols for TDSAT's engagement with corporate law questions — potentially through formal arrangements with the NCLT for coordinated jurisdiction in overlapping cases — would improve the efficiency of proceedings that involve both regulatory and corporate law dimensions.

I.3 Future of Regulatory Adjudication

The future of regulatory adjudication in India — and specifically the institutional design of TDSAT as the telecommunications regulatory tribunal — must be considered in the context of the broader transformation of the Indian judicial landscape. India's Supreme Court has recognised that the proliferation of tribunals with overlapping and inconsistent jurisdictions creates complexity and inefficiency, and has repeatedly called for rationalisation of the tribunal system. The government's Tribunal Reforms Act, 2021 was a step in this direction, merging several specialised tribunals and transferring their functions to High Courts. TDSAT survived the 2021 rationalisation exercise, but the structural question of whether a dedicated telecommunications regulatory tribunal is necessary — or whether High Courts with specialised benches could provide equivalent quality adjudication — remains open. The answer depends on empirical assessment: do TDSAT's decisions demonstrate superior quality (in terms of technical accuracy, regulatory coherence, and the development of a consistent body of sector-specific law) than the telecommunications regulatory decisions of generalist High Courts? If the answer is yes, the case for maintaining TDSAT as a dedicated tribunal is strong; if not, the case for integration into the general court system is more compelling.

The telecommunications regulatory adjudication landscape will also be shaped by the growth of alternative dispute resolution — specifically mediation and conciliation — as initial steps in the resolution of regulatory disputes before formal adjudication proceedings are commenced. India's Mediation Act, 2023 has established a formal framework for mediation that includes a pre-litigation mediation requirement for certain categories of commercial dispute. The application of pre-litigation mediation to telecommunications regulatory disputes — specifically as a mandatory step before TDSAT adjudication in commercial disputes between operators, and as an optional step in regulatory compliance disputes — would reduce the burden on TDSAT's formal adjudicatory resources while potentially producing faster, more mutually acceptable outcomes in disputes that are primarily commercial in character. TRAI's development of a mediation framework for telecommunications commercial disputes — potentially through a TRAI-supervised mediator panel with telecommunications sector expertise — would complement TDSAT's formal adjudicatory jurisdiction and provide a fuller spectrum of dispute resolution options for the sector.

SUPPLEMENTARY NOTE J

TDSAT: Concluding Analysis

J.1 Regulatory Compliance as Risk Management

The framework for telecommunications regulatory compliance — encompassing the obligations of licensed operators under their authorisation conditions, TRAI regulations, and government directions — should be understood not merely as a legal obligation but as a risk management discipline that protects operators from the financial, reputational, and operational consequences of regulatory non-compliance. The risk-based approach to compliance — focusing compliance resources on the areas of highest regulatory risk (where non-compliance is most likely, most severe, or most difficult to detect) rather than applying equal attention to all compliance obligations regardless of their risk profile — is both more cost-effective and more effective at preventing material compliance failures than a uniform, checklist-based approach. Major telecommunications operators' compliance functions typically manage hundreds of specific regulatory obligations across multiple regulatory instruments; the systematic assessment and prioritisation of these obligations by risk profile — using a compliance risk matrix that rates each obligation by likelihood of failure, severity of consequences, and controllability — enables efficient deployment of compliance resources.

The financial consequences of major regulatory non-compliance events — such as the AGR crisis, which resulted in demands running to tens of thousands of crores against major operators — illustrate that regulatory compliance risk in the telecommunications sector can threaten the financial viability of major commercial enterprises. The AGR crisis had its origins in a seemingly technical accounting question (the appropriate definition of "adjusted gross revenue" for licence fee computation purposes) that accumulated to a catastrophic financial exposure over several years of unpaid or underpaid licence fees and interest. The lesson for compliance risk management is that seemingly technical regulatory compliance questions can have enormous financial consequences when they are not identified and addressed early, and that the accumulation of uncertain regulatory positions over multiple years amplifies the eventual financial exposure significantly. The development of a compliance early warning system — identifying emerging regulatory risks before they crystallise into formal enforcement actions or legal proceedings — is one of the most valuable functions a telecommunications operator's compliance function can perform.

The integration of regulatory compliance into operators' broader enterprise risk management framework — alongside financial risk, operational risk, cybersecurity risk, and reputational risk — reflects the recognition that regulatory risk is a material business risk that must be assessed and managed systematically rather than treated as a separate legal compliance function. The boardroom visibility of regulatory compliance risk — through regular board-level reporting on compliance status, emerging regulatory risks, and the financial exposure associated with

identified compliance issues — is an important governance element that ensures that senior management and the board can make informed decisions about regulatory risk management. Operators that treat regulatory compliance as a boardroom-level risk management discipline — investing in strong compliance infrastructure, maintaining transparent communications with regulatory authorities, and proactively addressing potential compliance issues before they become formal violations — consistently achieve better compliance outcomes and better regulatory relationships than those that treat compliance as a peripheral legal function.

J.2 TDSAT's Evolving Caseload

TDSAT's caseload has evolved significantly since its establishment in 2000, reflecting both the changing nature of telecommunications regulatory disputes and the broader evolution of India's telecommunications market. In TDSAT's early years, its docket was dominated by interconnection disputes, tariff order challenges, and access service licensing matters — the core regulatory issues of the early competitive market. As the market matured, the AGR dispute and related financial compliance proceedings became the dominant regulatory litigation theme, along with infrastructure sharing disputes, POI congestion matters, and consumer protection cases. In the post-2023 Act period, TDSAT's caseload is expected to evolve further toward: challenges to the new authorisation conditions as they are developed and notified; disputes about the TTP framework and its application to specific network equipment and vendors; data protection cases under TDSAT's new DPDP Act appellate jurisdiction; and enterprise private network disputes as the private 5G market develops. TDSAT's institutional preparation for this evolving caseload — through staff development, technical capacity building, and procedural modernisation — is important for maintaining the quality of regulatory adjudication as the subject matter becomes more technically complex and legally novel.

The statistical analysis of TDSAT's case disposals over time — tracking filing rates, disposal rates, and average disposal times by case category — provides important insights into the efficiency and quality of telecommunications regulatory adjudication. The development of TDSAT's performance measurement framework — with publicly reported metrics on case disposals, pendency levels, and average disposal times — would improve public accountability and provide an evidence base for identifying the case categories and procedural stages where improvements are most needed. International benchmarking of TDSAT's performance — comparing it to specialist telecommunications regulatory tribunals in comparable jurisdictions such as the UK's CAT (Competition Appeal Tribunal), Australia's Australian Competition Tribunal, and South Korea's KCC appeals mechanism — would identify both the areas where TDSAT performs well relative to international peers and the areas where improvements would be

most valuable. TDSAT's engagement with judicial reform initiatives — including the Supreme Court's ongoing work on commercial courts and specialised dispute resolution — should explicitly draw on this performance evidence to make the case for appropriate investment in TDSAT's institutional capacity.

SUPPLEMENTARY NOTE K

TDSAT: Closing Commentary

K.1 The TDSAT Bench: Composition and Expertise

The composition of TDSAT's bench — the Chairperson and Members who collectively decide cases — has evolved over the tribunal's history, reflecting successive governments' and Chief Justices' judgments about the appropriate balance between legal expertise and technical expertise in a specialist regulatory tribunal. The TRAI Act's requirements for TDSAT's composition prescribe: a Chairperson who is or has been a judge of a High Court or the Supreme Court; and two or more Members with backgrounds in telecommunications or related technical fields. This composition requirement — mandating a legally qualified Chairperson with technically qualified Members — reflects the dual nature of TDSAT's adjudicatory function: resolving legal disputes (requiring legal expertise) about technical regulatory questions (requiring technical expertise). In practice, the balance between legal and technical expertise on TDSAT's bench has varied over time, with some periods seeing a greater concentration of legal expertise (particularly when legally complex cases dominate the docket) and others seeing more technical expertise (when technically intensive network sharing and spectrum disputes are most prominent). The Telecommunications Act, 2023's provisions on TDSAT's composition should maintain this flexible approach to bench composition while ensuring that both legal and technical expertise are consistently represented.

The appointment process for TDSAT's Chairperson and Members — involving the Chief Justice of India, the government, and potentially a selection committee — is an important determinant of the quality and independence of TDSAT's adjudication. The independence of the appointment process from government influence is critical for TDSAT's perceived and actual impartiality: a tribunal whose members are appointed through a process that gives the government excessive control over the selection creates a risk of actual or perceived bias in regulatory adjudication, particularly in cases where the government itself is a party (as DoT is in most licensing disputes). The development of a fully independent, merit-based appointment process for TDSAT members — with a selection committee that is insulated from day-to-day

government influence and that applies published criteria for assessing candidates' qualifications and suitability — would improve both the quality of TDSAT appointments and the public confidence in TDSAT's independence.

K.2 Closing Perspectives on TDSAT's Jurisprudence

TDSAT's jurisprudence over its two decades of operation represents a significant and growing body of Indian telecommunications regulatory law that is essential reading for practitioners in the sector. The tribunal's decisions on interconnection (establishing the principles for resolving POI congestion and IUC disputes), spectrum management (developing the legal framework for spectrum auction challenges and spectrum cap compliance), quality of service (interpreting TRAI's QoS regulations and determining appropriate remedies for systematic QoS failures), and consumer protection (developing the jurisprudence for systemic consumer regulatory violations) collectively constitute the substantive law of Indian telecommunications regulation at the level below the Supreme Court. The quality of TDSAT's jurisprudence — assessed by its analytical rigour, its consistency over time, its engagement with evidence, and its contribution to the development of principled legal standards — has improved significantly over the tribunal's history, reflecting both the learning that comes with institutional maturity and the growing professionalism of telecommunications regulatory practice.

The future development of TDSAT's jurisprudence under the Telecommunications Act, 2023 framework will be shaped by the new regulatory landscape that the Act creates. New areas of jurisprudence will emerge around: the interpretation of the 2023 Act's novel provisions (such as the enterprise spectrum framework, the digital connectivity obligations, and the civil penalty regime); the adjudication of disputes arising from the TTP framework (particularly challenges to vendor exclusion decisions and disputes about the compliance obligations for specific equipment); the development of proportionality review standards for the 2023 Act's regulatory interventions (assessing whether specific conditions and requirements are proportionate to their stated objectives); and the application of constitutional standards (including the Puttaswamy privacy framework and the Anuradha Bhasin internet rights framework) to new categories of regulatory decision. TDSAT's engagement with these novel legal questions — approached with the analytical rigour and institutional independence that characterise the best of its existing jurisprudence — will determine the quality of India's telecommunications regulatory law as it develops under the new framework.

The legacy of TDSAT's first two decades — measured not only by the specific legal outcomes it has produced but by its contribution to the development of a rule-of-law framework for India's telecommunications sector — is significant and deserves wider recognition than it has

received. TDSAT has provided a forum for the peaceful, law-governed resolution of disputes that in less mature regulatory environments would have resulted in: licence revocations that disrupted subscriber services; regulatory capture that entrenched incumbent operators at the expense of new entrants; or investment uncertainty that deterred the capital flows needed for network development. The availability of an independent, specialist tribunal that operators, consumers, and regulators can trust to resolve regulatory disputes fairly and competently has been an underappreciated contributor to the development of India's competitive telecommunications market. Strengthening TDSAT — through better resourcing, faster disposal times, and continued quality improvement in its adjudication — is an investment in the institutional infrastructure of India's regulatory state that will pay dividends across the entire digital economy.

FINAL NOTE: TDSAT's Role in Digital Governance

TDSAT's contribution to India's digital governance framework extends beyond its formal adjudicatory function to encompass a broader set of institutional roles that are less visible but equally important. As the primary forum for the peaceful resolution of telecommunications regulatory disputes, TDSAT reduces the commercial and social costs of regulatory uncertainty: disputes that would otherwise be resolved through competitive disadvantage, regulatory capture, or informal political pressure are instead subject to principled, evidence-based adjudication that applies consistent legal standards to all parties. This dispute resolution function — creating a predictable, rule-governed framework for telecommunications regulatory conflict — is an essential component of the rule-of-law infrastructure that India's digital economy requires. As a repository of telecommunications regulatory expertise, TDSAT plays an educative function — its decisions explain the legal principles and regulatory standards applicable to complex telecommunications matters in terms that operators, regulators, and the public can understand and apply. And as an appellate check on regulatory overreach, TDSAT provides an institutional counterbalance to the significant powers that the 2023 Act vests in DoT and TRAI, ensuring that those powers are exercised within the bounds of legal authority and constitutional principle.

The effectiveness of TDSAT in performing these roles depends critically on resources: sufficient judicial capacity (enough bench time to dispose of cases within reasonable timelines), technical support (access to telecommunications engineering and economic expertise for complex technical cases), and administrative capacity (effective case management systems, efficient registry operations, and adequate physical infrastructure). The underfunding of India's regulatory tribunals — a persistent problem across the judicial system — imposes real costs on the regulatory framework: delayed dispute resolution reduces investment certainty, inadequate technical resources compromise the quality of adjudication, and poor administrative systems

create procedural inefficiencies that impose disproportionate costs on parties. Investing in TDSAT's capacity — through appropriate funding, staffing, and technology — is an investment in the effectiveness of India's telecommunications regulatory framework that should be explicitly recognised in budgetary and institutional planning processes.

The future trajectory of TDSAT's jurisprudence under the Telecommunications Act, 2023 will be shaped by the novel regulatory questions that the Act's new framework generates. The development of jurisprudence on the civil penalty framework (including the standards for calculating proportionate penalties and the procedural protections applicable to Adjudicating Officer proceedings), on the enterprise spectrum framework (including the conditions for private network operations and the boundary between private and commercial service provision), and on the security conditions framework (including the standards for reviewing TTP vendor evaluation decisions and the procedural requirements for national security orders) will create a new generation of TDSAT precedents that are as commercially significant as the interconnection and AGR jurisprudence of the tribunal's first two decades. The quality of these precedents — their analytical rigour, consistency, and contribution to principled legal standards — will be a primary determinant of the effectiveness of the 2023 Act's implementation and the long-term credibility of India's telecommunications regulatory governance.

The development of TDSAT's public interest jurisdiction — its capacity to address telecommunications regulatory issues from the perspective of the broader public interest, not merely the interests of the parties in a specific dispute — is an important aspect of its institutional role that has been developed through its engagement with consumer group petitions and regulatory compliance proceedings. When TDSAT adjudicates a dispute between two operators about interconnection terms, the public interest in the outcome — the effect on competition, on subscriber welfare, and on the investment climate — is at least as significant as the private interests of the parties. TDSAT's best decisions acknowledge this public interest dimension and ensure that their reasoning addresses not only the immediate dispute but the regulatory principles that the decision establishes for the sector as a whole. The development of TDSAT's public interest jurisprudence — through the consistent application of regulatory principles that advance the sector's broader welfare objectives — is an important contribution to the legitimacy and quality of India's telecommunications regulatory governance.

The interaction between TDSAT's jurisdiction and India's growing body of public interest litigation — the tradition of courts and tribunals entertaining petitions from concerned citizens and organisations on issues of public interest without requiring traditional standing based on personal interest — creates both opportunities and challenges for telecommunications governance. On

the positive side, public interest petitions can bring important telecommunications regulatory issues to TDSAT's attention that might not otherwise be litigated (for example, petitions from consumer organisations challenging systematic QoS failures or from civil society organisations challenging surveillance-related regulatory decisions). On the challenging side, the risk of vexatious or poorly grounded public interest petitions consuming TDSAT's limited adjudicatory resources — and potentially creating precedents based on incomplete factual records — requires careful screening of public interest petitions against minimum threshold requirements of public relevance and legal merit. TDSAT's development of clear, published criteria for entertaining public interest petitions — specifying the minimum standards of public relevance and legal merit that must be demonstrated before a petition is admitted — would improve the efficiency of its public interest jurisdiction while maintaining meaningful access for legitimate public interest petitioners.

The relationship between TDSAT and civil society organisations — including consumer groups, digital rights advocates, academic researchers, and public interest lawyers who engage with telecommunications regulatory issues through TDSAT proceedings — is an important dimension of TDSAT's accountability to the broader public. Civil society engagement with TDSAT has contributed to several important developments in telecommunications regulatory law: consumer organisations' group petitions have driven improvements in QoS enforcement; digital rights advocates' interventions in internet shutdown cases have advanced the development of constitutional protections for internet access; and academic researchers' amicus submissions have improved the quality of TDSAT's analysis of complex economic and technical questions. Formalising and encouraging civil society engagement with TDSAT — through clear procedures for amicus curiae participation, public interest intervention, and access to TDSAT proceedings and records — would strengthen the accountability dimensions of telecommunications regulatory adjudication and improve the quality of TDSAT's jurisprudential development on issues of broad public significance.

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