Centre on Regulation and Competition

WORKING PAPER SERIES

Paper No. 40

THE INSTITUTIONAL POLICY FRAMEWORK FOR REGULATION AND COMPETITION IN SRI LANKA

Malathy Knight-John
Institute of Policy Studies
(Sri Lanka)

December 2002

ISBN: 1-904056-39-3

Further details: Fiona Wilson, Centre Secretary
Published by: Centre on Regulation and Competition,
Institute for Development Policy and Management, University of Manchester,
Crawford House, Precinct Centre, Oxford Road, Manchester M13 9GH, UK
Tel: +44-161 275 2798 Fax: +44-161 275 0808
Email: crc@man.ac.uk Web: http://idpm.man.ac.uk/crc/

THE INSTITUTIONAL AND POLICY FRAMEWORK FOR REGULATION AND COMPETITION IN SRI LANKA

Abstract

The liberalization of the Sri Lankan economy in 1977 and the privatization of state enterprises in the ensuing years, created a need for competition policy and rules-based regulatory systems to address distributional concerns. However, the integration of these newer external regulatory processes into the policy framework was slow due to an ongoing civil war, pressures to finance the burgeoning fiscal deficit and the related move to opt for rapid privatization. In addition, the policy and governance milieu, institutional structures, and legal framework within which these reforms were finally formulated and implemented did not allow for an effective competition and regulatory regime.

This paper describes and analyzes the policy, institutional and legal framework for competition and regulation in Sri Lanka, placing them in the context of pervasive bad governance practices. It is argued that rampant political capture is the principal obstacle to the creation of effective competition and regulatory agencies.

The paper also poses the following questions - how to build effective competition and regulatory institutions and systems and to create the conditions for good regulatory governance in a milieu where bad governance is omnipresent; should the competition and regulation reform process rely more on a "market approach" to the delivery of public interest; can such an approach actually guarantee insulation from political influence, given that vested interests with political connections are not confined to the state sector alone; and what impact will such an approach have on equitable growth and poverty alleviation – and suggests that these should form the basis for the Sri Lankan component of the CRC competition, regulation, and regulatory governance research and capacity building program over the next few years.

The excellent research assistance provided by Ms. Menaka Phillips is gratefully acknowledged. The views expressed in this paper are those of the author and do not necessarily represent those of the Institute of Policy Studies.

In framing a government to be administered by men over men, the greatest difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

- James Madison (1788)

INTRODUCTION

The policy shift in the developing world over the last two decades, towards market mechanisms as instruments of economic growth and poverty reduction, has been paralleled by the emergence of a new role for the state from provider to facilitator/regulator to ensure inclusive and equitable development. Liberalization and privatization have been accompanied by competition policy and rules-based regulatory systems in an effort to address distributional concerns. However, the integration of these newer external regulatory processes into the policy framework and their effectiveness in addressing their stated objectives has depended to a large extent on the political economy priorities and governance standards of the state.

Sri Lanka has not been an exception in this regard, as the ensuing discussion in this paper illustrates. Although Sri Lanka moved from an import-substituting and heavily state-interventionist economy to a more liberalized one in 1977, competition legislation was enacted only a decade later[1], with legislation for regulating telecommunications, passenger bus transport, the securities market, banks and insurance companies also being brought in later. The civil strife that has engulfed the nation for over three decades, pressures to finance the burgeoning fiscal deficit and the related move to opt for rapid privatization contributed to placing competition and regulatory concerns on the backburner.

Moreover, whilst the formal institutional and legal structures for competition and external regulation in selected areas do exist, distortionary state intervention and bureaucratic micro-management by the state are not uncommon. Regulatory practices have tended to stifle rather than enhance or promote competition. This raises important questions such as, are competition and regulation weak because the institutional and legal framework is flawed; or/and more insidiously are the actual political economy objectives of the state different from the stated goals of equitable growth and poverty reduction championed by successive political regimes since liberalization.

This paper is essentially a mapping exercise laying out the profile of competition and regulation in Sri Lanka. It is also a means of evaluating the effectiveness of competition and regulatory reform, identifying particular deficits in this public policy process and picking out priority areas for in-depth research over the next two years of the Center on Regulation and Competition (CRC) project[2]. The paper is structured as follows. The next section describes and analyzes the policy setting, and Sections three and four look at the legal and institutional structures, respectively, for competition and regulation. Section five identifies the political, social and external influences impinging on regulation and competition strategies and policies and Section six concludes.

THE POLICY SETTING

Public policy in Sri Lanka is the joint responsibility of the executive and the legislative branches of government with the directive principles of state policy being specified in the constitution[3]. In practice however, these fundamental principles of good governance are rarely adhered to and the checks and balance mechanism built into the executive-legislative structures are undermined by short-term partisan politics. The permeation of disruptive politics into the policy-making process has intensified more recently with the chief executive (the president) and the legislature[4] coming from different political parties[5]. Moreover, even when the executive and the legislative bodies have been from the same political party, the electoral cycle has prompted *ad hoc* policies reflecting the incentive to maximize narrow, short-term political interests.

The political dynamics that have shaped the policy-making process in general have also influenced state policy with respect to competition and regulatory reform. Whilst successive governments since 1977 have made explicit policy statements defining state-market relations, with the state to assume the role of facilitator cum regulator and the private sector to be the engine of growth, the state still has what maybe characterized as an "inefficiently excessive" presence in the economy. State enterprises continue to be used as avenues for political patronage and employment creation. In spite of the privatization program that has resulted in the divestiture of 80 entities from 1989 to date, there are reported to be over 70 public enterprises operating in various sectors of the economy, with cumulative losses from these entities amounting to around 2 percent of GDP in 2000[6].

More recently however, an unsustainable and ever-expanding budget deficit (9.9 percent of GDP in 2000 and 10.9 percent in 2001) and the signing of a Stand-By Arrangement with the IMF, with attached conditionalities on structural reforms, in April 2001 appear to have contributed to be a more concerted policy effort to embrace public-private partnerships (through a range of different modalities such as Build-Own-Operate (BOO) and Build-Own-Transfer (BOT) schemes, management agreements, concessions¸ sale of shares to a strategic investor, etc.). These partnerships are viewed by policy makers as a means of developing vital infrastructure services such as public transportation, highways, electricity/energy, water and telecommunications and as a way to finance the deficit and retire debt through the sale of shares in state-owned enterprises (SOEs).

Currently, the most prominent examples of a public-private partnership are in the telecommunications sector, where the government sold 35 percent of its shareholding in Sri Lanka Telecom Ltd. (SLT), the incumbent fixed telephony operator, to Nippon Telegraph and Telephone (NTT) of Japan; in the airline sector, where 40 percent of government shares in Air Lanka[7] was sold to Emirates Airlines; and in the energy sector, where 51 percent of the government's shareholding in the Colombo Gas Company was sold to the Dutch company, Shell Overseas International BV/Royal Dutch (Shell)[8]. Management agreements with strategic investors, with the state retaining a "golden share", have also been used in the plantations sector privatization process.

The policy decision to intensify the public-private partnership approach in the reform process also highlights the importance of the regulatory regime[9] in place, particularly in the utilities sector where the need to carefully balance producer and consumer interests in order to ensure sufficient incentives for private investment and to address price and access issues is crucial[10]. However, as detailed in *Jayasuriya and Knight-John (2002)* and as will be discussed later on in this paper, policy makers have tended to pay insufficient attention to the need to build effective competition policy and regulatory systems to support the reform process.

As mentioned earlier on in this paper, competition legislation was only brought in in 1987 with the liberal trade regime being used as a proxy for competition policy during the early years of liberalization. The articulation of a clear and comprehensive competition policy is still pending. As such, competition policy concerns are handled in an arbitrary and piece meal fashion in response to a particular sector need or as dictated by political economy priorities at a given time. Moreover, as will be further elaborated on in the section on competition legislation, competition policy in Sri Lanka appears to be focusing on price control than on developing the environment for competition. The privatization process has also been at odds with competition with the maximization of fiscal benefits through the granting of monopoly power taking precedence over long-term sector efficiency and consumer welfare. As detailed in *Knight-John [mimeo (a)]*, the ill-effects of this process is apparent in the Liquefied Petroleum Gas (LPG), telecommunications and airline sectors, where there has been abuse of dominant position with negative impacts on competitors and consumers.

Regulatory principles are laid out in the specific legislation pertaining to a particular sector while sector policy, which currently exists in a structured format only in the telecommunications sector, is developed by the government in response to sector needs. This sectoral approach to regulation is a function both of sector-defined line ministries and of the sector-defined loans provided by donor agencies for the reform process. However, the centralization of policy development functions under the prime minister with the change of government in December 2001 has led to a policy initiative, supported by the World Bank and the Public-Private Infrastructure Advisory Facility (PPIAF) to move away from the sectoral approach to regulation and adopt a multi-sector model for utilities[11].

This new development in the policy process saw the creation of a specialized reform unit, the Public Interest Program Unit, under the Ministry of Economic Reform, Science and Technology, with the principal mandate of formulating and implementing strategies for multi-utility regulation and convergence regulation in the communications sector. A discussion paper on a consolidated strategy for the regulation of the infrastructure sector was also prepared for the government by the international consulting firm, Frontier Economics. The rationale for the multi-sector approach is the degree of commonality in the object of regulation (e.g. rights of way), the degree of commonality in the form of regulation (e.g. price caps), economies of regulation relating to the assumption that public hearings, cost studies etc. are substitutable across sectors and the belief that a multi-sector body will be less vulnerable to political and regulatory capture[12].

At the time when this policy decision was taken, the only sectoral regulatory bodies in place were the Telecommunications Regulatory Commission (TRC) and the National Transport Commission (NTC) – a highly dysfunctional entity – and reforms that were being planned for these sectors were at an embryonic stage. Plans to set up regulatory agencies for the water and electricity sectors however, were at an advanced stage with the legislation having been approved in principle by government. The government decided to set up a multi-sector agency, the Public Utilities Commission (PUC), that would initially include the water and electricity sectors (based on the premise that the economic regulation of these industries has several similar features: a relatively large public-owned element with contractual limitations on competition and the need to determine acceptable revenues for service providers, private investment likely to be in the form of long-term contracts etc.) with sufficient flexibility to add on other utilities as the reform process progressed.

However, telecommunications regulation continues to be handled by the TRC with policy makers arguing that it would be difficult to bring such a large agency into the new organization and that the regulatory requirements of the planned convergence model for the telecom, internet services, broadcasting and cable industries differ from those of the electricity and water sectors. Whilst these concerns, especially the latter one, do have practical/technical validity, the failure to include the broader energy industry – including the LPG sector - in the PUC is of particular concern as there is no regulator for the LPG industry at present. Given the government's desire to implement multi-sector reforms as quickly as possible, a policy decision was also taken to not include the bus transport sector in the PUC as the constitutional issues[13] currently affecting the sector would have hindered the multi-sector reform process as well.

Clearly, it is still too early to make any conclusive comments on the multi-utility regulatory process in Sri Lanka. The public policy procedure followed in developing the strategy for multi-utility regulation has certainly been more transparent and structured when compared to the usual policy development process in the country. However, as mentioned above, the rationale for excluding certain sectors, such as LPG, from the PUC on the grounds that these industries are characterized by competition is questionable. Recent reports that the Ceylon Petroleum Corporation, the incumbent state operator and the dominant player in the fuel market is drafting a Petroleum Product Law that would limit the fuel retail market to three players is cause for concern.

Whether or not the new structure will be less susceptible to political pressure also remains to be seen. Moreover, there has been considerable tension between the line ministry and agencies responsible for the implementation of competition policy (currently the Fair Trading Commission and the Department of Internal Trade, which are set to be replaced by the Consumer Affairs and Fair Trading Authority in the near future) and the line ministry and reform unit responsible for multi-sector regulation, with the division of labor between these entities still unclear. Apparently the turf mentality that characterized the sector approach to reform still prevails.

Regulators are bound, even in instances where sector policies contradict regulatory principles, to recognize government policy (and priorities) exposing them to the vagaries of the political process described above. An excellent example of regulatory failure that results from contradictions of this nature is the policy requirement that the Telecommunication Regulatory Commission (TRC) "maintains" the international monopoly conferred on the dominant incumbent operator after privatization, contrary to its mandate to facilitate and promote competition in the sector.

This particularly ominous concession afforded to SLT/NTT contributed to several instances of abuse of dominant position (such as the refusal to implement the closed numbering plan drawn up by TRC and the blocking of calls originating from competitors), anti-competitive behavior with respect to interconnection and legal disputes over the use of enhanced voice services by other operators for international calls[14]. Contrary to the regulatory principles for telecommunications (and the Sri Lankan government's WTO commitments), which specify that universal service obligations (USOs) must be administered in a transparent, non-discriminatory and competitively neutral manner, SLT has no binding universal obligations although the other fixed access operators have these built into their license agreements.

This example also calls into question the real rationale for regulation. Whilst the government's stated objective of regulation is, purportedly, to enhance competition and consumer welfare, regulatory practice focused on shielding the incumbent operator from competition. Was this simply an extension of the international monopoly granted to SLT/NTT so as to maximize the fiscal benefits of privatization? As argued in *Jayasuriya and Knight-John (2002)*, the answer lies in the changed rent seeking opportunities for politicians and favored bureaucrats who viewed anti-competitive regulation as a complement to the one-off rent extraction opportunity at the time of privatization, a means to ensure continued rent extraction.

These regulatory deficiencies are compounded over time, as there are no review or impact assessment mechanisms in place to evaluate regulatory strategies objectively, locate areas of weakness and rectify past mistakes. Given the manner in which policy is formulated and implemented in Sri Lanka – to maximize rent-seeking opportunities or to cater to narrow political interests – donor pressure or conditionality may, ironically, be the only way to install these objective assessment mechanisms.

LEGAL FRAMEWORK

Governing power in Sri Lanka is divided amongst the executive, the legislature and the judiciary, according to the constitution. As mentioned above, the president is afforded utmost power, with his/her decisions granted immunity from any judicial challenge[15]. Unique to the Sri Lankan judiciary branch is its comparatively narrow power of review – any prospective Bill can be challenged in the Supreme Court on constitutional grounds only within seven days from the date it is presented to parliament. After this point, the courts have no authority to review an Act and it can only be amended by parliament. In addition, the Sri Lankan Supreme Court rarely reviews legislation of its own motion; other parties generally bring such cases to the Court's attention.

The Sri Lankan constitution makes no specific reference to matters regarding regulation or competition. As a result, there is no constitutionally defined role for the courts in cases involving competition and regulatory issues, *excepting* instances that involve a question of fundamental rights (e.g. prejudicial dismissal/hiring policies etc.). The principle legal forms governing regulation and competition are the Acts of Parliament, used to set up competition and regulatory agencies, relating to specific sectors of the economy. The general procedure for an Act to be passed involves going through the following sequence: Line Ministry - Cabinet approval - Line Ministry - Legal Draftsman – Attorney General (to check constitutionality) – Line Ministry – Parliament.

Examples of such legislation, some of which will be discussed in detail later on in this section, include the Consumer Protection Act No.1 of 1979, Fair Trading Commission Act No. 1 of 1987, Consumer Affairs and Fair Trading Authority Bill of 2001, Telecommunications Act No. 25 of 1991, National Transport Commission Act No.37 of 1991, Securities Council Act No.36 of 1987, Banking Act No.30 of 1988, Accounting and Auditing Standards Act No.15 of 1995 and the Insurance Act No.43 of 2000.

In addition to Acts of Parliament, there are a few alternate dispute resolution bodies that can monitor economic issues. Examples are the Labor Tribunal (deals with dismissal cases based on disciplinary grounds) and the Agriculture Court (deals with tenant-cultivator issues). A more recent legal development coming into place in October 2001, under the 17th Amendment to the Constitution, is the formation of a 10-member Constitutional Council (CC), consisting of the president, prime minister, leader of the opposition, parliament speaker (all as ex officio members), three nominees from minority political parties, and three members nominated by the president, prime minister and leader of the opposition, with the mandate to appoint independent commissions for the elections office, public services, judicial service, the police department etc. In its current form, the role of the CC does not include its involvement in the workings of regulatory bodies. However, there has been discussion in policy circles of using the CC as the body to recommend names for appointment to regulatory agencies, such as the PUC, on the premise that this move would add objectivity and independence to these agencies.

The rest of this section will focus on specific pieces of legislation in an effort to map out the existing legal mechanisms for implementation, arbitration and enforcement of competition and regulation in Sri Lanka. It is important to note however, that legislation only sets out general and broad principles, leaving the task of developing detailed rules to specialized competition and regulatory agencies.

Competition law[16]

Competition law in Sri Lanka was introduced with the enactment of the Fair Trading Commission Act No.1 of 1987 (FTCA). This Act provided for the establishment of the Fair Trading Commission (FTC) for the control of monopolies, mergers and anticompetitive practices (Sections 5 and 11) and for the formulation and implementation of a national price policy (Sections 5 and 18)[17]. Consumer protection legislation was also brought in with the passing of the Consumer Protection Act No.1 of 1979 (CPA). The CPA provided for the setting up of the Department of Internal Trade (DIT) to regulate internal trade and to establish fair trading practices[18].

In principle, the DIT was meant to regulate day to day transactions between traders and consumers and the FTC was supposed to provide industry oversight with emphasis on anticompetitive behavior and price manipulation. In practice however, there is considerable overlap in the functions delegated to these two institutions pointing to potential cost savings from the amalgamation of the two entities. A degree of *ad hocism* is also apparent in the allocation of powers between the FTC and the DIT. For instance, while provisions on practices such as exclusive dealing and price discrimination come under the DIT, the FTC has also been given the power to allow traders to engage in these practices, if they are seen as being in the interest of the national economy.

The Consumer Protection Authority Bill of 2001, which is expected to be passed before the end of this year, is an attempt to address this issue of overlapping jurisdiction and to create a more effective competition policy regime. The specific mandate of this Bill is to provide for the establishment of a Consumer Affairs and Fair Trading Authority (CAFTA) to promote effective competition and the protection of consumers, and to regulate internal trade[19].

Currently, the FTC, DIT (and CAFTA in the future) function under the Ministry of Commerce and Consumer Affairs. The Minister appoints the Chairman and members of the FTC as specified in Section 4 of the FTCA. Further, Provisions 12 and 3 of the Schedule to the FTCA allow the Minister to terminate the appointment of the Chairman or of any member of the Commission, respectively, without assigning a reason. The fact that the decision to remove a Commissioner cannot be challenged in a court of law is indicative of the extensive power that the Minister has in the current system. A notable improvement in the new Bill is the provision that the Minister can only remove the Chairman and members of the Commission under clearly specified circumstances.

Until 1990, the FTC had fairly extensive powers of price control. However, the price control powers conferred under the FTCA were curtailed to a large extent with the introduction of a new piece of legislation, the Industrial Promotions Act No.46 of 1990 (IPA). At present, under Section 32 of the IPA, the FTC can only fix or vary the maximum retail price of pharmaceuticals. This move away from a focus on price control is, unfortunately, reversed in the new Bill with the incorporation of Section 17, which prohibits the increase of the retail or wholesale price of “specified articles” without the prior written approval of the Authority, with the Minister of Commerce and Consumer Affairs, in concurrence with the Minister of Finance, having the power to declare any item that he/she considers “essential” as a “specified article”.

Public interest considerations, such as maintaining and promoting effective competition between suppliers of goods and services; promoting the interests of consumers with respect to price, quality, and variety of goods and services; promoting, through competition, the reduction of costs, development and the use of new techniques and products and facilitating the entry of new competitors into existing markets; maintaining and promoting balanced distribution of industrial activity and employment; and, maintaining and promoting competitive activity in export markets have to be taken into account by the FTC when exercising its powers on matters relating to monopolies, mergers, and anticompetitive practices, under Section 15 of the FTCA. In line with the behavioral (as opposed to structural) approach to antitrust in Sri Lanka's competition legislation, monopolies, mergers and anticompetitive practices are considered illegal only if it is proved that they are contrary to the public interest.

Under the existing legislation, a "prescribed percentage test" which is an arbitrary cut-off point specified by the Minister on the recommendation of the FTC – and generally varies between 40 to 50 percent – is used to determine the existence of a monopoly. This test limits the scope of the FTCA to items that are gazetted as "prescribed". For instance, when ACL Cables' buyout of Kelani Cables gave the former entity control of over 70 percent of the cable market, the FTC was not able to initiate an investigation under the monopolies provision as cables were not a "prescribed" item[20]. However, as argued in *Kelegama and Cassie Chetty (1993)*, this test is useful to the extent that it provides an *entry point* for the investigation of monopolies, given the resource constraints of the FTC.

In the same vein, the requirement that *all* mergers and acquisitions must be notified to the FTC appears to place undue burden on the competition authority in terms of staff and financial resources. In practice however, non-compliance with the pre-notification requirement is common in Sri Lanka. In addition, although the FTC has powers commensurate to that of a District Court to call for information, it rarely initiates and carries out merger investigations, even when the merging parties do notify the authority as reflected in the recent Glaxo Wellcome- Smithkline Beecham (GSK) merger[21]. One of the reasons given for the non-investigation of this merger was that the Commissioners believed that extra-territorial jurisdiction (since the GSK merger was an international one) was not within the scope of the FTC. Clearly, the concept of the effects doctrine was of little significance in this rather questionable decision.

In the area of anticompetitive practices, the Sri Lankan law defines such practices as instances where, a person, in the course of business, pursues a course of conduct, which has or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods or the supply or securing of services (Section 14). The legislation does not specifically identify different types of anticompetitive practices such as, predatory pricing, price discrimination, vertical and horizontal restraints, exclusive dealings etc.

The problem with the broad definition of anticompetitive practices is illustrated in the case of Ceylon Oxygen vs. FTC, where the Court of Appeal held that the FTC did not have the power to investigate predatory pricing, discriminatory rebates and exclusive dealings and that it could only look into practices such as monopolies, mergers and anticompetitive practices, as specified in Section 11 of the FTCA. Evidently, the Court did not consider predatory pricing, discriminatory rebates and exclusive dealings to be instances of anticompetitive practice.

Although the FTC has the power to investigate monopolies, mergers and anticompetitive practices of its own motion or on a complaint made by another party, there have been very few investigations instigated by the Commission – perhaps due to the scarcity of resources- and most applications are brought by other parties. Provisions on monopolies, mergers and anticompetitive practices are incorporated into the new Bill with little no substantial change. It is clear therefore, that all the above- mentioned problems faced under the current legal structure would recur in the proposed regime. Another issue that has not been addressed adequately in the new legislation is the problem of overlapping jurisdiction between the sector specific regulatory agencies and the FTC. As mentioned above, the division of labor between the regulatory and competition agencies has become more problematic with the turf mentality surrounding the establishment of the PUC and CAFTA.

The FTC provides all parties connected with a case an opportunity to be heard under Section 10 of the law. The FTC can also, under Section 15 of the FTCA, order remedies such as the division of a business (not provided for in the new legislation), termination of an anticompetitive practice etc. However, the inability to make binding interim orders for the alleged violation of the provisions on monopolies, mergers and anticompetitive practices, coupled with extensive delays in the court procedure in Sri Lanka, renders the authority relatively ineffective in terms of curbing these practices in the intervening period – a problem that is likely to be carried forward into the new legislation given the strong business lobby opposed to the inclusion of interim orders in the Bill.

Section 37 of the FTCA specifies that any person who fails to comply with a provision of the FTCA is guilty of an offence and will, on conviction in the Magistrate's Court, be liable to a fine of up to Rs. 5000, or imprisonment of up to one year, or both. For offenses regarding monopolies, mergers and anticompetitive practices, the penalties are a fine of up to Rs.50,000, or imprisonment of up to two years, or both[22]. Parties aggrieved by an order made by the Commission can appeal to the Court of Appeal within 30 days of the order and an appeal can also be made to the Supreme Court by parties affected by orders of the Court of Appeal. The penalties set out above have failed to have a deterrent effect, perhaps because the FTC itself lacks legitimacy as a competition authority that would actively pursue cases that contravene the law. The institutional factors that have prompted this image of the Commission will be discussed in detail in Section 4 of this paper.

Utility regulation

Currently, the legal framework for utility regulation exists only in the telecommunications and bus transport sectors. As mentioned previously however, draft legislation for water and electricity sector regulation has been prepared and steps are being taken to synchronize these statutes with the PUC Bill. Specifically, policy makers have decided to include the constitution, funding and powers of the multi-sector authority in the "umbrella" PUC legislation and to contain the industry-specific bits of regulation in a set of separate industry statutes. This section of the paper will focus on the legal framework for telecom and bus transport regulation.

The telecommunications industry is governed by the Telecommunications Act No.25 of 1991 [as amended by the Telecommunications(Amendment) Act No.27 of 1996]. The 1991 legislation led to the trifurcation of the industry, with operational functions being assigned to the incumbent state operator –SLT- regulation being the responsibility of the Office of the Director General of Telecommunications (ODGT) and telecommunications policy remaining within the line Ministry.

The legislative amendments of 1996 saw the creation of the TRC, a five member Commission with three appointed members and two ex-officio members – the Secretary to the Ministry serving as Chairman and the Director General of Telecommunications serving as the Chief Executive Officer- replacing the single-person ODGT. While the replacement of a single member regulatory entity with a diversified group of Commissioners appointed by the line

Minister from the fields of law, finance and management was a step in the right direction, the independence of the TRC was limited by the appointment of the Secretary to the Ministry as the ex-officio Chairman of the Commission[23]. Unlike in the case of the FTC, conditions for the removal of appointed members of the TRC are clearly specified in the law.

Under the existing legislation, the line Minister can issue "general or specific" directions with which the Commission must comply. Moreover, while the TRC can *recommend* the issuing of telecom licenses to the Minister, he/she can reject these recommendations, with reasons, and give out licenses at his/her discretion (Section 17). In the area of tariff control however, the TRC has more discretion with the mandate to determine tariffs *in consultation* with the Minister.

Public interest considerations are incorporated in the Act as the "general objects to be achieved by the Commission to promote the national interest" (Section 4). The public interest criteria outlined in the law, includes providing for a reliable and efficient national and international telecommunications service to satisfy reasonable demands for services such as emergency services, public call box services, directory information services, maritime services and rural services; ensuring that all operators have the technical, financial and managerial resources to provide the services specified in their license; protecting and promoting the interests of consumers, purchasers and other users with regard to the charges for and the quality and variety of telecom services provided and telecom equipment supplied; maintaining and promoting effective competition between persons engaged in commercial activities relating to telecom; promoting the rapid and sustained development of domestic and international telecom facilities; ensuring that operators are able to carry out their license obligations for a reliable and efficient service, free of undue delay, hindrance or impediment etc.

The Act only indicates the general public interest rationale for both price regulation and universal service obligations. Detailed methods of price regulation – price cap regulation in the case of Sri Lanka – and the particulars of USOs are included in network licenses. Currently, SLT's license specifies an RPI-x formula where x is 2 percent, with a provision to suspend price cap regulation for the five-year tariff-rebalancing period (1998 to 2002). The two fixed access wireless loop operators were also given an exemption with regard to tariff regulation for a five-year period (until 2000), in order to give them time to develop their markets. While one of these operators has been able to renew this concessionary deal for a further five years, based on the fact that it met the quality of service requirements in its license, the exemption renewal of the other operator is pending before the Commission. All other operators in the industry are covered by price cap regulation, as per their license agreements.

As mentioned earlier on in this paper, the wireless loop operators have USO commitments built into their licenses; each operator was required to have at least ten working telephones in each secondary switching area by the end of 2000, with an annual penalty of US$ 80,000 for failing to meet these targets. SLT on the other hand was exempt from such formal rollout obligations. While the Act does provide for the drafting of Quality of Service (QOS) rules, the Commission is yet to come up with a set of comprehensive QOS standards.

The TRC also has the power to *approve* interconnection charges and charges for calls between licensed interconnected telecommunication systems in instances where operators of these systems can reach an agreement on charges, and to *determine* such charges in instances where the operators are unable to reach an agreement. Attempts by the Commission in 1996 and in 1998 to assist the three fixed access operators to develop an interconnection regime, given their inability to reach a negotiated settlement without the intervention of the TRC, were not successful. The 1996 determination clearly disadvantaged the wireless loop operators compelling the Commission to make a second determination in 1998. Although none of the three operators were satisfied with the 1998 arrangement, the wireless loop operators complied with the regulatory directive, while SLT continued with the pre-1998 arrangement and challenged the TRC decision in the Court of Appeal. Currently, there is an informal interconnection agreement amongst the three operators, which the Commission is attempting to build into the formal regulatory framework.

Although the Commission entertains complaints from the public as provided for under Section 9 of the law and has the power to investigate and make determinations in disputes between customers and operators, it does encourage the public to first attempt to resolve the problem with the operator. The TRC's role in disputes between operators depends on its powers to set and enforce license conditions rather than on explicit powers to resolve disputes. As in the case of the FTC, TRC decisions can be directed to the Court of Appeal within 30 days of the decision being made public.

With the liberalization of Sri Lanka's bus transport sector in 1977 and the entry of private sector operators into an industry that had been a stronghold of the state for decades, the need for external regulation to balance public and private interest considerations became apparent. As such, a Department of Private Omnibus was set up under the Private Omnibus Services Act No. 44 of 1983 with the objective of regulating private bus operators. However, this body was dissolved with the establishment of the National Transport Commission under the National Transport Commission Act No.37 of 1991(later amended in 1996), following advice from the World Bank.

The mandate of the NTC, as set out in the legislation, includes regulating the quality and quantity of service to meet the needs of the public and to promote the equitable distribution of such services throughout the country; ensuring the provision of adequate services on socially necessary but unremunerative routes; ensuring healthy competition between operators; determining route permit fees; regulating subsidized transport (for instance school services) etc. In practice however, the NTC has functioned mainly as a permit-issuing entity and has been extremely ineffective in achieving its specified objectives.

The possibility of excessive ministerial interference is also rife given that the line Minister appoints five members of the Commission while the three ex officio members come from the line Ministry, the Ministry of Policy Planning and the Ministry of Finance. Moreover, as in the case of the FTC, the Minister can remove any member of the Commission without assigning a reason, with no provision for the removal to be challenged in court. The Minister also has the power to give "general directions" to the NTC, similar to the case of the TRC. Although the Commission has the power to cancel permits, licensees can appeal to the Minister; in the last decade, only one cancellation directed by the NTC has stood.

Financial sector regulation

This section focuses on the legislation governing the securities market, banking sector, insurance sector and auditing and accounting standards in Sri Lanka.

The Securities and Exchange Commission of Sri Lanka (SEC) was set up under the Securities Council Act No.36 of 1987, to regulate the securities market and to grant licenses to stock exchanges, stock brokers and stock dealers that deal in the trading of securities. This legislation was amended by the Securities Council (Amendment) Act No.26 of 1991, which gave the Commission the power to license unit trusts.

The broader objectives of the SEC, as set out in the Act, are to create and maintain a market where securities can be issued and traded in an orderly and fair manner, to protect the interests of investors, to operate a Compensation Fund to protect investors from financial losses that arise from the failure of licensed stock brokers or dealers to meet contractual obligations, and to ensure that professional standards are met in the securities market. The Act also gives the Commission the responsibility of advising the government on the development of the securities market and the implementation of policies with regard to the capital market.

The Commission is made up of six members appointed by the Minister of Finance (based on experience in the fields of law, finance, business and administration), a Deputy Governor of the Central Bank nominated by the Governor of the Bank, and three ex officio members – the Deputy Secretary to the Treasury, the Registrar of Companies, and the President of the Institute of Chartered Accountants. The diversified structure of the Commission – when compared to those of the regulatory bodies discussed above- limits the powers of the Minister. The Chairman and Director General (DG) of the SEC are appointed by the Minister of Finance from among the Commission members, and on the recommendation of the Commission, respectively. The DG heads a Secretariat that functions under the general direction of the Commission, and is answerable to, and can be removed by, the Minister. However, the Minister can only remove the DG on the recommendation of the Commission; Commissioners, on the other hand, can be removed by the Minister without assigning a reason.

The SEC has fairly extensive powers with regard to the licensing of stock exchanges, brokers and dealers, formulation of rules for fair trading and for the protection of investor interests, the suspension/cancellation of the listing of securities, insider dealing etc., with the breach of any provision of the Act subjecting the offender to a maximum punishment, upon conviction in Magistrate court, of a sentence of five years imprisonment, or a fine of Rs.10 million, or both. The Commission can also publish the findings of malfeasance by a licensed stockbroker or dealer of any public company listed on a licensed stock exchange.

However, the investigation powers of the SEC are limited by the fact that the present legislation only allows the Commission to request details of suspicious transactions; it does not have the power to visit premises, to seize documents, to summon persons and record statements, to impound travel documents or issue stay orders to immigration, or to arrest persons. These limited powers of the SEC have compromised its ability to regulate the market and has prompted the drafting of new legislation that will include wider powers of investigation and enable the Commission to regulate new market intermediaries – credit rating agencies, underwriters, portfolio managers and investment advisors, securities depositories and margin traders.

The legal framework for Sri Lanka's banking sector is set out in the Banking Act No.30 of 1988. This Act provides for the introduction and operation of a procedure to license persons carrying out banking business and the business of accepting deposits and investing such money. The law sets out guidelines for the regulation of the banking sector and gives wide supervisory powers to the Monetary Board of the Central Bank of Sri Lanka.

This Board is made up of the Governor of the Central Bank, the Secretary to the Ministry of Finance and Planning and a member appointed by the Minister of Finance and Planning, and is widely respected for its independence- in contrast to some of the other Commissions looked at in previous sections of this paper. This perception of the Board is particularly relevant in the current context where several attempts have been made by investors to purchase banking stocks with a view to obtain a dominant position in the banking industry. As per the current legislation, an individual is not permitted to hold more than 10 percent of the shares of a bank, while the corresponding maximum share for a company is 15 percent[24].

Sri Lanka's insurance sector is regulated by the Insurance Board of Sri Lanka (IBSL), established under the Insurance Act No.43 of 2000. Like in the case of the SEC, the diversified composition of the Board – the Deputy Secretary to the Treasury, a Deputy Governor of the Central Bank nominated by the Monetary Board, the Director General of the SEC, and four members appointed by the Minister of Finance from the fields of insurance, commerce, financial management, business management, economics or law – provides for a relatively greater degree of independence from undue political intervention.

The principle tasks assigned to the IBSL as per the Act are, to ensure that insurance business is carried out with integrity in order to safeguard the interests of policy holders and potential policy holders; to register persons carrying on insurance business in the country; to advise the government on the development and regulation of the insurance industry; to implement the policies of the government with respect to the insurance industry etc.

The Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB) was established under the Accounting and Auditing Standards Act No.15 of 1995, to look into the accounting and auditing practices of "specified business enterprises" (such as companies with a turnover in excess of Rs. 500 million, with a staff in excess of 1000 employees etc.) One of the principal differences between the SEC and the SLAASMB is that the former's jurisdiction is limited to quoted companies, while the latter has a broader ambit, including quoted companies, financial institutions, banks and family owned entities.

The SLAASMB is made up of ex officio members and members appointed by *specific institutions* (such as the Central Bank, the Sri Lanka division of the Chartered Institute of Management Accountants of the UK, the Bar Association of Sri Lanka, the Chambers of Commerce, the Banks' Association, the University Grants Commission etc.). The absence of direct political appointees is of particular significance. According to the Director General of this watchdog body the percentage of significant deviations from the Board's standards dropped from 17 percent in 2000 to 9 percent in 2001, with the higher level of compliance suggesting that the Board does have considerable legitimacy and credibility. Under the Act, the SLAASMB can either take offenders to courts – where the courts have the power to impose prison sentences – or to compound an offense to a fine. However, as of now the Board has neither taken a body to courts nor imposed a fine, with the authorities claiming that the cases that have been investigated did not justify such penalties[25].

INSTITUTIONAL STRUCTURE

This section completes the triad – of policy, law and institutions – that provides the foundation for understanding competition, regulation and regulatory governance in Sri Lanka. The principal focus of this section is the question of establishing institutions that promote and sustain effective competition, that provide for investments to flow into utility sectors, and that ensure that consumer interests are also accommodated in the process.

What is required to build such institutions? *Samarajiva (forthcoming)* argues that the most critical factor for competition and regulatory agencies to be effective is that they be independent of operators and of the government. In the real world where government ownership is a factor to contend with however, absolute independence is not possible. Moreover, independence must not be viewed as being exempt from accountability. As such, the issue becomes one of achieving *workable independence* in an imperfect situation.

This section looks at formal methods of getting to workable independence, such as the procedures for appointment, removal and reporting (and the extent of direct political involvement in these processes) and the financial autonomy of the competition and regulatory agencies in the Sri Lankan context. It also considers what *Samarajiva (forthcoming)* characterizes as informal modes of ensuring independence – winning legitimacy through communicative processes with stakeholders – by looking at variables such as user participation and influence, commitment to the public interest etc.

Sri Lanka's competition and regulation institutions developed in response to the liberalization of a previously heavily state-controlled economy. Given the extensive nationalization of major industries in the past, the basis for a broad competition and regulatory foundation is absent in Sri Lanka, with competition and regulation agencies assuming a sector specific role. The fact that

the implementation of these agencies is begun through line ministries creates a problem of obtaining the degree of independence required for these bodies to operate efficiently and objectively.
The main external competition and regulation agencies have already been mentioned in Section 3 in relation to the laws governing these entities. In addition, there is an assorted collection of regulatory bodies inside government made up of ministries, various central government regulators (e.g. the Central Transport Board), regional (devolved) regulators (e.g. regulation of bus transport by the Provincial Councils), local government regulators (e.g. municipalities dealing with water and sewerage monitoring) etc.

Two entities of particular relevance in the context of this paper are the Committee on Public Enterprise (COPE) established to scrutinize the financial accounts of SOEs and the Public Enterprise Reform Commission (PERC) set up to handle transactions relating to the privatization of SOEs and to allow government to get into the management area of an industry by empowering a line minister to take over the management through the appointment of a "competent body". Recent media reports[26] indicate that COPE's ability to investigate over 40 SOEs could be jeopardized with the position taken by Sri Lankan Airlines not to submit its accounts for scrutiny on the basis that it did not come within the definition of a Public Corporation under the 1978 Constitution. Moreover, while PERC's mandate does not include the regulation of utilities, it was this body that was largely responsible for the granting of the international monopoly provision to SLT/NTT; it was also the entity that assumed the de facto role of a regulator in the case of Shell.

Several aspects regarding formal mechanisms for ensuring independence, such as the appointment, dismissal and reporting procedures in external competition and regulatory agencies were discussed in the preceding section of this paper. Direct ministerial influence, provided for by the law, is a prominent feature in most of those agencies, although less so perhaps in the entities responsible for financial sector regulation. The more vital question however, is the degree of independence that these agencies and their officials have from government (and from special interest groups) *after appointment*, to carry out the tasks assigned to them effectively. Some useful indicators in this regard are the nature of the service contract for Commissioners (e.g. part time/ full time appointees, specified term of contract etc.), mechanisms for accountability (e.g. review by legislature, judicial review, regulatory impact assessment, expertise in solving regulatory problems, consultative processes before reaching a decision, requirements to give reasons for decision-making etc.) and financial autonomy.

Under the current law, the FTC is made of seven members, all appointed by the Minister for a three term of three years, with provision for reappointment. The Chairman of the Commission is the only full-time member and there are no ex-officio members. As mentioned above, the Minister has the power to intervene in the decision-making procedures of the FTC, particularly with regard to price control issues. As is the case in other public institutions, the Commission is subject to financial scrutiny by public audit bodies, under Article 154 of the Constitution. It is also, like in the case of most other public agencies, subject to legislative review, not a very effective process given the political dynamics outlined in Section 2 of this paper, and to judicial review. While the judicial process does allow for more independence and autonomy, the long delays in Sri Lanka's courts system and the fact that most judges do not have the expertise required to tackle regulatory issues, undermines its effectiveness as an instrument for accountability.

While the FTC does put out an Annual Report containing information for the public on investigations, decisions, accounts etc. this publication is invariably not made available to the public[27]. Given that funds for the FTC are allocated by Parliament, the Commission requires Treasury approval for all expenses. This competition authority is also one of the more poorly funded public bodies, with a budget of around 0.00363 percent of the total government budget, and with staff salaries less than those of other public sector institutions. As a result, there is a severe shortage of skilled persons in the FTA, with only around 13 of the 27 positions being filled over the last few years. Currently, efforts are being made to secure independent sources of finance for CAFTA so as to avoid the problems that afflict the FTC.

The TRC structure is similar to that of the FTC except for the inclusion of ex officio members. The Director General is the only full-time member of the Commission. As mentioned in Section 3, the power of the Minister to intervene in the workings of the Commission continues even after the appointment of members given that the Chairman is the Secretary to the Ministry and that the

Minister can issue "general or specific" directions at any time. TRC however, has a relatively better record in terms of consultative procedures in decision-making, particularly in the 1998/1999 period under the leadership of a pro-active Director General. Two significant public hearings include those on billing procedures in the fixed access network in 1999, and on establishing a calling-party-pays (CPP) system for mobile operators in 1999/2000. The TRC also has greater financial autonomy, when compared to the FTC, given that it does not receive any government monies with its financing coming mostly from license fees. In addition, salary scales are also higher than those in the public sector, enabling the TRC to recruit more qualified and skilled staff.

The institutional structure of the SEC allows for considerably more autonomy than those of both the FTC and the TRC, given the appointment procedure outlined in Section 3. Specific measures of accountability are built into the reporting procedure, with the Director responsible to both the Commission and the Minister, the Minister monitoring Commission members, and the Commission monitoring the staff. Like the TRC, the SEC is not dependent on state monies, finances itself through a tax collected from brokering costs and from market transactions, and pays salaries that are close to private sector levels. As a result, it has been able to maintain a staff of about 50 employees in six divisions, specializing in corporate affairs, public relations and market development, supervision, legal and enforcement, monitoring and investigation, and finance and administration.

The PUC Bill also contains significant improvements with regard to independence, measuring up to best practice. For instance, the five-member Commission is to be appointed by the Minister of Policy Development in concurrence with the Constitutional Council, these members are to be appointed on staggered terms, they cannot be removed without Parliamentary approval with specified reason, and they are to serve on a part-time basis and are subject to conflict of interest rules.

While the formal modes of ensuring independence, outlined above, are important particularly when bad governance is ubiquitous, winning and sustaining legitimacy in the eyes of stakeholders is vital for the survival of competition and regulation agencies. How successful have these agencies been in this regard in the Sri Lankan context? Clearly, the FTC has not been able to build an image for itself as a credible entity, free from political capture with the ability to take on a pro-active role in regulating competition. Cases are rarely brought to the FTC and it also looks into very few cases of its own accord. Resource and skills constraints have contributed significantly to the public image of the Commission as a watchdog with "teeth that cannot bite".

The TRC, on the other hand, went through a short period – 1998/1999 – when it was considered one of the most credible, transparent and pro-active regulatory bodies in the country, with several countries in the region viewing the TRC as an instance of best practice. This was also the period when user participation was actively encouraged through public hearings procedures and consumer consultations, and public interest considerations manifested themselves in the decisions of the Commission – a case in point being the decision to introduce special tariff schemes to partially shield low and medium users from tariff increases in the first two years of rate re-balancing. Since then however, most stakeholders have not considered the TRC a legitimate entity. Clearly, the appointment of an ex-employee of the incumbent operator as the Director General of the Commission contributed in no small manner to this loss of credibility, pointing to the fact that leadership – somewhat of an "intangible" commodity – plays a key role in winning legitimacy.

POLITICAL, SOCIAL AND EXTERNAL INFLUENCES

The role of organized interests such as consumer groups, chambers of commerce, operators and labor unions, and the role of aid donors and international organizations, in shaping the competition and regulation reform process in Sri Lanka is considered in this section. Political influences, which given the *ad hoc* policy development process and bad governance practices, tend to have a negative impact on the reform process, have already been discussed in length throughout this paper.

In general, consumer and user groups have had very little influence on the competition and regulatory process in Sri Lanka, with minimal opportunity to participate in and contribute towards the development of policies, laws and institutions that, in the final instance, have a tremendous impact on their welfare. Perhaps the most significant factor explaining the lack of consumer involvement in this process is that there are no *active* consumer organizations in the country. Conversations with the leaders of two of these dormant entities indicate that the leadership (mostly from the more affluent groups of society) blames consumers – with their lackadaisical attitude - for this sorry state of affairs. On the other hand, creating consumer awareness is the core responsibility of consumer organizations – clearly a paradoxical situation that points to leadership failure.

Given the absence of a bottom-up consumer/user network, the involvement of such groups in the competition and regulatory process has largely been at the initiative of proactive regulatory agencies. An example is that of the TRC in the 1998/1999 period, as discussed above. The absence of an active consumer interest group to counter other interest groups, particularly those representing the chambers of commerce - a very powerful lobby group in Sri Lanka - was felt very strongly when the CAFTA Bill was being drafted. While provisions including the rights of consumers were rejected, the chamber of commerce representations opposing the payment of a registration fee from companies to secure non-government funds to finance the competition authority appear to have been taken on board. The strong role of business interests in the regulatory process is also reflected in TRC's inclination to support the incumbent operator, SLT, in recent years.

Trade unions have had more of an impact on competition reforms such as the privatization process, than on regulatory reforms. Not surprisingly, labor groups have not been very supportive of privatization, given the job security in SOEs and the perception, cultivated over years of government intervention in the economy, of a benefactor state. The presence of vociferous trade unions with strong bargaining power and the ability to create industrial unrest has prompted the government to introduce several measures, such as Employee Share Ownership Plans (ESOPs) and retrenchment packages to placate workers, very often at high financial costs to the state[28].

International organizations/ external agencies have had an impact on the competition and regulation process mostly through technical and financial assistance channels. For instance, the

World Bank is currently helping the Sri Lankan government to develop a consolidated strategy for infrastructure regulation and SEC was created with the assistance of the US Agency for International Development (USAID). Also, in the case of telecommunications, TRC is bound by Sri Lanka's commitments to the WTO Regulatory Reference Paper (interconnection on non-discriminatory terms and at cost-oriented rates, administering of USOs in a transparent and non-discriminatory manner etc.)

Contrary to the claims of groups opposed to any involvement of these external agencies in domestic affairs however, the influencing role of international donor agencies has not been exceptional and has certainly not exceeded that of political interest groups. Ironically, it might even be the case that Sri Lanka *requires* external pressure to counter the negative influence of political interest groups and to get to a more effective competition and regulatory policy regime.

CONCLUSION

The main conclusions that emerge from this analysis of the institutional and policy framework for competition and regulation in Sri Lanka are that regulatory failure, stemming from systemic weaknesses in policy formulation and implementation and in the institutional and legal structures governing competition and regulation, is rampant and that opportunities for political capture are abundant. In essence, the underlying message is that government in Sri Lanka does not work too well.

This raises the conundrum of how to build effective competition and regulatory institutions and systems and to create the conditions for good regulatory governance in a milieu where bad governance is omnipresent. Given the apparently extensive government failures in the system, should the competition and regulation reform process rely more on a "market approach" to the delivery of public interest; for instance, would light-handed regulation, fewer and simpler regulatory rules etc. have a more beneficial impact on consumer and producer welfare? Can such an approach actually guarantee insulation from political influence, given that vested interests with political connections are not confined to the state sector alone? What impact will such an approach have on equitable growth and poverty alleviation?

Clearly, there are no simple answers to these posers. Issues such as whether more or less regulation makes for effective regulation require careful consideration. Unfortunately however, the mechanisms for an objective analysis of the competition and regulatory procedures, such as regulatory impact assessment (RIA) methods are absent in Sri Lanka, as are accurate means for assessing capacity building requirements in the country. Addressing these gaps in understanding the dynamics of the competition and regulatory process is the principal aim of the research issues proposal that accompanies this paper and the main focus of the Sri Lankan component of the CRC competition, regulation and regulatory governance research and capacity building program.

Notes

[1] However, a Consumer Protection Act was put in place in 1979.
[2] The research proposal that accompanies this paper identifies some important issues that require research and policy input in the Sri Lankan context.
[3] Under the 13th Amendment to the constitution, passed in November 1987, certain powers have also been devolved to 9 elected provincial councils, primarily with a view to meet minority demands for greater autonomy. However, there has been considerable political debate and controversy regarding the effectiveness of this Amendment with some factions claiming that it has failed to provide for meaningful devolution and others claiming that it would lead to excessive regional autonomy.
[4] Sri Lanka has a hybrid, U.S./French presidential and British parliamentary, form of government. The president and the cabinet of ministers make up the executive, with the cabinet of ministers being nominated by the prime minister (the leader of the party that secures a majority in parliamentary elections) and appointed by the president. The legislature is made up of 225 members - representatives of the political parties that contest parliamentary elections, held under a system of proportional representation every five years, and secure the required percentage of votes to get into parliament. The president, whose electoral term is six years, is all-powerful and immune to any judicial challenge. Under the current (1978) constitution, the president can only be removed if impeached by parliament, with a two-thirds majority.
[5] While such a situation may have a beneficial impact on the policy-making process in countries with good governance practices, it has had the opposite effect in Sri Lanka.
[6] Knight-John, mimeo (a).
[7] The company was renamed Sri Lankan Airlines after privatization.
[8] Strategies to adopt public-private partnerships in the passenger bus transport sector are currently being formulated.
[9] Self-regulation is not prevalent in Sri Lanka and it is questionable if it will even be a feasible option given the dismal governance situation that has become a systemic feature of the country in general.
[10] See Knight-John, mimeo (a)and Jayasuriya and Knight-John (2002).
[11] The government has also decided to adopt a multi-sector regulatory model for the financial and banking sectors. However, these plans are still at an embryonic stage.
[12] See Frontier Economics (mimeo)
[13] Transport is a devolved subject, with some aspects of transport policy relating to the regions coming under the provincial councils with the 13th Amendment to the constitution. Currently, there is controversy regarding the division of powers between the National Transport Commission, representing the center, and the provincial councils.
[14] See Jayasuriya and Knight-John (2002) for details.
[15] Members of the Supreme Court are appointed by the president.
[16] Also see CUTS (2002) and Wickramaratne Rupesinghe (forthcoming) for an extensive discussion of competition law in Sri Lanka.
[17] It also repealed the National Price Commission Law No.42 of 1975.
[18] See CUTS (2002) for details of this Act and of the Department of Internal Trade.
[19] The CAFTA Bill provides for the establishment of a Consumer Protection Authority and a Consumer Protection Council, with investigative and adjudicative powers, respectively, both under the broader umbrella of a Consumer Affairs and Fair Trading Authority, to replace the FTC and the DIT.
[20] However, FTC (2000) reports that this case was later investigated under Section 13 – the provision on anticompetitive practices.
[21] Knight-John, mimeo (b).
[22] While these penalties are general and apply across the board to corporate and non-corporate bodies, the new Bill differentiates between these two groups in the level of penalties.
[23] The draft PUC legislation is clearly an improvement on the provisions contained in the telecommunications law, with the appointment of the five-member commission – meeting the required experience and expertise criteria – to be made by the Minister of Policy Development(currently the prime minister) with the concurrence of the Constitutional Council.
[24] The Monetary Board has the authority, in exceptional situations, to authorize holdings in excess of these limits under grounds of national interest.
[25] Sunday Times, July 14, 2002.
[26] Daily News, August 8, 2002.

[27] This phenomenon however, is common to most public and private sector institutions in Sri Lanka; the disclosure of information is seen as "a loss of control" and even the most public information is categorized as "confidential".

[28] See Knight-John, mimeo (a).

REFERENCES

Central Bank of Sri Lanka (various years). *Annual Report.* Colombo: Central Bank of Sri Lanka.

Cook, P. *Competition and its Regulation: Key Issues.* Working Paper No. 2. Manchester: Center on Regulation and Competition.

Consumer Unity & Trust Society (2002). *Comparative Study of Competition Law Regimes of Select Developing Countries: Sri Lanka 1st Phase Country Report.* Jaipur: CUTS.

Fair Trading Commission (various years). *Annual Report.* Colombo: Fair Trading Commission.

Frontier Economics (mimeo). 'Consolidated Strategy for Regulating Infrastructure in Sri Lanka: A Discussion Paper prepared for the Government of Sri Lanka and PPIAF'.

Jayasuriya, S. and M. Knight-John (2002). *Sri Lanka's Telecommunications Industry: From Privatization to Anti-Competition?* Working Paper No. 14. Manchester: Center on Regulation and Competition.

Kelegama, S. and Y. Cassie Chetty (1993). *Consumer Protection and Fair Trading in Sri Lanka*. Colombo: Law & Society Trust.

Kirkpatrick, C. (2001) *Regulatory Impact Assessment in Developing Countries: Research Issues.* Working Paper No.5. Manchester: Center on Regulation and Competition.

Knight-John, M. mimeo (a). 'Distributional Impact of Privatization: The Sri Lankan Experience'.

Knight-John, M. mimeo (b). 'A preliminary impact assessment of the Glaxo Wellcome-SmithKline Beecham international merger on the respiratory segment of Sri Lanka's pharmaceutical market'.

Minogue, M. (2001). *Governance-Based Analysis of Regulation.* Working Paper No. 3. Manchester: Center on Regulation and Competition.

Ogus, A. (2001). *Regulatory Institutions and Structures.* Working Paper No. 4. Manchester: Center on Regulation and Competition.

Parker, D. (2001). *Economic Regulation: A Preliminary Literature Review and Summary of Research Questions Arising.* Working Paper No. 6. Manchester: Center on Regulation and Competition.

Samarajiva, R. (forthcoming). 'Utility Regulation and Competition Policy in Sri Lanka: Prospects for Change' in M. Knight-John (ed.) *Competition Policy and Utility Regulation: The Sri Lankan Experience*. Colombo: Law & Society Trust.

Sri Lanka (1987). *Fair Trading Commission Act No.1 of 1987*. Colombo: Government Publications Bureau.

Sri Lanka (1987). *Securities Council Act No.36 of 1987.* Colombo: Government Publications Bureau.

Sri Lanka (1988). *Banking Act No.30 of 1988.* Colombo: Government Publications Bureau.

Sri Lanka (1991). *National Transport Commission Act No.37 of 1991.* Colombo: Government Publications Bureau.

Sri Lanka (1991). *Sri Lanka Telecommunications Act No. 25 of 1991 as amended by Sri Lanka Telecommunications (Amendment) Act No.27 of 1996.* At http://www.trc.gov.lk/telecom1.html

Sri Lanka (2001). *Consumer Protection Authority: A Bill.* Colombo: Government Publications Bureau.

Wanasinghe, S. (2001). *The Implications of the Changing Role of Governance in Sri Lanka.* Research Studies: Governance Series No.7. Colombo: Institute of Policy Studies.

Wickramaratne Rupesinghe, P. (forthcoming). *Competition Law in Sri Lanka* in M. Knight-John (ed.) *Competition Policy and Utility Regulation: The Sri Lankan Experience*. Colombo: Law & Society Trust.

World Bank (2002). *World Development Report 2002: Building Institutions for Markets.* Washington D.C: World Bank.