

**PRIVATISATION, COMPETITION AND REGULATORY GOVERNANCE:
A CASE STUDY OF SRI LANKA'S TELECOMMUNICATIONS SECTOR**

A thesis submitted to The University of Manchester for the degree of
Doctor of Philosophy (PhD)
in the Faculty of Humanities

2011

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Word Count: 67,690

GLOSSARY OF ACRONYMS

ADB – Asian Development Bank
ADSL – Asymmetric Digital Subscriber Line
AWC - Augmented Washington Consensus
BCI – Business Confidence Indices
BOP – Bottom of the Pyramid
BPO – Business Process Outsourcing
CBSL - Central Bank of Sri Lanka
CC – Constitutional Council
CDMA - Code Division Multiple Access
CEB – Ceylon Electricity Board
CEO - Chief Executive Officer
CFA – Cease Fire Agreement
COPE – Committee on Public Enterprises
CPC – Ceylon Petroleum Corporation
CPI – (Worldwide) Corruption Perceptions Indicators
CPP – Calling Party Pays
CSE – Colombo Stock Exchange
DBI – Doing Business Indicators
DGT - Director General of Telecommunications
EGI - Economic Governance Index
EGO – External Gateway Operator
ESOPs – Employee Share Ownership Plans
FDI - Foreign Direct Investment
FOI – Freedom of Information
FPTP- First-Past-the-Post
GATS - General Agreement on Trade in Services
GOSL – Government of Sri Lanka
GSM – Global System for Mobile Communications
HHI - Herfindahl-Hirschman Indices
ICT - Information and Communications Technology
IFC – International Finance Corporation
IFIs - International Financial Institutions
IMF - International Monetary Fund
IPS - Institute of Policy Studies, Sri Lanka
ITU – International Telecommunication Union
MDGs - Millennium Development Goals
MNC – Multinational Corporation
NCE- Neo-Classical Economics
NGO - Non-Governmental Organisation
NIE - New Institutional Economics
NSO - National Statistical Organisation
NTT – Nippon Telegraph and Telephone Corporation, Japan
ODGT - Office of the Director General of Telecommunications
OIE - Old Institutional Economics
PA – People’s Alliance
PAC – Public Accounts Committee
PC – Provincial Council
PERC – Public Enterprise Reform Commission

PIPU – Public Interest Program Unit
PR - Proportional Representation
PRSF - Poverty Reduction Strategy Framework
PRSP - Poverty Reduction Strategy Papers
PUCSL - Public Utilities Commission of Sri Lanka
PWC - Post-Washington Consensus
QoS – Quality of Service
RPP – Receiving Party Pays
SBA- Stand-By Arrangement
SEMA – Strategic Enterprise Management Agency
SIM - Subscriber Identity Module
SLFP - Sri Lanka Freedom Party
SLR - Sri Lanka Railways
SLT – Sri Lanka Telecom
SLTB - Sri Lanka Transport Board
SOE - State-Owned Enterprise
TCE - Transaction Costs Economics
TI - Transparency International
TRCSL - Telecommunications Regulatory Commission of Sri Lanka
TRE - Telecom Regulatory Environment
U.K. - United Kingdom
UNP - United National Party
U.S. - United States
USOs - Universal Service Obligations
UT - Usaha Tegas, Malaysia
VOIP - Voice- Over –Internet- Protocol
WB -World Bank
WC - Washington Consensus
WGI - Worldwide Governance Indicators
WiMax - World-wide Interoperability for Microwave Access
WLL - Wireless Local Loop
WTO – World Trade Organisation

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ABSTRACT

The University of Manchester

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Degree Title: Doctor of Philosophy (PhD)

Thesis Title: Privatisation, Competition and Regulatory Governance: A Case Study of Sri Lanka's Telecommunications Sector

Date: September 23, 2011

My research analyses issues in the relationships between the state and the market, including the roles of key institutions and organisations and their interactions in the policy and regulatory governance arenas. The findings, based on documentary analysis, focus group discussions, perceptions analysis and in-depth interviews with representative actors in the public policy system in Sri Lanka, focus specifically on the linkages between the country's institutional endowments, the reform process and regulatory governance; and the role of mental models, path dependence and ideology – specifically that of the donor and local epistemic community – in influencing economic reforms and regulatory governance.

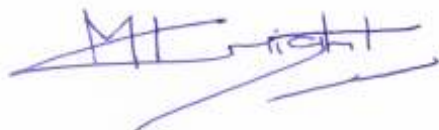
The analysis set forth in this thesis draws on Douglass North's conceptualisation of New Institutional Economics as well as on the conceptualisation of public policy by seminal scholars in the field such as Harold Lasswell, David Easton, Bill Jenkins, Michael Hill and Wayne Parsons. These theoretical constructs are particularly useful in exploring and obtaining a rich understanding of complex institutional and policy processes and relationships, as well as policy outcomes. Moreover, this framework sits well with the interpretivist research philosophy, inductive approach and qualitative research methods which I use to gather "thick" information on privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka's telecommunications sector.

An overview of the existing literature on privatisation, competition and regulatory governance in general and in the telecommunications sector in particular, points to a paucity of public policy analyses in developing countries. As such, whilst acknowledging the limitations of single case study research in relation to policy transfer, I posit that my research findings do shed light on a number of critical issues that are relevant to scholars and practitioners interested in understanding the policy process in developing countries.

My research findings provide a real world illustration of the futility of dichotomising the state and markets; instead, constructs such as policy and regulatory space are more useful than those such as the regulatory state. Incorporating these constructs of policy and regulatory space also allows for a "thick" understanding of the dynamics between political and socio-economic institutions, organisations and individuals and their impact on policy outputs and outcomes. My findings also provide for a better understanding of regulatory governance in developing countries. Constructs such as responsive regulation, regulatory society and independent regulation that are typically conceived in the literature in a developed country context are critically explored in the Sri Lankan setting. Finally, my research findings extend the literature on privatisation, competition and regulatory governance by illustrating that forces of competition and contestability are more important than ownership change in terms of policy outputs and outcomes, and that – as reflected in the case of Sri Lanka's telecommunications sector - competition and contestability can in fact transcend forces of weak regulatory governance.

DECLARATION

I, Malathy Knight-John, declare that no portion of the work referred to in this thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.



Malathy Knight-John
September 30, 2011

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Malathy's publications include book chapters in volumes published by Edward Elgar, Cambridge University Press, Sage, Elsevier and the United Nations (UN); articles in journals such as Law and Governance and South Asia Economic Journal; and working papers and project reports for the IPS; LIRNEasia; the Department for International Development (DFID) Centre on Regulation and Competition (CRC) at the University of Manchester; the University of Colombo, the International Labour Organisation (ILO); the International Development Research Centre (IDRC), Canada; the Department for International Development (DFID), UK; the United States Agency for International Development (USAID); and the World Bank.

ACKNOWLEDGEMENTS

This thesis is the outcome of not merely my own efforts but of the selfless love, dedication, and moral support extended to me by countless people. The writing of my PhD coincided with one of the most personally traumatic periods in my life; and the University of Manchester was empathetic and gracious in granting me periods of interruption to give me the time and space to deal with my grief.

This PhD marks the end of a long academic episode in my life; much more however, it has given me the opportunity to embrace the realities of life with all its ups and downs. The fact that I have been able to complete this piece of research is a testimony to the love of our Lord, without whose Grace and Faithfulness I would not have been able to reach this goal. I dedicate this thesis also to my father who tirelessly burnt the midnight oil with me, made me countless mugs of coffee, ensured that I had a nutritious diet (!) and goaded me into believing that I could and would finish what I had begun: Appa, your selfless love and those chats in the wee hours of the morning when you constantly emphasised that I had to complete “the race that I had begun” are what have taken me through to the end. Although my mother is no longer here with me, the memories of her positive approach to life and her advice that anything and everything that one does should be seen as “fun and exciting” – even exams! – were with me as I went through the highs and lows of writing. My ex-husband continued to be a steady source of strength to me with his quiet and yet firm words of advice when I was ready to abandon this thesis; and my current partner has been a constant source of support over this last year. This acknowledgment of my immediate family would not be complete without the unconditional love that I had from my “canine” family – Sandy girl and Amber girl in particular who stayed up all night with me although they were old and tired, making sure that “Mummy” did her work and rewarding me with constant licks and cuddles!

My close-knit circle of friends who have been beside me encouraging me in their unique, individual ways from editing and commenting on my drafts to berating me when I tended towards sluggishness whilst simultaneously giving me tremendous emotional support in my many moments of anxiety are way too many to name – (and besides, I did promise them that they would remain anonymous!). However, each of you knows how much you mean to me and how grateful I am for your love and commitment to my well-being. I only hope that I can be as amazing a friend to each one of you as you have been to me.

I would also like to thank my current supervisor and ex-supervisors, all those who have stood with me at IDPM, my bosses at IPS and at LIRNEasia and all my colleagues for their invaluable inputs. Dr. Gao: thank you for your constant support, useful comments and words of advice in helping me to complete this PhD. Martin and Paul: your academic direction, patience and most of all your encouraging words throughout these years have been amazing; you promised me that you would see me finish this and you did. Dr. Kelegama and Rohan: you have both been more than bosses and mentors to me in this exercise.

So now my PhD is finally complete; and I would repeat it a thousand times over if I had to – a huge thank you and a big hug to all of you – I would not be where I am today if not for all of you.

CHAPTER 1: INTRODUCTION

1.0. Privatisation, Competition and Regulatory Governance: Debates in Development

The past three decades have witnessed an upsurge of neo-liberal ideology in development theory, policy and practice. Debates on the specific connotations of this ideology are still prominent in the development literature (Williamson, 1990a, 1996b, 2000, 2003; Stiglitz, 1998, 2002; Rodrik, 2001; Onis and Senses, 2005; and Robison and Hewison, 2005 for example). However, the core of neo-liberalism as evidenced in both developed and in developing countries, consists mainly of policies associated with competition, liberalisation, privatisation and deregulation. The perceived success of neo-liberalism in Britain and in the United States (U.S.) under the political leadership of Margaret Thatcher¹ and Ronald Reagan, respectively, combined with the legitimisation of this ideology by the Bretton Woods institutions and by the U.S. Treasury in particular, contributed to the export of neo-liberal policies to developing countries in the 1980s and 1990s. Further, neo-liberalism was absorbed into the domestic policy agenda of developing countries through a form of embedded policy transfer channelled through the epistemic community and key local decision-makers educated in academic institutions that promulgated neo-liberal ideology.

The onset of neo-liberalism posed a challenge to the pre-1970s role of the state as the principal driver of socio-economic development. However, as highlighted in the literature, links between the market and the state are fluid and dynamic. The state does and will continue to have an important role to play in development.² To cite Moran and Wright (1991):

‘The language used by politicians (and not a few academics)...employs a false antithesis in the relationship between the state and the market. They are not opposed. The divorce of the market from the state is as demonstrably absurd as the now discredited concept of states without markets.’ (p. xiv)

Empirically, neo-liberal reforms such as privatisation have shown mixed results as documented for instance in Cook and Uchida (2001), Kikeri and Kolo (2005) and in Boubakri et al (2008). As set out in Megginson and Netter (2001) and in Nellis and Birdsall (2005), privatisation has generally had a positive impact on the efficiency of firms, whilst having a less than favourable impact on distributional outcomes. Principal-

¹ Moran (2003: p.1) terms this the ‘revolution (ary)’ properties of privatisation in the United Kingdom (U.K.).

² The debate on the division of labour between states and markets in the development process is one that has repeatedly surfaced on the ideological as well as policy landscape since the late 1940s (Martinussen, 1997).

agent dynamics combined with factors such as the nature of parallel economic and political reforms and the sequencing of the reform process (with effective regulation and competition preceding ownership change) have also had a significant influence on the outcome of privatisation in developing countries (Parker and Kirkpatrick, 2003).

As discussed in King and Maddock (1996), Cook (1999) and Kikeri and Kolo (2005) for example, the fact that ownership change in and of itself is not a sufficient condition for improved enterprise performance is clearly seen in the case of the utility sector in both developed and developing countries. Historically, these entities have been operated as state-owned, vertically and horizontally integrated monopolies for reasons of political governance. In addition, structural economic aspects such as the natural monopoly features that characterise many of these entities pose a challenge to the introduction of competition in these sectors. To cite Cook (1999) on utility privatisation in developing countries:

‘The introduction of privatisation has not necessarily meant more competition. Consequently, utility privatisation has led in many cases to the creation of regulatory structures that aim to protect consumers from monopoly abuse and to provide incentives to firms to maintain efficiency. Case studies drawing on examples from the telecommunications, electricity and water sectors indicate that creating effective regulation and a competitive environment is a difficult and slow process.’ (p.549)

What remains clear however is that, in spite of the practical hurdles associated with institutionalising effective regulation and facilitating competition, these variables have a positive impact in terms of reform outcomes. Analyses by Parker and Kirkpatrick (2003) and by Cook et al (2004a) drawing from both econometric as well as qualitative case study evidence, endorse the fact that effective ex-ante and ex-post regulatory capacity is essential for a sustainable reform process. Clearly, this also underscores the continued importance of the state in the development process as cited in Cook et al (2004a):

‘Therefore contrary to the ambitions of leading advocates of ‘privatisation’, such as Milton Friedman in economics and Margaret Thatcher in politics, the ‘frontiers of the state’ have not been so much ‘rolled back’ but have been reshaped and redirected since the 1970s’. (p.3)

Recent empirical evidence from developing countries also indicates that the state assumes a critical role in socio-economic development. According to a survey carried out by Estache and Goicoechea (2005) as cited in Vagliasindi (2008):

‘...the private sector is less widespread than it is often assumed both in the academic and policy arena....the results of the survey show that the private

sector has roughly contributed 20-25% of infrastructure investments in developing countries on average over the last 15 years or so.’(p.2)

The fact that the state is an integral part of the reform and development process is clear. However, the jury is still out on the nature of the state and on its interactions with other actors in the policy and regulatory space. Similarly, neo-liberalism itself continues to be a subject of debate in the development literature (Leeson and Minogue, 1988; Moran and Wright, 1991; Lane, 1997; Williamson, 2003; Onis and Senses, 2005; and Robison and Hewison, 2005 for instance). As aptly expressed by Robison and Hewison, ‘Neo-liberalism has become a catch-all term accommodating a range of market-oriented ideas and interests that have evolved over the past three decades’ (2005: p.185).

The neo-liberal economic orthodoxy propagated by the International Financial Institutions (IFIs) has been equated - albeit erroneously, as argued in Williamson (1990b, 1996a, 2000, 2003) and Robison and Hewison (2005) - with the recipe for economic reform identified by Williamson (1990a) in response to the financial crisis that wracked Latin America in the 1980s. This reform package, which he termed the “Washington Consensus” (WC), consisted of ten very specific policy prescriptions: fiscal discipline, re-ordering public expenditure priorities, tax reform, liberalising interest rates, a competitive exchange rate, trade liberalisation, liberalisation of inward foreign direct investment (FDI), privatisation, deregulation, and property rights. Misconceptions in relation to the WC, which have subsequently also influenced the formation of a tangled and diffuse set of ideas associated with neo-liberalism, is well captured in the following expression in Williamson (2003):

‘Most self-styled opponents of the Washington Consensus appear to have used the term in recent years to mean universal application of the neo-liberal interpretation of the term... And perhaps this usage was to some extent legitimised by the fact that at least for a period in the 1990s some of the Washington institutions – the IMF and key agencies of the US government like the Treasury – did indeed urge parts of this extended agenda, most damagingly a pace of capital account liberalisation that most people agree in retrospect to have been precipitate.’ (p.4)

Outside of this debate on what it means to development practitioners, the WC has inspired useful discussions on areas such as the role of the state, economic and political reform in developing countries, and policy transfer (Cook et al, 2004a). Two strands of thinking stemming directly from the debate on the WC are the “augmented Washington consensus” (AWC) initially referred to in Rodrik (2001) and the “post-Washington consensus” (PWC) set out in Stiglitz (1998, 2002).

The AWC, which includes a range of policies relating to poverty reduction (for example, the Poverty Reduction Strategy Papers (PRSP) and Poverty Reduction Strategy Framework (PRSF)) initiated by the IFIs and to good governance (for example, the promotion of civil society, democratic reform, institution and capacity building, transparency and creation of social safety nets) was largely a product of the East Asian financial crisis in the late 1990s. The principal tenet set out in the PWC is that states do have a vital role in development policy and practice; and that markets and states are complements. Both the AWC and the PWC emphasise the inextricable link between the state, the market and other non-state actors in sustainable socio-economic development. In contrast to the models of neo-liberalism that prevailed in the pre-East Asian crisis era, this thinking emphasises the importance of institutions and of context-specific policy transfer in the development process.

1.1. Research Objectives, Relevance and Process

The objective of my research is to understand the dynamics of the policy process in relation to privatisation, competition and regulatory governance in developing countries, using Sri Lanka and Sri Lanka's telecommunications sector as a case study. In this thesis, I use the conceptualisation of the policy process as set out in Hill (2009):

‘...the policy process is essentially a complex and multi-layered one. It is essentially a political process, but in the widest sense of that term. The policy process is a complex political process in which there are many actors: politicians, pressure groups, civil servants, publicly employed professionals, and even sometimes those who see themselves as the passive recipients of policy.’ (p.4)

Development in this thesis is seen in the context of the policy process, taking into account the political, social and economic processes and outcomes that lie at the heart of public policy. This conceptualisation of development resonates with the idea of “embedded autonomy” set out in Evans (1995) and reflected in the writings of Wade (1990) and Chang (2003). Embedded autonomy is defined in Evans (1995) as:

‘...embedded in a concrete set of social ties that binds the state to society and provides institutionalized channels for the continual negotiation and renegotiation of goals and policies.’ (p.12)

Again, as discussed in Section 1.0 above, development policy goes beyond the role of the state; and as will be expanded on later on in this Chapter and in the rest of this thesis, institutions matter in shaping the development process. To cite Minogue (1993):

‘... “what governments do” embraces the whole of economic, social and political life. Public policy does things to economies and societies, so that ultimately any satisfactory explanatory theory of public policy must also explain the inter-relations between the state, politics, economy and society.’ (p.10)

As illustrated by the underpinning research questions set out below, my aim is to gain an in-depth understanding of the socio-political economy aspects of public policy as it pertains to privatisation, competition and regulatory governance in Sri Lanka in general and in Sri Lanka’s telecommunications sector in particular, to be able to reach reliable conclusions on what drives the reform and regulatory process, and on the dynamics between these processes and regulatory efficacy. The objective is to explore the policy process, including how decisions are made, which decisions are implemented and why, and the gap between the design and implementation of policies, using Sri Lanka and Sri Lanka’s telecommunications sector as a case study.

This thesis will explore two primary research questions:

1. What are the political, social and economic processes that have influenced public policy with respect to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007?
2. What are the impacts of these processes on policy and regulatory efficacy in Sri Lanka’s telecommunications sector during the period under study?

As expanded on in Chapters 3 and 4 of this thesis, the year 1977 is chosen as a starting point given the introduction of a large-scale liberalisation programme in that year, a landmark year in the Sri Lankan policy space with respect to the direction of development ideology and reform. Limiting the broad time frame of analysis to 2007 hinges on the exigencies of data availability. For instance, as at the time of writing, the data for 2008 published by the country’s leading National Statistical Organisation (NSO), the Central Bank of Sri Lanka (CBSL), is still labelled as “provisional”. Similar data gaps are also seen in the statistics published by the telecommunications sector regulator, the Telecommunications Regulatory Commission of Sri Lanka (TRCSL). However, post-2007 data will be used in this thesis, when available and if relevant to the discussion carried out in this thesis, a case in point being the limited analysis of the post-conflict years as it pertains to the research questions.

This research also includes a number of subsidiary issues as follows:

- The relationship between the state and key institutions and organisations including the market, in the policy and regulatory space in the period being researched;

- The linkages between the “macro” governance structure (the executive, legislative and judicial arms of government, the electoral system, the Constitution of Sri Lanka), the reform process and regulatory governance (which includes the formal and informal processes by which regulatory decisions are made; independence and accountability of the regulator; relationship between the regulator, policy makers and other key individuals and organisations in the regulatory space; and transparency and predictability of the regulatory process) in Sri Lanka’s policy space in general and in the telecommunications sector in particular;
- The role of historical (path dependence), cultural (mental models), trust and power factors in shaping the reform and regulatory governance process in Sri Lanka’s policy space in general and in the telecommunications sector in particular: for example, how relevant are interest group dynamics and the incentive structures faced by key players in the telecommunications policy and regulatory space in shaping the policy process; who are the key stakeholders that influence reform and regulatory governance in this space; and does regulatory and political capture play a significant role in shaping the policy process?
- The role of ideology – specifically that of the donor and local epistemic communities- in influencing the reform and regulatory governance process; the degree and impacts of policy transfer; the impact of international commitments for instance the role of World Bank (WB) and the International Monetary Fund (IMF) loan conditionality on reform and regulatory governance in the domestic sphere; to what extent have global governance mechanisms such as the commitments with respect to telecommunications services made by the government of Sri Lanka (GOSL) under the Fourth Protocol of the General Agreement on Trade in Services (GATS) and the full adoption of the Telecommunications Reference Paper, which sets out the regulatory principles for the effective implementation of the Agreement and of the Telecommunications Annex, influenced policy and regulatory governance in the domestic telecommunications space; and how significant are the roles played by the donor community and multi-nationals through the conduit of technical assistance for telecommunications sector development and by way of share ownership in the local telecommunications companies in shaping the dynamics of the policy process in the sector?

The choice of Sri Lanka’s telecommunications sector as a case study is apt to explore the nuances of the policy process with respect to privatisation, competition and regulatory governance in developing countries for a number of reasons. Since the late 1940s, developing countries have undergone two massive changes in this sector: a wave of nationalisation in the 1950s and 1960s and significant policy reforms – privatisation,

competition, and regulation – over the last three decades (Noll, 2000; Brown et al, 2004). Far-reaching transformation in the sector, from structure and technology which have facilitated competition to the role of the state and the mode of governance, makes it an exceedingly useful case study to explore facets ranging from technical aspects to political economy and public policy aspects as evidenced by the vast and growing literature on telecommunications (for instance, Levy and Spiller, 1994, 1996b; Melody, 1997, 1999; Wallsten, 1999, 2001, 2002; Cave et al, 2002a; and Majumdar, 2005). The focus of my research however, as indicated throughout this thesis, is specifically on the public policy angle of telecommunications: on privatisation, competition and regulatory governance in this sector.

The decision to locate my research in Sri Lanka stems from the fact that the telecommunications sector has over the past three decades experienced significant policy shifts paralleling regional and global trends: the trifurcation of policy, regulation and services, the liberalisation of the mobile and wireless local loop (WLL) segments, the privatisation of the incumbent state monopoly, and the setting up of an “independent” regulator.³ Moreover, the telecommunications sector is a key driver of socio-economic development and is widely perceived to be one of the success stories of reform in the country (for example, Samarajiva, 2000, 2004; Brown et al, 2004; and Kelegama, 2004) – as will be discussed in detail in Chapter 5 of this thesis.

A survey of the literature on telecommunications reform and regulation, as will be expanded on in Chapter 2 of this thesis, suggests that there is a considerable quantum of research on privatisation, competition and regulation in developed countries and on privatisation in particular in developing countries. However, the dynamics between competition, privatisation and regulatory governance in developing countries from a public policy perspective still remain a relatively under-explored area of study. Discussion on issues such as the politics of regulation, the regulatory state⁴ and responsive regulation for instance are still largely confined to developed country analyses, as argued in Jordana and Levi-Faur (2004), Minogue and Carino (2006) and Braithwaite (2006), respectively.

³ The concept of regulatory independence is in itself debatable given the state’s strong influence over the regulatory process in a number of developing countries. Whilst neo-liberal prescriptions decry the lack of independence, they offer very little in terms of practical alternatives. My research looks at this issue in greater depth with regard to regulation in Sri Lanka in Chapters 4 and 5.

⁴ It is important to note that the legacy of the interventionist state still prevails in several developing countries despite the onset of what the literature terms the “regulatory state”. What this implies is that these are just crude labels and that we are likely to see elements of many versions of the state, depending on the country we research (Minogue, 2001a).

As will be further expanded upon in Chapter 2, the literature also indicates that existing studies on telecommunications reforms in developing countries tend to pay less attention to political and institutional variables. This also raises the critical issue of policy transfer, very crisply expressed in Minogue (2002), meaning the adaptation problems that arise when Western models of regulation are transplanted into political and administrative cultures that operate under very different institutional and behavioural norms. What is needed is a realistic appraisal of the issues and processes that shape regulatory governance in developing countries. This regulatory ‘hole in research’ as termed by Noll (2000) is what my work on telecommunications reform and regulation in Sri Lanka aims to address.

The telecommunications sector in itself affords a useful case study to explore the inter-play of competition, privatisation and regulatory governance. In contrast to other utility sectors such as electricity and water for example, the structure of the telecommunications industry has been more conducive to technological and competitive forces. At the same time, historical “lock-in” factors such as incumbent resistance to competition and overly intrusive state regulation do persist in a large number of developing countries (for example, King and Maddock, 1996; Mansell et al, 2002; Harris, 2003; and Kessides, 2003). Therefore, the final outcome of any reform efforts would inevitably rest on the tensions between competitive forces and “lock-in” effects, as will be explored in this thesis, drawing on Sri Lanka’s experience in telecommunications reform and regulatory governance.

Research on telecommunications in developing countries is also important from a macro-economic perspective given that this sector has evolved to be one of the key drivers of socio-economic growth in developing countries as will be set out in Chapter 2. In addition, studies such as Bayes et al (1999), Souter et al (2005), Waverman et al (2005) and De Silva and Zainudeen (2007) emphasise the crucial nexus between poverty reduction and access to telecommunications services in developing countries.

The research process employed in this thesis is determined by the nature of the two principal research questions that I seek to answer. These two research questions combined with the subsidiary issues listed above, typify my thesis as one exploring and describing a research problem in contrast to one attempting to verify a research hypothesis.⁵ As set out earlier on in this Section, these research questions are looked at from a public policy perspective. The conceptualisation of the policy process derived

⁵ See Blaikie (2000) for a comprehensive analysis of what constitutes a research hypothesis as opposed to a research problem.

from Hill (2009) and cited below directly influences the research process. As argued in Hill (2009):

‘Policy experiments are rare, and when they occur they are not necessarily set up in ways which make research evaluation easy....the political environments in which they are conducted mean that they are very unlikely to run their course without ongoing adjustments. When they do occur, the very fact that they are atypical limits the lessons that can be drawn from them. Furthermore, the impact of the presence of researchers on the behaviour of the researched will also distort the impressions they give of processes.’ (p.9-10)

Following from this take on the policy process and as will be discussed in Chapter 3 of this thesis, I adopt an interpretivist research philosophy, an inductive approach and a case study methodology to explore my research questions. Moreover, as detailed in Chapter 3, I use what Philip (1998) and Saunders et al (2009) define as multiple methods research in my research process.

The research methods that I use to analyse my research questions include qualitative techniques such as extensive document analysis, focus group observations, and in-depth stakeholder and elite interviews. The data/information collected through these methods is complemented by indicators drawn from secondary sources⁶ - for instance, the Worldwide Governance Indicators (WGI) published by the WB⁷; the Worldwide Corruption Perceptions Indicators (CPI) published by Transparency International (TI)⁸; the Doing Business Indicators (DBI) published by the WB⁹; and the LMD-Nielsen Business Confidence Indices (BCI)¹⁰ that are unique to Sri Lanka. The analysis of privatisation, competition and regulatory governance in Sri Lanka’s telecommunications sector in particular, is conducted using the qualitative methods mentioned above and the Telecom Regulatory Environment (TRE) method -a multiple methods tool kit that will be detailed in Chapter 3.

⁶ Although data types are classified by some authors (Blaikie, 2000 for instance) as primary, secondary and tertiary based on their originality/ proximity to the source of origin, I define primary data as all the data/information collected by me through focus group sessions, in-depth stakeholder and elite interviews and the TRE surveys; and secondary data as information/data collected and analysed by others. Given that secondary and tertiary data often overlap in research practice, my position is that drawing micro-level distinctions between the two categories is a futile exercise.

⁷ See www.govindicators.org for details on this data and methodology. [Accessed on 15 January 2010].

⁸ See http://www.transparency.org/policy_research/surveys_indices/cpi/2009 for details on this data and methodology. [Accessed on 15 January 2010].

⁹ See <http://www.doingbusiness.org/MethodologySurveys/> for details on this data and methodology. [Accessed on 15 January 2010].

¹⁰ See <http://www.lmd.lk/2007/January/bci.htm> for details on this data and methodology. [Accessed on 15 January 2010].

1.2. Theoretical Framework

The objective of this sub-Section is to pave the way for a detailed discussion in Chapter 2 of the theoretical framework and concepts that I use to analyse my research questions. Definitions of and linkages between concepts and theories are clearly set out in Blaikie (2000) as follows:

‘A concept is an idea that is expressed in words or as a symbol...Concepts are regarded as the building blocks of social theories. Theories, in turn, specify the relationships between concepts and why these relationships exist.’ (p.129)

The theoretical framework that I use in this thesis is New Institutional Economics (NIE) as conceptualised by Douglass North. As discussed in Chapter 2, North’s version of NIE consists of particular theoretical strands drawn from the “grand theory” NIE which emphasises the role of social, political and economic institutions in development policy (see for instance, Voigt and Engerer, 2002; Shirley, 2008). Institutions are defined in North (1991) as:

‘...the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)...they evolve incrementally, connecting the past with the present and the future; history in consequence is largely a story of institutional evolution in which the historical performance of economies can only be understood as a part of a sequential story...’ (p.97)

NIE and NIE a la North are useful theoretical frameworks because they provide the analytical tools to make sense of real world social, political and economic phenomena. These theories’ ability to transcend disciplinary boundaries is particularly advantageous in analysing the policy process which, as set out in Minogue (1993) above, requires a multi-disciplinary perspective. NIE is described in Klein (1999) as a:

‘...“grand theory” that is capable of “combining economics, law, organization theory, political science, sociology and anthropology to understand social, political and commercial institutions.”’ (p. 456)

As will be detailed in Chapter 2, one of the principal criticisms of the NIE paradigm is its tendency towards neo-classical precepts such as the primacy of the individual in decision-making and rational-choice frameworks. One of the pioneers of the NIE school, Oliver Williamson, proposed that ‘in the beginning there were markets...’ (Williamson, 1975: p.20). However, these criticisms of NIE, I would argue, are effectively countered in the genre of institutional analysis developed in North (1990a, 1991 and 1994).

Moreover, in contrast to one of its closest competitors in the quest to understand regulatory processes, Public Choice Theory, NIE a la North is sceptical of atomistic, rational choice-maximising accounts of the individual. Cultural and historical explanations of regulation are well within the scope of this framework as evidenced by the grid and group dimensions of organisations propounded by Douglas (1982) and by the notion of path dependence developed in North (1991). The inclusion of the notion of trust in this framework sits well with the concepts of responsive regulation and voluntary compliance set out in Ayres and Braithwaite (1992), whilst sociological accounts of regulatory capture as posited by Grabosky and Braithwaite (1986) in terms of relational distance between the regulator and the regulated are also accommodated within this model.¹¹ The central role assigned to interdependent institutions (as opposed to the independent entities and the dichotomy between state and society that characterise the standard regulatory literature) is analogous to the notion of regulatory space described in Hansher and Moran (1989). As such, this analytical framework lends itself to a multi-disciplinary and more realistic approach to the study of regulation.

The policy process, as described in Hill (2009) above, is viewed as a set of concepts, including policy space, policy drivers, policy transfer and policy gap. This thesis seeks to explore these concepts as they pertain to the research questions through the “Douglass North genre” of NIE. Together, both concepts and theories help researchers to understand the world around us. In the context of my thesis for example, concepts of the policy process, privatisation, competition and regulatory governance and theoretical strands drawn from North’s version of NIE are defined and operationalised in Chapter 2 in order to explore and analyse my research questions in Chapters 4 and 5.

Another issue that is vital to the analysis carried out in this thesis is the nature of the state and what it means in the context of the reform process. As illustrated in the literature, this issue has been the subject of substantial discourse in fields as diverse as economics, political science, law, and sociology.¹² As would be expected in the analysis of a subject as complex and multi-dimensional as the state, there has been little consensus in this regard, with the different disciplines proposing their particular perspectives on its positive and normative nature. The line of reasoning developed in my thesis refrains from overly restrictive definitions of the state so as to derive a holistic understanding of the

¹¹ This could also be modified to fit the case of political capture where the relevant actors would be the regulator and the politician.

¹² See for example, Olson (1971); Skocpol (1985); Leeson and Minogue (1988); Ayres and Braithwaite (1992); World Bank (1995); Hood (1998); Bardhan and Udry (1999); Moran (2002); Pierre (2002) and Stirton and Lodge (2002).

dynamic political, economic and social institutions that shape the reform process. As lucidly argued in Phillips (2006):

‘...rather than trying, for the most part too hard, to identify whether states in Asia have now shifted decisively from the developmental state model to the regulatory state model and concentrating on which name badge (singular) should now be pinned on them...we can thus begin to understand the combinations of these elements that exist within states, the manner of their interaction and the nature of the political economies that emerge there from.’ (p.20)

A particularly critical issue with respect to the state is the basis of policy transfer. Most often, development practitioners work on the assumption that connotations of the state associated with developed economies can readily be applied to developing countries. To cite Leeson and Minogue (1988):

‘It would in any case be crude in the extreme to insist that the Third World state should be analysed only in terms of a set of conceptualisations rooted firmly in Western experience, and in the political and economic relations of industrialised countries...it should be clear that any attempt to construct a theory of the ‘Third World State’ must start with, and be rooted in, the political and economic realities of the Third World.’ (p.231)

At the other extreme however, it would be futile to reject any meaningful cross-country comparison both between developed and developing nations and amongst developing countries. For example, given the substantial empirical evidence that exists on telecommunications reforms (for example, Bortoletti et al, 2002; Fink et al, 2002; Li and Xu, 2004; and Estache et al, 2006a), it would be rather unfortunate if policy makers placed themselves at the bottom of the learning curve or resorted to practices of reinventing the wheel. What is important is that reformers have a holistic understanding of the socio-political and economic differences within and between countries – rejecting the concept of a homogenous society or societies – whilst at the same time making optimal use of lessons coming out of similar reform processes.

An appropriate understanding of the state and of its interactions with other actors in the public policy space would accordingly necessitate a theoretical framework that is able to capture the multi-disciplinary nature of reforms as well as the “embeddedness” of the reform process and outcomes in the local (national) context. The usefulness of a socio-political economy approach also lies in the rather more practical stance it adopts in terms of understanding the ability to actually implement reforms – based on factors such as the drivers of reforms, the incentive structures, confluences of power, trust relations and interest groups dynamics that underpin the reform process.

A conceptual framework that can lend itself to socio- political economy analyses is also particularly useful in relation to research on regulation, given its inherently multi-disciplinary nature and its inextricable link to governance. According to Black (2002):

‘All actors have needs and capacities and ‘solutions’ emerge from a mutually dependent relationship. This complexity is further affected by changes in the public-private set of relationships so that “Governance and regulation is seen by some to be the outcome of the interaction of networks...” (p.6)

The significance of adopting a multi-disciplinary approach to the study of regulation and in understanding the nuances of concepts such as the regulatory state, regulatory space, and regulatory capture is highlighted also in accounts by Jordana and Levi-Faur (2004), Minogue and Carino (2006) and Cook and Mosedale (2007) – as will be discussed further in Chapter 2 of this thesis. Similar to the approach in Levy and Spiller (1994, 1996b), my research aims to explore the institutional underpinnings of the regulatory process in the telecommunications sector. However, this thesis focuses only on regulatory governance – in terms of the regulatory efficacy parameters set out in the TRE method; evaluating sector performance is beyond the scope of the research questions set out in my thesis.

1.3. Concluding Remarks

This Chapter has introduced the subject and relevance of my thesis on privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector, and some of the conceptual underpinnings of the related public policy process. It has also set out the principal research questions and associated subsidiary research issues analysed in this thesis and briefly described the research methodology used to explore these questions and issues.

The knowledge gaps that my thesis aims to explore pertain to the public policy process in developing countries in the specific areas of privatisation, competition and regulatory governance in general and in the telecommunications sector in particular. I analyse the policy process in this regard, using North’s NIE theoretical framework to explore both the Sri Lanka country and the Sri Lanka telecommunications sector case study in Chapters 4 and 5, respectively. Some critical policy constructs that my thesis attempts to shed light on include the dynamics between the state and other institutions, organisations and individuals in the policy process (policy space) and the much-debated issue of policy transfer that developing countries grapple with in the design and implementation of policies.

The structure of my thesis is briefly outlined as follows:

- Chapter 2 of this thesis will set out a critical and structured overview of the relevant literature pertaining to the policy process; privatisation, competition and regulatory governance; and telecommunications reforms and regulatory governance in developing countries. This Chapter details the theoretical framework, NIE as conceptualised by North, which I use to explore my research problem.
- Chapter 3 will describe my research process, including the research philosophy, approach, methodology and specific research methods used to analyse the research problem set out in Chapter 1 and explored in Chapters 4 and 5.
- Chapter 4 of my thesis provides an overview of the policy process with regard to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007 in order to identify the drivers as well as obstacles to reforms, the socio-political economy factors that shape public policy, and the factors that account for the gap between policy decisions and implementation applying the conceptual framework developed in Chapter 2.
- Chapter 5 focuses on the policy process in relation to privatisation, competition and regulatory governance in Sri Lanka's telecommunications sector. This Chapter attempts to unpack the political, economic and social factors that have driven and shaped reforms and regulatory governance in the telecommunications sector as well as to evaluate regulatory efficacy using the TRE method detailed in Chapter 3.
- Chapter 6 sets out the conclusions coming out of the analysis contained in Chapters 4 and 5 of my thesis in relation to the two primary research questions and the subsidiary research issues set out in Chapter 1, discusses the contribution that this research makes to the existing body of knowledge detailed in Chapter 2, and considers the limitations of my research as well as potential areas for further research in the subject area.

CHAPTER 2: LITERATURE REVIEW

2.0. Introduction

Privatisation, competition and regulation have been, and continue to be, at the centre of public policy discussions with the spectrum of the debate ranging from the ideological underpinnings of these policies to their association with development practice (see for instance, Wade, 1990; Chang, 2003; Cook et al, 2004; Kelegama, 2004, 2006). In contrast to theoretical and empirical studies on privatisation, competition and regulation in the field of economics however, the literature points to a lacuna in knowledge with respect to the interplay between privatisation, competition and regulation and the contours of regulatory governance in a developing country context, from a public policy perspective (see for instance, Minogue 2001a, 2004, 2006; Minogue and Carino, 2006). Clearly, the objective of this thesis is not so ambitious as to derive conclusive findings that would fill this gap. However, the aim of my research is to use case study methodology – in this instance that of reforms and regulation in Sri Lanka and in Sri Lanka’s telecommunications sector – to contribute to the process of evidence-based understanding of the policy process in relation to privatisation, competition and regulatory governance in developing countries.

The focus of this thesis, as set forth in Chapter 1, is not on the technicalities or the nuts and bolts of privatisation, competition and regulation tool kits but rather on the public policy aspects of these issues. For example, in view of the research questions that I explore in my thesis, I focus on regulatory governance issues (such as the regulatory state, regulatory space, regulatory accountability, regulatory “independence” and regulatory capture) rather than on technical issues such as the type of price regulation (price-cap, rate-of-return and cost-based).

The objective of this Chapter is to provide a critical overview of the relevant literature on the public policy process regarding privatisation, competition and regulatory governance in developing countries, with an emphasis on the telecommunications reform and regulatory process and to detail the theoretical framework of NIE a la North that I use to explore my research problem. The Chapter is organised thematically, situated on the research questions and issues set out in Chapter 1 and woven around North’s NIE theoretical framework. This framework, I argue, provides the conceptual “glue” that makes the most sense in terms of the research problem that I explore in this thesis. A particularly useful feature of NIE as conceptualised by North is its ability to tie together

the various multi-disciplinary strands that underlie the public policy process, particularly in relation to regulatory governance.

The next Section of this Chapter elaborates on the public policy process as it pertains to my research objectives. Section 2.2 sets out the literature on key elements of NIE a la North linking it to the policy process as conceptualised in Section 2.1, considers the advantages it has over other competing theoretical frameworks in addressing the subject of this thesis and addresses some of the limitations associated with this framework. Section 2.3 discusses the relevant literature pertaining to privatisation, competition and regulatory governance in developing countries with a particular emphasis on the telecommunications sector. This discussion is framed in line with the theoretical framework developed in Section 2.2.

2.1. Conceptualising the Public Policy Process

The policy process is conceptualised in this thesis in accordance with the description set out in Hill (2009) as already set out in Section 1.1. As reflected in the public policy literature (Hill, 1993, 2009; Parsons, 1995; and Hill and Hupe, 2009 for example), providing an all-encompassing account of a complex, real world phenomenon such as the policy process is difficult. In this context, I posit that the explanation provided in Hill (2009) has two particular strengths in view of the research problem that I address in my thesis. First, this explanation recognises the inherent political nature of the policy process. Second, and inter-relatedly, the political process is in itself viewed as an outcome of dynamic interactions amongst other social and economic processes. Citing Minogue (1993):

‘In brief, the policy analyst, who seeks to provide description of and prescription for specific decisions on particular policies, cannot ignore the overall policy process which is created by the interaction of decisions, policy networks, organisations, actors and events. Nor can he avoid the broader environment within which the policy process is located; that is, he must pay due regard to the interaction of society and economy, in the effort to understand the political consequences of this interaction.’ (p.11)

The field of public policy is replete with analytical frameworks from various disciplines that attempt to understand the workings of the policy process.¹³ It is also the opaque nature of this process that has set forth the term “black box” as a metaphor

¹³ Parsons (1995) refers to Harold Lasswell, Herbert Simon, Charles Lindblom and David Easton as seminal contributors to the field of public policy.

associated with the work of Easton (1953, 1965), work that attempts to analyse the policy process from a political systems perspective. As stated in Parsons (1995):

‘The main characteristic of the Eastonian model is that of viewing the policy process in terms of received inputs, in the form of flows from the environment, mediated through input channels (parties, media, interest groups); demands within the political system (with inputs) and their conversion into policy outputs and outcomes.’ (p.24)

In this thesis, I explore and attempt to unpack the “black box” of public policy using North’s NIE framework, in relation to privatisation, competition and regulation governance in Sri Lanka and in Sri Lanka’s telecommunications sector. As will be discussed in detail in Section 2.2, this multi-disciplinary theoretical framework with its emphasis on concepts such as individuals, organisations, institutions, mental models, path dependence, and interest group dynamics is well placed to explore the policy process as it corresponds to my research questions. Further, the research methodology that I use in this thesis, as detailed in Chapter 3 – an interpretivist research philosophy, an inductive approach and a case study methodology – is particularly useful in view of the research problem I explore. The complex nature of the policy process with its intrinsic socio-political economic nuances emphasises the importance of an inductive approach that is capable of making sense of empirical observations and providing what Geertz (1973) terms “thick description” grounded in the real world within which policies are made. Moreover, the atypical nature of “policy experiments” as described by Hill (2009) and set out in Section 1.1 above, points to the value of the interpretivist research philosophy and case study methodology in public policy research.

The rest of this Section focuses on developing a policy scheme mapping out key concepts and relationships between these concepts. In this context and adapting the contributions of authors such as Jenkins (1993), Minogue (1993), Parsons (1995) and Hill and Hupe (2009), I define “policy drivers” as individual or collective political and socio-economic forces or factors that impact upon and influence the policy process. The objective of operationalising the policy process is to provide a framework to understand the links between theoretical and conceptual constructs and empirical observations. The policy scheme illustrated in Figure 2.1 is derived from what Parsons (1995) describes as a combination of David Easton’s “political systems approach” and Harold Lasswell’s “stages approach”.

The stages approach has been criticised in the literature as dividing up the policy process into discrete, linear, sequenced stages and not taking account of the dynamic

nature of policy making or of the numerous feed-back loops that occur in the real world of public policy (for example Lindblom and Woodhouse, 1993; Sabatier and Jenkins-Smith, 1993). The policy scheme shown in Figure 2.1 is taken from what Jenkins (1993:p.35) sets out as an ‘amended systems model of the policy process’ and is modified in line with North’s NIE framework to address the research questions and issues explored in my thesis. This policy scheme builds on and addresses the criticisms of the stages approach by recognising the dynamic interactions within and between each policy stage. Further, the political orientation of this scheme also aims to capture some degree of the complexity inherent in public policy –what Easton (1953) terms the “web of decisions”.

Given the nature of public policy as defined in this thesis, it is difficult to generate a single “model” that can capture the realities of the process. However, as will be set out below, the modified version of the Jenkins (1993) conceptual scheme sits well with the research questions and issues that I explore in this thesis and with the theoretical framework – North’s version of NIE – that I use to analyse my research problem. The conceptualisation of the policy process in Figure 2.1 below combined with the conceptualisation of North’s NIE framework in Section 2.2 provides the basis for analysing the policy process in relation to privatisation, competition and regulatory governance in Sri Lanka in Chapter 4 (Figure 4.2) and in relation to privatisation, competition and regulatory governance in Sri Lanka’s telecommunications sector in Chapter 5 (Figure 5.3) of this thesis.

Although the schematic illustrated in Figure 2.1 is a stylised portrayal of the complex and multi-layered nature of the policy process described by Hill (2009), it provides a number of useful insights on public policy in the real world. First, this diagram sets forth the key components and configurations of what I define as “policy space” in this thesis: a political and socio-economic arena where diverse actors interact in a dynamic fashion to influence public policy. My conceptualisation of the policy space is similar to what Evans (1995) terms “embedded autonomy” as set out in Chapter 1.

Second, this schematic shows the bi-directional flows (feed-back loops) between the “black box” of the political system and what is termed the policy “environment”. Conceptualising what constitutes the policy environment is a challenging task given the fact that the environment encompasses a wide range of political and socio-economic variables that interact in both static and dynamic ways (see for instance, Hill, 1993, 2009; Jenkins, 1993; and Minogue, 1993). The complexity of the policy environment is further heightened by the fact that constructs such as individuals, interest groups, organisations

and institutions can be a part of both the external environment and the “internal” policy process as Figure 2.1 portrays. These constructs have very specific connotations in the context of North’s version of NIE and will be discussed in detail in Section 2.2.

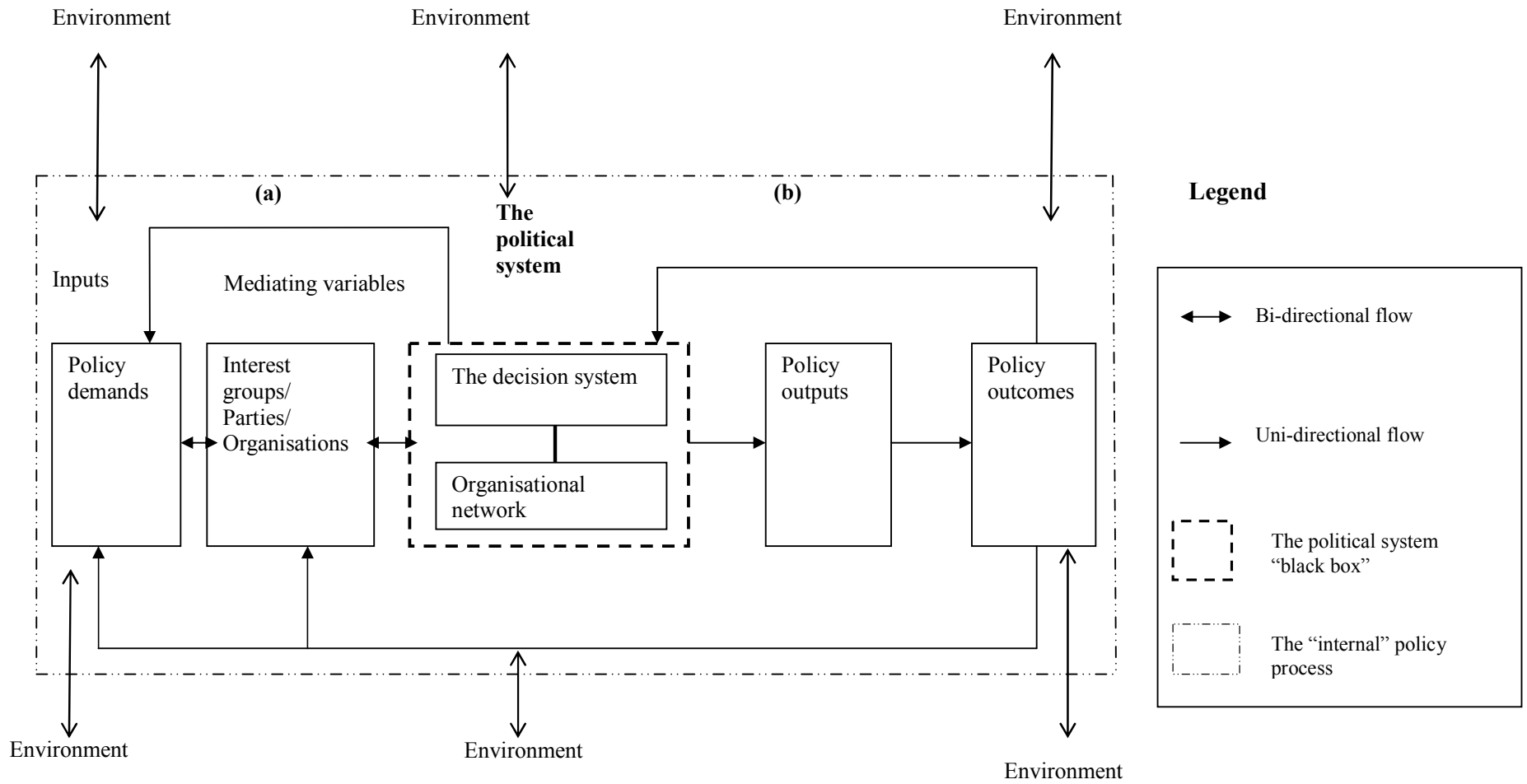
Third, the political system, as shown in the policy schematic in Figure 2.1, needs to be unpacked in order to get to a better understanding of how policies are formulated. The black box of the political system, depicted using bold dashed lines (see diagram legend), consists of two non-transparent, interrelated mechanisms: the decision system and the organisational network. These mechanisms will be explored in the context of my research problem in Chapters 4 and 5 of this thesis. The decision system comprises authoritative actors such as politicians that are directly involved in making policy choices. These actors operate within the constraints of organisational layers such as the executive, legislative, judicial branches of government; electoral processes; political parties, and bureaucratic networks as set out for instance in the works of Hill (1993), Lindblom and Woodhouse (1993) and Parsons (1995). As such, any policy decision rests on the outcome of the dynamic interaction between the decision system and organisational networks.

Fourth, through the input channels depicted in Figure 2.1 as “(a) mediating variables” (such as interest groups, political parties and other organisations), there is a bi-directional flow between the political system and policy demands (defined here as demands for action arising from both inside and outside the political system). Further, these policy inputs impact on and are in turn impacted upon by the policy environment – as indicated using the bi-directional arrows in Figure 2.1.

Fifth, policy decisions coming out of the political system as shaped by the dynamic processes highlighted above are converted into policy outputs (defined as the direct outputs of the political system). These policy outputs then have real world consequences (both intended and un-intended), including those that arise from political inaction. Although it is the political system that generates the policy outcomes, these outcomes in turn feed back into the political system (b), as well as into the policy demand and inter-related input channels as shown in Figure 2.1. In this context, the “policy gap”, a term that I use in the context of my research questions and issues in this thesis, can be conceptualised as the gap between the political system (policy decisions generated within this system) and policy outputs as well as the gap between the political system and policy outcomes. This conceptualisation of the policy gap resonates with analyses in the

literature of the problems that surround the implementation of policies in the real world, such as those of Minogue (1993) and Hill and Hupe (2009).

Figure 2.1. The policy process: a schematic



This discussion on public policy emphasises the crucial point that each policy decision has a unique underlying configuration. The policy process is shaped by particular political and socio-economic variables that place it within a specific context. Can a policy constructed in one context be “transferred” effectively to another situation? This problem of “policy transfer” is the issue discussed in Sections 1.1 and 1.2. as articulated by Minogue (2002) and Leeson and Minogue (1988), respectively and in other works such as Dolowitz and Marsh (1996, 2000). A key question then is how does a unique, context-specific policy process interact with policy transfer? Can lessons be drawn from policy processes that emanate from different contextual backgrounds? In other words, as stated by Rose, ‘Under what circumstances and to what extent would a programme now in effect elsewhere also work here.’ (1991: p.4)

The issue of policy transfer will be looked at through the lens of North’s NIE framework and in relation to the case study methodology that I use to analyse my research problem. As set forth very clearly in the literature on policy transfer and regulatory governance (for instance, Minogue, 2001a, 2002, 2006; Minogue and Carino, 2006; and Cook and Mosedale, 2007), situating the policy process within a specific political and socio-economic context is vital for regulatory efficacy. The potential for and limitations of policy transfer in the context of privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector will be set forth more fully in Chapters 4 and 5 of this thesis.

2.2. New Institutional Economics: North’s Theoretical Framework

NIE, a term coined by Oliver Williamson in 1975¹⁴, received renewed intellectual interest with the awarding of the Nobel Prize in Economics to Ronald Coase (1991), to Douglass North and Robert Fogel (1993) and more recently to Elinor Ostrom and Oliver Williamson (2009). The diverse academic training of these scholars from the fields of economics, economic history, political science and law is reflective of the importance accorded to the multi-disciplinary nature of knowledge.

As highlighted in the preceding Section of this Chapter, insights from a multi-disciplinary perspective are crucial to get to a better understanding of the policy process. The objective of this Section is to discuss the relevance and usefulness of NIE as conceptualised by North in relation to the research questions and issues that I explore in my thesis. As mentioned in Chapter 1, concepts underpinning the policy process together

¹⁴ The term “institutional economics” however was originally proposed by Hamilton (1919).

with concepts drawn from North's theoretical framework form the basis for analysing my research problem in Chapters 4 and 5 of this thesis.

Section 2.2.1 provides a brief description of the main theoretical strands that constitute NIE in general along with the limitations of this framework as set out in the literature. Section 2.2.2 defines and discusses key concepts of NIE à la North as they pertain to my research problem. Section 2.2.3 considers the relevance and limitations of North's version of NIE in relation to alternate approaches such as Public Choice Theory.

2.2.1. NIE: key theoretical constructs and limitations

As reflected in the vast and growing literature on NIE¹⁵, this body of knowledge consists of diverse theoretical and conceptual strands woven together by the fundamental premise that “institutions matter” (Voigt and Engerer, 2002). The diverse theoretical approaches that make up NIE have also influenced definitions of what constitute institutions. In this thesis however, institutions are very clearly defined according to North's conceptualisation of the term as already set out in Chapter 1 and as will be discussed further in Section 2.2.2. Given the expansiveness of the NIE grand theory, a comprehensive overview is neither possible nor useful in terms of the research objectives set out in my thesis. Instead, this Section will briefly discuss some key inter-related constructs perceived in the NIE literature as core theoretical strands: transaction costs economics (TCE), principal-agent theory, property rights, rent-seeking and collective action (see for example, Eggertsson, 1990; Clague, 1997; and Drobak and Nye, 2007).

The literature also makes a crucial distinction between NIE and its predecessor Old Institutional Economics (OIE) developed by scholars such as John Commons and Thorstein Veblen based on the Neo-Classical leanings of the former. As argued in Mayhew (1989, 2000), Hodgson (1993, 2000, 2007) and Rossiaud and Locatelli (2010) for instance, NIE retains the assumption of methodological individualism associated with Neo-Classical Economics (NCE). It is this approach that has been at the centre of criticisms of NIE and of its limitations in terms of explaining real world situations.

The implications of maintaining this assumption with respect to understanding the policy process is that actors modelled as rational utility-maximising agents are seen as the

¹⁵ The importance of understanding institutions is reflected in a vast body of literature ranging from sociology (for instance, Granovetter, 1985; Coleman, 1990; Dobbin, 2004), political science (for example, March and Olsen, 1984; Lane and Ersson, 2000; Carey, 2005; Cox, 2005; McCubbins, 2005), law (for example, Spiller, 1985; Joskow, 1987; Langbein, 1987; Black, 1997), history (for example, Hodgson, 1993, 2000, 2001, 2007), organisation theory (for example, Powell and DiMaggio, 1991), political economy (for example, Chang, 2002; Acemoglu, 2003; Acemoglu and Robinson, 2006) to economics and economic development (for example, Williamson, 1975; Bardhan, 1989; Nabli and Nugent, 1989; Eggertsson, 1990; Clague, 1997; Rodrik, 2007).

drivers of policy outputs and outcomes. The dynamic interactions between the institutional environment and individual behaviour are not given due recognition in decision-making. As discussed in Rutherford (1995) and Vandenberg (1998), the genre of NIE associated with Douglass North is similar to OIE. As I argue in the next sub-Section, one of the most significant contributions made by North is his conceptualisation of individuals and institutions from cognitive (mental models) and historical (path dependence) perspectives, perspectives that make this version of NIE a useful template to explore complex and dynamic phenomenon such as the policy process.

TCE is a branch of NIE first associated with the work of Ronald Coase (Coase, 1937) and further developed and refined by Oliver Williamson (Williamson, 1985, 1996, 2005). The main objective of TCE analyses is to understand different forms of economic organisation. For example, why do certain transactions take place within firms and not in the market; what are the organisational features (for instance vertical integration) that make firm-level transactions more efficient than those via the market? The theory of transaction costs also branches into analyses of contracts and property rights as well as principal-agent dynamics.

Theories of contracts and property rights and of principal-agent dynamics draw from two key concepts defined lucidly in Williamson (1996, 2005): bounded rationality and opportunism. Bounded rationality is originally described in Simon (1957:p.xxiv) as behaviour that is ‘intendedly rational but only limitedly so’ due to informational uncertainties. The implications of bounded rationality in relation to contracts are set out in Williamson (1996):

‘Although it is instructive and a great analytical convenience to assume that agents have the capacity to engage in comprehensive ex ante contracting (with or without private information), the condition of bounded rationality precludes this. All contracts within the feasible set are incomplete. Accordingly, the ex post side of a contract takes on special economic importance.’ (p.56)

Similarly, the pitfalls of opportunistic behaviour in relation to contracts are set out in Williamson (1996) as:

‘Another convenient concept of contract is to assume that economic agents will reliably fulfill their promises. Such stewardship behaviour will not obtain, however, if economic agents are given to opportunism. Ex ante efforts to screen economic agents in terms of reliability and, even more, ex post safeguards to deter opportunism take on different economic significance as soon as the hazards of opportunism are granted.’ (p.57)

The branch of NIE that extensively analyses theories and concepts pertaining to property rights is largely associated with the work of Alchian and Demsetz (1973) and

Barzel (1989). The essence of property rights is that it bestows individuals with exclusive rights over the use and exchange of a resource (or “property”). Clearly, the concept of property rights is intrinsically linked to both the formulation and enforcement of contracts. As discussed in Clague (1997), a gap in most analyses of property rights is a sound understanding of the role of the state, ideology and social norms in defining and enforcing these rights and the formal contracts and informal agreements that underpin them. The contribution made by North in addressing this gap and getting to a more realistic understanding of property rights and contracts is discussed in Section 2.2.2.

Another construct linked to the TCE concepts of bounded rationality and informational asymmetries and to opportunism is what is termed in the NIE literature (as well as in the policy literature) as the “principal-agent dilemma” (see for instance, McCubbins et al, 1987; Klein, 1999; Lane, 2003; Kunischewski, 2006). Principal-agent theory analyses situations where one party (the principal) enters into a contract with another party (the agent) with the expectation that the latter will act on behalf of the former. The underlying assumption is that the agent has more information than the principal. In the policy space for instance, elected politicians are the agents of the citizens/ voters; and politicians in turn are the principals in relation to bureaucrats and other public officials. The dilemma surrounding principal-agent dynamics stems from the dual problems of asymmetric information and opportunistic behaviour. To cite Lane (2003):

‘... When there is asymmetric information, then a host of difficulties in transacting arises from selecting an agent, negotiating a contract and monitoring its observation. These difficulties may be summarized under the following headings:
-adverse selection meaning opportunism before the making of the contract between principal and agent;
-moral hazard meaning opportunism after the making of the contract between principal and agent.’ (p.2)

The key issues that the principal-agent dilemma raises with regard to my research problem are explored in Chapters 4 and 5 of this thesis. In particular, I examine the ramifications of the principal-agent dilemma on state-owned enterprises (SOEs), private and privatised entities (which includes the analysis of incentive mechanisms required to get the agent to comply with the expectations of the principal) and regulatory contracts as an option to enhance regulatory governance.

NIE theories that address rent-seeking are discussed in this thesis following the analysis set out in Kunischewski (2006). This analysis is situated on the following

question: can rent-seeking as conceptualised by NIE explain the factors that influence the level of corruption in a country? Rent-seeking in this analysis is viewed as taking on several forms: ‘legal ones like lobbying or the use of personal influence and acquaintances, as well as bribing public officials or politicians’ (Kunischewski, 2006: p.11). As such, this description of rent-seeking is also linked to the conceptualisation of principal-agent dynamics described above; the informational gaps between principals and agents can create an incentive for rent-seeking behaviour. To cite Kunischewski (2006):

‘The level of corruption in a society is determined by the profit-maximizing behaviour of its individuals, the institutions that channel it, and the amount of possible political rents.’ (p.13)

Finally, NIE has contributed significantly to theories of collective action, primarily through the seminal work of Mancur Olson. Olson’s contribution to the conceptualisation of collective action contains three strands that are relevant to the discussion carried out in this thesis (Olson, 1971). First, he postulates that the notion of individual self-interested behaviour cannot be readily extrapolated to explain group dynamics or how groups come together to achieve a common or collective goal. Second, he differentiates between small and large groups in terms of incentives for collective action:

‘Social sanctions and social rewards are ‘selective incentives’...It is in the nature of social incentives that they can distinguish among individuals: the recalcitrant individual can be ostracized, and the cooperative individual can be invited into the center of the charmed circle...In general, social pressure and social incentives operate only in groups of smaller size, in the groups so small that the members can have face-to-face contact with each other.’ (p.61-62)

Third, Olson conceptualises interest groups using what he terms “the by-product theory” of large pressure groups:

‘The large and powerful economic lobbies are in fact the by-products of organizations that obtain their strength and support because they perform some function in addition to lobbying for collective goods.’ (p.132)

As will be discussed in the next Section of this thesis, North criticises Olson’s conceptualisation of interest groups and provides a far more convincing take on interest group dynamics and its implications for the policy process.

2.2.2. Conceptualising North’s NIE framework

North’s definition of institutions has already been referenced in Chapter 1 of this thesis. The objective of this sub-Section is to further develop the conceptual framework that I use to explore the research questions and issues in my thesis by complementing the

conceptualisation of the policy process in Section 2.1 with concepts drawn from North's theoretical framework. It is this integrated conceptual framework that I use along with the research methodology outlined in Chapter 3 to analyse my research findings in Chapters 4 and 5 of this thesis.

As reflected in the literature, North's theoretical framework is expansive (for example, North, 1978, 1981, 1984, 1989, 1990a, 1990b, 1991, 1993, 1994, 1995, 1999, 2005; North et al, 2007, North et al, 2009). A detailed overview of this theoretical framework is beyond the scope of my thesis. Instead, this sub-Section will focus on conceptualising key strands of North's framework as they pertain to my research problem and on distinguishing North's take from other NIE theories as relevant to the research objectives of this thesis.

As mentioned earlier on in this Chapter, concepts such as institutions, organisations, individuals, mental models and path dependence have very specific connotations within North's theoretical framework. Figure 2.2 below, which I develop in line with the thinking set out in North's work (for instance, North 1990a, 1991, 2005), provides a useful schematic to understand these concepts as well as the interactions amongst these concepts. This Figure also contextualises constructs relevant to my research issues - such as the state, executive, legislative and judicial arms of government, regulatory agencies, political parties, interest groups, donors, trust, power, rent-seeking (corruption) and global governance mechanisms – within North's theoretical framework. Again, this schematic depicted in Figure 2.2 combined with the policy schematic set out in Figure 2.1 provide the conceptual template for exploring the research questions and issues in my thesis.

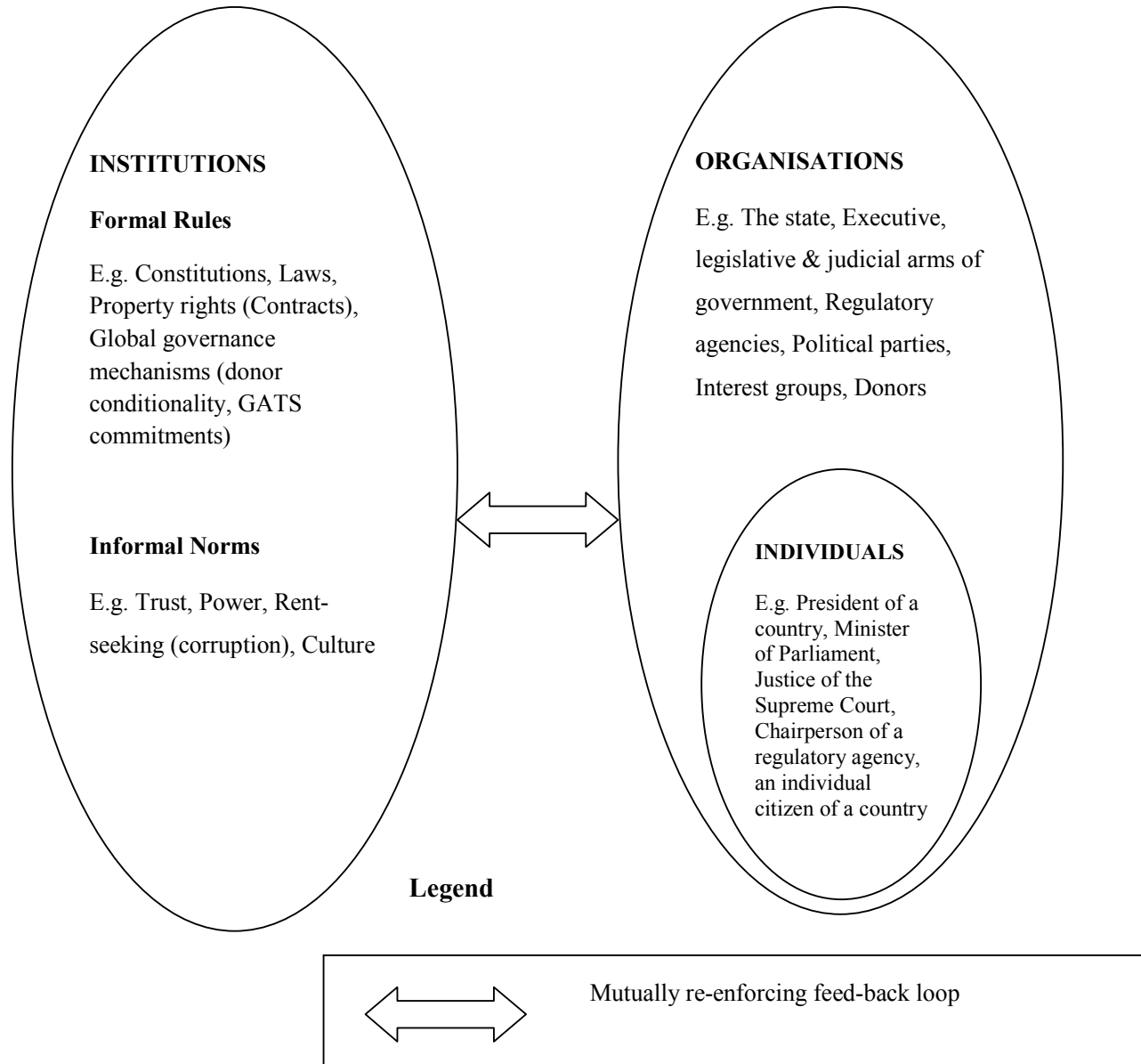
North's take on institutions as referred to in Chapter 1 is further extended to incorporate organisations and individuals in North (2005):

'Institutions are the rules of the game – both formal rules, informal norms and their enforcement characteristics. Together they define the way the game is played. Organizations are the players. They are made up of groups of individuals held together by some common objective.' (p.22)

Extrapolating from North's conceptualisation of institutions, organisations and individuals to the discussion of public policy, the "game" I explore in my thesis is the policy process. The dynamics of the policy process illustrated in Figure 2.1 is shaped by continuous interactions within and amongst the set of institutions, organisations and individuals that make up the policy "game". Referring back to the research issues set out in Chapter 1 of my thesis, a noteworthy contribution made in North et al (2009) is the

definition of the state as an organisation, where ‘the internal dynamics of relationships amongst elites within the dominant coalition affect how states interact with the larger society’. (p.17)

Figure 2.2. Conceptualising North's theoretical framework: a schematic



North's discussion of institutions, organisations, individuals, interest groups and other constructs of NIE such as those set out in sub-Section 2.2.1 and Figure 2.2 above is embedded in two specific concepts: "mental models" (cognitive perceptions) and "path dependence" (see for instance, North 1990a, 1993, 1994, 2005). It is the infusion of these two concepts that largely distinguishes North's framework from other variants of NIE.

Mental models and how these constructs influence an individual's interpretation of real world phenomenon are described in North (1993):

'Individuals possess mental models to interpret the world around them. These are in part culturally derived – that is produced by the intergenerational transfer of knowledge, values, and norms... In part they are acquired through experience which is "local" to the particular environment... Consequently there is immense variation in mental models and as a result different perceptions of the world and the way it "works".' (p.1-2)

North's conceptualisation of mental models resonates with the issue of policy transfer that I set out in Chapter 1 and in Section 2.1. The emphasis on context-specific knowledge, on varied perceptions and on a dynamic learning process, also underscores the importance of using research methodologies that are capable of "thick description" that can generate useful and sensible conclusions on real world phenomenon such as public policy. As such, North's conceptualisation sits well with the interpretivist research philosophy, inductive approach, case study methodology and TRE method that I use to explore the research questions and issues set out in my thesis.

In relation to the conceptual template that I use in my thesis (combining the schematics set out in Figures 2.1 and 2.2), the mental models pertaining to organisations and individuals together with formal rules and informal norms such as trust, power, rent-seeking and culture are an integral part of the "internal" policy process, the political system "black box" and the "external environment". As will be explored in terms of my research questions and issues in Chapters 4 and 5 of this thesis, the dynamic interaction of these constructs influence how policy decisions are made as well as the nature of both policy outputs and outcomes.

Path dependence, a concept originally developed by Brian Arthur (1989) and Paul David (1985) to understand technological change, is modified and used by North to explore how institutions evolve and change over time. The conceptualisation of path dependence as set out in North (2005) describes how this construct, combined with mental models, plays out in the policy process.

'The "reality" of a political-economic system is never known to anyone, but humans do construct elaborate beliefs about the nature of that "reality"... The dominant beliefs

– those of political and economic entrepreneurs in a position to make policies-produce over time an elaborate set of institutions... The resultant institutional matrix imposes severe constraints on the choice set of entrepreneurs when they seek to introduce new or modified institutions in order to improve their economic or political position. The resultant path dependence typically makes change incremental.’ (p.25)

Institutions, organisations and individuals continuously interact in a world of uncertainty; choices are made in the context of informational asymmetries. It is this incidence of informational gaps that underpin the conceptualisation of TCE, property rights, principal-agent issues, rent-seeking behaviour and interest groups dynamics in the NIE literature. What distinguishes North’s conceptualisation of these constructs from other NIE theorists is the overlay of mental models, path dependence and his inclusion not merely of economic but also of socio-political factors. As stated in North (1993):

‘Individuals typically act on incomplete information and with subjectively derived models that are frequently erroneous; the information feedback is typically insufficient to correct these subjective models. Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules... In everyday language the individuals and organizations with bargaining power as a result of the institutional framework have a crucial stake in perpetuating the system. Paths do get reversed... But reversal is a difficult process...’ (p.3)

In relation to the policy process for instance, choices and decisions are made by individuals and organisations with varied mental models; perceptions that are formed in the context of incomplete information. Individuals and organisations interact dynamically with socio-political economic institutions resulting in particular policy outputs and outcomes. The overlay of incomplete information and path dependence may well result in sub-optimal policy outputs and outcomes and policy gaps.

Policies can be “locked-in” - what (Eggertsson, 1997: p. 1198) refers to as ‘pathological path dependence’ - due to the nature of powerful interest group dynamics and due to what Granovetter (1985) terms the “embeddedness” of social phenomena (trust, culture and social interactions that govern relationships amongst actors in the policy space) as will be explored in detail in Chapters 4 and 5 of my thesis. Policy reversals are difficult because of the “embedded” nature of path dependence as argued in North (1993). Some specific conditions under which policy reversals could take place are discussed in Hood (1994):

‘• The idea that policy reversal comes mainly from the force of new ideas, which succeed in upsetting the status quo in some way (through experimental evidence, logical force or rhetorical power).

- The idea that policy reversal comes mainly from the pressure of interests, which succeed in achieving changes that suit their purposes.
- The idea that policy reversal comes mainly from changes in social ‘habitat’, which make old policies obsolete in the face of new conditions.
- The idea that policy reversal comes from ‘inside’, with policies and institutions destroying themselves rather than being destroyed from outside.’ (p.3-4)

The tensions between policy lock-in and conditions that can bring about policy reversals are explored in relation to privatisation, competition and regulatory governance in Sri Lanka in general and in Sri Lanka’s telecommunications sector in particular in Chapters 4 and 5 of this thesis.

North’s conceptualisation of interest groups and their role in influencing the rules of the game, such as the policy process, is expanded on in the work of scholars such as Dorward et al (2005), Robison and Hewison (2005) and Dur and de Bievre (2007). As set out in Dorward et al (2005):

‘These groups respond by modifying institutions in ways that they perceive to be in their interests...Much depends upon (a) the perception by different groups of possible opportunities and threats posed to their interests by alternative paths of institutional change or stagnation, and (b) their political effectiveness (locally, nationally and internationally) in influencing the paths and pace of institutional change... There is a strong path dependency in these processes...’ (p.3-4)

North’s portrayal of institutions, organisations, property rights, bargaining power and rent-seeking behaviour of interest groups, and collective action underscores two important constructs: power and trust. As shown in Figure 2.2 above, I categorise trust and power as “informal norms” in line with North’s conceptualisation of institutions. These informal norms continuously interact with, shape and are shaped by organisations and individuals.

For example, organisations such as political parties or civil society groups may be held together by either power or trust or some combination of both. The design and enforcement of property rights (and contracts) are shaped by the nature of organisations such as the state and by the bargaining power of dominant interest groups (see for instance, Shirley, 2005). Similarly, trust and power play a significant role in influencing the potential for rent-seeking behaviour on the one hand and for collective action on the other.

In contrast to Olson’s conceptualisation of collective action in sub-Section 2.2.1, North offers a more realistic take with his stance that interest group behaviour and collective action are not static phenomena. North conceptualises these constructs as involving dynamic and repeated interactions between, amongst and within individuals and organisations that have varied mental models (see for instance, North, 1984).

Power, as discussed in Hay (1997), is one of the most contested topics in socio-political analyses.¹⁶ The discussion by Hay complements North's position on institutions and interest group dynamics and is also useful to understand the policy process as conceptualised in Section 2.1.

'Power then is about context-shaping, about the capacity of actors to redefine the parameters of what is socially, politically and economically possible for others...to indirect power or *power as context-shaping* we must also add direct power or *power as conduct-shaping* ...Direct power...is manifest in such practices as decision-making, physical and psychological coercion, persuasion and blackmail.' (p.50-51)

An important issue explored in Chapters 4 and 5 of this thesis is the interplay between power and trust in collective action and interest group dynamics. To cite Fukuyama (1995) whose writings on trust (largely based on his argument that intrinsic characteristics of Japanese culture have fostered a high-trust society in that country) are widely viewed as being influential in the literature:

'...a nation's well-being, as well as its ability to compete, is conditioned by a single, pervasive cultural characteristic: the level of trust inherent in the society....(Trust) is the expectation that arises within a community of regular, honest, and cooperative behaviour, based on commonly shared norms, on the part of other members of that community...' (p. 7, 26)

The similarities between Fukuyama's thoughts on trust and North's conceptualisation of mental models, informal norms, organisations and individuals are noteworthy.

Understanding the nature of and dynamics surrounding trust and power is important to explore phenomenon such as the policy process and how institutions and organisations are shaped and evolve over time. For instance, power and trust play a significant role in determining the role of constructs such as rent-seeking (corruption) in the policy process as will be explored in the context of my research questions later in this thesis.

The literature on corruption as highlighted in Jain (2001b) and in Johnston (2001) for example, indicates that debates on the definition of corruption are numerous, and to a large extent, definitions of corruption are shaped by differences in the various disciplines that study this phenomenon. As indicated in Figure 2.2 above, corruption in this thesis is specifically

¹⁶ The concept of power is discussed in this thesis specifically in relation to interest group dynamics, rent-seeking/corruption and the public policy process. The analyses of power discussed in Dobbin (2004) propounded by theorists such as Karl Marx (see Marx, 1963) that views the nation-state as a tool of capitalists and by writers such as Fligstein (1990) and Roy (1997) that focus on power struggles in relation to corporate control are outside the scope of the research questions and issues that I address. Similarly, the ontological and epistemological accounts on power contained in works such as Foucault (1977) and Bourdieu (1977) are not within the parameters of the research contained in this thesis.

defined as an “informal norm” in line with North’s conceptualisation of institutions, and issues relating to measurements of corruption will be addressed in Chapter 3 of this thesis.

Finally, a construct that is important in terms of the research issues that I set out in Chapter 1 of my thesis is the concept of governance. As discussed in works such as Grindle (2007) and Epstein and Gang (2009), the debate in the literature on what constitutes governance and the links between good governance and aid is vast.¹⁷ However, as indicated in my research questions and issues, this thesis explores the concept of governance very specifically in terms of regulatory governance and global governance mechanisms such as donor conditionality and international commitments such as GATS.

A detailed discussion of regulatory governance in terms of my conceptualisation of the policy process and of North’s framework will be carried out in Section 2.3 of this Chapter. As illustrated in Figure 2.2 above, I categorise global governance mechanisms as formal rules (institutions) in line with North’s theoretical framework. Issues relating to the measurement of governance as conceptualised in my thesis will be addressed in Chapter 3.

Issues of donor conditionality and of global regulatory commitments are also very pertinent in terms of policy transfer. As indicated in articles by Armon (2007), Mayer (2009) and Pallas and Wood (2009) and as reflected in the annual World Development Reports published by the WB– particularly since 2002 – the issue of donor aid and its impact on institutional change and development in recipient countries is a much debated topic.

This discussion is significant to Sri Lanka given its position as an aid recipient from both multilateral and bilateral donors, with the most recent being a 20 month Stand-By Arrangement (SBA) with the IMF beginning in September 2009. Donor participation in the form of technical assistance in the telecommunications reform and regulation process and in the form of share ownership in telecommunications companies in Sri Lanka also makes this topic very relevant in terms of the research questions being addressed in this thesis. Moreover, as will be discussed in Chapters 4 and 5, the expansion of the policy space from national confines to the international arena via interactions between domestic actors and the donor community deals with crucial questions such as the actual influence of donors on domestic policy, of local “ownership” over the reform process, of conditionality on policy outputs and outcomes, and of international regulatory governance on regulatory governance in Sri Lanka.

¹⁷ A paper by Keefer (2004) looks at the prospects for improved governance by way of elements such as the security of property rights, quality of bureaucratic performance, corruption, voice and accountability, and Prakash and Hart (1999) address the contested concepts of and linkages between globalisation and governance.

2.2.3. North's framework in the context of alternative theories

The current sub-Section briefly considers the significance and limitations of North's framework in relation to other approaches such as Public Choice¹⁸ theory. The objective of this comparison is to further substantiate the use of North's theoretical framework for the analysis of the research questions and issues set out in my thesis.

Public Choice, like NIE, is a grand theory which branches into the analysis of numerous constructs including bureaucracy; interest group dynamics; constitutions; political parties; voting and electoral processes; and rent-seeking (see for example, Dunleavy, 1991 and Udehn, 1996). The body of knowledge that constitutes Public Choice theory is largely associated with the seminal work of authors such as Arrow (1951), Downs (1957) and Buchanan and Tullock (1962).

As posited in the literature, two key assumptions that form the core building blocks of Public Choice theory are self-interest and methodological individualism. These constructs have also been the source of much contention on the empirical value of the Public Choice approach (Green and Shapiro, 1994). The adoption of these two central assumptions positions Public Choice theory closer to the tenets that underpin NCE as described in sub-Section 2.2.1 above.

North's theoretical framework as detailed above does not focus on self-interest or methodological individualism to understand the world around us. Instead, the infusion of concepts such as mental models and path dependence provides North's version of NIE with the analytical capacity to examine complex socio-political and economic issues such as the policy process. Ironically, whilst it is the flexibility of North's framework that makes it an extremely useful empirical approach to explore real world phenomena, it is this very fluidity that is also the subject of criticisms on the capacity of this theory to draw predictive solutions (see for example, Milonakis and Fine, 2007).

As such, the principal criticism pertaining to North's approach stems from its methodological limitations – viewed in contrast to what some may posit as methodologically neater constructs such as Public Choice theory. Clearly, North's emphasis on concepts such as mental models and path dependence does not fit well with econometric analyses or modelling. The disadvantage of including constructs such as mental models and path dependence is a loss of predictive power. For example, path dependence has low predictive power because it is contingent on other historical events, and mental models are inherently subjective in nature.

¹⁸ The application of the rational choice approach to the political realm is generally referred to as public choice theory.

Given the low predictive power associated with North's framework, the questions remain, what are the redeeming feature of this approach; why is this framework useful in terms of the analysis contained in this thesis, and in a broader context, what does it add to the body of knowledge on public policy? As stated by Vandenberg (1998), North deserves to be assessed on the value his approach adds to real world explanations:

'North's is not a systematic treatment of the issues mainly because history and other non-economic influences, such as politics and informal relationships, influence the analysis. This may make the treatment frustrating for those seeking a systematic approach throughout but any attempt to make it more systematic might also involve sacrificing realism and variety in human affairs for the sake of logical consistency.' (p.4)

As will be further discussed in Chapter 3, the research problem that this thesis seeks to explore requires a conceptual framework that is amenable to "thick" description. Moreover, as mentioned earlier on in this Chapter, a study of the public policy process requires a framework that can accommodate a multi-disciplinary analysis. It is this richness inherent in North's theoretical approach that makes it more useful, despite its methodological limitations, in exploring my research questions and issues than other versions of NIE and alternative theories such as Public Choice.

2.3. Privatisation, Competition and Regulatory Governance in Developing Countries: The Telecommunications Sector Experience

The literature on privatisation, competition and regulation pertaining to both developing and advanced countries is vast. As previously noted, there is a considerable quantum of work on privatisation in developing countries. Similarly, the literature on telecommunications reform and regulation is perhaps the largest (and growing) in the infrastructure sector. Despite the significant volume of literature in these areas, there are important public policy issues in developing countries that remain relatively under-explored. Specifically, the public policy literature on the dynamics between privatisation, competition and regulatory governance in general and in the telecommunications sector in particular is relatively sparse compared to analyses in fields such as economics.

The objective of this thesis is to contribute to public policy analyses by exploring the dynamics between privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka's telecommunications sector. As previously set out, my research problem will be analysed using my conceptualisation of the policy process and of North's NIE theoretical framework. The analysis contained in my thesis incorporates a country and sector case study. Chapter 4 examines

public policy in Sri Lanka as it pertains to privatisation, competition and regulatory governance whilst Chapter 5 explores this discussion in the specific context of Sri Lanka's telecommunications sector.

The rest of this Section is organised as follows. Sub-Section 2.3.1 provides a critical overview of the literature on privatisation, competition and regulatory governance linking it to the conceptualisation of the policy process and to North's NIE theoretical framework. Sub-Section 2.3.2 sets out some of the key literature on privatisation, competition and regulatory governance in the telecommunications sector, again linking this to the policy process and to North's framework. Although the focus of this thesis is on understanding the policy process in a developing country context, important literature relating to advanced countries will also be referred to when required to get a holistic perspective on my research problem.

2.3.1. Privatisation, competition and regulatory governance

The objective of this sub-Section is to set out the key literature on privatisation, competition and regulatory governance as it pertains to the research questions and issues being explored in Chapters 4 and 5 of my thesis. As such, this overview will focus on a number of important policy issues. For example, whether privatisation is sufficient or necessary for the success of the reform process; whether privatisation is a pre-requisite for effective competition; the role of the state in the reform and regulatory process; sequencing of reforms; the dynamics of regulatory governance; and the potential and limitations of "independent", hybrid and intermediate regulatory approaches in developing countries. This discussion will also consider linkages between the political and socio-economic constructs - set out in my conceptual framework above- and privatisation, competition and regulatory governance.

Privatisation, as I define it in this thesis, refers to ownership change: partial or full divestiture of state-owned assets. Competition and the manner in which it works in the development process have various connotations as reflected in the economic literature (Cook et al, 2004b). In my thesis, competition is defined as a policy construct conceptually distinct from ownership change. In line with the thinking set out in Metcalfe et al (2004), I conceptualise competition as a "contest" where "contestants" (individuals and organisations) vie to achieve certain "prizes" (political and socio-economic goals).

'Any contest has a number of important characteristics. Chief among these is a clear set of accepted and enforceable rules of the game, the institutions of competition, including property rights and the rule of law, which determine the nature of the contest...' (p.67)

Competition therefore is a dynamic process, rather than a state of equilibrium, where the mental models of individuals and organisations and the institutional setting (political and socio-economic institutions and the interplay between these institutions, individuals and organisations) matter. This characterisation of competition sits well with North's NIE framework as conceptualised above. The discussion of competition in this sub-Section focuses on two key issues pertaining to the reform process: does competition depend on ownership change; and what is the relative effectiveness of competition as opposed to privatisation in the success of the reform process?

The seminal literature on privatisation in developing countries points to its mixed record as a reform strategy (for instance: Vickers and Yarrow, 1988, 1991; Cook and Kirkpatrick, 1988, 1995; Kikeri et al, 1992; Galal et al, 1994; Shirley and Walsh, 2000; Megginson and Netter, 2001; Birdsall and Nellis, 2002; Bortolotti and Siniscalco, 2004; and Kikeri and Kolo, 2005). In addition, the socio-political and economic impacts of privatisation in the infrastructure sector differ from those in more competitive sectors. As such, debates on the socio-political and economic costs and benefits of privatisation as well as on the socio-political and economic institutions that need to be in place for privatisation to be a successful reform strategy are still on-going. In this context, the feasibility of policy transfer also remains a significant concern (see for instance, Tan, 2011).

Important constructs underpinning the effectiveness of privatisation are property rights, principal-agent dynamics and informational asymmetries as described and conceptualised in Section 2.2. The difference between SOEs and privatised entities in the context of principal-agent dynamics and property rights is lucidly explained as follows in Tan (2011):

‘...public enterprises are characterised by problems where the ultimate principal (the owner or taxpayer) elects the government (as agent) to manage them. The government in turn has to contract managers (as agents) but is unable to provide the appropriate incentives to the agent to exert effort in monitoring the performance of workers...Privatisation, by clearly designating property rights, reduces the chain of command between principal and agent and also provides owners with incentives to monitor the performance of managers. Managers can, for example, be disciplined by capital market pressures and the market for managers.’ (p.49)

What is missing in this conceptualisation of privatisation however, is the crucial role of socio-political constructs such as rent-seeking behaviour, power, trust, interest group dynamics and path dependence in shaping policy outputs and outcomes. For example, the assumption that privatisation results in a clear delineation of property rights is misleading when one considers North's worldview of institutions being perpetuated by individuals and organisations with

bargaining powers and of individuals typically acting on incomplete information (which includes imperfect property rights/contracts).

Moreover, whilst works such as Nellis (1994) base their support for privatisation on the assumption that ownership change is necessary to ‘distance the firm from the political process’ (p.1), empirical evidence supporting this claim is sparse (Chang and Singh, 1992; Wilner and Parker, 2002; and Cavaliere and Scabrosetti, 2008). Instead, qualitative case study and econometric analyses (for example, Cook and Uchida, 2001; Parker and Kirkpatrick, 2003; and Nellis and Birdsall, 2005) on the efficiency, fiscal and distributional impacts of privatisation in developing countries point to the following empirical findings.

First, ownership change is neither a sufficient nor necessary condition for the success of the reform process. Second, privatisation is not a pre-requisite for effective competition; competitive behaviour can be stimulated by constructs such as contestability (defined in Baumol et al, 1982 as a situation where credible threat of entry into the market impacts on the strategic conduct of actors in the market; a phenomenon of competition for the market) even in the absence of ownership change. Third, competition and effective regulation are often more important than ownership change for the reform process to be sustainable and successful. The fact that effective ex-ante and ex-post regulation have a greater impact than ownership change on reform outputs and outcomes is further evidenced in the literature on infrastructure sector reforms (Klein, 1996; Cook, 1999; Kessides, 2003; Andres et al, 2007; and Estache and Rossi, 2008). Fourth, the sequencing of the reform process, with effective regulation and competition preceding ownership change, has a significant impact on reform outputs and outcomes.

Another critical observation in the literature that looks at public opinion polls such as the Latinobarometro (Latin America), AfroBarometer (Sub-Saharan Africa) and Asia Barometer (East Asia) is that perceptions are important in shaping the reform process (for instance, Kikeri and Kolo, 2005, Checchi et al, 2009). The results of the public opinion polls mentioned above resonate with the findings of the literature cited earlier on in this sub-Section in that the socio-political and economic impacts of privatisation in the infrastructure sector differ from those in more competitive sectors. The mental models of individuals and organisations play a crucial role in shaping the outputs and outcomes of the reform process as will be explored in the context of my research problem in Chapters 4 and 5 and as is emphasised in the TRE method detailed in Chapter 3 of this thesis.

The antipathy towards infrastructure sector privatisation reflected in the public opinion polls above combined with fiscal constraints faced by developing country governments point to

the need for alternative modes of infrastructure funding (Harris, 2003; Briceno-Garmendia et al 2004; Calderon and Serven, 2004; and Estache, 2004). An approach adopted by a large number of developing countries seeking to find solutions that fit socio-political and economic realities is the public-private partnership (PPP) modality. Policy debates and gaps in research relating to PPPs in developing countries are looked at for example in Estache (2005); Nellis (2005) and Shah and Batley (2009).

The analysis in Estache (2005) suggests that the record of PPPs in developing countries is mixed and that outputs and outcomes are linked to a country's particular socio-political and economic institutions. The implementation of PPPs is also strongly linked to interest group dynamics and the relative perceptions of winners and losers of the reform process. This points to the relevance of in-depth country and sector case studies in accumulating "rich" evidence-based knowledge.

As discussed earlier on in this thesis, the nature of the policy process as described by constructs such as "policy space" and "embedded autonomy" points to the futility of maintaining rigid boundaries between the state and other socio-political and economic institutions, organisations and individuals. The usefulness of the notion of policy space in understanding real world phenomena is expressed by Nellis (2005) in relation to the provision of infrastructure services. Specifically, this piece emphasises the need to re-think the view of public and private provision of infrastructure as being alternative approaches:

'...an end to the view that public and private infrastructure provision is a dichotomy – a case of either-or, one or the other – and a better appreciation of the extent to which the performance of each is dependent on the competence of the other. In other words, for the private sector to perform well, public sector capacity must be enhanced.' (p.51)

Understanding the dynamic interactions between the state and other actors in the policy space is also of particular importance in the context of regulatory governance – a core component of the research problem being explored in my thesis.

Regulation, as a construct in and of itself, is multifaceted as suggested by the diverse literature on the subject (see for instance, Loayza et al, 2004; Minogue, 2005; and Jalilian et al, 2007). My thesis, however, focuses on regulatory governance: on exploring regulatory governance as a public policy construct through the conceptual framework that I detail above. Regulatory governance is broadly conceptualised in this thesis as a construct that pertains to 'the legal design of the regulatory system, institutional arrangements and the processes of regulatory decision-making' (Eberhard, 2006: p.2) and as further elaborated upon in Brown et al (2006) as:

‘...defined by the laws, processes, and procedures that determine the enterprises, actions, and parameters that are regulated, the government entities that make the regulatory decisions, and the resources and information that are available to them.’(p.19)

My take on regulatory governance as a public policy construct (with political and socio-economic underpinnings) also resonates with the writings of Levy and Spiller (1994, 1996b); Black (1997, 2002); Scott (2001); Jordana and Levi-Faur (2004); Minogue and Carino (2006); and Bortolotti and Perotti (2007). As will be discussed in this and the following sub-Sections, this description of regulatory governance sits well with my conceptualisation of the policy process and of North’s NIE framework and with the research problem that I explore in Chapters 4 and 5.

As set out in Brown et al (2006), regulation consists of two elements: regulatory governance and regulatory substance. Regulatory substance refers to the content of regulation (or the nitty-gritty “tool kit” of regulation as I have referenced earlier in this thesis), issues such as tariff levels and tariff structures for instance. Whilst acknowledging the validity of the claim made by these authors that a comprehensive evaluation of regulatory efficacy (the subject of my second research question) requires an analysis of both regulatory governance and regulatory substance, I justify my focus on regulatory governance in this thesis as follows.¹⁹

First, regulatory efficacy (regulatory performance) is conceptualised in Brown et al (2006) in relation to sector performance. However, I argue that sector performance is not an adequate proxy for regulatory performance given real world situations where factors other than regulation do impact upon sector performance indicators such as access, price and quality. The complexity of real world phenomena that require “thick” description using research methods that follow an interpretative and inductive approach is well illustrated in my discussion of both the public policy process and of North’s NIE framework above.

Second, there are practical limitations in incorporating a comprehensive evaluation of regulatory substance and sector performance in my research. The cost of compiling a robust methodological instrument capable of comprehensively evaluating regulatory efficacy incorporating both regulatory governance and regulatory substance is prohibitive (see for instance, Melody and Samarajiva, 2011). In addition, the lack of good time-series data on

¹⁹ Some examples of regulatory analyses that are more general in scope include Posner (1974); Mitnick (1980); Breyer (1982); Joskow and Rose (1989); Peltzman (1989); Laffont and Tirole (1996); Baldwin and Cave (1999); MacGregor et al (2000); Ogus (2002); Parker (2002); and Burns and Riechmann (2004).

telecommunications in Sri Lanka (as will be discussed in detail in Chapter 3) precludes regression analyses that may disaggregate the various impacts on sector performance.

It is in this context that I justify the use of the TRE method detailed in Chapter 3 as an effective and parsimonious instrument to assess regulatory efficacy. In brief, the TRE method evaluates the efficacy of the regulatory process by obtaining and aggregating assessments on a country's policy and regulatory environment from informed observers. Although the objective of the TRE method is to evaluate regulatory governance through the perceptions of these informed observers, some elements pertaining to regulatory substance are incorporated in the survey questionnaire in an attempt to get to a better understanding of the contours of regulatory governance. Moreover, as is emphasised in North's conceptualisation of mental models, this perceptions-based analysis is based on real world phenomena, a real world where it is very likely that the respondents are influenced by perceptions of both regulatory substance and regulatory governance. Whilst the evaluation of regulatory governance remains the main objective of the TRE method, the parsimonious inclusion of regulatory substance elements as they pertain to regulatory governance makes this instrument extremely useful in assessing regulatory efficacy.

Finally, I posit that a "thick" exploration of regulatory governance using North's theoretical framework in the country and sector case study analysed in my thesis would indeed add significant value to the existing analyses of this construct in the field of public policy. As set out below, regulatory governance in the context of North's framework and the policy process I conceptualise above incorporates formal and informal institutions and their dynamic interactions with individuals and organisations. Regulatory governance is embedded in a policy space – or more specifically "regulatory space" – that includes the overarching constructs of mental models and path dependence. In line with Figure 2.1, the regulatory space is a political and socio-economic arena where institutions, organisations and individuals interact in a dynamic fashion with these interactions and the resultant "web of decisions" shaping the regulatory (and policy) process.

Regulatory space is lucidly discussed in the regulatory literature by scholars such as Hancher and Moran (1989), Stirton and Lodge (2002) and Littlechild (2008). As set forth in Stirton and Lodge (2002), this construct is akin to the concepts of "embedded autonomy" and the "web of decisions" described earlier on in this thesis.

'...the regulatory process...characterised by an interplay of interdependent (state and societal) organisational interests with varying degrees of power and resources, each of which is competing for influence over outcomes. In short, regulatory space is characterised by social relations among actors.' (p.13)

This portrayal of the concept of regulatory space also resonates with North's conceptualisation of constructs such as trust, power, interest group dynamics and the "embeddedness" (Granovetter, 1985) of mental models and path dependence as they pertain to the regulatory governance process.

Clearly, the concept of regulatory space modifies the centrality of the state – or in this instance, the "regulatory state" – in shaping the contours of regulatory governance (see for instance, Jordana and Sancho, 2004). Discussion on the significance of the regulatory state in the context of socio-political and economic realities that exist in individual societies, countries and throughout the world is brilliantly set out in the works of Moran (2001, 2002) and Majone (1997, 1999).²⁰ As argued in Phillips (2006) and as expressed in Moran (2002), this construct is largely of academic as opposed to practical value in view of the complex web of decisions that make up the regulatory space. Citing Moran (2002):

"The regulatory state" provides a sort of intellectual brazier around which we can all gather, to warm our hands and speak to each other, in a world of increasingly fragmented academic professionalism.' (p.411-412)

Indeed what these analyses of the shortcomings of the regulatory state in light of the construct of regulatory space point to is the need for a more decentred approach to regulatory governance, an approach that has the capacity to incorporate what the regulatory literature terms the concept of "regulatory society". This construct is described in Black (2002) as one where 'regulation is not 'centred' on the state, but instead is 'decentred, diffused throughout society' (p.1). As acknowledged by Black (2002) however, a decentred conceptualisation of regulatory governance is not without its own set of practical problems. For instance identifying the boundaries of power, authority and responsibility ("the black box" of decision-making) is difficult in a fluid context, where dynamic shifts within and amongst institutions, organisations and individuals and the influences of mental models and path dependence need to be understood in order to understand the realities of regulatory governance.

An important critique of the regulatory literature, as discussed in depth in Minogue and Carino (2006), is that these debates on the regulatory state, regulatory space and regulatory society are largely confined to advanced countries. As such, there is a significant gap in our understanding of the dynamics of regulatory governance in the context of developing countries.

²⁰ A piece by Scott (2004) also considers the possibility of a post-regulatory state but contends that this construct 'is not used in the sense of the body politic denoted in the phrases welfare state and regulatory state. Rather the post-regulatory state is a state of mind which seeks to test the assumptions that states are the main loci of control over social and economic life or that they ought to have such a position and role.' (p. 166).

This gap in understanding is particularly problematic in the context of policy transfer as discussed earlier in this thesis, what Minogue (2006) terms the “apples and oranges” problem in regulatory reform. As aptly expressed by Ogus (2003) in relation to the dynamics of rent-seeking and regulatory governance in developing countries:

‘...Western models of regulatory arrangements are often proffered as ideals which developing countries are advised to follow. An intriguing finding of this paper...is that designing regulatory institutions to limit opportunities for corruption directly contradict some of the received wisdom of those models.’ (p.3)

As set out in my research questions and issues and as explored in Chapters 4 and 5, my thesis aims to contribute to a richer understanding of the dynamics of regulatory governance in developing countries from a public policy perspective.

The concept of regulatory space also sheds light on various approaches to enhancing regulatory governance. These approaches include contested concepts in the literature such as responsive regulation, self-regulation, independent regulation, hybrid regulation and intermediate forms of regulation in a developing country. The related concepts of responsive regulation and self-regulation are associated largely with the writings of Ayres and Braithwaite (1992); Parker (2000); and Braithwaite (2006). Responsive regulation is defined in Ayres and Braithwaite (1992) as follows (echoing North’s constructs).

‘We suggest that regulation be responsive to industry structure in that different structures will also be conducive to different degrees of and forms of regulation....responsive regulation is not a clearly defined program or a set of prescriptions concerning the best way to regulate. On the contrary, the best strategy is shown to depend on context, regulatory culture, and history.’ (p.4-5)

Responsive regulation is viewed as a possible option in developing countries that have regulatory capacity constraints by including stakeholders such as non-governmental organisations (NGOs), industry associations, citizen groups and international organisations²¹ in the matrix. In this analysis, regulatory governance is conceptualised as an interactive “pyramid”: business self-regulation (first-best option) is placed at the bottom of the pyramid, with more non-state actors being added to the network if and when the players at the lower levels fail to improve regulatory governance (Braithwaite, 2006).

One critical drawback of this approach, as I discuss in Chapters 4 and 5 of my thesis is that it assumes a relatively high level of societal trust as well as the active participation of non-state actors in the policy process. As argued in Hall et al (2000) and as emphasised in my

²¹ See Braithwaite and Drahos (2000) for a detailed analysis of the role of global institutions in the national regulatory process.

conceptual framework, interest group dynamics, power struggles and rent-seeking behaviour are very much a part of policy making (and regulatory governance). In contrast to the pyramid metaphor set out above, Hall et al (2000) conceptualise responsive regulation as follows:

‘...a pair of scales or a servomechanism built on pent-up forces in tension. To the extent that regulatory regimes are steerable at all, in the sort of political/institutional conditions sketched out above, it seems to be by the judicious or opportunistic manipulation of tensions among the different actors in the regulatory space.’(p.203)

Another contested construct in the regulatory literature is the concept of “independent” regulation. As argued in Minogue (2006), independent regulation is to a large extent a creation of advanced economies where the separation of powers amongst political, economic, legal and social institutions is relatively well-defined. In most developing countries however (and as will be explored in the Sri Lanka country and sector case studies in Chapters 4 and 5), political intervention in regulatory agencies occur for reasons ranging from the need to ensure pro-poor outcomes to more pernicious ones such as rent-seeking/corruption.

In any case, from a practical point of view, regulatory entities in most developing countries are established by way of legislation and are as such functionally linked to the state. Independence in this context can only be obtained if the agency has access to its own sources of funding, and if the process of accountability is subject to a balance of political interests (for instance, reporting to Parliament as opposed to a single Minister). Regulatory accountability, an important element for regulatory efficacy, is closely linked to the concepts of transparency and participation in the decision-making process, the ability for all actors in the regulatory space to be effectively involved in the regulatory process, and for the regulator to be credibly held responsible for its decisions (see for instance, Lodge, 2004).

The regulatory literature points to a spectrum of regulatory approaches in between responsive regulation and independent regulation that may be more suitable for the political and socio-economic realities prevalent in developing countries (for instance, Brown et al, 2006; Eberhard, 2006). These include regulation by contract, outsourcing of certain components of regulation and hybrid and intermediate regulatory governance approaches.

Regulation by contract is an approach that generally involves the government, the regulatory agency and private individuals or organisations. The regulatory contract sets forth specific details such as type of product or service, tariff levels, quality of service as well as dispute settlement mechanisms. This modality circumscribes the discretionary powers of the regulator compared to the independent regulation approach. Regulatory contracts inherently involve principal-agent dynamics (Stern and Holder, 1999), dynamics which are shaped by the

dual problems of asymmetric information and opportunistic behaviour as set out in the discussion of my conceptual framework. As such, and as will be explored in Chapters 4 and 5 of my thesis, the effectiveness of regulatory contracts hinge on the nature of political and socio-economic institutions and on the dynamic interactions between these institutions, organisations and individuals.

Governments may also choose to outsource certain regulatory functions to expert panels - most often advisory functions that require technical expertise lacking in the regulator. Whilst the outsourcing approach may facilitate an “embedded” process of institutional capacity building, it is important to note that the outside party/agent that undertakes the outsourcing activity is not responsible for implementation. This takes us back to discussions on policy gap where commitment/buy-in on the part of policy makers and the dynamics of the policy process as illustrated in Figure 2.1 are the decisive factors. In addition, bringing in outside agents also raises concerns of policy transfer as discussed earlier in this thesis; outside agents need to have an in-depth understanding of the political and socio-economic environment if their inputs are to result in improved regulatory governance.

As Eberhard (2006) notes, the regulatory approaches discussed above are not mutually exclusive. For example, governments or independent regulators could administer regulatory contracts; or any regulatory regime could outsource minor or major elements of its activities to outside parties. A number of hybrid permutations are possible given the socio-political and economic context of a given country and the specific needs of a particular sector. Furthermore, intermediate regulatory regimes may evolve over time in line with dynamic changes in the political and socio-economic environment.

The issue with either the outsourcing approach or hybrid variations of regulatory governance is the same as with independent regulation and regulation by contract. All of these approaches can be effective tools to improve regulatory governance. However, as set out in my conceptual framework and as will be discussed in Chapters 4 and 5, understanding the dynamics of institutions, organisations and individuals (including political commitment and institutional capacity) is vital for the success of any of these approaches.

2.3.2. Telecommunications sector privatisation, competition and regulatory governance: insights from the literature

The literature on telecommunications reform and regulation is perhaps the largest (and growing) in the infrastructure sector. Studies on the telecommunications sector range from technical discussions (for instance, Laffont and Tirole, 1996; Armstrong, 1998; Crocioni, 2001;

Henten et al, 2003; Kim and Lim, 2004; and Bourreau and Dogan, 2006) to the impact of the sector on economic growth (for instance, Roller and Waverman, 2001; Waverman et al, 2005; and Labonne and Chase, 2008b) to analyses that focus mainly on the impact of privatisation, competition and regulation on sector performance (for instance, Bortolotti et al, 2002; Li and Xu, 2004; and Zheng and Ward, 2011).

Although there are many studies on privatisation, competition and regulation in the telecommunications sector as set out above, public policy analyses on the interplay between privatisation, competition and regulatory governance in this sector are relatively sparse, particularly with respect to developing countries. This discussion on the telecommunications sector complements the themes and analysis set forth in sub-Section 2.3.1 and provides a real world illustration of my conceptualisation of the policy process and of North's theoretical constructs.

There are several unique characteristics of the telecommunications sector that make it an important and interesting subject of public policy analysis. For instance, empirical studies indicate that the potential for "deep pockets" and rent-seeking (corruption) are high in this sector (for instance, Abbott and Brady, 1999; Henisz and Zelner, 2001; Brown et al, 2004; Lee and Quayes, 2006; and Salazar, 2007). This prevalence of rent-seeking opportunities provides a useful real world application of North's theoretical constructs as conceptualised in Section 2.2 and as will be explored in relation to the policy process in Chapters 4 and 5.

Another critical feature that differentiates telecommunications from other infrastructure sectors such as power and water for instance is the rapid pace of technological change (see for instance, Melody, 2002; Sharkey, 2002). These technological changes allow for a greater degree of competition (and unbundling) in the telecommunications sector, dynamic changes that often tend to overtake regulatory capacity particularly in developing countries as discussed for example in Cave et al (2002b). As will be explored in this thesis, what this implies in terms of regulatory governance is that existing approaches to improving telecommunications sector regulatory governance in developing countries may need to be reconsidered.

The telecommunications literature also provides insights on some of the main policy concerns pertaining to privatisation, competition and regulation. These concerns include whether ownership change is a sufficient or necessary condition for the success of the reform process, and the significance of the sequencing of reforms. Corresponding to the findings set out in the general literature on privatisation, competition and regulation discussed in sub-Section 2.3.1, telecommunications sector research suggests that competition is more important than ownership

change and that the sequencing of the reform process with effective regulation and competition preceding ownership change has a significant impact on reform outputs and outcomes (see for example the cross-country analyses by Wallsten, 1999, 2001, 2002, 2003; Fink et al, 2002).

These dynamics relating to ownership change and to the sequencing of the reform process in the telecommunications sector are also inextricably linked to regulatory governance, with regulatory governance conceptualised as in sub-Section 2.3.1 as a policy construct rooted in the political and socio-economic context described in North's theoretical framework. An excellent analysis of regulatory governance in the telecommunications sector applying North's institutional perspective is contained in the seminal studies by Levy and Spiller (1994, 1996b). These studies explore the political and socio-economic underpinnings of regulatory governance in five countries: Jamaica, the U.K., Chile, Argentina and the Philippines. The analyses by Levy and Spiller have proven to be influential as reflected in a number of empirical studies that have used, modified and refined their analytical framework (for instance, Galal and Nauriyal, 1995; Dokeniya, 1999; Abdala, 2000; Noll, 2000; Lodge and Stirton, 2002; Stirton and Lodge, 2002, 2003; Stern and Cubbin, 2005; and Mohammed and Strobl, 2011).

Some important insights that emerge from the work of Levy and Spiller (1994, 1996a) include the fact that regulatory efficacy is an important element in shaping private investment decisions. This insight also resonates with the thinking behind the TRE method briefly described earlier in this thesis and detailed in Chapter 3. Another related insight set out in these analyses is that the prevalence of rent-seeking opportunities impacts on investor perceptions with regard to the nature of regulatory governance in a particular country, and these perceptions in turn impact on investment decisions.

The centrepiece of Levy and Spiller's analytical framework as described in Levy and Spiller (1996b) is what they describe as "institutional endowments" (following the contributions of scholars such as North). These institutional endowments influence decision-making and policy choices with respect to regulatory governance. Five specific constructs of institutional endowments are set out in Levy and Spiller (1996b), constructs that fit well with my conceptual framework as depicted in Figures 2.1 and 2.2 and that I use to explore my research problem in Chapters 4 and 5 of this thesis.

'Following North and others we consider five elements of a nation's institutional endowment: [1] Legislative and executive institutions...[2] Judicial institutions...[3] Custom and other informal but broadly accepted norms that tacitly restrain the actions of individuals or institutions. [4] The character of the contending social interests within a society and the balance between them, including ideology [and] [5] The country's administrative capabilities.' (p. 4)

Institutional endowments as conceptualised in the analyses by Levy and Spiller (1994, 1996a,b) is illustrated in the form of what the authors refer to (1996a: p.8) as “a decision tree for regulatory design”. This framework will be built upon and extended in this thesis in relation to Sri Lanka and Sri Lanka’s telecommunications sector.

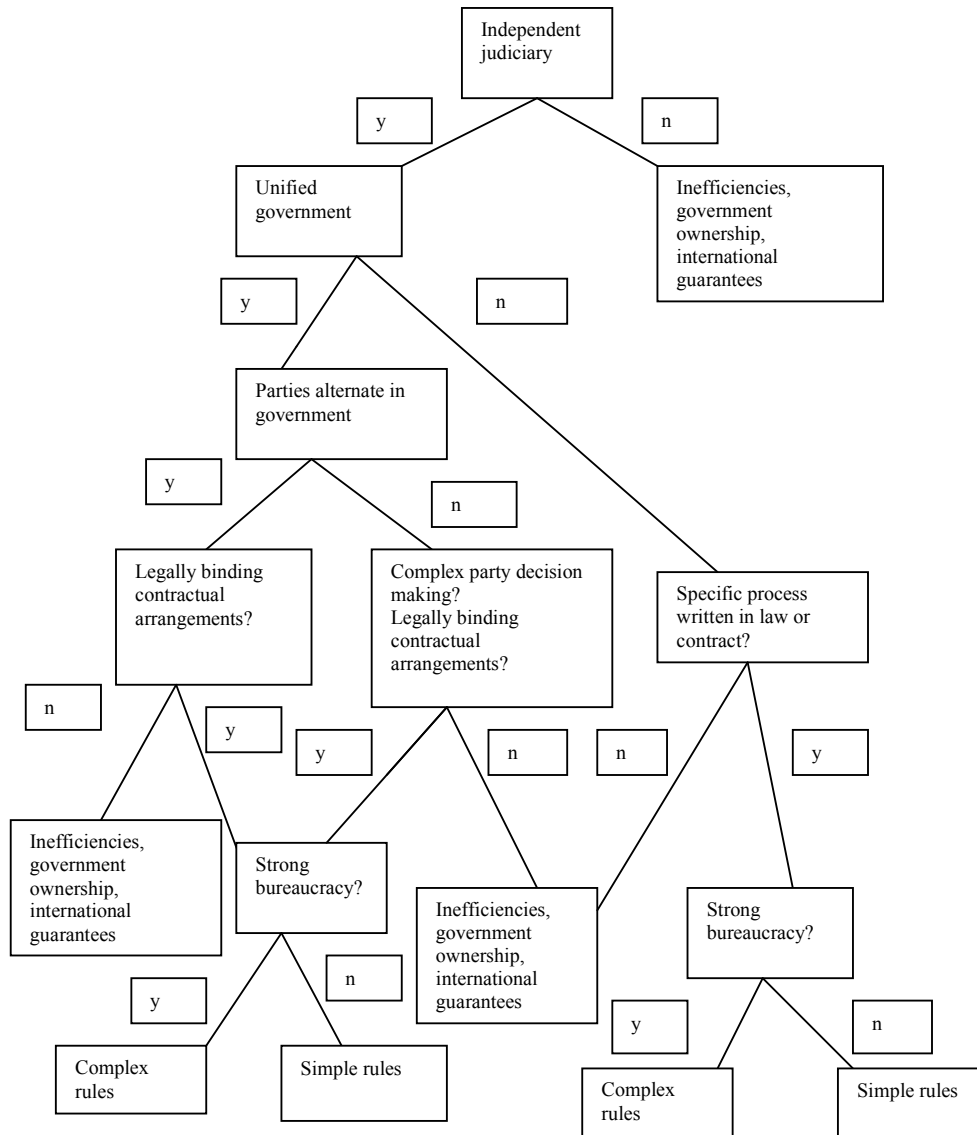
The decision tree draws on four principles (Levy and Spiller, 1996b). The first principle is the distinction between countries with domestic “institutions” that can credibly demonstrate a capacity for non-arbitrary decision-making from those that cannot. For instance, Chile, Jamaica and the U.K. that have an independent judiciary are better placed than Argentina and the Philippines, which do not have an independent judiciary, to make credible policy commitments and to develop regulatory governance processes conducive to sustainable private investment. In cases like the latter countries, options such as international guarantees may be required to signal the levels of policy commitment necessary for private investment.

Second, there is a distinction within the group of countries that are indeed able to build up credible regulatory governance processes. Some countries (for instance, Chile) are able to achieve this through general legislation (administrative law), while others (for example, Jamaica and the U.K.) do this through the operating licenses of private companies (contract law). Further, the study argues that administrative law works in political systems where there is no unified government (such as presidential systems with multi-chamber legislatures and different electoral cycles) but may fail to create regulatory credibility when political parties alternate in government (for instance, two-party parliamentary systems).

Third, a distinction lies between countries that need specific, substantive rules for credibility (for instance, Jamaica) and those that are able to restrain arbitrary regulatory behaviour through flexible processes (for instance, the U.K.). Flexible processes are possible in situations, for example, where informal norms of administrative law exist to restrain arbitrary government action even in the absence of explicit legal constraints.

The final distinction lies within the subset of countries that need specific rules: between countries with strong bureaucratic capabilities (for instance, Chile) and those without (for instance, Jamaica). Countries with strong bureaucratic capacity are more able to use complex rules in their regulatory governance framework whereas those that have weaker bureaucracies may be confined to the use of more simple rules.

Figure 2.3. Decision tree for regulatory design



Note: y= yes; n= no

As discussed in sub-Section 2.3.1 and as further reinforced by the Levy and Spiller decision tree illustrated above, there are different approaches to enhancing regulatory governance. The success or failure of each of these approaches depends on a country's "institutional endowments", the dynamic interactions between institutions, organisations and individuals as well as mental models and path dependence as conceptualised by North.

For example, some of the regulatory governance approaches discussed in the previous sub-Section were "independent" regulation, regulation by contract, hybrid versions of regulation and responsive regulation. Countries throughout the world have experimented with and adopted a number of these different approaches in the telecommunications sector (see for instance, Hall et al, 2000; Samarajiva, 2000, 2004; Gutierrez, 2003; Laffont, 2003; Guermazi and Neto, 2005; and Howard and Mazaheri, 2009).

Some of the key insights emerging from this literature are as follows. Regulatory contracts (with explicit terms and conditions as set out in the operating license of a telecommunications company) may be better placed to rein in the discretion of the regulator (which could be more vulnerable to political or interest group interference). However, any regulatory contract will necessarily be incomplete given the incidence of asymmetric information. Rapid technological changes that characterise the telecommunications sector are hard to encapsulate in contracts that lack flexibility. Also, re-negotiating and enforcing a contract is neither an easy exercise nor one that is immune to political influences in countries that have weak judicial institutions and wide-spread opportunities for rent-seeking (corruption).

A useful insight with respect to regulatory independence in the telecommunications sector is that the concept of "independence" in itself is subjective and linked to the institutional endowments of a country. For instance, in countries where political interference and interest group pressures driven by rent-seeking behaviour undermine the efficacy of a regulatory agency, independence is merely a label rather than a real world construct. Some of these problems may be addressed by a move to more responsive regulation in the telecommunications sector. This approach would emphasise collective responsibility through 'extended mechanisms of accountability' (Hall et al, 2000: p.206) that would provide participatory checks on the power of the regulator. As will be explored in Chapters 4 and 5 however, the effectiveness of this participatory approach to regulation also hinges on socio-political realities, such as the extent to which all actors in the regulatory space can in fact be involved in the regulatory process.

2.3. Concluding Remarks

This Chapter has set out a critical and structured overview of the relevant literature pertaining to the policy process; privatisation, competition and regulatory governance; and telecommunications reforms and regulatory governance in developing countries. The Chapter has also detailed North's NIE theoretical framework as well as key policy concepts that I use to explore my research questions and issues in Chapters 4 and 5 of this thesis. The findings coming out of Chapters 4 and 5 will be considered in the context of the existing body of knowledge detailed in this Chapter to highlight the contribution made by this piece of research to the subject of study.

The central message that emerges from the discussion in this Chapter is that the policy process – including privatisation, competition and regulatory governance - is inherently a dynamic political and socio-economic exercise. The political and socio-economic context within which any policy is embedded needs to be understood and given sufficient recognition in the policy making process. As set forth in the literature on policy transfer, a policy that works well for a particular country or within a particular sector may not necessarily produce similar results in other situations. Accordingly, any research that aims to extend understanding on public policy must be developed within a multi-disciplinary conceptual framework that sufficiently accommodates the complexities of this process.

The conceptual framework that I use in my thesis emphasises the multi-disciplinary nature of public policy as well as the need for research methodologies that can capture the “thick” nuances of the policy process. These elements underpin my choice of research methodology that I detail in Chapter 3 – an interpretative research philosophy, an inductive approach and case study methodology. This research process sits well with my conceptual framework and is also extremely relevant in the context of the research problem that I set out in Chapter 1.

CHAPTER 3: METHODOLOGY

3.0. Introduction

The preceding Chapters of this thesis identified the objectives of and justification for my research; Chapters 1 and 2 described the “what” (research questions and associated research issues) and the “why” (the relevance of this research to the existing body of knowledge on the subject) of this study. The aim of this Chapter is to describe the research process used to analyse the subject of study explored in Chapters 4 and 5 of this thesis (the “how” part of the study).

The research process is determined by the nature of the research questions and issues that underpin it. As set out in Chapter 1 and as illustrated in Figure 2.1, this thesis explores the policy making process in relation to privatisation, competition and regulatory governance applying North’s NIE framework, as conceptualised in Figure 2.2 and as discussed in Section 2.2, to the Sri Lanka country and Sri Lanka telecommunications sector case study. As stated in Chapter 1, my thesis aims to explore and describe a research problem rather than verifying a research hypothesis (Blaikie, 2000).

In line with the research problem set out in my thesis and following from the conceptual framework, the usefulness and relevance of my research process lies in its ability to generate a “thick” and rich understanding of the policy process pertaining to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector. In addition, the usefulness of my research process is heightened by its ability to make real world sense of important multi-disciplinary constructs highlighted in my conceptual framework; concepts such as “mental models” that are key to North’s NIE framework.

As previously mentioned, an important clarification is that the broad time frame of analysis in this thesis is from 1977 to 2007. A general issue affecting data collection during this timeframe of analysis – a period that overlaps with the years of civil war in the country - is that credible data and information from the Northern and Eastern Provinces of Sri Lanka (the geographical areas most affected by the war) were not available. However, post-2007 information and data will be used where available and if relevant to a rich and “thick” discussion of the research problem being explored in my thesis.

Another key clarification with respect to the scope of my research is that the analysis of reforms and regulatory governance in the telecommunications sector focuses almost entirely on the fixed and mobile segments of the industry given that the telecommunications space in Sri Lanka is dominated by fixed and mobile technology. As detailed in my discussion on the TRE method later on in this Chapter, industry segments such as equipment suppliers and cable

television providers for example are not within the scope of this analysis, and broadband access is addressed only incidentally in Chapter 5 as it contributes to “thick description” of my research problem.

This Chapter is structured as follows. Section 3.1 will set out and discuss the rationale for the particular research philosophy and research approach that I use to explore my research problem. This Section will also discuss concepts such as reflexivity, positionality, validity and objectivity/subjectivity as they pertain to the research process. Section 3.2 will discuss the usefulness of my choice of case study research methodology in relation to the research questions and issues set out in this thesis. Section 3.3 will address the relatively more practical aspects of this research such as methods used to collect and analyse information/data, the sources and types of information/data and the limitations and problems encountered in the research process. The discussion in this Section will also demonstrate the basis for the specific choice of methods in the research process. Section 3.4 will briefly set out and analyse the debates in the literature surrounding the measurement of constructs such as governance and regulatory governance, corruption and the investment/business environment in view of their relevance to the research questions and issues being explored in this thesis.

3.1. Research Philosophy and Approach

The literature on research philosophy in the social sciences is multi-faceted, with some scholars primarily focusing on the two traditional perspectives on epistemology and ontology, positivism and interpretivism (for instance, Walsham, 1995; Leitch, et al, 2010) while other scholars branch into additional perspectives such as realism, critical realism and pragmatism (for instance, Myers, 2009; Saunders et al, 2009). The literature also contains analyses that question the sharp demarcation of these various epistemological and ontological positions in the research process (for instance, Lee, 1991; Weber, 2004). The objective of my discussion in this Chapter is not to wade into the intricacies of these philosophical debates. Instead, what I aim to do is to set out and justify my choice of research philosophy and approach as they pertain to my research problem.

In this thesis, I adopt an interpretivist research philosophy and an inductive research approach. My choice of research philosophy follows from the basic distinction between positivism and interpretivism; nuanced philosophical discussions on the multitude of and linkages between perspectives are not within the scope of my thesis. Again, as set out earlier on

in this Chapter, my choice of an interpretivist philosophy and an inductive approach follows directly from my research questions and issues as well as from my conceptual framework.

Interpretivism in the context of research aiming to explore social reality (a “thick” exploration of the policy process in the context of my thesis as set out previously) is as expressed in Leitch et al (2010: p. 69), ‘grounded in people’s self-understandings’. The epistemological and ontological underpinnings of interpretivism emphasise the subjectivity of knowledge and of what constitutes reality. Interpretivist research also embraces the importance of inter-subjective interactions – for instance between the researcher and the research subject/s (for instance, Walsham, 1993; Saunders et al, 2009); the concept of reflexivity as will be discussed later on in this Chapter. This research philosophy stands in contrast to a positivist portrayal of knowledge and the process of knowledge creation as well as what positivism constitutes as reality, as described succinctly in Saunders et al (2009):

‘Only observable phenomena can provide credible data, facts. Focus on causality and law like generalisations...external, objective and independent of social actors...’
(p.119)

As set out in the discussion of my research questions and issues and in the conceptual framework I use to explore my research problem, the objective of my thesis is to get to a rich understanding of the real world, the real world of public policy. My aim is to understand the dynamic interplay between real world institutions, organisations and individuals in the policy space pertaining to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector. What this means therefore is that “mental models” matter; the perceptions of human beings matter; path dependence and history matter; human behaviour – including interest group dynamics, rent-seeking behaviour and opportunism – matters; and the socio-political and economic “environment” (as conceptualised in Figure 2.1) matters. In sum, getting to a “thick” understanding of the real world is inherently a subjective process where “interpretation” is the binding factor. The usefulness and relevance of the interpretivist philosophy in the context of my research questions, issues and conceptual framework is re-iterated crisply in Walsham, (1993):

‘Interpretive methods of research start from the position that our knowledge of reality, including the domain of human action, is a social construction by human actors and that this applies equally to researchers. Thus there is no objective reality which can be discovered by researchers and replicated by others, in contrast to the assumptions of positivist science.’ (p.5)

Following from the link between my research philosophy, research problem and conceptual framework as discussed in this Section, the research approach I use is inductive in nature. The

research methodology and methods of information/data collection and analysis as well as the type of information/data I collect are linked to the interpretivist and inductive underpinning of my research process. The inductive approach is broadly distinguished from a deductive approach in the literature with most scholars viewing deduction as an approach that is useful to test theories or research hypotheses (for instance, Blaikie, 2000; Creswell, 2003; and Saunders et al, 2009). In contrast, as set out in Saunders et al (2009), an inductive approach is useful in the exploration of and building explanations for research problems given its focus on:

‘...gaining an understanding of the meanings humans attach to events...[and] a more flexible structure to permit changes of research emphasis as the research progresses...[and] a realisation that the researcher is part of the research process...[and] less concern with the need to generalise.’ (p.127)

The interpretivist research philosophy and the inductive approach also shed light on a number of other key concepts relating to my research process. First, a concept that has been subject to much debate in the literature is validity and its connotations in terms of objectivity and subjectivity in the research process (for instance, Denzin and Lincoln, 2003a; Creswell and Clark, 2007; and Dellinger and Leech, 2007). I argue that the preoccupation with validity in pursuit of some objective truth detracts from the value of social science research. As aptly stated by Bernard (1994: p.389): ‘Validity is never demonstrated only made more likely.’ What would be far more relevant in terms of social science research, as I aim to demonstrate in this thesis, is to *reframe the discussion in terms of the practical usefulness* of a particular piece of research.

As such, validity becomes less important than issues of coherence, transparency, reliability, persuasiveness and informed and well-reasoned choices in the research process. In the specific context of the research problem being addressed in this thesis for instance, an important concern would be how well the narrative on policy making in Sri Lanka with respect to privatisation, competition and regulatory governance in general and in the telecommunications sector in particular, reflects ground realities. These ground realities in turn are influenced and shaped by the subjective process of reflexivity in the research process.

Reframing the discourse with regard to the research process does not however imply that the concept of objectivity should be abandoned all together; what needs to be changed is the conventional notion that objectivity requires the researcher to be neutral (value-free) and detached from the object of study as in a controlled experiment in a science laboratory. Is this feasible or even possible in social science research? Can studies that explore the socio-political and economic contours of policy making for instance be completely value-free? How can

objectivity be introduced in a useful manner in a social science research project? A useful discussion on this topic is contained in Philip (1998):

‘What is required is a reconceptualisation of the meanings of ‘objectivity’ and ‘objective research’. ...I believe that the idea of ‘realistic or objective subjectivity’ has considerable potential as a means of acknowledging the subjectivity inherent in social research while concurrently acknowledging that most researchers strive to present as realistic (objective) a picture of the world they have investigated as possible.’ (p.269-270)

The second important concept that interpretivism illuminates in relation to my research process (and as already alluded to earlier on in this Section) is that of reflexivity. Reflexivity has been defined in numerous ways in the literature (for instance, Lipp, 2007) and has also been subject to much debate. Some researchers view this construct as a limitation to robust research (for example, Davis and Klaes, 2003) whilst others view it as a means to improve the quality of research (for instance, Carolan, 2003).

I adhere to the latter position, arguing that reflexivity is in fact an integral and unavoidable factor in the practice of social science research. Moreover, I posit that it enhances the quality of research, facilitating the gathering of rich knowledge by enabling researchers to, as stated by Moss (1995: p.445), ‘position our own involvement in the production of knowledge, in the practice of science, in the politics of knowing and doing’. An excellent working definition of reflexivity - emphasising the “mental models” of the researcher and of the research subject/s and the interaction between the two - is set out in Lincoln and Guba (2003):

‘Reflexivity is the process of reflecting critically on the self as researcher, the “human as instrument” (Guba and Lincoln,1981)...Reflexivity forces us to come to terms not only with our choice of research problem and with those with whom we engage in the research process, but with our selves...the fluid self in the research setting.’ (p.283)

As will be discussed in Section 3.3 of this Chapter, reflexivity and the related notion of positionality described below are particularly significant in some of the research methods I use – TRE, one-on-one interviews and focus groups. Translating reflexivity into practice in these methods emphasises the fact that the research process constitutes a level of dynamic duality with the researcher/respondent, interviewer/observer and the interviewee/focus group participants contributing to the creation of knowledge. In North’s terms, this implies a holistic perspective of “mental constructs”. As such, and as argued earlier on in this Chapter, the notion of one version of “the truth” makes little or no sense in the real world.

Positionality is the third key concept for which interpretivism provides useful insights. Interesting accounts of positionality in research practice are contained in Herod (1999), Ward

and Jones (1999) and Sultana (2007) for instance. As set out in these works, this construct relates to issues such as the researcher's ideological and cultural position (mental model) vis-a-vis the research subjects and whether the research subjects perceive the researcher as an "insider" or as an "outsider" in the social context within which the research project is embedded.

Positionality points to some interesting procedural issues in the context of my research, issues that are also useful in the larger scheme of social science research. As detailed in the "Ethical Practice Statement" that I submitted (see Appendix 3.1), required by the University of Manchester in recognition of the importance of ethical issues in social science research, the research undertaken for my PhD is largely an extension of the work that I have doing for over a decade as a Research Fellow at the Institute of Policy Studies, Sri Lanka (IPS)²², a leading, semi-governmental socio-economic policy think tank and over the last five years as a Research Fellow at LIRNEasia²³, a regional Information and Communications Technology (ICT) policy and regulation think tank.

My association with these two entities raises some important issues with respect to the research process. First, being an established policy researcher in the country and in the subject area that I am studying places me within the policy space. As such, my "mental model" and self-reflexivity are an integral part of the research process. Second, the relationships that I have developed over time with key policy makers and the donor community in Sri Lanka in my capacity as the Head of IPS' Industry, Public Enterprise Reform and Regulatory Policy Research Unit has facilitated the collection of rich - and sensitive - information/data, through elite interviews in particular. Third, my position in the research process has shifted back and forth from being perceived as an "insider" to that of an "outsider" depending on the research subjects and the time spent earning "trust" as it were - a classic example of this being my relationship with players in the telecommunications policy space.

My association with LIRNEasia has helped me establish and build rapport with most of the major telecommunications operators as well as user groups in the sector. However, my relationship with the telecommunications regulator, the TRCSL, has been ambivalent based on their perceptions of me as an "insider" (working for another government body- the IPS) or of me as an "outsider" (working for LIRNEasia, a private organisation). Interestingly, the degree of tension between these two positions has tended to be closely linked to changes within the TRCSL in itself - changes in leadership and the presence/absence of personnel with whom I had

²² See <http://www.ips.lk> for more details on this institution. [Accessed on 17 February 2010].

²³ See <http://www.lirneasia.net> for more details on the institution. [Accessed on 17 February 2010].

already established a close rapport over the years. In sum, my positionality has simultaneously served as an asset and as a limitation in the research process; although I would argue that in most instances, the former has offset the latter. Moreover, my experience provides useful evidence for what Herod (1999) posits as a rather futile dichotomy between “insiders” and “outsiders” in the research space.

3.2. Research Methodology: The Usefulness of Case Study Research

The research methodology that I use to explore the research questions and issues in this thesis is the case study methodology. As in my choice of research philosophy and approach, my decision to use a case study methodology in this thesis hinges on its usefulness in relation to both my research problem as well as the conceptual framework set out in Chapter 2. Whilst case study research can be conceived in various research philosophies, I use this methodology in the context of interpretivism, focusing on the real world construction of knowledge. The main objective of this Section is to discuss the usefulness of case study research in the context of my thesis; and more broadly in the context of real world research practice.

Debates on the nomenclature, uses and limitations of research methodologies are abundant in the literature.²⁴ As pointed out in Blaikie (2000: p.8) for instance, even the term “methodology” is often not clearly defined in research studies with the terms “methodology” and “method” being used interchangeably. A detailed account of these debates is not within the scope of my study. Moreover, to cite Guba (1990: p.17), ‘Having the term not cast in stone is intellectually useful and allows for reshaping understandings’. However, setting out working definitions of the key constructs pertaining to the research process employed in this thesis is useful to the extent that it provides a coherent template for the “how” part of this study. I define methodology broadly as ‘a general approach to studying research topics’ and method as ‘a specific research technique’ borrowing from Silverman (2000: p.77).²⁵ Using this nomenclature, I classify “case study” as a “methodology” and the research techniques I use in this thesis, such as TRE, focus groups, interviews and document analysis, as research “methods”.

Case studies are an oft-used methodology in social science research and have drawn significant attention in terms of their usefulness in the generation of knowledge (see for instance, Yin, 1994, 2009; George and Bennett, 2005; Shirley, 2005; Llewellyn, 2007; Siggelkow, 2007;

²⁴ See for instance, Tashakkori and Teddlie (1998); Blaikie (2000); Denzin and Lincoln (2000, 2005); Silverman (2000); May (2001); Creswell (2003, 2009); Yin (2006); Bryman (2007); Johnson et al (2007); Morgan (2007); Greene (2008); Johnson (2008); Brannen (2009) and Niglas (2009).

²⁵ Examples of the different definitions and perspectives surrounding these particular constructs are reflected also in Johnson et al (2007); Johnson (2008) and Greene (2008).

and VanWynsberghe and Khan, 2007). As expressed by Yin (2009: p.18), ‘A case study is an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context’. The strength of a case study stems from its ability to extract, explore and describe “thickly”, specifically its ability to provide a coherent, interesting and persuasive narrative on real world phenomena. As such, this methodology sits very well with an interpretivist perspective which as discussed in Section 3.1 embraces a deep as opposed to a broad or generalised stance on the production of knowledge.²⁶

The usefulness of the case study research methodology in the context of my thesis lies in its capacity to provide a “thick” understanding of the policy process (as also emphasised by scholars such as George and Bennett, 2005). As will be set out in Chapters 4 and 5, this methodology has the ability to capture the dynamics and nuances pertaining to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector. It also provides a robust template to analyse key constructs in my conceptual framework - such as issues of policy transfer and North’s conceptualisation of institutions, organisations and individuals, mental models and path dependence - within the context of my research problem. To cite Llewellyn (2007):

‘...case studies are more likely to be concerned with inter-subjective cultural understandings and peoples’ subjective interests, thoughts, feelings and emotions – because this is why we do case studies – to get at the “how”...and “why” (culture, interests, thoughts, feelings and emotions) aspects of phenomena.’ (p.66)

The core debate surrounding the usefulness of case study research relates to the generalisability and transferability of knowledge (see for instance, Burton, 2000b; Creswell, 2003; Sayer, 2008; and Yin, 2009). Case studies are often criticised on the grounds that they are too contextualised to make predictions or universal generalisations (see for instance, Blaikie, 2000, Flyvbjerg, 2001). I argue that these criticisms stem from a narrow, unrealistic and somewhat misplaced view of real world research practice and that the strength of case study research does not lie in its ability to draw predictive conclusions or universal generalisations. In fact, as clearly set out in George and Bennett (2005), the case study methodology does not aim to achieve these goals.

‘Case study researchers are more interested in finding the conditions under which specified outcomes occur, and the mechanisms through which they occur, rather than

²⁶ The other primary candidate for an interpretivist methodology is “grounded theory”, which emphasises continuous theory development based on analysis of data and observations; in other words, “grounding” the theoretical account in data (see for instance, Myers, 2009). Because grounded theory requires the researcher to have no preconceived theoretical ideas before starting research, I do not believe that such a methodology is appropriate given my use of North’s NIE theoretical framework to analyse my research problem.

uncovering the frequency with which those conditions and their outcomes arise.’
(p.31)

In conclusion, I would also argue that comparing case study methodologies with other methodologies such as those that use sophisticated statistical techniques or formal modelling to get to generalisable findings is akin to comparing apples and oranges. Perhaps it is time to realistically appraise this methodology, understanding what it actually attempts to achieve and viewing what is now perceived as its shortcomings (inability to generalise for instance) as a trade-off that it deliberately assumes to achieve its objective: the exploration and description of real world phenomena.

3.3. Implementing the Research Process: Methods, Sources and Limitations

3.3.1. Contextualising my research methods

In previous Sections of this Chapter, I have set forth my choice of research philosophy, approach and methodology. In this sub-Section, I specify my choice of research methods in the context of the interpretivist philosophy and inductive approach and in relation to my research problem. As previously discussed, interpretivist and inductive positions on the nature of knowledge and the process of building knowledge emphasise the social or real world construction of knowledge and are useful in research that aims to capture the dynamics and nuances of real world phenomena.

What this means in the context of research methods is that the choice of a specific research technique also needs to embrace concepts such as subjectivity, reflexivity and positionality that are intrinsic to interpretivist and inductive perspectives on knowledge. The specific qualitative research techniques that I utilise in this thesis do reflect these concepts. Perception surveys, interviews, focus groups and document analysis gather impressions, statements and other qualitative evidence (interpretations) that in turn must be interpreted by the researcher in the analysis of the information and in the presentation of the findings.

The use of these research methods in my thesis situates my research process in what is classified in the literature as a “multiple methods” research design (see for instance, Philip, 1998; Saunders et al, 2009). As described by Philip (1998):

‘...*Multiple methods* may be understood as being the situation in which a number of complementary methods are employed to address different facets of a research question, or to address the same question from different perspectives.’ (p.264)

The adoption of multiple methods research in the context of my research design also brings in the important concept of triangulation.²⁷ Triangulation as it applies to the research process has been subject to debate in the literature (see for instance, Blaikie, 2000; Johnson et al, 2007; and Johnstone, 2007) with authors such as Blaikie (2000) stating for instance that:

‘lip-service is paid to it but few researchers use it in its original conception as a validity check (mainly because convergence is very rare); it means so many things to so many people...’ (p.270)

As reflected in the analyses set out in Blaikie (2000); Johnson et al (2007); and Johnstone (2007), triangulation in its original incarnation in social science research was conceived as a means to converge on “the truth”, that is, to establish construct validity. I would argue, in line with the interpretivist stance that I adopt in this thesis, that the conceptualisation of triangulation is in itself flawed if its objective is to arrive at what I perceive as a very narrow perspective of “the truth”. As reflected in the research contained in this thesis, the pursuit of a singular notion of reality is a futile exercise when studying real world phenomena such as the policy process; a test of sound social science research instead is its ability to relate a coherent story that helps to extend our understanding of the real world. As such, triangulation as I use it to explore my research problem is better described in the words of Myers (2009:10) as: ‘...an excellent idea if you want to look at the same topic from different angles. It allows you to gain a “fuller” picture of what is happening’.

Multiple methods research fits well with the research questions and issues that I explore in this thesis and also complements North’s conceptual framework as discussed in Section 2.2. The complexities of the public policy process and its intrinsic political and socio-economic nuances cannot be fully articulated or analysed through quantitative models. In other words, “thick” description as termed by Geertz (1973) that can capture the richness of detail in the policy process does not fit well with clinical statistical generalisations. For instance, constructs such as mental models and path dependence which are integral to choice and decision-making in the conceptual framework I use, cannot be “measured” quantitatively. Instead, such constructs can only be “observed” and “described” using qualitative methods. In addition, at a practical level, limitations with respect to the quality and availability of robust time-series telecommunications sector data in Sri Lanka constrain analyses that require the application of rigorous quantitative methods such as regressions.

²⁷ According to Johnson et al (2007), the notion of triangulation in social science research was first introduced by Campbell and Fiske (1959) while the coining of the term is attributed to the work of Webb et al (1966) and the initial operationalisation of the concept to the work of Denzin (1978).

As such, and as will be described in detail later in this Chapter, the various facets of the policy making process in relation to privatisation, competition and regulatory governance in Sri Lanka in general (Chapter 4) are explored using qualitative techniques such as extensive document analysis, focus group sessions, and in-depth elite and other stakeholder interviews. The data/information collected through these methods is complemented by information drawn from secondary sources mentioned in Chapter 1 such as the WGI, the CPI, the DBI and the BCI. Similarly, the analysis of privatisation, competition and regulatory governance in Sri Lanka's telecommunications sector (Chapter 5) is conducted using the qualitative methods already mentioned above and the TRE method (a multiple methods technique), which consists of a stakeholder perception survey, extensive document analysis and stakeholder interviews for data collection, and simple statistical weighting and averaging in analysing the stakeholder perceptions survey. These methods complement and reinforce each other. Document analysis provides a broad foundation for my interviews and focus group session, and the TRE surveys are a useful technique to confirm views collected in the interviews and focus group session with respect to regulatory efficacy and governance.

3.3.2. Methods, sources and limitations

This sub-Section sets forth the details of each of my specific methods, including the type of information and data collected, how this information and data were collected and analysed, and the limitations of each method. The discussion in this sub-Section complements that of the previous sub-Section which sets out the philosophical underpinnings and the related concepts of subjectivity, reflexivity and positionality that are a part of my methods. In addition, this sub-Section relates my choice and use of these methods to the specific research problem and conceptual framework set out in my thesis. A brief overview of the specific methods is provided in Table 3.1 for the purpose of clarity.

Table 3.1. Research process: a summary of methods, sources and limitations

Method	Process		Sources		Limitations
	Data collection	Data analysis	Primary	Secondary	
TRE	1) Perceptions survey targeted at pre-specified stakeholder categories (via email; postal service; facsimile; telephone; face-to-face interviews); 2) Document analysis; 3) Informal interviews	1) Statistical analysis using Excel software; 2) Document analysis; 3) Discussions with peer research team members at several stages of the data analysis process; 4) Fine-tuning the analysis via: a) comments received from commentators at the various in-house colloquia, local workshops and international conferences organised by LIRNEasia; b) Feedback from survey participants on the country analysis	TRE survey data	1) Central Bank of Sri Lanka: Annual Reports; 2) Ministry of Finance and Planning: Fiscal Management Reports; 3) Sri Lanka Telecom Ltd.: Annual Reports; 4) Dialog Telekom Ltd.: Annual Reports; 5) TRCSL website; 6) Legislation (Acts of Parliament) relating to the telecommunications sector; 7) Print and online media articles; 8) Telecommunications company websites	1) Secondary data gaps: TRCSL's published data not updated; published data from telecom companies unlisted on the Colombo Stock Exchange not available; 2) In a few isolated survey responses, it was apparent that the respondents had assumed that the objective of the TRE exercise was to assess sector performance rather than regulatory governance
Focus groups	Group interview session with four sub-groups using multiple moderators and observers based on semi-structured questionnaire	1) Thematic analysis of my own notes on sessions based on questionnaire; 2) Discussions with peer research team members participating (as observers and moderators) in focus groups; 3) Analysis of summary note transmitted to focus group participants	"Thick" information collected via focus groups		A limited degree of reluctance on the part of the focus group participants to be open about their views; however, this problem lessened as the level of interaction amongst the participants and between me and the participants increased; not all participants returned the summary note
Elite interviews	One-on-one interviews using semi-structured questionnaire	1) Thematic colour-coding analysis of my interview notes based on questionnaire; 2) Some follow-up (in person/telephone) with the interviewee	"Thick" information collected via interviews		The issue of power/hierarchy was present in a few of the interviews I carried out with the interviewee's "attitude" preventing the collection of useful information; however, this problem was limited to a very small number of interviews conducted
Other stakeholder interviews	One-on-one interviews using semi-structured questionnaire	1) Thematic colour-coding analysis of my interview notes based on questionnaire; 2) Some follow-up (in person/telephone) with the interviewee.	"Thick" information collected via interviews		There was some level of selection bias as I picked interviewees that I had already established rapport with in relation to my work at IPS and at LIRNEasia

Method	Process		Sources		Limitations
	Data collection	Data analysis	Primary	Secondary	
Document analysis	Document collection from various sources, including government, other researchers, Internet, media	Synthesis, evaluation and analysis of information contained in documents based on themes underpinning my research questions and issues		1) Legislation pertaining to privatisation, competition, regulation and telecom in Sri Lanka; the Constitution of the Democratic Socialist Republic of Sri Lanka; 2) Official /government documents such as Policy Statements, Party Manifestos, various Working Group materials, Budgetary Speeches; 3) Publications by other authors on the subject of privatisation, competition, regulatory governance, telecommunications; 4) Worldwide Governance Indicators; 5) Worldwide Corruption Perception Indicators; 6) Doing Business Indicators; 7) LMD-Nielson Business Confidence Indicators; 8) Print and online media articles; 9) Grey materials	Self-reflexivity

3.3.2.1. TRE Method

The TRE method is a technique designed and used by LIRNEasia²⁸ to evaluate regulatory efficacy as it pertains to a particular country's telecommunications sector. As mentioned in Chapter 2 (sub-Section 2.3.1), the objective of this method is to get to a “thick” and rich understanding of regulatory governance through the perceptions of informed stakeholders in the telecommunications policy space. As such, this method echoes my interpretivist stance set out previously in this Chapter as well as the thinking that underpins my conceptual framework. The centrepiece of the TRE method, as will be detailed below, is stakeholder perceptions: how stakeholders perceive the rules (regulatory governance) that govern the telecommunications sector or what North conceptualises as “mental models”. Moreover, as stated in Chapter 2, the parsimonious and systematic design of this method makes it an extremely useful technique for exploring and getting to a meaningful understanding of my second primary research question and research issues in Chapter 5 of this thesis.

As described in LIRNEasia (2008a), Galpaya and Samarajiva (2009) and Melody and Samarajiva (2011), the TRE method does not aim to evaluate telecommunications sector performance. The rationale for this is that sector performance is the outcome not only of regulatory governance and efficacy but also of a vast range of international and country-specific economic and socio-political factors and that a comprehensive analysis of these various factors would be a costly exercise. Moreover, in the case of Sri Lanka in particular, the quality, availability and type of time-series data on the telecommunications sector also limit the possibility of such comprehensive analyses.

Instead, what the TRE method attempts to understand is how potential investors may perceive regulatory risk (which in turn relates to the regulatory governance process) in a particular country's telecommunications sector. In recognition of the fact that investor perceptions (mental models) can be subjective and also influenced by the inter-subjective perceptions of other key actors in the policy space, the TRE method was designed so as to elicit responses from three informed groups of observers (as detailed in Appendix 3.3): those directly involved in the telecommunications sector (for instance, operators), those observing the sector with broader interest (for instance, investment consultants), and those representing the public interest (for instance, the media). Designing the TRE method in this manner is also particularly useful in relation to the concept of triangulation described in the previous sub-Section. Specifically, the TRE

²⁸ See LIRNEasia (2008a) for more details on the TRE method and its applications.

method can get to rich and meaningful interpretations of the realities surrounding regulatory governance in Sri Lanka's telecommunications sector from multiple informed stakeholder perspectives.

The TRE method was originally piloted in Sri Lanka in 2004 (Samarajiva et al, 2005) to address the nexus between telecommunications regulatory governance and investment with respect to the fixed and mobile sectors; across three time periods (1993-1996; 1997-1999; and 2000-2002), and along five dimensions contained in the GATS Telecommunications Service Reference Paper (market entry, access to scarce resources, interconnection, tariff regulation, and regulation of anti-competitive practices). The results of the pilot project however, will not be used in this thesis for two reasons. First, the methodology used in the pilot study had shortcomings as acknowledged in Samarajiva et al (2005):

'TRE is based on perception. Ideally, TRE would be measured by collecting data on perception of TRE from a representative and informed group of respondents. That has not been done in this particular pilot study. The summary assessments are those of the senior author who has attempted to provide the reasoning behind the assessments in the text.' (p.146)

Second, my involvement in the TRE project, both as a part of my PhD field work and as a part of my professional research at LIRNEasia was in 2006 and in 2008. My personal experience with the "nitty gritty" of this method in my research process does not include the 2004 pilot. I extract my "thick" understanding of telecommunications regulatory governance through my own research experience (both in relation to data collection and data analysis) in the Sri Lanka country research team using the TRE method in the 2006 and 2008 TRE projects.

The TRE method was used by teams of country researchers in six countries (India, Pakistan, Sri Lanka, Indonesia, Philippines and Thailand) in 2006 and in eight countries (India, Pakistan, Sri Lanka, Indonesia, Philippines, Thailand, Bangladesh and Maldives) in 2008. The TRE process in 2006 and in 2008 included a formal cover letter (describing the nature of the project, the organisations associated with administering it, an introduction to the country researcher/s, and a confidentiality clause), a letter of thanks and a confidentiality agreement signed by the country researcher/s in adherence to ethical research practice.

The structure of the TRE perceptions survey is as follows. First, the assessment of telecommunications regulatory governance in the survey was based on a specific set of dimensions selected through several iterative discussions amongst and between the

country research teams. These iterative discussions helped to bring in and synthesise varied perspectives from an expert group of researchers; as such, “triangulation” through the various “mental models” of the individual researchers was a part of the TRE process. Based on the outcomes of these discussions, the TRE survey incorporated the five dimensions from the GATS Telecommunications Service Reference Paper used in the pilot study and added on universal service obligations (USOs) in the 2006 project and quality of service (QoS) in the 2008 project. The inclusion of these additional dimensions in 2006 and in 2008 was also a result of the feedback that was received from the presentation of the TRE results at expert meetings in the survey countries. (The sample TRE survey questionnaire for 2008 is attached in Appendix 3.4 of this thesis).

Second, the focus of the TRE survey was largely on regulatory governance pertaining to the fixed and mobile segments of the telecommunications sector. Broadband access was brought into the 2008 survey in an experimental fashion; to “test the waters” on this segment given that the emergence of this sector in Sri Lanka’s policy and regulatory space is a relatively new development. The fact that this segment is still in its embryonic stages in Sri Lanka was further illustrated by the fact that a majority of the questions on the broadband sector in the TRE survey carried out in 2008 were either left unanswered or elicited the unsolicited comment: “I do not know”. What this also means is that meaningful discourse on regulatory governance as it pertains to this segment is limited.

Third, the respondents were categorised into three informed stakeholder groups with the minimum number of responses specified as 12 and 15 in the 2006 and 2008 surveys, respectively. The surveys were administered using multiple modes: email, one-on-one meetings between the researcher and the respondent, mail, telephone and fax, with email being the predominant mode of administration in the Sri Lanka country case. The administration of the surveys was a highly labour intensive exercise, involving multiple reminder phone calls between me as the Sri Lanka country researcher and the respondents. However, the construct of positionality set out above – with me being perceived as a leading researcher attached to well-recognised research institutes such as LIRNEasia and IPS – proved to be extremely valuable in this process, as reflected in the relatively high response rates secured.

Fourth, in recognition of the realities of perceptions formation/ “mental model” construction, a “fact sheet” detailing key events pertaining to the regulatory governance process in the telecommunications space was attached to the survey questionnaire. This

fact sheet was strictly limited to one year, the year preceding the administration of the survey. Again, the decision to restrict the time frame of analysis to one year was linked to the fact that most perceptions are formed with the latest events in mind. The fact sheets compiled by me for 2006 and 2008 are contained in Appendix 3.2 of this thesis. The compilation of these fact sheets was based on document analysis (including media reports, press releases by the TRSCL and operator company reports as indicated in Table 3.1) and on the information I accumulated through informal conversations with key actors in the telecommunications policy space with whom I had established contacts over the years as stated in Section 3.1 (positionality). Clearly, my own perceptions – subjectivity and self-reflexivity – also contributed to the selection of regulatory governance events set out in the fact sheets.

Fifth, a “Respondent List” with the details of each respondent was created by the researcher. As per the ethical clause contained in the TRE method, these details had to remain confidential; anonymity of the survey respondents had to be guaranteed. As such, each respondent was assigned a unique response number (or code) corresponding to the respondent category and it was this number that was used in the analysis of survey data.

Each of the seven dimensions incorporated in the survey was presented using a five-point Likert Scale scoring technique. As depicted in the TRE questionnaire set out in Appendix 3.4, the respondents were asked to score each of the dimensions on a scale of 1-5, with “1” being “highly ineffective” and “5” being “highly effective”. Each of the three survey respondent categories was assigned an equal weight in calculating the TRE scores for each of the seven dimensions being evaluated. Finally, simple statistical averages of these weighted responses were taken as the final TRE score for each dimension. Moreover, the simple statistical average of all seven dimensions pertaining to the fixed and mobile segment for a given year were taken as the final TRE score for that particular segment and in that particular year. As such – and as will be further discussed in Chapter 5 (Table 5.3) of this thesis – a “TRE score” indicates the average perceptions of the three respondent categories on regulatory efficacy based on the specific dimensions.

Finally, the TRE scores for each country were looked at carefully by each country team, also taking into account document analysis (including the secondary data and information sources set out in Table 3.1) and the individual experiences of each member of the team. As a next step, the results were presented to a small group of country experts (outside of the research team) and sent out to all survey respondents in order to

triangulate the information gathered. These findings were then released to the media and presented at local and international workshops to get feedback on the usefulness of the TRE project in general and of the country analysis in particular. Whilst inter-country findings were also presented at these workshops, the important caveat that the TRE scores represented a particular political and socio-economic context was emphasised. As such, the TRE method places more value on interpreting country-specific TRE scores than on cross-country comparisons; generating a “league table” understanding of regulatory efficacy in the telecommunications sector is not the emphasis of the TRE project.

Although the TRE technique employs multiple methods as shown in Table 3.1 (multiple qualitative methods for data collection and analysis and simple statistical averaging for data analysis), at its core it is an inherently qualitative framework. A TRE score measures a respondent’s subjective perception of regulatory efficacy, translated by the respondent into a number on a Likert Scale. These scores attempt to capture the perceptions of key observers on a country’s telecommunications sector regulatory governance. However, as already mentioned in sub-Section 2.3.1, some elements relating to regulatory substance are also incorporated into the survey in order to provide context for understanding governance perceptions. In the real world, and consistent with North’s mental model construct, respondents are likely to be influenced by both regulatory substance as well as regulatory governance. The main objective of the TRE method is to focus on evaluating regulatory governance; the parsimonious inclusion of substance elements provides some real world context.

An important issue that was discussed extensively in the process of designing the TRE method was the meaning and usefulness of data and information in the research process. The usefulness of International Telecommunication Union (ITU) data in the context of getting to a “thick” understanding of a country’s telecommunications sector regulatory governance process was a key element in our discussions. Whilst acknowledging that ITU data is a comprehensive source for measuring sector performance (see for instance, ITU, 2007, 2008), we made a collective decision to design a method that would gather primary data: “thick” and rich data specifically focusing on telecommunications sector regulatory governance in a particular country.

In addition, we concluded that ITU data was based on definitions that were questionable in the context of real world circumstances. For instance, as set out in LIRNEasia (2007), the ITU definitions of fixed line telephony and of mobile telephony

do not capture the real world situation relating to these constructs (see for instance, ITU, 2008). The ITU definition of fixed line telephony fails to distinguish between installed lines and actual lines in use, and the definition of mobile telephony does not distinguish between a user and a subscriber, effectively ignoring the phenomenon of “shared access” mobile usage prevalent in developing countries. These limitations also apply to the data published by the TRCSL; in fact, the TRCSL does not set out clear definitions for the data it publishes.²⁹ As such, getting an even vague idea of how this entity classifies services requires a comparison of different documents on its website.³⁰

The TRE method is subject to some limitations. First, if the response rate is low overall or in particular observer categories, we would not be able to amass a full spectrum of regulatory efficacy perceptions. Second, the fact sheets reflected some unavoidable secondary data gaps due to incompleteness in TRSCL’s information and missing data from companies not publicly listed on the Colombo Stock Exchange (CSE). Third, as indicated in Table 3.1, although the objective of the TRE survey was to evaluate regulatory governance, the survey responses indicated that some respondents had considered issues of sector performance as well as regulatory substance in setting out their scores. For example, in a few instances, respondents had added on unsolicited comments indicating that these other parameters had influenced their thinking.

Nevertheless, in the case of Sri Lanka, I argue that the TRE analysis provided for a useful interpretation of ground realities relating to telecommunications regulatory governance for several reasons. First, the response rates were high in both years, providing a basis for meaningful, representative interpretation: the total number of questionnaires sent out in 2006 was 135 and the response rate was 75%; the corresponding figures for 2008 were 124 and 78%. Second, the feedback received from the respondents and from experts in Sri Lanka’s telecommunications space was extremely positive in that it corroborated the country analysis discussed in Chapter 5 of this thesis.

As previously noted, reflexivity proved to be an asset in this research process, allowing for “thick” descriptions and policy relevant findings; this exercise also emphasised the importance of dissemination in policy-based research. The

²⁹ See <http://www.trc.gov.lk/> for a flavour of what I perceive as a website that provides little meaningful and useful information in terms of data. [Accessed on 17 February 2010].

³⁰ For instance, what is termed a statistical document (<http://www.trc.gov.lk/information/statistics.html>) and what is set out as “service authorised” under different license categories (<http://www.trc.gov.lk/services/licenses/category.html>) need to be considered together to get some idea of TRCSL’s classifications. [Accessed on 17 February 2010].

recommendations are yet to be taken into consideration by the relevant authorities such as the TRCSL; however, this phenomenon – relating to what may be termed the policy gap – is widespread in Sri Lanka’s policy space and will be looked at in detail in Chapters 4 and 5 of this thesis.

3.3.2.2. Focus Groups and Interviews

Focus groups and interviews are two key research methods I utilised in gathering information for my analysis of the research questions and issues explored in this thesis. As described in works such as Blaikie (2000), Denzin and Lincoln (2005), Walsham (2006), Krueger and Casey (2009), Myers (2009) and Saunders et al (2009), both focus groups and interviews are time-tested qualitative methods useful in research that aims to obtain rich primary information. As set out in Myers (2009):

‘Interviews allow us to gather rich data from people in various roles and situations... The purpose of a focus group interview is to get collective views on a certain defined topic of interest from a group of people who are known to have had certain experiences.’ (p.121, 125)

As such, these methods also sit well with the interpretivist philosophy, inductive approach and case study methodology that underpin my research process. The relevance of these methods are further underscored by their ability to get to a “thick” and deep understanding of the policy process as it pertains to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector and of the real world application of North’s NIE framework.

These methods are subject to structural limitations as highlighted for instance in Myers (2009) and Leitch et al (2010). For instance, organising focus groups and setting up interviews can be costly, time-consuming and labour-intensive. Moreover, the researcher needs to be cognisant of the fact that issues of “trust” (amongst the participants of a focus group as well as between focus group participants and interviewees and the researcher), ambiguities in communicating the objectives of these exercises to the participants and interviewees, and problems in relation to gaining access to informed participants and interviewees can be extremely challenging concerns that need to be given due consideration in the design of both these methods. However, as highlighted in Section 3.1 above, these same issues of positionality, subjectivity, inter-subjectivity and reflexivity can also be viewed as the strength of qualitative methods such as focus groups and interviews. The ability of these methods to generate rich information can be

enhanced if the researcher carefully structures the design of these methods, including the process of information collection, analysis and interpretation of findings.

In this sub-Section, I set out the manner in which I designed these research methods in the context of my research problem, how I gathered and analysed the information obtained, and the problems I encountered in the process. The rich findings that I gathered through these methods will be set out in Chapters 4 and 5 of my thesis. Some of the discussion in this sub-Section refers to focus groups and interviews collectively for a number of reasons. First, as described in Myers (2009), focus groups are a group-based variation of one-on-one interviews. Second, although I conducted these methods in different settings, I used the same semi-structured questionnaire (attached in Appendix 3.6) to collect information. Third, I utilised a structured system for data analysis with both focus groups and interviews.

As Krueger and Casey (2009) note, effective questions generally evoke conversation and are clear, short and usually open-ended. The design of my semi-structured questionnaire was influenced by a number of factors. First, the questionnaire had to be linked as tightly as possible to the research problem being explored in my thesis. As such, key concepts such as privatisation, competition, regulatory governance, policy process, SOEs, telecommunications sector, and Sri Lanka's political and socio-economic environment had to be introduced in clear language, flagging key words and phrases that could also be used to analyse the information later. Second, in view of the fact that the focus group participants and interviewees that I selected for this process were informed stakeholders in Sri Lanka's policy space (with respect to privatisation, SOE reforms, competition and regulatory governance in Sri Lanka and in Sri Lanka's telecommunications sector), I also assumed that using language that was too simplistic was both unnecessary and could in fact be seen as under-estimating the intellectual capabilities of these individuals.

Third, the questionnaire had to be short in order to avoid interviewee or participant fatigue. I felt that a lengthy set of questions would undermine interviewees' and participants' attention span and interest in engaging in and completing the interviews or focus groups. Fourth, the questions needed to be sufficiently open-ended so as to allow for more free form discussion, discussion that I felt was extremely crucial in extracting "thick" and rich information. Fifth, I read a considerable volume of literature - mostly grey materials (see the sub-Section on document analysis below) - on the subject matter covered in the questionnaire as it pertains to Sri Lanka in order to provide a topical

context for the questions. These readings also enhanced my self-reflexivity in designing the questions, conducting the interviews and focus groups and analysing the information gathered.

Following the design of my semi-structured questionnaire, the next stage of my research process was to conduct a number of one-on-one elite and other stakeholder interviews and to hold a focus group session. As expressed in Cochrane (1998), there is much debate in the literature on the definition of what constitute an “elite”. What, for instance, are the criteria that set “elite” stakeholders in the policy space apart from “other” stakeholders? In my research, I borrow from Lilleker (2003: p.207) who states that, ‘Elites can be loosely defined as those with close proximity to power or policy making’. Taking this a step further, the working definitions that I used in mapping potential interviewees was based on my positionality vis-a-vis the selected stakeholders. As such, I define “elite” stakeholders as those with whom I have a hierarchical relationship (with me being positioned at a lower level on this ladder). In contrast, “other” interviewees are defined as those with whom I have a peer relationship as well as those who are positioned beneath me in the line of hierarchy within the policy and regulatory space.

In line with this working definition, I classified stakeholders such as politicians, senior government officials and donors as “elite”; and stakeholders such as lower-level government officials, academics, representatives of the private business community (such as telecommunications operators and members of the various Chambers of Commerce in Sri Lanka), private law firms, NGOs, consumer groups and the media as “other”. A table profiling the interviewees is contained in Appendix 3.5. I conducted 10 elite interviews and 20 other stakeholder interviews using the semi-structured questionnaire found in Appendix 3.6.

The interviewees were distributed roughly equally across the above categories, with the exception of politicians (due to access restrictions) and consumer groups (due to the limited number of these organisations in Sri Lanka). Thus, these interviewees represented a broad cross-section of stakeholder perspectives. I deliberately picked interviewees with whom I had already established a close rapport over the years. The rationale behind this selection was that I had access to these individuals and confidence in their credibility as sources of information, given my professional association with them over a long period of time. In addition, the access I had to “elite” stakeholders given my position at IPS facilitated the collection of sensitive data.

I conducted my elite and stakeholder interviews for my research over a time period extending from 2005 to 2009.³¹ Each of these interviews lasted for approximately one hour and was generally relaxed and informal. I began the interview with a brief description of my objectives in the interview, including the fact that the time frame being covered in the interview was 1977 to the date of the interview. Although a formal confidentiality statement/ agreement was not a part of the interview process, I showed the interviewees a copy of the University of Manchester ethical statement (contained in Appendix 3.1) and also verbally agreed to maintain anonymity with respect to names/designations. As mentioned previously, these interviews were all conducted on a one-on-one basis with just the interviewee and me in the room. I asked the questions – allowing for a free form discussion – and took down detailed notes, including key quotations. At the end of the interview, I briefly re-iterated the responses of the interviewee to confirm their accuracy.

As with the interviews, the focus group session that I designed was carefully structured so as to derive rich, qualitative information on my research problem using the semi-structured questionnaire contained in Appendix 3.6. I conducted the focus group session as both a part of my PhD research process as well as a part of the work I was doing at IPS. This session was held in the first quarter of 2008.

Although the focus group was simultaneously a part of my research work at IPS, I was the lead researcher and had prior permission from IPS to use the data for my PhD. Given that the micro-objectives of the research project and of my PhD were different moreover, I had ownership over the data I gathered and the manner in which I used the data for my PhD research. The findings from the focus group session were published in an internal IPS report based on a different set of policy questions. The focus group consisted of 20 informed participants representing key stakeholder categories (government officials in the policy and regulatory space, the private sector, academia, NGO's, consumer groups and the media). Representatives of the donor community were excluded. Given that this segment is generally perceived as “outside of the system” by other stakeholders in the policy and regulatory space, the inclusion of donors in this session could well have stifled what turned out to be a very lively, interactive and meaningful discussion. The group also did not include any of the individuals that I had

³¹ Although my field work extended for approximately five years, the actual time spent on the research process was less as I received several periods of official “interruption to PhD study” from the University of Manchester for personal reasons.

previously interviewed in my elite and other stakeholder interviews. A table detailing the profile of the focus group is contained in Appendix 3.7.

The session was held in an informal setting – a small seminar room – with the participants seated in four sub-groups, each consisting of five members. The composition of the four sub-groups was carefully planned by me prior to the session to ensure that stakeholder categories were equally represented, and a letter of invitation was sent out two months prior to the session, with follow-up telephone calls to confirm participation.³² The focus group session included four silent observers from the IPS with whom I had had extensive prior discussions on the objectives and process of the session. Their specific role was to sit in with the sub-groups, take notes on the sub-group discussions and participate in the post-session information analysis. I served as lead moderator with assistance from two additional IPS researchers.

The session, which lasted for about four hours, included the following stages. First, I provided a brief introduction setting out the objective and topic of discussion (that it was simultaneously a part of the work being done by IPS on privatisation, competition and regulatory governance in Sri Lanka and a part of my own PhD field work), the time frame of analysis (1977-2007), and noted that the names/designations of the participants would not be disclosed outside of the session.³³ Second, a ten minute slot was assigned for the participants to introduce themselves to each other (the lunch break also provided for further informal group interaction). Third, a single power point slide setting out the questions for discussion (see Appendix 3.6) was displayed on a large screen right through the entire session. Fourth, a one hour break-out session was assigned for the sub-groups to discuss the questions and post their answers/ideas on flip charts, followed by a break for lunch. Fifth, the post-lunch session began with a member of each of the groups providing detailed accounts on the debates, discussions and reasoning underpinning the flip chart notes, followed by an open session where the different sub-groups could challenge or ask questions from each other.

In the final part of the session, I, as the lead moderator, set out a thematic summary of the entire discussion on a power point slide. This thematic summary was a synthesis of the detailed notes that both I and my co-moderators took down during the sessions. The main objective for setting out this summary was to provide the participants

³² The original list had 25 participants.

³³ A confidentiality statement relating to the focus group session was also included in the invitation letter sent out to the selected participants.

with an opportunity to comment on the findings, modify their thinking and add any final thoughts.

The information gathered from the interviews and the focus group session provided a large amount of data from which I could explore my research questions and issues. I used the same basic framework to analyse both the interviews and the focus group responses, but there were some variations. According to Krueger and Casey (2009:p.115), there are four critical qualities of focus group (and by extension, interview) analysis: the analysis should be ‘systematic, verifiable, sequential and continuous’. Systematic analysis means that the analysis process is understood and can be articulated before the analysis takes place. Verifying the analysis is making sure that other observers or researchers can reach similar conclusions based on the same evidence. Ensuring that analysis is sequential means that questions follow a logical flow and that the researchers discuss and debrief following the session. Finally, analysis must be continuous: further analysis or research should incorporate the lessons of earlier analysis.

In evaluating the interview and focus group results, I utilised a systematic qualitative categorisation process. My categorisation framework is a form of “coding” as understood in qualitative academic research. As described in Myers (2009: p.167), ‘A code can be a word that is used to describe or summarize a sentence, a paragraph, or even a whole piece of text such as an interview’. Through this process, I distilled and summarised the large amount of raw interview information collected, making it more tractable for analysis and findings. My structured analysis is a variation of the “Classic Analysis Approach” as set forth in Krueger and Casey (2009). In the basic structure described by these authors, the researcher uses the raw information from the interviews and categorises individual responses by theme. Within each theme, the responses are further categorised between different types of responses. The researcher can then more easily view and analyse the findings.

I used a variation of this basic framework with the interviews and a somewhat different approach for the focus group results. For the interviews, as indicated in Table 3.1, my coding system was based on my semi-structured questionnaire outline. First, I divided the interview summaries by stakeholder categories. Next, I reviewed the summaries and notes of each interview and broke down the responses by question category. In doing this I looked for the key words and phrases that I had flagged in my questionnaire (for instance, privatisation, competition, regulatory governance, policy process, SOEs, telecommunications sector, and Sri Lanka’s political and socio-economic

environment). Finally, I color-coded the categories and responses to make comparisons between interviews easier. This coding approach allowed me to isolate key responses and to reconstruct useful quotations in the large amount of interview information.

Analysing the focus group responses was an easier exercise as there was only one such session. Working with the other observers and moderators from IPS, we first reviewed all the materials generated by the focus group (our own notes, the flip charts, the final thematic summary) and transmitted a summary note to the individual participants to allow them to make corrections in order to enhance the accuracy of the data. For my own analysis, I gathered all the materials, including the final summary note, and manually reviewed the information in light of the questionnaire categories and reconstructed useful quotations. Unlike with the interviews, I did not break down the responses and statements by stakeholder category as the groups represented a variety of viewpoints. Instead, I sought out key themes and findings (based on the semi-structured questionnaire) that reflected each sub-group's as well as the entire group's perspectives. Thus, I used the focus group output to draw out broad conclusions about stakeholders' views on the policy process pertaining to privatisation, competition and regulatory governance in Sri Lanka (and specifically in the transport, energy and telecommunications sectors); views that incorporated the intensive and substantive discussion that took place in the focus group.

The semi-structured questionnaire provided the framework for identifying common themes in evaluating aspects of Sri Lanka's policy making process. The interviews and focus group participants provided information on the strengths and weaknesses in particular policy making initiatives and in regulatory governance, the policy drivers embedded in the system, the key stakeholders and their incentives, and the possibilities for reform and change. Both the focus groups and the interviews gave me access to the mental models of key participants and observers in the Sri Lankan policy process as well as to a rich and "thick" source of data on how the policy process relating to privatisation, competition and regulatory governance in the country and in particular sectors was perceived and how it was working.

As will be discussed in Chapters 4 and 5, the perspectives of the focus group participants broadly corresponded with the views elicited in the individual interviews. As I set forth in more details in those Chapters, including by quoting particular interviewees and focus group participants, many stakeholders and observers believe that there are fundamental infirmities in the Sri Lankan policy making process. Rent-seeking behaviour

is the norm, and bureaucratic capacity as well as political will are woefully lacking. This negative path dependence cycle has been in place over successive political regimes, and the observers with whom I talked are not optimistic for fundamental reform and change.

3.3.2.3. Document Analysis

I utilised document analysis as an important mechanism not only as an independent method of gathering information but also as a building block for my other methods. As explained above, document analysis was used in formulating the TRE and interview/focus group questions. Documents provide an invaluable resource for background/contextualising my research, exploration of my research questions and issues, supplementation of information gathered through other methods, and confirmation of findings. As Myers (2009) notes, documents can cover a range of different forms and formats, ranging from legal contracts, to government reports, to personal notes, to emails. In my thesis, besides relying upon academic writings, I almost exclusively draw upon documents such as government publications, legislation, speeches, court case proceedings, media reports and importantly, grey materials – as indicated in Table 3.1.³⁴

The definition and practical applications of document analysis as a method of data collection and interpretation has been described variously by authors such as Seldon (1988), Blaikie (2000), Silverman (2001), Krippendorff (2004) and Prior (2008) for instance. Much of the literature on document analysis either explicitly or implicitly hinges on its origins as a quasi-quantitative method with an emphasis on data coding or developing “categories” based on the frequency of words in a particular text (“data mining”), either manually or using computer software such as Atlas/ti, Nudist and NVivo. This quantitative coding-based approach was not applicable to my research use of documents as I was not interested in the quantifiable characteristics of my source documents. Instead, I was interested in capturing the “thick” and rich information contained in these documents in line with my research problem and research philosophy set out in this thesis.

As such, I focused on extensively and intensively analysing a broad range of documents to extract information on the particular themes underpinning my research problem and research questions and issues. For instance, I reviewed court case hearings and determinations relating to the telecommunications sector to get a flavour of telecommunications regulatory governance; I studied media pieces on particular episodes

³⁴ A comprehensive list of these materials used in my thesis are contained in the “Primary Sources” section of my Bibliography.

in the policy and regulatory space to get a better understanding of issues of trust, corruption and public opinion on governance in the country; and I looked at grey materials to get to some of the deep-seated reasons for the gap between policy decisions and policy implementation.

According to Myers (2009), the researcher should consider four criteria in assessing the quality of documents: authenticity, credibility, representativeness and meaning. In my research, there was no question of the authenticity of the documents that I utilised. What I did have to evaluate was the credibility, representativeness and meaning of the documents I reviewed. As such, the working definition of document analysis I use in this research is a variation of what is conventionally recognised as a literature review in that I bring my own “mental model” (self-reflexivity) into the interpretation of the text whilst also attempting to unravel the social context within which the text is embedded (considering, for instance, factors such as the positionality of the author/s, the audience that the document targets and the larger time horizon – in a socio-political economy sense - within which the document is embedded). I would argue that in spite of what some may perceive to be a limitation – subjective reflexivity – this process enhances the understanding and analysis of the research problem.

3.4. Cross-Country Perceptions Rankings: Relevance and Limitations

In Section 3.3, I described the methods and sources I utilised in my research process. In my document analysis, I also drew from perception surveys conducted by various international organisations. These data sources require slightly more explanation as they are somewhat controversial quantitative measures – as will be described below.

Debates on the merits and demerits of world-wide, aggregate indicators based on perceptions surveys are abundant in the methodological literature; much of this discussion in the policy and regulatory space at least³⁵, is centred on rankings such as the Worldwide Governance Indicators, the Worldwide Corruption Perceptions Indicators and the Doing Business Indicators³⁶ referred to in Chapter 1.³⁷ In brief, the WGI database

³⁵ Indicators that embrace broader themes than those specific to my research questions and issues are outside the scope of analysis in this thesis: for instance, the measurement of broad-based market reforms (Loayza and Soto, 2003), of political institutions defined broadly (Beck et al, various years), and of national economic competitiveness (World Economic Forum, various years).

³⁶ Given that these indices focus rather narrowly – in relation to my research problem – on *business* regulations, I use them very nominally in my analysis.

³⁷ See for instance, Kaufmann et al (various, 2009), Iqbal and Shah (2008), Langbein and Knack (2008), and Thomas (2009) for a flavour of the debate on WGI; Galtung (2005), Thompson and Shah (2005, and Andersson and Heywood (2009) for a flavour of the debate on TI’s corruption indicators; and Berg and Cazes (2007) for a critique of the Doing Business Indicators.

contains time series statistics from 1996 on six dimensions of governance (voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law, and control of corruption across the world) using perception surveys targeting a broad range of stakeholders. Governance is defined by the authors in Kaufmann and Kraay (2008) as:

‘...the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.’ (p.6)

Whilst the authors explicitly acknowledge the margins of error and bias that are common to highly aggregated perceptions-based measurements, they assert that the high usage of this data by stakeholders that influence policy making in their respective countries is indicative of its value (Kaufmann et al, various, 2009). The main criticisms surrounding these indicators point to issues such the absence of construct validity, the dependence on subjective perceptions, and representation deficiencies (see for instance, Iqbal and Shah, 2008; Langbein and Knack, 2008; and Thomas, 2009).

The Global Corruption Perceptions Indicators developed by TI from 1995 are a set of composite worldwide country rankings on corruption, derived from perceptions surveys on ‘...the degree of corruption among public officials and politicians...as seen by business people, academics and risk analysts’ (Transparency International, 2004: p.4). Corruption is defined as the ‘misuse of entrusted power for private gain’ (Andersson and Heywood (2009: p.748) citing Transparency International (2006)). As argued in Andersson and Heywood (2009):

‘The CPI provides a snapshot of the views of decision-makers and business people, both local and expatriates, about the level of corruption in a country. That is an incredibly important indicator of the image a country conveys to investors and potential business partners. A poor score in the CPI is a clear signal that a government has to make drastic changes – and to be seen to be doing so.’ (p.757)

While this exercise combined with the various advocacy initiatives carried out by TI has undoubtedly placed the issue of corruption right at the centre of the global and national policy and regulatory agenda (Andersson and Heywood, 2009), it has also been subject to criticisms similar to those aimed at the WGI project.

My own take on this debate goes back to the discussion set out previously in this Chapter. I would argue therefore, that issues such reliance on subjective data, lack of

construct validity and problems of representation, raised by the critics of these data sets need to be reframed along the lines of the *practical usage* of these indicators. Clearly, these problems are not unique to these data sets; positionality and reflexivity are an inherent part of any qualitative data collection and analysis process. The questions I would pose instead relate to the *manner in which these indicators are used* in social science research. For instance, does the researcher use these indicators as the sole means of deriving conclusions; and how extensively are these indicators used by key stakeholders influencing policy and regulatory decisions?

In the specific context of my research process, I use these indicators to complement the “thick” primary data I collected using the methods set out in Section 3.3 above; as such, I build in sufficient checks and balances when using these statistics. Moreover, as observed in the Sri Lankan context, the wide publicity given to these indicators have in fact helped place issues such as governance, regulatory governance and corruption squarely in the middle of the policy and regulatory space.³⁸ Applying the words of Greene (2008) in relation to the social science research process in general, what matters is that any research methodology, method or source of information:

‘...*distinctively* offers deep and potentially inspirational and catalytic opportunities to meaningfully engage with the differences that matter in today’s troubled world, seeking not so much convergence and consensus as opportunities for respectful listening and understanding.’ (p.20)

3.5. Concluding Remarks

This Chapter has described the research process that I use to analyse the research questions and issues in this thesis. The discussion in this Chapter details my choice of research philosophy, approach, methodology and methods in line with my research problem set out in Chapter 1 and my conceptual framework set out in Chapter 2. The justification for and relevance of the research process that I use in my thesis lies in its ability to provide for a “thick”, rich and meaningful exploration of the subject of study – the policy process as it pertains to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka’s telecommunications sector.

The practical value of constructs such as reflexivity, positionality, validity, objectivity/subjectivity and triangulation in the research process as well as the usefulness

³⁸ This does not imply that the policy gap is reduced or that policy makers actually take decisions based on the information contained in these data sets. Problems relating to implementation are rampant in Sri Lanka’s policy and regulatory space in general as mentioned previously in this Chapter, stemming from factors that will be analysed in detail in Chapters 4 and 5 of this thesis. Instead, the publicity given to these indicators has contributed to wider discussion and debate on issues of governance and corruption in civil society circles.

of case study research are also analysed in this Chapter. A key argument posited in this Chapter, looking forward at the application of this research process in Chapters 4 and 5 and at critiques of worldwide aggregate indicators, is that research methodologies and methods have to be assessed on the basis of their practical usage and their ability to facilitate meaningful discourse in social science research. These are the considerations that guided my choice and applications of methods in the research that underpins this thesis.

The research methods that I detailed in this Chapter (TRE, interviews, focus group session and document analysis) provided a wealth of primary and secondary data from which I could extract rich findings. Placing these findings in the context of my research problem and conceptual framework and analysing them in a holistic fashion allow me to draw meaningful conclusions on my research questions and issues. The next two Chapters will set forth these findings and conclusions on privatisation, competition and regulatory governance in Sri Lanka in general and in Sri Lanka's telecommunications sector in particular.

CHAPTER 4: PRIVATISATION, COMPETITION, AND REGULATORY GOVERNANCE IN SRI LANKA: EXPLORING THE PUBLIC POLICY PROCESS

4.0. Introduction

The first three Chapters of this thesis identified the objectives and relevance of my research as well as the specific processes used to analyse the research questions and issues underpinning this study. As set out in the preceding Chapters, this thesis focuses on the public policy process in relation to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka's telecommunications sector drawing on North's NIE framework. The objective of this Chapter is to set forth and explore the policy process with regard to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007. The analysis in this Chapter aims to capture the socio-political and economic underpinnings of the policy process in these areas, including the drivers and obstacles to reforms, policy gaps and policy transfer, applying the conceptual framework developed in Chapter 2 and the specific research methods set out in Chapter 3.

This Chapter also sets out Sri Lanka's public policy context for the analysis of Sri Lanka's telecommunications sector in Chapter 5. It provides a basis for understanding the similarities and/or differences between the policy process (including policy decisions, outputs and outcomes) and regulatory efficacy in the country's telecommunications sector in comparison to privatisation, competition and regulatory governance in other sectors. Examples will be drawn from infrastructure sectors such as energy and transport as well as competitive sectors, based on the findings of my interviews, focus group session and document analysis.³⁹ The analyses contained in this Chapter and in Chapter 5 will be drawn upon in Chapter 6 of this thesis to shed light on the public policy process in developing countries, based on the "thick" and rich description and exploration of the Sri Lankan experience.

By setting out the Sri Lankan macro-economic and "macro-governance" context (which I conceptualise in line with what Levy and Spiller, 1994, 1996a,b refer to as "institutional endowments"), and analysing the evidence gathered through my research methods, I aim to answer my first research question set out in Chapter 1:

- What are the political, social and economic processes that have influenced public policy with respect to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007?

³⁹The banking and finance sectors are not within the scope of this thesis.

I also begin analysing several of my key research issues listed in Section 1.1. In particular, my evaluation of the evidence will shed light on:

- The relationship between the state and key institutions and organisations including the market, in the policy and regulatory space in Sri Lanka from 1977-2007;
- The linkages between the “macro” governance structure, the reform process and regulatory governance in Sri Lanka’s policy space;
- The role of historical (path dependence), cultural (mental models), trust and power factors in shaping the reform and regulatory governance process in Sri Lanka’s policy space;
- The role of ideology – specifically that of the donor and local epistemic communities- in influencing the reform and regulatory governance process; and the extent and impacts of policy transfer.

As mentioned in preceding Chapters of my thesis, my time frame of analysis, 1977-2007, is based on the following factors. First, 1977 is widely perceived as a landmark year with respect to development ideology, policy and practice in the Sri Lankan policy space following the launching of a massive economic liberalisation programme in that year (see for instance, Athukorala and Jayasuriya, 1994; Lakshman, 1997; and Sarvananthan, 2005). Second, the exigencies of data availability as set out in Chapters 1 and 3 of my thesis limit the period of analysis to 2007. However, information and data that I gathered through my interviews, focus group discussions and document analysis pertaining to the post-2007 years will be included in both Chapters 4 and 5 as it relates to my research issues and as it adds to a “thick” and rich understanding of my research questions.

This Chapter is structured as follows. Section 4.1 sets forth the socio-economic and political context of privatisation, competition and regulatory governance in Sri Lanka through an analysis of the macro-economic and macro-governance “environment” from 1997 to 2007. Section 4.2 explores specific policy episodes in relation to privatisation, competition and regulatory governance as it has evolved over the various political regimes during this time period. Significantly, my interviews and focus group findings were crucial in supplementing my document research for Sections 4.1 and 4.2.

Based on the background and findings set forth in Sections 4.1 and 4.2 combined with my interviews, focus group and document analysis, I draw a number of conclusions in Section 4.3 on the policy process as it pertains to privatisation, competition and regulatory governance in Sri Lanka. The “thick” realities of the policy process in Sri

Lanka analysed in this Section are explored combining the conceptualisation of the policy process described in Section 2.1 with North's framework in Section 2.2 (including the dynamic interaction of institutions, organisations, individuals; mental models; path dependence; interest group dynamics; and rent-seeking). This analysis is depicted in Figure 4.2. Finally, Section 4.4 lays out a number of challenges, drawing upon my research findings, on enhancing the efficacy of policy making, particularly in the area of regulatory governance, and on crucial policy issues such as policy transfer.

4.1. The Context of Privatisation, Competition and Regulatory Governance in Sri Lanka: 1977-2007

4.1.1. The macro-economic context

The Sri Lankan economy has displayed a remarkable degree of resilience in the context of a civil war that ravaged the nation for over 25 years and more recently in the face of the global financial meltdown that began in 2007. Annual average GDP growth has approximated 5% over the past 20 years and 6.9% from 2005-2007, even at the height of the conflict (see for instance, Institute of Policy Studies, 2008, 2009). A per capita GDP of US\$ 1062 in 2004⁴⁰ propelled Sri Lanka to a middle-income country status, a noteworthy achievement for a small (population of around 20 million), open economy in the midst of a fiscally damaging war (see for instance, Central Bank of Sri Lanka, 2005, 2006).

Other positive developments include the reduction of poverty rates (based on Poverty Head Count measures) from 22.7% to 15.2% between 2002 and 2006; the shrinking of the unemployment rate to a historical low of 6% in 2007 and an increase in net FDI from US\$ 234 million in 2005 to US\$ 548 million in 2007 (see for instance, Central Bank of Sri Lanka, various; Institute of Policy Studies, 2008). It is noteworthy that a significant quantum of this investment came from the telecommunications sector. As reported in Institute of Policy Studies (2008) for instance, Dialog Telekom, a leading telecommunications service provider in the country, was the single largest foreign investor in 2007 accounting for around US\$ 328 million of total FDI.

In addition, the country has been widely acclaimed in the international and domestic policy space since the 1970s as having high levels of human development in spite of relatively low per capita income (see for instance, Lakshman, 1997b, Abeyratne, 1998) and is well on track to achieve the Millennium Development Goals (MDGs) in health and education services (see for instance, Institute of Policy Studies, 2010b). The

⁴⁰ Per capita GDP stands at US\$ 1617 as at 2007.

exemplary management of public health services in the context of Sri Lanka's worst natural disaster, the Tsunami of December 2004, with no outbreaks of epidemic diseases combined with an average literacy rate of 90.8% as at 2006 are indicative of the country's success on the human development front (Central Bank of Sri Lanka, various).

The military phase of the civil war was officially over as at the 18th of May 2009, bringing with it a new wave of economic optimism. This optimism was captured for instance by an instantaneous high recorded at the country's stock exchange and also by a notable jump in the LMD-Nielson Business Confidence Indices (described in Chapter 3) from 88.66 in May 2009 to 160.56 in June 2009 (Media Services Private Ltd, various). Despite these optimistic socio-political and economic trends however, the country faces significant macro-economic challenges as discussed for example in Institute of Policy Studies (2010a).

On the economic front, the key challenges are as follows. As set out in Institute of Policy Studies (2009, 2010a), regaining macro-economic stability with a fiscal deficit of 7.7%, a current account deficit of 4.3% and an annual average inflation rate of 15.8% (based on the New Colombo Consumers' Price Index⁴¹) as at the end of 2007⁴² remains a difficult task. The drastic dip in Sri Lanka's gross official reserves from a level sufficient to cover 3 months of imports in August 2008 to a precarious position of 1.5 months of imports by December 2008, pushed the government to secure IMF assistance for an enhanced facility of US\$ 2.6 billion (approximating 400% of Sri Lanka's quota) in the form of an SBA in 2009 (see for example, Institute of Policy Studies, 2009, Ministry of Finance and Planning, 2010a).

This move on the part of the government came in the midst of a socio-political backdrop that has since 2005 grown to become increasingly sceptical of the international donor community. This scepticism was very evident in the focus group session I held. The spokespersons for two of the subgroups expressed the following:

“Our country has enough experts. We don't need the World Bank telling us what to do. These people only have text-book knowledge. This is why we are in such a mess.” (Quote 4:1)

“When we keep borrowing from these IMF and World Bank people we have to listen to all the conditions that they put on us. Our government has to take a firm stand. Look at India – those people tell the World Bank what to do.” (Quote 4:2)

⁴¹This restructured price index with a base year of 2002 is constructed with a revised and more representative basket of goods in comparison to its predecessor which had a base year of 1952.

⁴²The corresponding figures for 2005 stood at 8.7%, 2.8% and 11%, respectively.

These views were broadly similar across the stakeholder groups that I interviewed with the notable exception of academics and representatives of the private business community that had ties with multinational organisations. Two revealing remarks that I had noted in my interviews with these two stakeholder groups are as follows:

“Sri Lanka is a part of the global village. Ties with our multinational counterparts have helped us to increase our service standards. We have also benefited a lot from technology that we don’t have in this country. The government has to understand that we need people like multinationals, the World Bank, the ADB and the IMF. Our country is too small to act like we know everything. If the government wants to help the private sector it must not be short-sighted.” (Quote 4:3)

“The problem is that the government needs to justify the unpopular decisions that it takes. It needs a scape goat. Look at privatisation in this country. We all know that the top politicians wanted it. Why? Because there are so many opportunities for corruption in privatisation in this country. But these people also need to please the masses that don’t like the idea of privatisation. So the World Bank and its so-called conditionalities are a good excuse for the government.” (Quote 4:4)

Moreover, whilst the IMF loan may well provide incentives for tighter fiscal and macro-economic management⁴³, the lack of transparency surrounding the attached conditionality could back-fire on political and macro-economic stability. For instance, media reports suggested that the privatisation of loss-making SOEs was a feature of the Arrangement with contradictory messages coming from elites in the policy space and from different members of the incumbent regime.⁴⁴ These inconsistencies were particularly troubling in terms of policy credibility given the fact that one of the key features of the current government’s election manifesto was that privatisation would no longer be considered a policy option (Rajapaksa, 2005).

Another area of concern is the boosting of investor confidence by ensuring macro-economic stability as well as by addressing significant gaps in governance structures that

⁴³ An objective that the Fiscal Management Responsibility Act of 2003 has failed to achieve as at 2007 with notable gaps between numbers set out in the country’s annual National Budgets and the post-Budget actuals.

⁴⁴ For instance: Lanka Business Online (LBO) (2009) Loan Objective. *LBO*, 1 July. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=30976902> [Accessed on 25 November 2009]; LBO (2009) Secret Papers. *LBO*, 27 July. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=2004185389> [Accessed on 25 November 2009]; LBO (2009) Sri Lanka non-state sector to bear adjustment burden under IMF deal. *LBO*, 3 September. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=685577181> [Accessed on 25 November 2009]; LBO (2009) Sri Lanka IMF document suppressed by government decision: official. *LBO*, 23 September. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=1503133493> [Accessed on 25 November 2009].

impact on policy credibility and legitimacy. Monetary tightening by the Central Bank in early 2007 in response to inflationary pressures and the consequent sharp rise in interest rates has not been beneficial to private sector investment (see for example, Institute of Policy Studies, 2008). Exact statistics of the direct costs of the civil war (for instance, military expenditure, destruction of infrastructure and costs incurred to address the needs of refugees) and the indirect costs (for instance, loss of potential FDI flows, decreased tourist inflows and brain drain) are not officially published. However, an analysis by Kelegama (2006) posits that defence expenditure amounted to approximately 41% of GDP between 1984 and 1996. This piece further sets out that some of the key fallouts of the war include: foregone FDI flows (estimated at around 71% of the country's GDP in 1996), extensive damage of physical and social infrastructure (estimated at approximately US\$ 1 billion in 1995), the loss of human lives (productive human capital) by death, physical disability and mental trauma, and a break-down in the law and order of the country in general and in conflict areas (the Northern and Eastern Provinces of Sri Lanka) in particular.

The global indicators referred to in Chapter 3 of this thesis present a mixed picture on governance, corruption and the climate for business in the period being researched in this study. Whilst these aggregate findings will be set out in brief here as a broad benchmark, the conclusions on the research question and issues being analysed in this Chapter will draw largely on my own field work using interviews, focus group evidence and document analysis. As per the WGI database pertaining to Sri Lanka⁴⁵, the country has demonstrated improved governance rankings (between 1996 and 2008) in the dimensions of Government Effectiveness (40.8 to 46.9), Rule of Law (51.9 to 54.5) and Control of Corruption (45.1 to 54.1) whilst falling back on Voice and Accountability (41.1 to 33.7), Political Stability (5.8 to 2.9) and Regulatory Quality (63.9 to 44.4). The CPI compiled by Transparency International indicates that Sri Lanka's score has dropped from 3.5 (placed 67th out of a total of 145 countries) to 3.2 (placed 92nd out of 180 countries) to 3.1 (placed 97th out of 180 countries) in 2004, 2008 and 2009, respectively.⁴⁶ Focusing largely on the area of business regulations, the DBI saw Sri

⁴⁵ See the following websites for details of the construction of these indices (at a 90% confidence level and using percentile rankings): <http://info.worldbank.org/governance/wgi/pdf/c129.pdf> and http://info.worldbank.org/governance/wgi/sc_chart.asp#. [Accessed on 25 November 2009].

⁴⁶ See the following websites for details of the construction of these indices: http://www.transparency.org/policy_research/surveys_indices/cpi/2004, http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table and http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table. [Accessed on 25 November 2009].

Lanka's ranking falling from 75 out of 155 countries to 101 out of 178 countries between 2006 and 2008.

The general environment of uncertainty prevalent during the war has also had a significant impact on infrastructure development – both physical and social, particularly in the Northern and Eastern areas of the country and also more generally across the nation⁴⁷ (see for instance, Institute of Policy Studies, 2010a). According to the Central Bank of Sri Lanka (2003/2004, various), there are very strong disparities in income levels and development between the country's Western Province, which accounts for nearly half of Sri Lanka's GDP, and the other eight Provinces in the country. Infrastructure and service delivery (such as electricity from the national grid, pipe-borne water, telecommunications facilities and road development) in the Western Province are well above the national average. As such, bridging infrastructure gaps and addressing regional disparities in the incidence of poverty remains a significant challenge to Sri Lanka in the post-war years.

4.1.2. The “macro-governance” context

This sub-Section discusses Sri Lanka's “institutional endowments” drawing from the framework established by Levy and Spiller (1996b) and detailed in Chapter 2. The institutional endowments/ macro-governance context set forth in this sub-Section include executive, legislative and legal institutions and the country's bureaucratic capacity. Understanding Sri Lanka's macro-governance environment is an important component in exploring the research questions and issues set out in Chapter 1 of this thesis.

Constitution, electoral processes and coalition politics

The broad parameters of public policy in Sri Lanka are enshrined in the country's Constitution. Sri Lanka has had three Constitutions since gaining independence from British colonial rule in 1948. The analysis contained in this thesis focuses only on the current Constitution – The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 (see Government of Sri Lanka, 1978)– as it pertains to the research questions and issues being analysed. The Constitution of 1978 is the brainchild of the right-wing political regime, the United National Party (UNP) government that swept into power in 1977 with an unprecedented landslide victory, securing a four-fifths majority in Parliament (see for instance, De Silva, 2003, 2005). This massive electoral victory had both economic and political roots. On the economic front, years of state domination, over-regulation and inward bias had resulted in a largely stagnant economy; on the

⁴⁷ See Appendix 4.1 for a geographical map of Sri Lanka.

political front, a class-based insurgency in 1971 stemming from disparities in a sluggish economy was violently squashed by the government leading to mass disaffection towards the ruling regime (see for instance, Dunham and Kelegama, 1994, 1997a).

The Constitution of 1978 is a blend of the American/French Presidential and British Parliamentary structures of government (see for instance, De Silva, 1979; Coomaraswamy, 2003; and De Silva, 2005). The Constitutional revision of the electoral process⁴⁸ from a first-past-the-post (FPTP) to a proportional representation (PR) system in an attempt to prevent the emergence of Parliaments with huge majorities has resulted in a phenomenon of coalition-party politics with no single party having been able to secure a majority to form a government.

The need to cater to the assorted socio and political economic ideologies of multiple parties and to their pork-barrelling constituents under the PR system has fostered a syndrome of political patronage and embedded interest groups that have in turn been a hindrance to cohesive policy making. Thus, as will be discussed further in this Chapter, public policy in the 1977-2007 years has by and large been piecemeal in nature. The prevalence of this sub-optimal and partisan-based decision-making in relation to SOE reforms was highlighted in the focus group session that I held. The responses from all four sub-groups, based on the semi-structured questionnaire that I used for the focus group discussion and from the free-form intra and inter-group discussions, suggested a general consensus amongst the participants. Some key remarks that I took down in my detailed notes during this session included the following:

“The biggest problem in these state enterprises is political interference. These politicians make all sorts of promises during election time to win elections. Then they have to find jobs for all the people who helped them win. Most of these people don’t do any work when they come to office. But they still get paid. This is very unfair. But the government won’t do anything about this problem because these people are their friends and they need them.” (Quote 4:5)

“Every government in Sri Lanka is the same. They all promise lots of things when they are campaigning. But they forget all this when they get elected. The only people they listen to are the rich people – like the people in big private sector companies. They listen to these people because these people give them a lot of money for election campaigns. These campaigns are a waste of money. And the politicians and the rich people make a lot of money during these campaigns. After the elections all these governments only listen to these powerful people.” (Quote 4:6)

⁴⁸ As at 2007, Sri Lanka has 22 electoral districts.

The SOE sector and public sector administrative capacity

Coalition politics and the need to placate various interest groups have also had a negative impact on the efficiency of the public service (see for instance, Wanasinghe and Gunaratna, 1996, Wanasinghe, 2001). Much of the 1977-2007 period witnessed a proliferation of ministries (the number of ministries increased from less than 30 in 1990 to 67 in 2006), the duplication and overlapping of ministerial functions, and a bloated bureaucracy at a significant cost to state coffers and at the expense of capital expenditure on physical infrastructure (see for instance, Dunham and Kelegama, 1994; Kelegama, 2000; and World Bank, 2006). As pointed out in World Bank (2004), Sri Lanka has the largest per capita bureaucracy (civil servants per 100 population) in South Asia – with the figures being 3.9, 1.5, 1.2 and 0.6 in Sri Lanka, Pakistan, India and Bangladesh, respectively.

The SOE sector which accounted for over one-third of investment and for approximately 40% of formal employment in 1977 (Kelegama, 1997) continues to dominate the economy. Public sector employment as a percentage of total employment grew from 13.2 to 13.8 between 2005 and 2007 (Central Bank of Sri Lanka, various), even after previous episodes of SOE reform, including privatisation in the post-1977 years. Consistent with the works of authors such as Cook and Uchida (2001), Parker and Kirkpatrick (2003) and Nellis and Birdsall (2005) referred to in sub-Section 2.3.1, the problem lies not in ownership per se but rather in the management of these entities. The type of principal-agent dynamics that have been embedded in the public sector over the years has resulted in the emergence of bloated, loss-making SOEs. The findings from my interviews and focus group session provided more “thick” information confirming this state of affairs. A useful remark from one of my elite interviews with a junior Parliamentarian (which also confirmed the general perceptions of the academics that I interviewed) sets out the following:

“We have to take a good look at privatisation in this country. The main reason for privatisation is because the government cannot afford to run these organisations. We have a huge budget deficit. The government needs money. One of the quickest ways to get money is by selling off state assets. The government is not interested in what happens to these organisations after privatisation. They are just passing the buck to the private sector. See what happened with the privatisations from 1989 to 1993. The government told the private sector that they could not retrench any workers. That was an order from the highest level of government. So all the inefficient practices that were there in these state organisations were just landed on to the private sector. The people that bought these organisations also did not protest. Why? Because they bought these assets for a song. Now see what has happened to those

organisations. Even the Parliament debates are talking about asset stripping.”
(Quote 4:7)

This line of thinking was also expressed in the focus group session in relation to the bus transport sector. To cite a meaningful interaction between two of the participants:

“Bus transport in this country is a mess. Even in India people can travel in public transport without a problem. Here there are no timetables, no proper fare structures. When you get into a bus you don’t know whether you will even reach your destination in one piece. We all know this. We can see this on our roads.” (Quote 4:8)

“We all know why bus transport is a mess. It is all because the government decided to privatise this sector. The government made a lot of money by privatising. The private bus owners and the top people in the government are on one side. These people are all corrupt. They don’t care about management practices. They don’t care about the people who travel in buses. They only talk about regulation. Where is the regulation? The regulator can’t do anything. They are scared of the bus owners and the politicians.” (Quote 4:9)

The murky governance environment associated with a massive public sector has also led to increased bureaucratic red tape in public service delivery, impediments to the ease of doing business in the country and a socio-political climate conducive to corruption/rent-seeking as reflected in the evidence from my interviews and focus group session cited above and as argued in works such as Wanasinghe and Gunaratna (1996) and Wanasinghe (2001). A one-off exercise in assessing the enabling environment for business at the local and Provincial Council (PC) levels through the construction of an Economic Governance Index (EGI)⁴⁹ (Asia Foundation, 2007) confirms the conventional wisdom that the Western Province tops the scale on average. Moreover, the EGI also indicates that better regulatory governance - by reducing informal charges and enhancing transparency and participation, for example – is as important as the quality of physical infrastructure in a given locality.

As argued in works such as Wanasinghe (2006), a half-hearted attempt at decentralisation under the 13th Amendment to the Constitution (a knee-jerk response to the North-East conflict implemented as a part of the Indo-Lanka Accord of 1997 where Indian military assistance was made conditional on policies to devolve power to the

⁴⁹ The EGI assesses the local business climate in 48 Municipal and Urban Councils – in 7 Provinces – along 10 dimensions: registration, permits and licenses; land access and property rights; transparency and participation; regulatory environment, compliance and cost; infrastructure and business services; tax administration, burdens and services; legal institutions and conflict resolution; government attitude towards business; informal charges, favouritism and discrimination; and crime and security.

Provinces) further compounded the problem of an inefficient bureaucracy.⁵⁰ The socio-political and economic opportunity cost of this experiment in decentralisation has been high (see for instance, Institute of Policy Studies, various). First, whilst the 13th Amendment sets out Central, Provincial and Concurrent powers of governance, most functions – including the subject of telecommunications – remain under the purview of the Centre as per the Constitution of Sri Lanka.

Second, fiscal decentralisation has tended to be an illusion with PCs depending on the Centre for over 75% of their financing needs (Waidyasekera, 2004). Provincial expenditure amounts to just 7% to 10% of the Central budget and the limited funds allocated to these regional authorities have a direct impact on physical and social infrastructure service delivery. A disturbing feature of this system of governance is the perpetuation of geographical disparities with regions such as the Western Province, which as mentioned above, accounts for nearly half of the country's GDP having an edge over the less-affluent Provinces in terms of self-financing by way of taxes (Central Bank of Sri Lanka, various; Institute of Policy Studies, various).

Third, successive regimes have tended to perceive decentralisation as a threat to centralised political power that provides the space for influencing and manipulating the polity. As stated in Wanasinghe (2006):

'There was no serious attempt made, in the setting out of these lists of functions, to precisely define the responsibilities of each of the different levels of the polity in regard to each function. The outcome has been a severe degree of confusion in regard to the management of the specific functions – with each level of governance seeking either to grab management roles for itself or to evade such roles where politically or bureaucratically convenient.' (p.6)

Drawing from North's conceptual framework and the phenomenon of principal-agent dynamics detailed in Chapter 2, I would argue that this governance structure – with ambiguities in management responsibilities and blurring of lines of accountability, has in fact created perverse incentives in terms of processes of service delivery. The prevalence of this phenomenon was also highlighted in the findings of both my interviews and my focus group discussions. Following from the interactive focus group conversation pertaining to the bus transport sector cited above (Quotes 4:8, 4:9), another focus group participant expressed this view:

“On top of all these problems with bus transport, nobody knows whom we are to complain to. The National Transport Commission is the regulator. But they

⁵⁰ As of 2007, Sri Lanka had three layers of governance: the Centre, Provincial, and Local (including Municipal Councils, Urban Councils and Village Councils).

are invisible. When we go to the Ministry they tell us that we have to lodge our complaints at the Provincial Council. When we go to the Provincial Council they tell us that their hands are tied. That we have to go back to the Minister if we want anything done. These Provincial Council people sit and complain about the 13th Amendment. We don't care about any Amendment. All we want is a good bus service. Now only the rich people and the politicians can travel in comfort." (Quote 4:10)

As also emphasised in my stakeholder interviews with lawyers (including a former government regulatory attorney), formal mechanisms (for instance, service contracts that clearly define property rights) by which citizens (principals) can hold service providers (agents) accountable for non-compliance are relatively ineffectual in a socio-political environment where neither public-interest litigation nor consumer rights tribunals are common features.

Voice, trust and accountability

The gaps in formal institutions detailed above (described as "formal rules" in North's NIE framework depicted in Figure 2.1) combined with a "low-trust" social canvass (Fukuyama, 1995 as discussed in Chapter 2) that undermine the formation of informal trust based pacts (described as "informal norms" in Figure 2.1) and the embedded culture of political patronage described above has led to a situation where those with stronger political connections also have better access to services. This situation is also evidenced by my research findings as set out in Quotes 4:6 and 4:10 above. Decades of civil conflict in Sri Lanka have fostered inter and intra-community distrust and resulted in a fragmented society. In the language of North, the "mental models" embedded in the Sri Lankan polity are not conducive to cohesive forms of social trust that underpin collective action/ a shared public interest. Thus, as set out throughout this Chapter, the conceptualisation of power dynamics in (Hay, 1997) set out in Chapter 2 is a more useful template for the analysis of public policy in Sri Lanka.

A position paper reflecting the views of civil society (Weliamuna, 2006), points to the additional problem of weak fiscal accountability mechanisms that further erode investor and public confidence in the systems of governance. Whilst formal institutions/structures are in place, including Parliamentary committees such as the Public Accounts Committee (PAC) and the Committee on Public Enterprises (COPE), legislation such as the Fiscal Management (Responsibility) Act No.3 of 2003, and Constitutional provisions such as Article 148 that specifically sets out that Parliament is to have full control over public finance, the reality over the years points to a huge policy gap in this area.

As specifically pointed out in the stakeholder interviews with members of the academic community and the media that I conducted for this study, evidence of the weakness in public finance accountability and transparency is seen in the fact that meetings of both PAC and COPE are conducted in camera, that budgetary estimates set out by successive regimes are rarely adhered to with provisions under a supplementary budget process being used to increase fiscal expenditure, and that public finance is subject to “exploitation” in pre-election periods with “goodies”/ concessions being handed out to secure political patronage. As expressed by a representative of the media:

“The government claims to be transparent. But we are very often not allowed to attend Parliament. Even though the government says that the proceedings are open, their body guards and other characters chase us out. This is all just an excuse to do what they want without the public knowing.” (Quote 4:11)

These perceptions were also highlighted in my interview with an academic who had previously been advising the government on the national Budget.

“As professionals we develop Budgets based on Sri Lanka’s fiscal situation and development priorities. But in the end the Budget that is presented to the people is very different. Politicians throw in all sorts of goodies to make the voters happy. This situation is worse because we have a coalition government. After all this why are we surprised when we can’t make ends meet?” (Quote 4:12)

Another perilous phenomenon undermining good governance, accountability and transparency in general, highlighted in the interviews that I carried out, is the absence of freedom of information (FOI) legislation. Although key players in the policy and regulatory space including judges of the Supreme Court of Sri Lanka⁵¹ and the academic community⁵² have emphasised the need for FOI legislation, and while various committees have been set up to advise the government on drafting such legislation over the years, there is a huge lacuna in this area.⁵³ The undermining of media freedom and citizens’ expression of views - described by (Shah, 2007b: p.234) as ‘mechanisms of citizen voice’ – demonstrates an element of path dependence with successive regimes since 1977 falling short in this area.

⁵¹ Lanka Business Online (2008) Sri Lankan judge calls for freedom of information law. *LBO*, 25 August. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=211378969>. [Accessed on 25 November 2009].

⁵² Edrisinha, R. (no date) *The Case for a Freedom of Information Act in Sri Lanka*. [Online] Available from: <http://sanvada.org/policyanalysis/sanvadaFreeInfo5/Freedom%20of%20Information%20Rohan%20Edirisinghe.pdf> [Accessed on 25 November 2009].

⁵³ The right to information is not explicitly set out in the 1978 Constitution. However, case law precedents, specifically some judgments of the Supreme Court, have held that Article 14(1) (a) which refers to “the freedom of speech and expression including publication” implicitly provide for FOI.

This culture of political authoritarianism stems from another imprudent feature of the 1978 Constitution: the superimposition of an all-powerful Executive Presidency endowed with judicial immunity and minimal accountability to the legislature (Parliament) (see for instance, Government of Sri Lanka, 1978; Wijesinha, 1991). In spite of arguments propounded by the architects of this Constitution that it enshrines strong checks and balance mechanisms with adequate separation of powers amongst the Executive, Legislature and Judiciary⁵⁴ (De Silva, 2005), the post-1978 years have seen the locus of power focused on the President. Under the existing governance framework, the President can only be removed if impeached by way of a two-thirds majority in Parliament. Although successive regimes since 1994 have made Constitutional change a key feature of their electoral campaigns and policy statements (see for instance, Bandaranaike Kumaratunga, 1995; Rajapaksa, 2005), the inability to secure the two-thirds majority required for an overhaul of the Constitution (under the PR system described above) has undermined these efforts.

The discussion on Sri Lanka's "macro-governance" context so far suggests that there have been little incentive for the incumbent President to make a concerted attempt at Constitutional change. The short electoral term of six years combined with coalition politics, political patronage and the relative "silence" of the citizenry has instead created incentives for nepotism, crony capitalism and the further entrenchment of power in the Executive Presidency. Ensconcing power in the Executive Presidency per se may not have had negative impacts on governance if the Sri Lankan polity had the space to exert bottom-up pressure. As mentioned above the repression of dissent has been a key societal feature in the 1977-2007 years with only the 1994-2001 period being different in this respect.

The discouragement of "voice and expression" has simultaneously fostered a culture of apathy amongst the citizenry with the war also having taken its toll on the mind-set of the people, drawing their attention to "bread and butter" issues such as the rising cost of living as opposed to the right to dissent. The sentiment expressed in Quote 4:11 above was similar to that set forth by a leading member of Sri Lanka's NGO community whom I interviewed for my research.

⁵⁴ The Executive comprises the President and the Cabinet of Ministers. The latter is nominated by the Prime Minister (the leader of the party that secures a majority in Parliamentary elections held every 5 years) and appointed by the President. The Legislature is made up of 225 members, representing the political parties that contest Parliamentary elections, and members of the Supreme Court are appointed by the President.

“The political signs in this country are not good at all. We are all afraid to talk, to dissent in any way. This is not new. We faced this in the 80s and we are facing this now. There is no room for civil society action. The masses are struggling to live with the cost of living. Trade unions are divided. Anyway most of these trade unions have been bought over. People with power can do as they please. The rest of us have to be silent.” (Quote 4:13)

The misuse of Presidential powers in manners inimical to good governance began with the four-fifths mandate given to the 1977 regime. The demonstrated popularity of this newly elected regime combined with the required two-thirds majority required to amend the Constitution resulted in the passing of Amendments that undermined the principles of good governance – specifically the 3rd and 4th Amendments to the Constitution which allow for the President to seek a further mandate in four years (as opposed to six years) and to dissolve Parliament in one year (as opposed to five years), respectively. The ramifications of these measures are reflected in the following episodes, pointed to in works such as Wijesinha (1991), Abeyratne (1998), Bastian (2003), Coomaraswamy (2003) and further evidenced through my interviews:

- 1982: The Executive President seeks a second term under the 3rd Amendment; wins the election promising the people that he would also conduct Parliamentary elections; contrary to the election mandate, the President resorts to a referendum (using Article 86 of the Constitution) on the pretext of a Naxalite plot being hatched against him to extend the existing Parliament; homes of members of the judiciary that dissented to the Supreme Court ruling on the referendum are stoned; trade unions’ right to strike is denied; press freedom is curtailed; and the civic rights of the opposition leader are removed for apparent violation of good governance in the 1970-1977 period by extra-judiciary means endorsed by the President.
- 1989-1993: Heavy repression of media and citizen freedom using the North-East conflict and a Southern class-based insurrection (similar to the uprising in 1971 mentioned previously) as justification; ruthless assassinations of political opponents; prevalence of a virtual political dictatorship.
- 2001-2004: A period of cohabitation, with the President and the Prime Minister coming from two different parties for the first time since 1977 is abruptly halted with the President dissolving Parliament using the 4th Amendment to the Constitution in January 2004.
- 2005-2007: Path dependence continues in the area of voice and accountability – repression of media freedom and civil society dissent; the impediments to bottom-up pressure foster a governance milieu prone to bribery and corruption.

The legal system and regulatory governance

The role of the judiciary in macro-governance is of particular importance in relation to regulatory governance - which as mentioned in Section 1.1 of this thesis includes the formal and informal processes by which regulatory decisions are made; independence and accountability of the regulator; relationship between the regulator, policy makers and other key individuals and organisations in the regulatory space, and transparency and predictability of the regulatory process. In contrast (and relative to) the other two branches of government, the Judiciary has remained what a member of the media that I interviewed for my research referred to as “the last bastion of democracy” (Quote 4:14) available to the citizenry. Whilst the Judiciary has by and large been insulated from the rampant abuse of power in the wider macro-governance setting and has displayed a remarkable degree of independence in the period being researched in this thesis, the legal system has its own share of weaknesses.

A major shortcoming in the legal framework is the absence of judicial review of legislation (see for instance, Pinto-Jayawardena, 2008), an issue of extreme importance in the context of the research questions being addressed in this thesis. The principal legal institutions governing policies on privatisation, competition and regulation are the Acts of Parliament. It is these pieces of legislation that are used to set up ex-ante and ex-post regulatory agencies and to lay out the rules with respect to the design and implementation of regulation and the accountability mechanisms surrounding the regulatory process.⁵⁵ As at 2007, Sri Lanka only has a system of pre-enactment review: when a Bill is published in the government Gazette the citizenry has a two-week period to challenge it before the Supreme Court; challenges to an Act are explicitly disallowed in the Constitution, and any amendment to an Act requires a two-thirds majority in Parliament.

Regulatory governance in Sri Lanka also faces problems of independence, accountability and transparency, constructs already discussed as they pertain to my research problem in Chapter 2 of this thesis. These problems are evidenced in several episodes linked to ex-post agencies such as the competition authority and ex-ante utility agencies such as the transport regulator (see for instance, Quotes 4:9, 4:10 above) and the telecommunications regulator (issues relating to the telecommunications regulator will be discussed in Chapter 5 of this thesis).

⁵⁵ The Constitution does not make specific reference to issues regarding privatisation, competition and regulation, and there is no constitutionally defined role for the courts in these areas, excepting instances that involve matters of fundamental rights such as biased hiring/firing practices.

Regulatory independence as conceived by developed countries and as described in Minogue (2006) is not a suitable benchmark to evaluate the degree of regulatory independence in countries such as Sri Lanka where regulatory agencies are under the auspices of the state or ‘inside government’ as termed by Minogue (2001a: p.4, 5). The term I would use instead is one I gathered in a stakeholder interview with an academic (member of the epistemic community) who has also been involved in advising the government on regulation in the utility sectors. This term, “workable independence” (Quote 4:15), describes a regulatory process that prevents political capture (the degree of direct political involvement in processes such as appointments, removals and reporting structures in regulatory agencies, and the degree of financial autonomy secured by these agencies) and prevents regulatory capture by operators (the degree of credibility as perceived by stakeholders in the regulatory space, through maintaining transparent channels of communication with the citizenry and minimising policy gaps).

Unfortunately however, even “workable” regulatory independence has remained an elusive goal in Sri Lanka in the 1977-2007 years in the case of the agencies referred to above with accountability and functions such as appointments/removals being assigned to a single Minister under the relevant Act of Parliament (see for instance, Government of Sri Lanka, 1979, 1987a, 1991b, 1996b, 2003a). With the exception of the telecommunications regulator, the other agencies are dependent on the government for funding, a phenomenon that has had a negative impact in terms of technical capacity with low salary scales preventing the hiring of skilled professionals.

Some examples drawn from my field work include the fact that the competition agency which until 2002 had a broad mandate to investigate and monopolies, mergers and anti-competitive practices was stripped of its powers with regard to monopolies and mergers based on an argument propounded by the incumbent government that the entity lacked the technical skills to deal with “complex” competition policy issues (see for instance, Indraratna, 2004). Whilst the regime of that time issued press releases to the effect that another agency would be set up to deal with these complex issues, as at 2007, there is no comprehensive competition policy framework in Sri Lanka. Moreover, as pointed out in the focus group session I held (see Quotes 4:9, 4:10), the transport regulator has, since its establishment in 1991, been deficient in professional skills and lacking legitimacy in the eyes of the players in the transport policy and regulatory space.

The only exception to this dismal state of affairs with regard to regulatory governance is the Public Utilities Commission of Sri Lanka (PUCSL) set up in 2002 as

an umbrella body to facilitate multi-sector regulation – initially of water and of electricity with provisions to add on other sectors as reforms progressed (Government of Sri Lanka, 2002b). The principal feature of this piece of legislation that endows it with the potential for good regulatory governance is the checks and balance mechanism built into the reporting/accountability framework in an attempt to sever linkages between partisan politics and regulatory governance.

The PUSCL is governed by the Constitutional Council (CC) set up under the 17th Amendment to the Constitution with the CC comprising the Prime Minister, the Leader of the Opposition, the Parliament Speaker (as *ex officio* members), a nominee of the President, five members appointed by the President on the advice of the Prime Minister and the Opposition Leader, and one member appointed by the President and nominated by parties other than those to which the Prime Minister and the Opposition Leader belong. Other significant features of the CC include the fact that members are to be appointed on staggered terms and cannot be removed without Parliamentary approval.

The 17th Amendment raised public expectations with regard to better regulatory governance as well as better macro-governance, given that the 17th Amendment also provided for the establishment of independent Commissions, including the Elections Commission, Public Service Commission, National Police Commission, Human Rights Commission and a Commission to Investigate Allegations of Bribery and Corruption. These hopes sank with the breaking down of the 17th Amendment by early 2006 due to a combination of a lack of political will on the part of the leadership and a lack of cooperation displayed by the minor parties (see for instance, Institute of Policy Studies, various).

The lapse of the 17th Amendment undermined the efficacy of the PUSCL, reducing it to the status of yet another “white elephant” (Quote 4:16) in the words of a participant at my focus group session. In addition, the failure to install the independent Commissions added another episode to the path dependence syndrome of deficient macro-governance that has pervaded public policy in Sri Lanka from 1977. These problems of regulatory governance were discussed in-depth in the focus group discussion I held, with all four sub-groups referring to the implementation issues surrounding the PUSCL. As expressed by one sub-group:

“The PUSCL is not like the other regulators in this country. The people who designed it have tried to make it independent. So that politicians can’t interfere as they please. But this has also become another useless thing. We have a

coalition government. So all the political parties are not agreeing. Because of this the Constitutional Council is not working.” (Quote 4:17)

4.2. The Evolution of Privatisation, Competition and Regulatory Governance across Political Regimes

Public policy in Sri Lanka, as in several other developing countries, has been interspersed with waves of nationalisation, privatisation and competition since Independence in 1948. The drivers of policy change, as introduced in Section 4.1 and as will be analysed throughout the remainder of this Chapter, include domestic socio-political and economic elements such as domestic macro-governance institutions, interest group and power dynamics, rent-seeking, and cultural and historical factors (“mental models” and “path dependence”) as well as external factors such as the influence of the international donor community. Utilising the macro-economic and macro-governance backdrop described above, this Section specifically examines the policy process as it relates to privatisation of SOEs and the corresponding competition and regulatory governance issues surrounding privatisation across political regimes from 1977-2007 illustrated in Figure 4.1. Exploring the evolution of this policy process through North’s framework conceptualised in Chapter 2 allows me to understand the dynamics of what happened and why events occurred as they did.

Sri Lanka’s Post-Independence economic policies were, with the exception of a brief and unsuccessful experiment with liberalisation in 1965-1970, inward-looking and nationalistic until the opening up of the economy in 1977 (see for instance, Athukorala and Jayasuriya, 1994; Lakshman, 1997a). Public policy in the pre-liberalisation years was marked by a heavy reliance on SOEs with successive political regimes embarking on large-scale nationalisation programmes and fostering state monopolies.

Stakeholder support for these policies was secured by strategically catering to populist sentiments. For instance, SOEs were used as vehicles of job creation even at the cost of productive efficiency. An analysis by Kelegama (1997) posits that a majority of these entities were burdened with problems such as overstaffing, mismanagement, corruption and politicisation. Research findings of the Central Bank of Sri Lanka (various) and media statements issued by key players in the policy space such as the Deputy Minister of Finance and the Secretary to the Treasury (referring to SOEs as “employment agencies” that feed off taxpayers’ money and eat into development

capital)⁵⁶ suggest moreover, that these problems have persisted even after the liberalisation of the economy in 1977 and subsequent experiments with SOE reform over the past three decades.

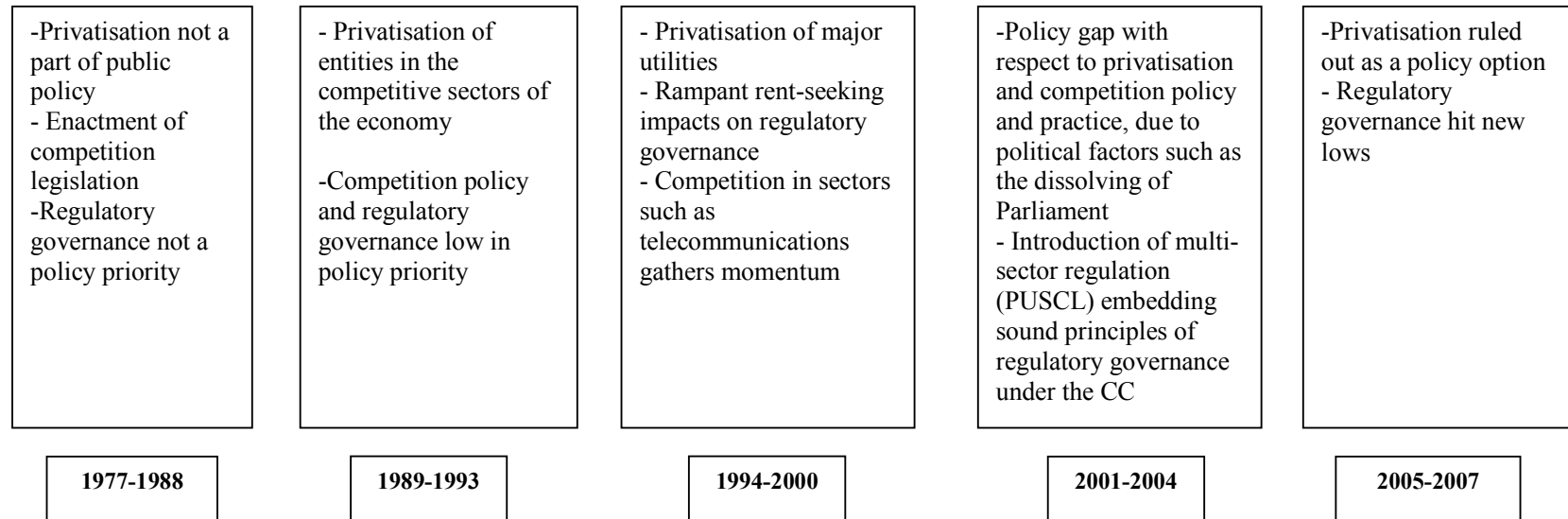
According to the Central Bank of Sri Lanka (2006), SOEs in Sri Lanka handle the management of essential services such as electricity, railways, water supply and drainage, and account for over 80% of the importation and distribution of petroleum products, 30% of bus transport services and over 50% of banking services. What is problematic is that these entities are managed on a non-commercial, soft budget constraint basis which erodes their sustainability as efficient enterprises and ironically undermines their role as major public sector service providers.

The results of the focus group sessions and interviews that I conducted for my research lend further credence to the dismal state of affairs in key SOEs such as the Ceylon Electricity Board (CEB), the Ceylon Petroleum Corporation (CPC), the Sri Lanka Transport Board (SLTB) and the Sri Lanka Railways (SLR) for instance. The evidence gathered through these research methods indicates that the CEB owes almost US\$ 245 million and SLTB and SLR combined owe around US\$ 26 million to CPC. Viewing this vicious cycle from a general equilibrium perspective, the individual and collective performance of CEB, SLTB and SLR has a direct impact on the performance of CPC in terms of revenue collection which in turn has a significant negative impact on Sri Lanka's fiscal deficit and macroeconomic stability.

Figure 4.1 below depicts the major phases of privatisation, competition and regulatory governance over the years as they pertain to particular political regimes. The information contained in this Figure is drawn from my research methods – interviews, focus group observations and document analysis – as well as from self-reflexive observations of the policy process. The remainder of this Section will expand upon the episodes depicted in Figure 4.1.

⁵⁶ For instance: Daily Mirror (7 November 2006) Financial Times: Throwing good money after bad, *Daily Mirror*, p. B7; Lanka Business Online (2009) Sri Lanka public sector scam vies with private sector ones: minister. *LBO*, 17 June. [Online] Available from: <http://www.lankabusinessonline.com/fullstory.php?nid=482198295> [Accessed on 25 November 2009]; LBO (2009) Sri Lanka public enterprises eating development capital: minister. *LBO*, 29 June. [Online] Available from: <http://vanguard1.vanguardlk.com/lbo/fullstory.php?nid=823676509> [Accessed on 25 November 2009].

Figure 4.1. Key developments in public policy on privatisation, competition and regulatory governance in Sri Lanka: 1977-2007



1977-1988

The right-wing UNP government that swept into power in 1977 had a strong political mandate for economic reform, as discussed in sub-Section 4.1.2. This government implemented various “Washington Consensus”-type policy reforms as well as populist projects (such as the Accelerated Mahaweli Development Programme – an integrated rural development project centred on the water resources of the country’s largest river and 6 allied river basins; and large-scale housing and urban development projects) that attracted huge inflows of foreign aid (resulting also in a Dutch Disease syndrome) in the wider macro-economic space (see for instance, Athukorala and Jayasuriya, 1994; Weerakoon, 2004). However, SOE reforms were placed on the backburner for over a decade as documented for instance in Kelegama (1993, 1997).

The lack of progress in SOE reforms during this period (the “first wave of liberalisation”) is perceived by Dunham and Kelegama (1997a) as a rational political economy response to the socio-economic conditions that prevailed in those years. Specifically, the enormous influx of concessionary aid that came with the opening up of the economy softened budgetary constraints and made it possible for the government to continue previous practices of political patronage. In short and particularly given the fact that this period was also one of mounting political violence, the leadership did not have an incentive to make radical changes to the status-quo that perceived SOEs as “sacred cows”.

Thus, during the first decade after the 1977 liberalisation, path dependence with respect to privatisation was the norm. Policymakers’ mental models of SOEs (as employment and vehicles for political patronage) could be perpetuated in actual policy because of the external flows of donor funds. As long as donors were willing to provide aid without forcing privatisation, there were few incentives for institutions, organisations or individuals to change the status quo.

1989-1993

By 1989 at the start of what is termed in the Sri Lankan policy literature as the “second wave of liberalisation” (see for instance, Dunham and Kelegama, 1995), the internal political and socio-economic environment as well as the external donor environment began to change. Budgetary transfers to loss-making SOEs averaged around 10% of GDP, indicating that the macro-economic fallout of wavering on the public enterprise reform process could not be ignored for very much longer (Kelegama, 1997). With the donor community making aid contingent on macro-economic stabilisation (see

for instance, World Bank, 1988), privatisation was also announced by domestic policy makers as a state policy in 1988 (Ministry of Finance and Planning, 1988) followed by the implementation of a privatisation programme in 1989 (see for instance, Kelegama, 1997).

The primary concern of the international donor community was fiscal stability, which in turn required a domestic policy response with respect to the bloated SOE sector. Privatisation per se was not a direct conditionality imposed on the government by donors. However, as set forth in Kelegama (1993) and as further evidenced in my interview findings (see for example, Quote 4:4), the political leadership strategically used external pressures as a convenient scapegoat for the implementation of unpopular reforms such as privatisation.⁵⁷

Whilst extensive public sector reforms, as evidenced in the partial and full divestiture of around 43 commercial enterprises with gross receipts of approximately US\$ 102 million, were carried out in the 1989-1993 years (Kelegama, 1997), the reform process in itself lacked certain crucial elements required for sustainability, including sound regulatory governance. A case in point is the fact that privatisation proceeds were not directed into an ear-marked account but went instead into an opaque, non-transparent mechanism known as the consolidated fund, a fund where monies were fungible. As expressed in one of my elite interviews with a retired senior government official:

“The official reason for privatisation was the huge budget deficit. But there was no transparency in the process. There was no special account for privatisation proceeds in the Treasury. So no one really knows where that money went or how it was spent.” (Quote 4:18)

The political leadership of this time used strategies such as dubbing the process “peoplisation” with connotations of transferring public assets to the people by way of employee share ownership plans (ESOPs), unit trusts and some share offers on the stock exchange and issued Executive directives that retrenchment was not an option to placate trade unions (see for instance Salih, 2000, and Quote 4:7 above). Although these political strategies allowed for a relatively smooth reform process in this period, there was little substantive change in terms of the tendency towards maximising short-term political gains (see for instance, Dunham and Kelegama, 1994, 1997b, and Quote 4:7 above).

⁵⁷ Two pieces of legislation – Conversion of Government Owned Business Undertakings Into Public Corporations Act No.22 of 1987 and Conversion of Public Corporations or Government Owned Business Undertakings Into Public Companies, Act No.23 of 1987 – were designed to facilitate the privatisation process.

In retrospect, the 1989-1993 years were perceived in the Sri Lankan policy space as a classic example of the incidence of crony capitalism with privatisation being used by the political leadership and its allies to engage in activities such as asset-stripping and rent-seeking (see for instance, Dunham, 2004, and Quotes 4:7 and 4:18 above). The absence of sound regulatory governance structures – with the political leadership claiming that the speed of reform specified by donors such as the WB and the IMF did not allow for the establishment of regulatory institutions prior to privatisation – provided room for a policy process that was inimical to good governance (see for instance, Kelegama, 1997, Salih, 2000).

Thus, although the policy demands from donors as well as from budgetary pressures helped push policymakers into beginning a phase of privatisation, principal-agent dynamics combined with the informal norms already in place meant that politicians and other interest groups pursued rent-seeking strategies. The absence of pressure to implement good regulatory governance allowed those inside the policy making “black box” to see privatisation as an opportunity for self-gain and to successfully pursue rent-seeking opportunities. The initial privatisation wave was therefore not a true policy reversal from decades of corrupt practice.

1994-2000

The fallout of neglecting to address and institutionalise fundamentals in the reform process – such as equity concerns for example – grew to politically unsustainable proportions by the 1990s. In late 1994, popular disenchantment over spreading corruption, authoritarian rule and political violence led to the end of 17 years of UNP rule and to the election of a People’s Alliance (PA) government, made up of a coalition of the left-of-centre Sri Lanka Freedom Party (SLFP), the traditional left parties and splinter groups from the UNP (see for instance, Lakshman, 1997b). However, contrary to public expectations that the ideology of this regime would bring on a reversal of the liberalisation process, SOE reforms in the form of complex privatisation exercises – in the telecommunications, airlines and gas sectors for example – were carried out by this government using the slogan “Free Market Economy with a Human Face”, resulting in gross privatisation receipts of approximately US\$ 403 million (see for instance, Bandaranaike Kumaratunga, 1995, Abeyratne, 1998, Institute of Policy Studies, various and Quote 4:6 above).

This regime also set up the Public Enterprise Reform Commission (PERC) in 1996 to manage the privatisation process and to promote a transparent culture with

respect to the sale of state assets. Transparency and access to information did improve for some time with the establishment of this institution and the publication of Annual Reports, frequent press notices and pertinent details of transactions on a designated website. However, these positive developments in the policy process began to dissipate over time. Regular updates of privatisation transactions on the PERC website became less frequent, and access to personnel within this entity became more difficult. For instance, even researchers such as myself that had “positionality” found it hard to obtain information from PERC.

Moreover, progress in economic reforms started to decline as the political priorities of coalition management began to gradually dominate the policy making process. The government’s ability to take resolute policy decisions was undermined by the fact that it lacked an adequate majority in Parliament and had to cater to the often contradictory view points of the various parties in its coalition (see for instance, Abeyratne, 1998). The political climate was one in which numerous interest groups vied for favours and rent-seeking opportunities - this time on a much larger scale given the size of the enterprises being privatised (see for example, Dunham, 2004). These points were also brought out in the focus group discussion I conducted as expressed below:

“The government promised us that they will be different from the UNP. But see what happened. There is no difference. Now it is even worse. All the big state organisations have been privatised. Air Lanka, Sri Lanka Telecom, Shell Gas. And nobody knows how these were privatised. PERC says one thing. Politicians say another thing. The people who bought these organisations are close to the government. They are all making money. It is the same old story.”
(Quote 4:19)

As per the information I gathered through my elite interviews with members of the donor community, the granting of exclusivity provisions without adequate regulatory arrangements in the divestiture of key utility and service sector entities such as telecommunications, gas and airlines for instance, and the under-pricing of assets were deliberate policy choices adopted by the government. Explanations for these policy choices as expressed by these interviewees include the following. On the one hand, these choices could perhaps be termed “pragmatic” - speed, lack of committed bidders for these transactions in the midst of a civil war and an unstable political climate, budgetary constraints and a dire need for investment. A case in point is that of telecommunications privatisation where the investor set the parameters of what was inherently a political choice of scenarios for the government: a three year monopoly and an immediate price hike or a five year monopoly and a phased out price hike. On the other hand, these

choices reflected a syndrome of path dependence/ policy “lock-in”, with rampant rent-seeking and the lack of effective “voice” allowing the government and its close associates to continue as its predecessors had done (as also reflected in Quote 4:19 above).

2001-2004

A commitment to private sector led growth – including completing the SOE reforms undertaken in previous years – was the hallmark of the new UNP regime that assumed power in 2001. The national policy statement of the government, “Regaining Sri Lanka”, was contained in a voluminous document that set out an acceleration of the privatisation process and reform of the legal foundations of the economy as two of its three main themes (Wickremesinghe, 2002). Following from the unsustainable and ever-expanding budget deficit of 9.9 % of GDP in 2000 and 10.9 % in 2001 and the signing of an SBA with attached conditionality on structural reforms with the IMF, the involvement of donor agencies in the policy making process, both in an advisory capacity as well as in terms of scrutinising progress on the reform front, was seen as more overt than under any previous regime. Again however, privatisation was not explicitly included in aid conditionality (see for instance, Central Bank of Sri Lanka, various; Institute of Policy Studies, various; Ministry of Finance and Planning, various).

This government set up several advisory working committees to achieve the tasks set out in the “Regaining Sri Lanka” policy document. In line with its commitment to private sector led growth, this UNP regime handpicked advisors, technocrats and experts whose “mental models” were also aligned with this ideology of the government. The locus of policy making with respect to the reform and regulation process was centred in the Public Interest Program Unit (PIPU) - a sun-set institution headed by technocrats and members of the epistemic community. The concerted efforts to achieve sound regulatory governance with the setting up of the previously-mentioned PUCSL and the CC were largely a result of the work of the PIPU (see for instance, Public Interest Program Unit, 2004).

However, as was emphasised in the focus group sessions and in my interviews, what was lacking was a robust strategy to secure and sustain the political capital vital for the reform process (see for instance, Quote 4:17 above). As such, this regime may have focused too heavily on the economic efficiency aspects of reforms whilst neglecting the political fundamentals (populist measures) required to sustain these reforms. Moreover, as further discussed in Section 4.3 and as depicted in Figure 4.1, the dissolution of Parliament in 2004 also pre-empted any potential benefits from this reform process.

These gaps in the policy process meant that the UNP's efforts for reform eventually dissipated.

2005-2007

The incumbent regime that was elected into power in 2005 has assumed a rather radical stance with respect to SOE reforms with privatisation being ruled out per se as a policy option (Rajapaksa, 2005). The findings from my elite interviews point to the fact that the current government's stance on privatisation is a direct populist response to the failed efforts of the predecessor UNP regime. The government's national development plan categorically specifies that privatisation will not be amongst the menu of public enterprise reform options (Ministry of Finance and Planning, 2007b, 2010b). However, statements⁵⁸ made by leading members of the government as well as in Budget Speeches suggest that PPPs and SOE reforms that do not involve ownership change remain viable options (see for instance, Ministry of Finance and Planning, various).

In line with the political ideology of the current regime that the sale of public assets will not be a policy option, the President resurrected the Strategic Enterprise Management Agency (SEMA) created by the previous regime in 2004 to manage SOEs as commercial entities on lines very similar to Singapore's Temasek model. Demonstrating the gap between policy rhetoric and implementation however, SEMA has as clearly pointed out in the focus group sessions grown to be yet another "toothless organisation" (Quote 4:20) with no formal legislation backing it. Moreover, the 2005-2007 period has seen the political leadership focusing on probing what they perceive to be "questionable privatisations" in the pre-2005 years⁵⁹ rather than moving forward in terms of addressing the problems such as regulatory governance that continue to plague the SOE sector.

4.3. The Policy Process in Sri Lanka: A Reality Check

The previous Sections of this Chapter have laid out the macro-economic and macro-governance environment in Sri Lanka as well as provided details on privatisation, competition and regulatory governance over the various government regimes from 1977-

⁵⁸ For instance: The Sunday Leader Online (2008b) Spotlight. *The Sunday Leader Online*, 8 August [Online] Available from: <http://www.thesundayleader.lk/archive/20080803/politics.htm> [Accessed on 7 September 2011]; Daily News Online (2010) Progress reports in six months. *Daily News Online*, 5 June [Online] Available from: <http://www.dailynews.lk/2010/06/05/news14.asp> [Accessed on 7 September 2011].

⁵⁹ Daily Mirror, Editorial (14 October 2008). "Probing Questionable Privatisations," p.A8.

2007. This review and analysis reveal a reform process that has lurched from one regime to another and unfortunately provided room for ineffective regulatory governance.

In the discussion above, drawing from my research findings, I have identified a number of factors that shed light on why the policy process developed the way it did, such as the embedded culture of political patronage, the need for pork-barrelling given coalition governments, the numerous opportunities for rent-seeking in various privatisation episodes and the subdued nature of citizen “voice”. The main objective of this Section is to build upon the “thick” and rich information set forth in Sections 4.1 and 4.2 and analyse the socio-political economy factors underpinning public policy in relation to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007, synthesising my research findings within my theoretical framework detailed in Chapter 2.

The initial set of conclusions relates to my first research issue: examining the relationship between the state and key institutions and organisations, including the market in the policy and regulatory space in Sri Lanka from 1997 to 2007. Unpacking the labyrinthine relationship between the state and the market in Sri Lanka also provides a starting point to unravel the drivers of the policy process and to understand the socio-political economy dynamics that account for the policy gap in privatisation, competition and regulatory governance in the period under study. Summarising my additional research issues pertaining to this Chapter, my analysis focuses on the impact of the macro-governance environment on the policy process regarding privatisation, competition and regulatory governance; the relevance of constructs such as mental models, path dependence, trust and power in understanding this process; and the influence of donor and internal (epistemic community and populist thinking) ideology on the public policy process.

As highlighted in Chapters 1 and 2, reductionist positions that dichotomise the relationship between states and markets are futile in terms of the dynamics of public policy (see for instance, Moran and Wright, 1991; Minogue, 1993). A real world conceptualisation of policy making as discussed in Section 2.1 requires a thorough understanding of the complex linkages between the state, the market and other socio-political and economic institutions, organisations and individuals in the policy space – as clearly reflected in the discussions contained in Sections 4.1 and 4.2.

The Sri Lankan experience from 1977-2007 also points to the ambiguity of state-market relations. Successive political regimes that governed the country from 1977-2004 demonstrated a degree of policy continuity in that privatisation and private participation

in economic activities (with the exception of key sectors such as electricity, water and railways for instance) were endorsed at least on paper. However, there was a gap between policy rhetoric and practice as reflected in the persistent state domination of economic activity even with the heavy losses incurred by major SOEs. This syndrome has also continued in the 2005-2007 years, where the government issued statements promoting private investment although explicitly shunning the concept of privatisation.

Similar complexities surround the notion of the regulatory state in Sri Lanka with the conceptualisation set out by authors such as Moran (2001, 2002) and Majone (1997, 1999) related to institutions of regulatory governance in developed countries being of little relevance in terms of local ground realities. The regulatory space and regulatory society models described in works such as Hancher and Moran (1989), Black (2002) and Stirton and Lodge (2002) are more meaningful to the policy process in Sri Lanka. As evidenced in the Sri Lanka country analysis, policy decisions, outputs and outcomes are influenced by a mesh of interactions amongst a web of actors in the policy and regulatory space as summarised in the discussion below and in Figure 4.2.

I argue that Sri Lanka's macro-governance environment has played a significant role in shaping the direction of public policy in relation to privatisation, competition and regulatory governance. As described earlier on this Chapter, good governance was undermined with the establishment of the 1978 Constitution and its ramifications on the executive presidency, the legislature, the electoral process – and to a lesser extent, the judiciary. As reflected in the episodes set out in previous Sections, flaws in the macro-governance environment – what Levy and Spiller, 1994, 1996 (a,b) term “institutional endowments” - also had a negative impact on regulatory governance in the period under study. Further, the PR electoral system brought in under the 1978 Constitution created the syndrome of coalition politics and embedded a culture of political patronage which, combined with the subdued “voice” of the citizenry and the breakdown in societal trust perpetuated by decades of civil conflict, nurtured incentive mechanisms antithetical to good governance.

Using North's framework as discussed in Section 2.2 and as illustrated in Figure 2.2, dynamic interactions between institutions, organisations and individuals in the 1977-2007 years set in motion a vicious public policy cycle; the contours of the policy process has been influenced by pork-barrelling interest groups driven by rent-seeking opportunities and aligned with the political leadership. Checks and balances and

accountability in decision-making have been further undermined by the lack of bottom-up pressure or what I refer to in previous Sections of this Chapter as the “lack of voice”.

Moreover, where the evolution of privatisation, competition and regulatory governance are considered in relation to political regimes in Sri Lanka, ‘pathological path dependence’ in the words of Eggertsson (1997: p.1198) has been a key feature of the policy making process in the two decades being analysed in this thesis. The deep embeddings of policy lock-in and the absence of incentives for change have countered the potential for beneficial policy reversals (as set out for instance in Hood, 1994). In short, given macro-governance conditions where policy makers maximise political gain (or votes/funding of electoral campaigns/re-election), the political and social transaction costs of changing the status-quo are perceived as high.

The discussion set out in this Section with respect to the drivers of the policy process and the reasons for the policy gap in the areas of privatisation, competition and regulatory governance in the 1977-2007 years; and the complexities (“web of decisions”) surrounding public policy are encapsulated in Figure 4.2 below. Using the findings developed thus far in this Chapter, Figure 4.2 adapts the generalised depiction of the policy process set out in Figure 2.1 and also integrates components of North’s conceptualisation in Figure 2.2 in the Sri Lankan context of privatisation, competition and regulatory governance.

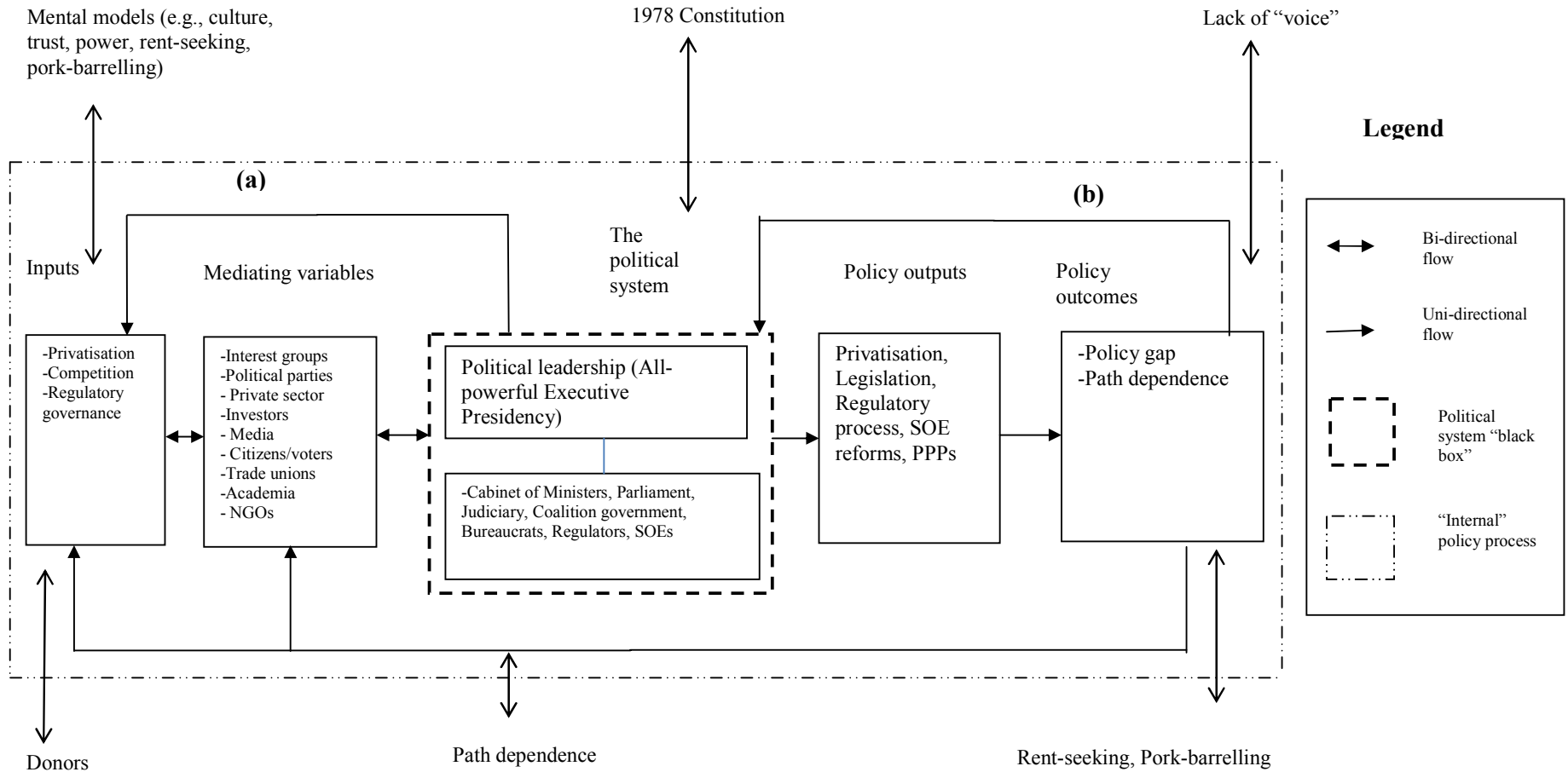
Figure 4.2 focuses on the policy demands of privatisation, competition and regulatory governance. Inputs into the policy demands include the environmental variables of existing mental models (including the lack of trust, individuals’ perception of power dynamics, rent-seeking and pork-barrelling) and donor pressure. The mediating variables into the political system process are organisations and individuals (using North’s terminology) such as interest groups, political parties, private sector, citizens and trade unions. Within the black box of the political system are the central components of macro-governance in Sri Lanka, with the key political actor (the powerful executive) operating within the various organisational layers such as the Cabinet of Ministers, Parliament, Judiciary and bureaucracy. One important characteristic of this organisational layer is the coalition government which exacerbates the interest group dynamics already present. The structure of the 1978 Constitution also has a heavy influence into the makeup and dynamics of the political system as well as the path dependence of the political system.

The results of this policy process are policy outputs, including privatisation and SOE reform that have failed to produce tangible effective results. Despite sporadic attempts at effective regulatory governance, a policy gap between output and outcomes (and between the political system and outcomes) has emerged, and path dependence has continued. The rent-seeking and pork-barrelling behaviour endemic in the Sri Lankan policy process coupled with the lack of citizenry “voice” has further widened this policy gap and pushed against any potential for positive policy reversals.

All of these trends and factors, unfortunately, have been self-reinforcing. The existence of a policy gap, ineffective regulatory governance and so forth have fed back into the political system which in turn strengthens the path dependence of pork-barrelling, catering to interest groups and political patronage. Trust is further eroded; voice is further subdued, and the cycle perpetuates across regimes.

Although Figure 4.2 is a highly stylised portrayal of the policy process in Sri Lanka, it does allow for several important insights. First, it helps identify the key organisations, institutions and individuals within the policy process and the manner in which these actors interact (directly and indirectly). Second, it illustrates that the policy process has stages that feed into each other in a “feedback loop”. Third, it reinforces the notion that policy making is not a neat linear process. Instead, it is driven by the dynamic interactions between various political and socio-economic institutions, organisations and individuals embedded within the real world constructs of mental models and path dependence. This underscores the need for detailed “thick” and rich context in order to understand more fully the policy process itself.

Figure 4.2. The policy process in Sri Lanka: privatisation, competition and regulatory governance



As pointed out in the findings of the focus group sessions and interviews that I carried out, as set out in preceding Sections of this Chapter, the obstacles to change are deeply rooted in the domestic policy space. Political claims of donor “pressure” are actually a strategy used opportunistically by successive regimes to implement reforms that suit the interests of the political leadership and the interest groups that are closely allied to it. The fact that donor influence in the areas of privatisation, competition and regulatory governance is of little relevance to public policy in Sri Lanka is highlighted in two key episodes in the 2001-2004 period where, the donor community was overtly involved in the reform process.

First, the 2001-2004 years, which were referred to in the focus group discussions as a “window of opportunity” (Quote 4:21) for reform was hijacked by partisan politics with the dissolving of Parliament pre-empting the implementation of reforms and of measures to enhance regulatory governance backed by donors and by their ideological allies in the domestic policy space. Second, as pointed out in the focus group discussions on the energy sector, the 2005-2007 years saw the political leadership reneging on competition-oriented electricity sector reforms, despite the enactment of supporting legislation in 2002 (Government of Sri Lanka, 2002a) when faced with trade union opposition.⁶⁰ As a consequence Sri Lanka lost out on conditional donor funding from the Asian Development Bank (ADB) and the opportunity cost of non-reform in the electricity sector has been borne almost entirely by users with electricity tariffs topping the rates in the South Asian region (see for instance, Asian Development Bank, 2007).

The role of interest groups, power dynamics, and rent-seeking in the policy process in relation to privatisation, competition and regulatory governance was a crucial point of discussion in the focus group session and interviews that I conducted. Supplementing my research findings previously set forth, several important conclusions emerged adding to the rich information that I gathered. First, it is apparent that most stakeholders in the policy space are averse to the concept of privatisation. These findings are similar to those set out in Nellis and Birdsall (2005), where a WB –commissioned survey in Sri Lanka found that more than 80% of the respondent group perceived privatisation as negatively impacting on poverty and living standards. As such, an important finding emerging from my research is that perceptions (mental models) are

⁶⁰ For instance: Lanka Business Online (2005) Oil pains. *LBO*, 4 May. [Online] Available from: <http://vanguard1.vanguardlk.com/lbo/fullstory.php?nid=89894726> [Accessed on 22 September 2011].

crucial in shaping the direction of the reform process, and in general, perceptions are formed on the basis of what one stands to gain or lose through changes in the status quo.

Second, the policy process is heavily influenced by the strong actual and perceived nexus between the relatively well-connected and the political leadership, given the “votes and election funding- in exchange for rent-seeking opportunities and political favouritism” arrangement that exists between these two groups of players in the policy space. Third, whilst there are debates amongst players in the policy space on precise estimates of rent-seeking/bribery and corruption, the focus group session and stakeholder interviews indicated that a majority of the citizenry perceive TI’s projections on bribery and corruption as accurate reflections of the status-quo. As such, the perception is one of path dependence in terms of rent-seeking, with the 1989-2000 and the 2005-2007 periods being seen as topping the scale in this respect.

Fourth, in general, the labour force does not look favourably upon change given the guarantee of job security in SOEs and the perception, cultivated over years of heavy government intervention in the economy, of a benefactor state. Vociferous trade unions with strong bargaining power have utilised their ability to create industrial unrest. Fifth, consumers tend to be marginalised as the “silent majority” who lose out (in terms of affordability, access and quality of service) from stagnation and backtracking in reforms - particularly in the services and utilities sectors.

Sixth, my research findings affirm the real world application of principal-agent dynamics discussed in works such as Wilner and Parker (2002), Parker and Kirkpatrick (2003) and Nellis and Birdsall (2005) and set out in sub-Section 2.3.1 of my thesis. Specifically, my field work (for example, Quotes 4:7, 4:9) points to the fact that ownership change is perceived as less important than how the entities are managed.

4.4. Privatisation, Competition and Regulatory Governance in Sri Lanka: Policy Challenges

The description and analysis of public policy in Sri Lanka in the areas of privatisation, competition and regulatory governance from 1977-2007 in preceding Sections of this Chapter, point to a tale of missed opportunities. The clear pattern of path dependence and lock-in in the policy process mirror the socio-political and economic incentives that govern decision-making in Sri Lanka. The combined impacts of short-term electoral cycles, coalition politics, interest group dynamics, and the general perception amongst the citizenry that there is little or no substantive difference between the different political parties have been inimical to sustainable change in the status quo

resulting in a trend of overall stagnation in public policy. The dilemma lies also in the fact that change requires political will as a necessary and sufficient condition. As with any phenomenon that deals with choices, political will can only be created and sustained by strategically establishing the right incentive structures, incentives that would indicate that the benefits of a particular policy choice outweigh its costs within the constraints of a relatively short-term electoral cycle.

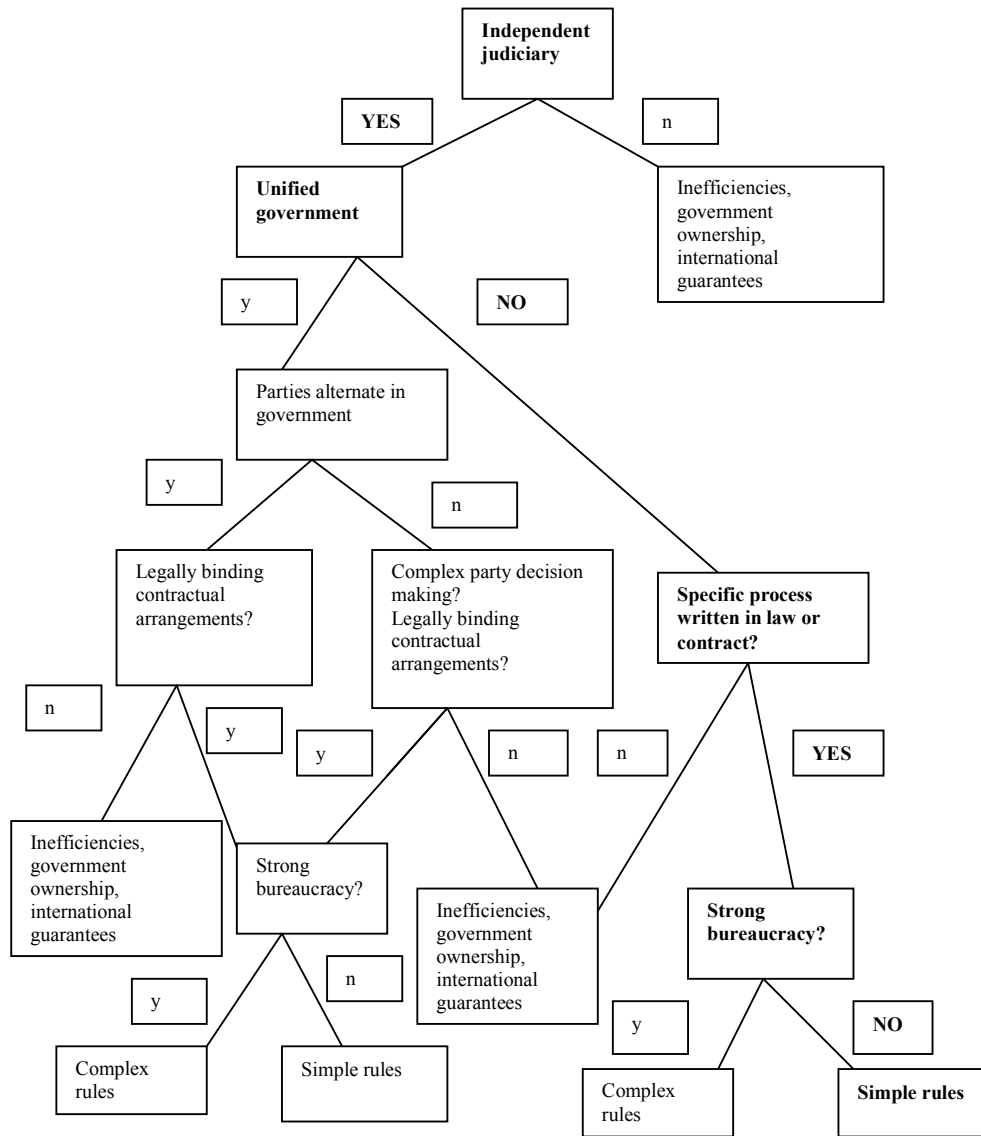
Based on the analysis set out in this Chapter, measures such as constitutional change and the creation of active civil society movements are key to resolving problems pertaining to the policy gap in Sri Lanka. However, macro-level changes of this nature would require a radical overhaul of the socio-political economy structures that are deeply embedded in Sri Lanka's public policy system. The syndrome of path dependence highlighted in this analysis suggests moreover that an incremental approach, albeit a second or even third best option, may be more effective in terms of change. As such, this Section will look at possible strategies to enhance what I perceive as the bedrock of sound public policy: regulatory governance (as conceptualised in Chapter 2 of this thesis).

I posit that a crucial ingredient in firming up the line of accountability, creating transparency and establishing credibility in the decision-making and implementation process is the institutionalisation of solid regulatory governance processes. Looking back at the reform process over the decades and based on my research findings set out in preceding Sections of this Chapter leads me to three possible conclusions with respect to the stance adopted by successive governments on regulatory processes. First, a hands-off policy on regulation was a deliberate, "pragmatic" decision on the part of the political leadership to attract private investment (this was particularly apparent in the 1977-1988 period). Second, the vast opportunities for rent-seeking available to the more powerful stakeholders that formed the political support base created perverse incentives with respect to effective regulatory governance. Finally (and this, as mentioned previously, is not a very convincing claim despite the fact that politicians often use this explanation to ward off populist pressures), the pace of SOE reforms/ privatisation set out for Sri Lanka by donors such as the WB and the IMF did not allow for a proper sequencing of events where the setting up of an effective regulatory framework would precede divestiture.

Echoing North's analysis of institutions, Levy and Spiller (1996a, b) brilliantly capture the linkages between formal and informal institutions and regulatory governance, setting out a "decision tree for regulatory design" (as discussed in sub-Section 2.3.2) In

Figure 4.3, I adapt this decision tree for regulatory design to the Sri Lankan context. Sri Lanka's "institutional endowments" (macro-governance) as discussed in detail in sub-Section 4.1.2 feature (for the purposes of my adaptation of the Levy and Spiller decision tree): an independent judiciary, a non-unified government, a need for specific regulatory rules to rein in arbitrary political behaviour (in contrast to flexible rules that allow for more discretion) and a weak bureaucracy. Given these institutional endowments, the decision tree indicates that simple, rather than complex, regulatory processes and rules are best suited for Sri Lankan regulatory governance.

Figure 4.3. Decision tree for regulatory governance: the Sri Lankan context



Note: y= yes; n= no

This normative conclusion is unsurprising, particularly given the analysis in sub-Section 4.1.2 which points to capacity constraints in the regulatory space. The more challenging question is how best to implement effective simple regulatory governance processes given the political and socio-economic realities of Sri Lanka as set forth in this Chapter. Given the problems associated with policy transfer from developed countries, any process that is implemented must be structured to fit the particular contours of the Sri Lankan socio-political and economic context. In addition, any prescription likely will have to be modest and incremental, particularly at the outset.

As a starting point and as discussed in sub-Sections 2.3.1 and 2.3.2 (relating to the literature on regulatory governance) and further evidenced in my research findings set out in previous Sections of this Chapter, truly independent regulatory governance is not realistic in the Sri Lankan context. Given the limits to certain institutional endowments (for example, a weak bureaucracy) and the decades of rent-seeking and other corrosive processes, implementing independent regulatory governance will not be a feasible option in the foreseeable future. In any event, as detailed in sub-Section 4.1.2, regulatory agencies in Sri Lanka as in most developing countries are already, as set out in Minogue (2001a:p.4, 5) ‘inside government’. Political intervention has been and will continue to be the norm in Sri Lankan regulatory governance, particularly given the nascent and underdeveloped nature of any regulatory framework. This conclusion further reinforces the fact that policy transfer from developed countries’ context must be viewed with caution.

As set forth in sub-Section 2.3.1, there are a number of alternatives to enhancing regulatory governance short of independent regulation, including responsive regulation, business self-regulation and hybrid and intermediate variations. With responsive regulation, stakeholders outside of the regulated businesses are incorporated into the regulatory network. Other variations that might be considered in the Sri Lankan context are regulation by contract in which the details of the regulatory contract circumscribe the discretion of the regulator, or the government might outsource certain aspects of regulatory governance by utilising outside experts or advisory panels in order to bring in technical expertise.

As described above, the government has made several small moves to improving regulatory governance through increasing transparency (as in the case of privatisation and PERC) and introducing some measures of accountability and checks and balances (as in the case of the PUSCL). In addition, as will be discussed in Chapter 5, the government

also has employed regulation by contract in the telecommunications sector and at times has utilised outside technical experts in regulatory consulting roles. Ultimately, however, any positive benefits from the shifts to more responsive regulation or to increased transparency, accountability and independence have thus far been outweighed by the negative impact of existing path dependence and policy lock-in in the overall policy making process.

In the final instance therefore, regulatory governance is essentially a political as opposed to a technical exercise in Sri Lanka – as may well be the case in other developed and developing country jurisdictions. As such, the dynamic interactions between socio-political and economic institutions, organisations and individuals that underpin public policy in the country (as depicted in Figure 4.2 above) need to be taken into consideration in any solutions aimed at enhancing regulatory governance. Clearly, it is not sufficient to tinker with economic reforms alone. What is important is to get the political processes right, an effort which requires tremendous political will given the inevitable loss of political support and hardships in the short-term and the perverse incentives embedded in Sri Lanka's political and socio-economic milieu. It is difficult to be optimistic. The syndrome of path dependence evidenced in the 1977-2007 period does not bode well for governance in general and for regulatory governance in particular.

4.4. Concluding Remarks

This Chapter has presented my research findings on the policy making process in relation to privatisation, competition and regulatory governance in Sri Lanka, based on my first research question and research issues set out in Chapter 1 and using North's NIE framework. This Chapter has also described and analysed the general Sri Lankan public policy context (the country context) within which the analysis of the telecommunications sector in the following Chapter of this thesis is situated, in order to understand the similarities/ differences between the sector case study and the broader country case study.

Some of the principal findings contained in this Chapter include the fact that the reform process entails much more than clinical economic prescriptions and needs to take account of the socio-political realities that underlie the policy process; that constructs of regulatory governance developed to suit advanced economies cannot be readily transferred to developing countries; and that public policy is not a linear process but rather, one that involves the complex and dynamic interactions of institutions, organisations and individuals in the policy space.

CHAPTER 5: PRIVATISATION, COMPETITION AND REGULATORY GOVERNANCE: EXPLORING THE PUBLIC POLICY PROCESS IN SRI LANKA’S TELECOMMUNICATIONS SECTOR

5.0. Introduction

This Chapter directs the discussion on public policy in relation to privatisation, competition and regulatory governance in Sri Lanka detailed in Chapter 4 of my thesis to the specific case of Sri Lanka’s telecommunications sector. As such, these two Chapters set out my research findings in response to the research questions and issues outlined in Chapter 1 and delineated below. As previously described, I have utilised the TRE method combined with interviews, focus group observations and document analysis along with my own self reflexivity to extract and to draw “thick” and rich conclusions on my research problem. The analysis in this Chapter, as in Chapter 4, is embedded in the conceptualisation of the policy process and North’s NIE framework set forth in Chapter 2.

Given the political, social and economic processes that have influenced public policy with respect to privatisation, competition and regulatory governance in Sri Lanka from 1977-2007 as analysed in Chapter 4, the main research question analysed in this Chapter is:

- What are the impacts of these processes on policy and regulatory efficacy in Sri Lanka’s telecommunications sector during the period under study?

The research issues associated with this primary question include the following:

- What is the relationship in Sri Lanka’s telecommunications sector between the state and key institutions and organisations including the market, in the policy and regulatory space?
- What are the linkages between the “macro” governance structure, the reform process and regulatory governance in Sri Lanka’s telecommunications sector?
- What are the roles of historical (path dependence), cultural (mental models), trust and power factors in shaping the reform and regulation governance process in Sri Lanka’s telecommunications sector?
- What has been the role of ideology of the donor and local epistemic communities as well as the impact of multi-nationals in influencing the reform and regulatory governance process? In particular, how have global governance mechanisms, particularly emerging from GATS obligations, influenced the telecommunications policy process?

My research findings with respect to the policy process in Sri Lanka’s telecommunications sector combined with the analysis of the policy process in the

country in general in Chapter 4 form the empirical platform for my reflections in Chapter 6 on the links between this case study and the knowledge emanating from the literature in Chapter 2.

Section 5.1 provides the macro-economic and regulatory governance context for the Sri Lankan telecommunications sector from 1997 to 2007. As mentioned in previous Chapters, I do include some information and data for 2008 as available and when useful to enhance the description of telecommunications sector policy and regulatory governance. Section 5.2 uses this backdrop of the telecommunications sector as well as the macro-economic and macro-governance context in Sri Lanka set forth in Chapter 4 and overlays key policy, reform and regulatory governance episodes from the Sri Lankan telecommunications sector. The research findings from my interviews, focus group session and document analysis provided for the “thick” details contained in these two Sections. Section 5.3 reports the findings from the 2006 and 2008 TRE surveys described in Chapter 3. This Section provides rich data and information on how informed stakeholders in Sri Lanka’s telecommunications policy and regulatory space perceive regulatory efficacy in the sector. Section 5.4 synthesises the main findings from my research methods to unpack the drivers and obstacles to reform and regulatory efficacy through the lens of North’s NIE framework and in line with my conceptualisation of the policy process in Section 2.1 of this thesis whilst also briefly considering options for improving regulatory governance and efficacy in the context of Sri Lanka’s telecommunications sector.

5.1. Contextualising the Telecommunications Sector in Sri Lanka: Socio- and Macro-Economic Environment, Sector Profile and Regulatory Governance 1977-2007

5.1.1. Socio-and macro-economic context

Sri Lanka’s telecommunications sector, which is now hailed as one of the principal drivers of socio-economic growth in the country, was up until the 1990s relatively stagnant and riddled with problems of under-investment (see for instance, Samarajiva 2000, 2004a and Brown et al, 2004). Similar to the other utility sectors such as the transport and energy sectors, referred to in Chapter 4, state domination of the telecommunications sector imposed fiscal constraints on service development. Moreover, as reflected in the discussion on the policy process pertaining to privatisation, competition and regulatory governance in Sri Lanka in Chapter 4, the priorities of the government did not include efficient public services (see for example, Quotes 4:5, 4:7

and 4:9). As mentioned earlier on in this thesis, the state's focus on infrastructure services, even after the opening up of the economy in 1977, was concentrated on a few populist projects such as the Accelerated Mahaweli Development Programme (see for instance, Athukorala and Jayasuriya, 2004 and Dunham and Kelegama, 1997a).

Ironically, the under-development of telecommunications services during these years was not because the sector in itself was unprofitable. As highlighted in Jayasuriya et al (1997), the "investment paradox" in telecommunications was clearly reflected in the Sri Lankan case with the telecommunications sector (in direct contrast to sectors such as electricity and transport for example) actually being a net contributor to state coffers.

The telecommunications sector contributed around 2.3% to GDP in 2004 with this figure increasing to 3% in 2007 (Central Bank of Sri Lanka, 2004, 2007), and this sector grew at approximately 22% in both 2006 and 2007 (Central Bank of Sri Lanka, 2007). It is also important to note that the beneficial impacts of telecommunications sector growth are not fully captured in these numbers. As pointed out in the stakeholder interviews I carried out for example, indirect positive spill over effects such as the facilitation of employment creation in other segments of the economy are not reflected in these figures (see for instance, Samarajiva, 2011 and Agüero et al, 2011). As expressed in one of my interviews with a leading private sector representative:

"Telcos are now the way to the future in this country. You can see this on our streets. Everybody has a mobile phone. The trishaw man, the shop keeper, the house wife. Even school children. Fishermen, farmers and these trishaw men have better business now. The customers can call them at any time. Telcos are also very important for BPOs. The government has to recognise this and give more benefits to this sector." (Quote 5:1)

As clearly set forth in previous Chapters, this thesis does not aim to examine the impact of regulatory governance on telecommunications sector performance. Instead, in line with my research question and issues, the objective of my research is to explore and understand the socio-political and economic factors that have shaped the telecommunications reform process as well as regulatory efficacy in the telecommunications sector. Thus, I do not evaluate in any great depth performance indicators such as tariff levels, quality of line service, customer satisfaction and so forth.

However, I do refer to the growth of the sector (specifically subscriber growth in the fixed and mobile telecommunications sub-sectors) and measures of industry concentration (again in the fixed and mobile sub-sectors) throughout this Chapter to provide the basic context for analysing the contours of reform and regulatory governance in the telecommunications sector. In addition, as will be discussed later in this Chapter,

growth and concentration/level of competition in the sector are relevant to the analysis using North's conceptual framework. Specifically, the size of the sector and the level of competition in the sector impact on rent-seeking opportunities, the level of interest from policymakers and other important actors in the public policy process, and influence the dynamics of how organisations, institutions and individuals interact in the socio-political and economic policy and regulatory space.

In direct contrast to loss-making utilities such as the CEB, CPC, SLTB and SLR referred to in Chapter 4, the telecommunications sector still remains one of the largest contributors to government coffers. For instance, net revenue to the state from the TRCSL and from the incumbent operator, Sri Lanka Telecom (SLT), alone approximated US\$ 14 million in 2005 (0.4% of total government revenue) and US\$ 39 million in 2007 (0.7% of total government revenue) as set forth in Ministry of Finance and Planning (2007a, 2008) and Central Bank of Sri Lanka (various). Moreover, although published data on the quantum of FDI flows that can be attributed to the telecommunications sector as a whole are not available in Sri Lanka, the elite interviews that I held with highly placed public officials suggest that the sector accounted for much of the US\$ 425 million total FDI flows in the first six months of 2008. An indication of the potential of the sector in this regard, is also reflected in the fact that one of the country's leading telecommunications service providers, Dialog Telekom, was the single largest foreign investor in 2007 (Institute of Policy Studies, 2008).

The direct benefits emanating from the telecommunications sector are also seen in the growth in subscriber numbers in both the fixed and in the mobile segments from 1992-2007 depicted in Figure 5.1 below. Whilst the trends indicated in this Figure provide for a general understanding of how the sector has grown over these years, these numbers are subject to a couple of limitations and caveats. First, in the case of the mobile sector these numbers underestimate the actuals given that they do not capture usage patterns such as "shared access" that is prevalent in most developing countries including Sri Lanka (see for instance, Samarajiva and Zainudeen, 2008). Second, the numbers for mobile sector subscribers calculated by TRCSL and depicted in Figure 5.1 do not account for the fact set forth in LIRNEasia (2007) that a single user may own multiple Subscriber Identity Module cards (SIM). Third, the numbers set out Figure 5.1 as per TRCSL's classification do not disaggregate between pre-paid and post-paid subscribers in the mobile segment, a particularly significant limitation in light of the fact that most users at the "bottom of the pyramid" (BOP) have pre-paid mobile connectivity (see for instance,

Samarajiva et al, 2008 and Agüero et al, 2011). Fourth, definitional issues pertaining to the fixed sector numbers need to be clarified, specifically in relation to code division multiple access (CDMA) technology. The TRCSL classifies CDMA telephones under fixed wireless telephony in contrast to India for instance which considers CDMA as a mobile service (see for instance, LIRNEasia, 2007).

Positive trends in terms of telecommunications services access and affordability are also seen in the narrowing of regional/Provincial disparities – again in contrast to the general pattern of widening regional disparities in infrastructure service delivery described in Chapter 4 of this thesis. As set forth in sub-Section 4.1.2, the country’s Western Province was well above the national average in terms of infrastructure services such as electricity, water and road development for instance. However, according to the Central Bank of Sri Lanka (2003/2004) although the Western Province had the largest number of households with telephones (44% in 2001 and 45.5 % in 2004), household access to telephones in hitherto neglected Provinces such as the Northern Province, Eastern Province, North Central Province, and the North Western Province increased from 3.5% to 19.5%; 9.5% to 14%; 7% to 14%; and from 9% to 23%, respectively in just three years between 2001-2004. Moreover, 25% of all households in Sri Lanka (excluding three districts in the conflict area) had either a fixed, mobile or both types of phones indicating a rapid increase in household connectivity in less than three years. Research by Zainudeen et al (2007) further indicates that 41% of the poorest households – at the “bottom of the pyramid”⁶¹ – had telephones in their households as at 2007 with pre-paid mobile telephony access being the most popular mode of connectivity.

The findings from my focus group session and from my interviews with telecommunications operators suggested that the signing of a Cease Fire Agreement (CFA) in early 2002, where there was a temporary cessation of hostilities in Sri Lanka’s civil war, facilitated the movement of telecommunications operators into the conflict areas and led to an increase in access to telecommunications services in these areas. The capital city of the Northern Province, Jaffna, for instance, which had had access only to the fixed-line network of the fixed sector incumbent operator, Sri Lanka Telecom (SLT), witnessed a significant increase in the number of new connections, with other operators rolling out services into these areas. An observation made at the focus group session that I conducted re-iterated the views of a telecommunications operator that I interviewed for my research.

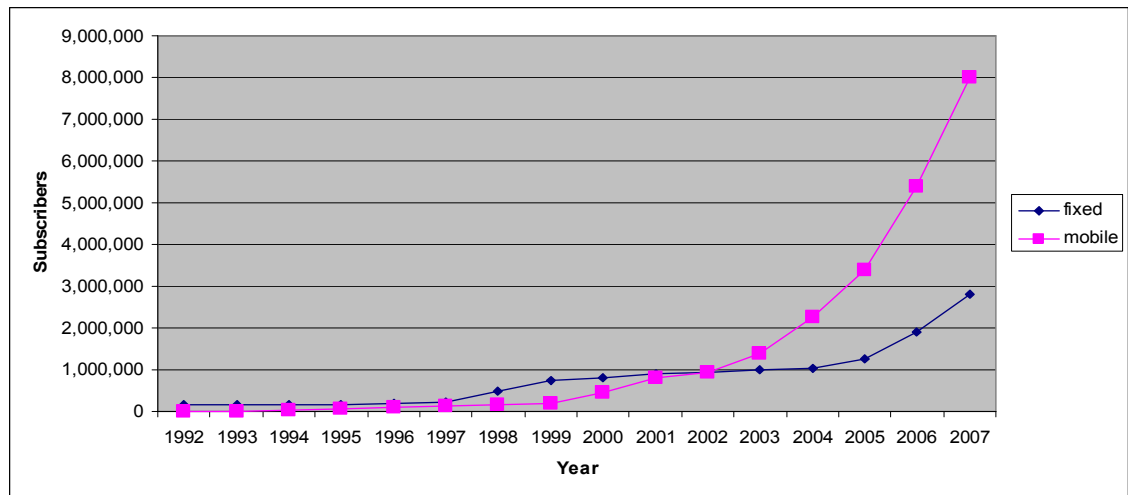
⁶¹ This research defines those at the BOP as financially constrained users earning less than US\$ 100 a month.

“The CFA gave us the opportunity to roll out our networks into the Northern and Eastern Provinces. Our operations have been successful in these areas because the people really need telephones to communicate with their family and friends abroad. There was a big rush to get phones connected. But we managed to meet the demand pretty well.” (Quote 5:2 from interview)

“The CFA helped a lot with providing these people with telephones. These people have been suffering a lot. They have not been able to contact their families. But the problem is that the CFA did not work properly. So it is hard for the government and the private sector to develop other infrastructure services in these areas.” (Quote 5:3 from focus group observations)

Surveys conducted by LIRNEasia (2005) in Sri Lanka and in India also found that the people of Jaffna spent more than 12% of their income on telecommunications – with much of this expenditure being made up of international calls (reflecting the social reality that the demand for communications services is high in post-conflict scenarios where the migrant population plays a significant role) and mobile telephony. Thus, telecommunications sector growth outside the Western Province was particularly notable given, as mentioned in Chapter 4, that telecommunications is not a devolved subject under the 1978 Constitution and given the fact that the PCs are also fiscally constrained. As such, this positive development is largely driven by the “mental models” or business strategies of telecommunications operators that seized the window of opportunity to grow their services with the declaration of the CFA. Unfortunately however, the potential for any further development was hampered by the fact that the CFA was in practice implemented in fits and starts with 2006 seeing a serious violation of the Agreement and early 2008 marking the end of the CFA.

Figure 5.1. Fixed and mobile telecommunications subscriber growth in Sri Lanka: 1992-2007



Source: Compiled using data obtained from TRCSL website at: www.trc.gov.lk

5.1.2. Regulatory governance

Moving onto the area of telecommunications regulatory governance, regulatory rules and accountability mechanisms are set out in the legislation governing the sector - Sri Lanka Telecommunications Act No.25 of 1991, as amended by Act No. 27 of 1996 (referred to in the rest of this thesis as the Act of 1991 and the Act of 1996, respectively) and in the operator licenses issued under these Acts⁶² – similar to what I describe as regulatory contracts in sub-Section 2.3.2 of this thesis.

The Act of 1991 (Government of Sri Lanka, 1991a) facilitated the creation of a sector regulator, the Office of the Director General of Telecommunications (ODGT), a one-man authority where the Director General was solely responsible for handling all regulatory matters and for advising the Minister in charge of telecommunications on all policy matters pertaining to the sector. However, this arrangement was not conducive to good regulatory governance as the authority lacked financial independence and was not able to attract or retain skilled professionals to carry out its mandate effectively. Moreover, although the establishment of a sector regulator was in line with the international best practice reforms of trifurcating policy, regulation and operations, the fact that both the ODGT and SLT reported to a single Ministry diluted this objective (see for instance, Samarajiva, 2000, 2004a,b).

The Act of 1996 (Government of Sri Lanka, 1996a) addressed these shortcomings in regulatory governance to some extent, replacing the single-person entity with a five member regulatory commission (TRCSL). The Commission comprises three part-time members with expertise in the fields of law, finance and management and two ex-officio members: the Secretary to the Ministry as Chairperson and the Director General of Telecommunications (DGT) as the Chief Executive Officer (CEO). Under this new regulatory regime, the TRCSL's responsibilities include advising the government on matters relating to licensing, pricing and subsidies; determining, in consultation with the Minister, tariffs and methods of calculating tariff structures; approving interconnection charges in instances where operators come to a mutual agreement on charges and determining charges in the absence of such agreement; functioning as the sole manager of the frequency spectrum; ensuring that operators comply with quality standards specified in the legislation; and protecting consumer interests.

⁶² An attempt to obtain details on these licenses on the TRCSL website indicate that this web page is “under construction”. However, a summary of the list of licenced operators is available at: <http://www.trc.gov.lk/services/licences/operator-licences/list-of-licenced-operators.html>

Whilst the legislation governing the telecommunications sector provide for concurrent jurisdiction on ex-ante and ex-post regulation, in practice the dynamics between the TRCSL and the (ex-post) competition agency referred to in Chapter 4 have tended towards a “passing the buck” syndrome with consumers having to resort to court action⁶³ (a tardy and costly process) to resolve issues relating to telecommunications services. My interview with a representative of one of the more active user groups in the telecommunications policy space confirmed the lack of clear-cut jurisdiction in this regard.

“The situation is absurd. We have to go from pillar to post to get things fixed. My telephone bill for the last few months has been very high. I hardly use my phone. I went to the telecom operator. They did nothing for months. Then I wrote a letter to the TRC. There was no response. Then I went to the TRC. They told me that dealing with bills was not their responsibility. When I asked them whom I should speak to they told me to go to the Consumer Affairs Authority. When I went to that place, those people did not understand anything about telephone bills. They told me that I had to go to the TRC. Everyone is passing the buck. We discussed this in our group meeting. Now we have decided to take TRC and the operator to courts. Something has to be done.”
(Quote 5:4)

Moreover, although the TRCSL unlike its predecessor has financial independence, drawing on license fees to finance its operations (as set out in the legislation), operational independence has been compromised with the appointment of the Secretary to the Ministry as *ex-officio* Chair of the Commission (see for instance, Samarajiva, 2000, 2004a). Unlike the PUSCL (described in Chapter 4) which has to report to the Constitutional Council and is under the auspices of the Parliament, the TRCSL’s accountability process revolves around a single Ministry. As also noted in an interview that I conducted with a representative of a leading investment consultancy firm, the “revolving door” norm (the movement of personnel from telecommunications operators to the regulator) with several former employees of SLT being recruited by the regulator has provided for a regulatory space where regulatory capture can thrive.

Moreover, the financial independence accorded to the TRCSL has had minimal impact on the salary scales of its cadre resulting in an institutional environment that lacks the incentives for efficiency, transparency and accountability (see for example, Brown et al, 2004; Samarajiva, 2004a,b). As such, regulatory capture by stakeholders (as will be

⁶³ See for instance: Lanka Business Online (LBO) (2005) Consumer lobby asks Courts to reverse SLT tariff hike. *LBO*, 18 May. [Online] Available from: <http://vanguard1.vanguardlk.com/lbo/fullstory.php?nid=599558024>. [Accessed on 14 September, 2011]; LBO (2007) Phone Charges. *LBO*, 10 July. [Online] Available from: <http://www.lbo.lk/fullstory.php?nid=849401676>. [Accessed on 14 September, 2011].

discussed later on in this Chapter) with “deep pockets” is rampant in the sector. This syndrome of rent-seeking and dynamics amongst politically and economically powerful interest groups is very similar to that discussed in Chapter 4 (see for instance, Quote 4:6, 4:9 and 4:19).

5.1.3. Sector profile

Despite these shortcomings in regulatory governance, new entry, competition and growth has continued in Sri Lanka’s telecommunications sector. The profile of the sector as at 2007 is shown in Table 5.1 below.

Table 5.1. A snapshot of Sri Lanka’s telecommunications sector as at December 2007

Service category	No. of licenses	Notes on service providers	Investor profile (for fixed and mobile providers)
Fixed telephony	4	SLT, Lanka Bell, Suntel, Dialog CDMA; Lanka Bell and Suntel are categorised as fixed wireless local loop operators (WLLs) whilst SLT is categorised as a fixed wireline operator; CDMA telephony is classified as a fixed line service in Sri Lanka.	SLT: GOSL 49.5%; Nippon Telephone and Telegraph, Japan (NTT) 35.2%; public holdings 15.3%. Listed on the CSE. Lanka Bell: Milford Holdings (Pvt.) Ltd., Sri Lanka Suntel: Telia AB, Sweden; Townsend Ltd., Hong Kong; International Finance Corporation (IFC), World Bank; Metropolitan Group of Companies, Sri Lanka; National Development Bank, Sri Lanka
Mobile telephony	5	Dialog, Mobitel, Tigo, Hutch, Bharti Airtel (Although the Airtel license was issued in April 2007, the company was not operational in the market even by September, 2008).	Dialog: Subsidiary of Telekom Malaysia, Malaysia. Listed on the CSE. Mobitel: Subsidiary of SLT, Sri Lanka Tigo: Subsidiary of Millicom, USA Hutch: Subsidiary of Hutchinson Telecommunications International Ltd., (listed on the New York and Hong Kong stock exchanges) Airtel: Subsidiary of Bharti Airtel, India
Data communications services (facilities based)	6		
Data communications services (non-facilities based) and Internet service providers (ISPs)	24	Although the TRCSL maintains this number on its website, only 19 of these providers are actually in operation	
Trunked mobile radio network services	2		
Leased line services	1	Dialog Broadband Network	
Public payphone services	1		
External gateway operators (EGOs)	32	Although the TRCSL maintains this number on its website, only 19 of these providers are actually in operation	
Direct-to-home satellite broadcasting service	1	Dialog TV	
Cable television distribution network	1	Lanka Broadband Networks	

Sources: TRCSL website⁶⁴, Company Annual Reports⁶⁵, Company websites⁶⁶

⁶⁴ <http://www.trc.gov.lk/services/licenses/category.html> [Accessed on 17 February 2010].

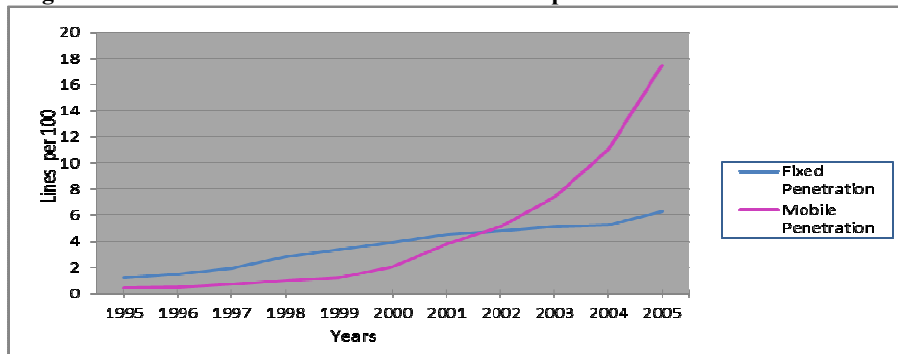
⁶⁵ Sri Lanka Telecom (various years); Dialog Telekom (various years).

As illustrated in Table 5.2 in the next Section of this Chapter, Sri Lanka's telecommunications space had just one fixed line operator as at 1989 – the incumbent, SLT. However, as seen in Table 5.1 above, a number of new competitors have emerged in the telecommunications sector over the years. Notably, all of the fixed and mobile operators, with the exception of Lanka Bell, have strong multinational links. In addition, the leading fixed and mobile operators (SLT and Dialog) are publicly listed companies in Sri Lanka. These MNC linkages and disclosure requirements associated with the Colombo Stock Exchange (CSE) listing are in direct contrast to the other major utility sectors in the country.

The MNC status and public disclosure requirements potentially have several important implications. First, companies with strong international linkages can take advantage of innovations and technologies developed outside Sri Lanka and import them into the country. Second, Dialog and SLT are subject to increased public scrutiny and accountability in Sri Lanka. (The MNC competitors also may be more transparent due to reporting obligations in their home country). The potential impact on regulatory governance and competition due to these factors will be discussed in Section 5.4 of this Chapter.

Although competition has emerged in both the fixed and mobile segments, competition is relatively higher in mobile. This difference is reflected in the Herfindahl-Hirschman Indices (HHI) that I calculated with respect to the fixed and mobile segments for the years 2006 and 2007 based on data gathered from interviews with telecommunications operators. As per my research findings, the HHI scores for the mobile segment were 0.36 and 0.30 in 2006 and 2007, respectively while the corresponding scores for the fixed access segment were 0.46 and 0.40.

Figure 5.2. Fixed and mobile telecommunications penetration in Sri Lanka: 1995-2005



Source: De Silva (2007)

⁶⁶<http://www.mobitel.lk/en/about-mobitel.htm>; http://www.celltel.lk/about_history.cfm; <http://www.hutch.lk>; <http://www.suntel.lk/home/aboutus.php>; http://www.lankabell.net/lanka_bell_corporate_profile.htm [Accessed on 17 February 2010].

As can be seen in Figure 5.2, both the fixed and mobile segments have grown from 1995 to 2005. The chart depicts the number of lines per hundred inhabitants (penetration) and is subject to the data caveats described earlier on in this Section. Several observations emerge from this chart. First, fixed penetration was growing prior to 1997 but then accelerated in 1997 before flattening out and going through a second growth spurt in 2004. (Figure 5.1 also shows increased fixed growth after 2005). Second, mobile growth took off in 1999 and then again around 2004. Third, mobile penetration surpassed fixed penetration in 2002. The subsequent Sections will discuss some potential political and socio-economic dynamics that underpin these trends.

5.2. Key Policy, Reform and Regulatory Governance Episodes in Sri Lanka's Telecommunications Sector: 1977-2008

This Section discusses key public policy episodes with respect to privatisation, competition and regulatory governance in Sri Lanka's telecommunications sector given the backdrop set out in Section 5.1. As indicated in Table 5.2 below, major public policy events in the sector began only three years after the liberalisation of the economy in 1977, with the de-linking of postal and telecommunications services. The separation of these two services was similar to developments in the international telecommunications policy space where rapid technological changes in the telecommunications sector made it functionally incompatible with the less dynamic postal sector (see for instance, Brown et al, 2004). Moreover, as already discussed in Chapter 3, the listing of key public policy episodes in the telecommunications sector extends up to 2008 (encapsulated in Table 5.2 below), given that the TRE method that I use to assess telecommunications regulatory governance is based on the two surveys that I carried out in 2006 and in 2008.

Table 5.2. Significant policy and regulatory episodes: 1980-2008

Year	Regulatory/policy event
1980	De-linking of posts and telecommunications service provision
1989	1st private operator enters market - Tigo (then branded as Celltel)
1991	Legislation to set up regulatory agency (one-man-authority); Corporatisation of incumbent fixed line operator SLT
1993	2 nd mobile operator – Mobitel – enters market (partnership between SLT and Telstra)
1994	National Telecommunications Policy issued by GOSL (covering USOs, cost-based tariffs and QoS for example)
1995	Dialog enters mobile market (subsidiary of Telekom Malaysia)
1996	Licensing of WLL operators (Suntel and Lanka Bell); Amendment to 1991 legislation (5-member Commission- however, Secretary to Ministry as <i>ex-officio</i> Chair of TRCSL)

1997	SLT partially privatised (NTT, Japan: 35%, GOSL: 61.5%, Employees 3.5%); GOSL also signs a 5 year management agreement with NTT and commits to not issuing additional licenses for wireline and international telephony until August 2002 and to a 5 year tariff re-balancing programme to discontinue the practice of cross-subsidising domestic services using net international settlement payments ; Sri Lanka makes WTO commitments under GATS Reference Paper
1998-1999	Fixed telephony interconnection determination issued by TRCSL; SLT appeals determination in courts – fails to stay it (1999); 1st stage of tariff rebalancing commences; TRCSL issues and implements fixed: mobile interconnection determination; Beginning of court cases with respect to interconnection and also VOIP services; Issue of implementing CPP discussed by policy makers, the TRCSL and the operators
2002	SLT acquires balance 60% shares of Mobitel, making it the sole owner of the mobile operator; SLT shares traded on the CSE (and subsequent re-mix of shares as: NTT 35.2%, Public 11.8%, Employees 3.5%; GOSL 49.5%); All court cases except one withdrawn; (yet another) National Telecommunications Policy
2003	Exclusivity on international telephony ends with issuance of EGO licenses (for a fee of US\$ 50,000); Interconnection Rules gazetted; First assignment by auction of 1800 Global System for Mobile Communications (GSM) frequencies; Final tariff rebalancing implemented (a year late); Asymmetric Digital Subscriber Line (ADSL) broadband services launched by SLT; Gazette by GOSL to use levies on international calls for the USO fund
2004	TRCSL decision on the implementation of calling-party-pays (CPP) reversed by the <i>ex-officio</i> Chair of the Commission just hours before a news conference to announce a shift from receiving-party pays (RPP) to CPP (the alleged reason given by the Chair was the political ramifications of the decision just before an election); Public hearing held on the decision, the public hearing committee counts the number of pro and con submissions and concludes that the public was against CPP (although evidence points to the fact that the con submissions were orchestrated by a union)
2005	CDMA frequencies assigned; Consumer lobby takes TRCSL and SLT to court over 5th (final) tariff re-balancing exercise
2006	Sri Lanka's 1st commercial 3G mobile license issued; SLT foreign currency debt outlook revised from stable to negative by Fitch Ratings; TRCSL issues call for 5th mobile operator
2007	TRCSL issues license to a fifth mobile operator Bharti Airtel in the midst of allegations and complaints on the non-transparent nature of this licensing process; GOSL imposes a 10% Mobile Subscription Levy on all mobile user bills; World-wide Interoperability for Microwave Access (WiMax) broadband services launched by Dialog
2008	Mobile Subscription Levy extended to non-mobile wireless phones (CDMA); Malaysia's Usaha Tegas (UT) group buys over NTT's shares in SLT (35.2%), GOSL shares in SLT reduced to 49.5% with the balance 15.3% shares being owned by SLT employees and the public; Lanka Bell invests approximately US\$ 26 million to link to the 65,000 km FLAG undersea global fibre optic network owned by India's Reliance group

Source: Compiled using information gathered through interviews (including stakeholder interviews with telecommunications operators and investment consultants) and document analysis (including numerous media reports, SLT and Dialog Annual Reports and TRCSL press releases)

Turning first to the fixed line segment, a number of episodes directly related to competition are worth highlighting in Table 5.2. In 1996, the government licensed two WLL operators and in 1997, SLT was partially privatised. As such, competition was introduced in the fixed line segment before ownership change. International telephony was opened up to competition in 2003 with the issuance of EGO licenses – although there were significant regulatory governance issues pertaining to these EGOs as will be discussed later on in this Section. In 2005, the CDMA frequencies were re-farmed and licenses subsequently issued.

Reviewing Figures 5.1 and 5.2, fixed sector growth does correspond to the opening up of competition from these events. First, prior to 1996, subscriber growth increased even before the WLL license issuance. As expressed in a stakeholder interview that I had with a telecommunications sector consultant, the threat of potential competition from the new WLL entrants provided SLT with an incentive to expand their coverage and grow the sector.

“SLT was sitting quite comfortably before the government announced that they were bringing in Suntel and Lanka Bell. Now they knew that they had to compete. So there were a lot of changes in SLT’s management. The management systems were streamlined. People who were on a waiting list to get a telephone for a long time got connected faster.” (Quote 5:5)

As such, in line with the discussion in sub-Section 2.3.1 of my thesis, contestability played a key role in SLT’s decision-making process at this point in time. The “mental model” of the incumbent paved the way for a business strategy to deal with the reality of new entrants.

Fixed sector growth accelerated following the 1996 issuance of the WLL licenses and the 1997 SLT partial privatisation. A second growth spurt occurred soon after the opening up of international telephony to competition in 2003. This ended SLT’s de facto monopoly in the international segment (Government of Sri Lanka, 1997). As set out in Chapter 4, the granting of this monopoly was embedded in the political and economic realities that prevailed at the time of SLT’s partial privatisation; realities that included an unstable political climate, a civil war, budgetary constraints and an imminent need for foreign investment. According to my research findings based on stakeholder interviews with telecommunications operators, international call rates fell by approximately 70% with the opening up of international telephony to other operators. Finally, as seen in Figure 5.1, the re-farming of the CDMA licenses had a significant impact on fixed sector subscriber growth (see for instance, De Silva, 2007).

The partial privatisation of SLT in 1997 also corresponded with positive growth in the fixed segment. As will be discussed later on in this Section however, this growth in the fixed segment turned out to be a temporary phenomenon. An important fact to note is that the privatisation of SLT in 1997 was only partial; the GOSL still retained a majority stake in the company. However, the management within the partially-privatised entity changed; NTT which held 35% of SLT’s shares brought in their own management systems. As also set out in Quote 5:5 above, one of the observations from my focus group session was as follows:

“Privatisation is not a good thing in this country. It is just a way for the government and their political friends to make money. But the privatisation in SLT was all right. Anyway there are so many private telecom companies in Sri Lanka already. The workers in SLT are happy. The Japanese managers are treating them well. They have got bonuses and better salaries. Their offices are also much nicer now.” (Quote 5:6)

As such, in line with the principal-agent dynamics discussed in the context of the literature pertaining to this phenomenon in Chapter 2 and in the context of Sri Lanka’s macro-governance milieu in Chapter 4 of my thesis, my research findings suggest that the change in management facilitated internal restructuring and tighter efficiency mechanisms within SLT. Competition combined with better management practices have been more significant than ownership change per se in the reform process pertaining to the telecommunications sector.

However, although SLT’s 1997 partial privatisation did enhance competition in the fixed line segment (due to management changes), privatisation also presented an opportunity for large-scale rent extraction on the part of the political leadership and interest groups closely allied to it (including some license-seekers). In line with the tendency in the Sri Lankan policy process towards rent-seeking described in Chapter 4, policymakers did not pursue privatisation primarily to increase efficiency but rather for their own gain. This situation is evidenced for instance in Quotes 4:7 and 4:19 and in the views expressed in my stakeholder interviews with some members of Sri Lanka’s academic as well as media community and also by some operators in the telecommunications sector.

The process by which the political leadership gathered support for the 1997 privatisation reinforces the political patronage path dependence ingrained in Sri Lankan politics discussed in Chapter 4. Trade-union opposition to privatisation was, in contrast to the case of electricity sector reforms described in Chapter 4, contained by strategic moves on the part of the political leadership. Political buy-in of this usually resistant group was obtained interestingly by building a coalition for reform with the close family members of employees. Specifically, the Minister in charge of telecommunications wrote letters to the wives and mothers of workers setting out the personal financial benefits that would accrue to employees if the privatisation process was implemented (see for instance, Salih, 2000). The result of this rather innovative tactic in the context of public policy in Sri Lanka was that there were absolutely no protests against this particular privatisation exercise.

The mobile segment has shown far more dynamism than the fixed line segment as illustrated in Figures 5.1 and 5.2. As seen in Table 5.2, the first private mobile operator (Celtel/Tigo) entered the Sri Lankan market in 1989, joined by Mobitel in 1993. The mobile sector grew steadily in the 1990s and accelerated in the late 1990s and through the 2000s. Key policy and regulatory events listed in Table 5.2 which impacted on mobile sector competition include the termination of SLT's international telephony monopoly, the issuance of the EGO licenses and the auctioning of GSM spectrum, all of which took place in 2003.

The HHI scores reported in the previous Section underscore the high level of competition in the mobile segment. Operators have proliferated value-added services and loyalty programmes and ramped up advertising (see for instance, De Silva, 2007 and individual mobile telecommunications company websites). Moreover, as set forth in Samarajiva (2007a), the CFA of 2002 also provided a significant opportunity for mobile operators to roll out their services in the conflict-torn regions of the country. Pent-up demand for telecommunications services in these regions reinforced these supply side initiatives.

Specific examples of competition in the mobile sector abound. Mobitel initiated an aggressive price war in 2008 resulting in lower tariffs. In reaction to Mobitel's price dropping strategy, Dialog responded with a 1,000 minutes free talk time package. Media analysts attribute this price dropping strategy to the imminent entry of the fifth mobile operator Bharti Airtel – similar to the manner in which contestability influenced the behaviour of SLT prior to the entry of the WLLs in 1996.⁶⁷ In addition, Tigo announced that all incoming calls within its network would be free with all other mobile operators following suit (see for instance, Samarajiva, 2008). Indeed, research conducted by LIRNEasia (2008b) benchmarking mobile tariffs in South Asia also shows that Sri Lanka had relatively low mobile prices, although not the lowest in the region, as at March 2008.

This competitive reaction to Mobitel's price cutting initiative also effectively put an end to any discussion on CPP versus RPP which as shown in Table 5.2 above has been debated since 1999. In 2004, TRCSL's decision to shift from RPP to CPP was reversed by the *ex-officio* Chair of the Commission just hours before a news conference to announce the change. As set forth in Table 5.2 and as argued in Samarajiva (2008), this backsliding on the part of the TRCSL points to the syndrome of both regulatory capture

⁶⁷ See for instance, Lanka Business Online (LBO) (2008) Street Fight. *LBO*, 23 November. [Online] Available from: <http://vanguard1.vanguardlk.com/lbo/fullstory.php?nid=233160788>. [Accessed on 11 September 2011].

(as the fixed operators were against the move to CPP) and political capture (as this issue was tabled just before an election). The mobile operators' adoption of strategies that rendered the need for a formal CPP regime redundant provides an excellent example of how competition and operator strategies spurred by market forces have offset the policy gap perpetuated by the TRCSL.

Although competition in the telecommunications sector at times has sidestepped episodes of ineffective regulatory governance, there have been continued examples of regulatory governance problems relating to both the fixed and mobile segments. Such problems include apparent capture of the regulator by existing competitors to hinder new entry, continued use of regulatory processes for rent-seeking by well-connected individuals and regulator favouritism for the still partially-government owned SLT. These issues were pointed out in some of my stakeholder interviews with members of the academic community, the media and investment consultants and as will be discussed below.

For example, my research findings indicate that the gradual slowing down and decline in growth in the fixed access segment from around 1999- 2003 is the result of key political and socio-economy factors that undermined the processes of regulatory governance. As pointed out in my interviews, the post-privatisation years saw the political leadership and their allied stakeholders maximising rents at the expense of the public interest. Regulatory capture and policy gaps in regulatory governance increased in the post-privatisation years with successive regimes, private investors and the regulator colluding to inhibit further competition.

All these factors are very similar to those discussed in Chapter 4 in relation to the policy process pertaining to privatisation, competition and regulatory governance in Sri Lanka. A key observation made by a leading telecommunications consultant (which was also re-iterated by a few telecommunications operators) is as follows.

“There is really no point in talking about regulatory governance in this country. The TRC does not have the capacity to do simple regulation. It's a waste of tax payers' money to keep this white elephant running. On top of that, people who used to work for SLT are now in the TRC. These people are all making money. Nothing can really be done because the processes are bad. The TRC spends so much money and gets foreign consultants to advise them. There are so many consultancy reports on CPP, spectrum allocation even on restructuring the TRC. But these reports are sitting on shelves in the TRC library collecting dust. The Secretary to the Ministry is also the Chair of the Commission. It is hard to find good regulators in this country. All these regulators are political appointees. So if they want their jobs they can't go against the government or the people close to the government.” (Quote 5:7)

Some concrete examples of sub-optimal regulatory governance processes that I gathered from my stakeholder interviews are as follows:

- The exclusivity on international telephony granted to SLT under the privatisation agreement – that ended almost a year after the contractually agreed date – provided this entity with the opportunity to entrench itself in the market (first-mover advantage) and develop scale and scope economies through the control of essential facilities and network standards and vertical economies. SLT also used this leverage to engage in anti-competitive interconnection practices such as blocking calls originating from the WLL networks, imposing a fixed-mobile interconnection regime that was biased towards SLT, preventing the implementation of CPP, acquiring Mobitel (and enhancing its “deep pockets”) despite the fact that the National Policy on Telecommunications (Government of Sri Lanka, 1994) specifically sets out that fixed access operators cannot provide mobile services and later colluding with the WLL and mobile operators to stall the interconnection of EGOs.
- SLT has no legally-binding USOs (Government of Sri Lanka, 1997) while the WLL operators have USO commitments built into their license agreements
- The licensing process has, on average, in the period under study been non-transparent
- Anti-competitive cross-subsidisation in the form of tied sales is of major concern, particularly between SLT and Mobitel, with the TRCSL claiming that it lacks the capacity to implement systemic processes to detect such behaviour on the part of operators
- The TRCSL has not announced a clear decision on whether or not Voice-Over-Internet-Protocol Services (VOIP)⁶⁸ are legal in Sri Lanka. These services provide consumers with a choice between higher quality, more costly voice services and lower quality, cheaper, data-voice services. The mid-late 1990s saw a number of legal disputes and court cases over the provision of these services, given the lack of a clear ruling by TRCSL. However, in practice, VOIP is widely used throughout the country– in households, offices, and in the mushrooming communication bureaus – indicating that operators have by-passed the regulator to cater to the demands of the market.

Another important gap in the regulatory process is the discrepancy between the number of licenses reported by the TRCSL on its website and the actual number of active operators. The fact that Bharti Airtel, a mobile operator that got its license in April 2007, is still not operational as at the 3rd Quarter of 2008 does not send out positive signals to the investment community. Indeed Airtel issued media statements to the effect that its entry into the Sri Lankan market is being blocked by a discriminatory stance adopted by

⁶⁸ In essence, what VOIP does is blur the line between voice and data service provision. Instead of using a dedicated circuit to connect to callers, VOIP encodes the telephone call as a two-way stream of data packets and sends it over a high-speed internet connection.

the existing mobile operators in terms of interconnection.⁶⁹ On the other hand, in my interviews, representatives from some existing telecommunications operators and investment consultants alleged that Bharti Airtel obtained its license in a non-transparent manner.

Similarly, although 32 EGO licenses were issued at a fee of US\$ 50,000 each under Section 17 of the Act of 1991 as amended by the Act of 1996, only 19 of the licensed operators are in operation due to interconnection issues with the incumbent fixed and mobile telephony operators. This imbroglio is a direct fallout of the failure on the part of the TRCSL to implement the Interconnection Rules made under Section 68 of the Act of 1991 as amended by the Act of 1996 and gazetted in March 2003 (Government of Sri Lanka, 2003c) and the consequent absence of a robust interconnection regime (see for instance, Dharmawardena, 2004, De Silva, 2007).

Again on the issue of licensing, some of the telecommunications operators and investment consultants that I interviewed for this research, as set forth in Appendix 3.3 describing the TRE respondents (Categories 1 and 2) and in Appendix 3.5 detailing my interviewee profiles, expressed significant concerns on the process by which TRCSL issued WiMax licenses. The non-transparent manner in which these WiMax licenses were issued and the implication of this process for rent-seeking and political patronage were also highlighted in several media reports. Specifically, SLT made a public complaint that the TRCSL was delaying the approval of the company's application for WiMax despite numerous reminders. This lapse in regulatory governance on the part of TRCSL resulted in SLT purchasing stakes in Sky Network (a unit of UK's Lycatel group) in order to expand its wireless data network.⁷⁰

The regulatory process with respect to unified licensing also has been an impediment to sector development. The lack of a decision on unified licensing, in spite of numerous policy briefs and high-level discussions on the subject over the last decade has created a sense of uncertainty in the telecommunications policy and regulatory space.⁷¹ Moreover, the asymmetric rules applied in this instance (SLT, a fixed line provider owns Mobitel, a mobile service provider; Dialog acquired MTT Network (Pvt) Ltd. – a

⁶⁹ Bharti Airtel (21 September 2008) Airtel alleges local operators blocking its entry. *The Nation*. [Online]. Available from: <http://www.nation.lk/2008/09/21/busi3.htm> [Accessed on 24 October 2009].

⁷⁰ The Sunday Leader Online (2008a) The Rajapaksa 'connection' and multi million dollar deal. *The Sunday Leader Online*, 24 February. [Online] Available from: <http://www.thesundayleader.lk/archive/20080224/spotlight.htm> [Accessed on 12 September 2011]; The Sunday Times Online (2008) SLT and Sky Network Ltd's WiMax deal sealed. *The Sunday Times Online*, 18 May. [Online] Available from: <http://sundaytimes.lk/080518/FinancialTimes/ft332.html> [Accessed on 12 September 2011]

⁷¹ The Nation Online (2008) Telecom accounts for more than half of FDI. *The Nation Online*, 13 April. [Online] Available from: <http://www.nation.lk/2008/04/13/busi1.htm> [Accessed on 12 September 2011].

backbone provider – following its less-than-transparent acquisition of a CDMA license; and other fixed access providers are prohibited from owning mobile subsidiaries and vice versa) is another instance of inconsistent application of regulatory governance (see for instance, De Silva, 2007).

The fact that these practices prevail in the sector, in direct contravention of Sri Lanka's WTO commitments⁷² also indicates that global regulatory governance even when enshrined in legal processes have little impact on regulatory governance in Sri Lanka's telecommunications sector (see for instance, Dharmawardena, 2004, Samarajiva, 2007b). This point was further reinforced in one of my elite interviews with a representative of the donor community.

“As donors we would like to see Sri Lanka doing well. But there are a lot of internal issues, mostly political, that we can't control. We sign technical support agreements with the government. But it is up to the government to make sure that these are carried out. Sri Lanka has signed on several international agreements. They were one of the first to sign the GATS agreement. But as you well know the political situation has made things difficult for the government. Even removing the international monopoly was delayed. The ADB had to withdraw its support for electricity reforms. But we still have to keep pressing on”. (Quote 5:8)

Thus, as evidenced through my research findings and discussed throughout this Section, policy gaps are widely present in the policy process pertaining to Sri Lanka's telecommunications sector. This phenomenon of policy gaps is very similar to the weaknesses in Sri Lanka's policy process set out in Chapter 4.

5.3. Exploring Regulatory Governance in Sri Lanka's Telecommunications Sector: TRE Survey Results 2006 and 2008

This Section sets out the findings of the TRE surveys that I conducted in 2006 and in 2008. The analysis of TRE scores in this Section aims to further enrich the “thick” description of public policy in Sri Lanka's telecommunications sector set forth in preceding Sections of this Chapter, using interviews, focus group observations and document analysis. As detailed in sub-Section 3.3.2.1, the TRE method is designed to evaluate regulatory efficacy in a country's telecommunications sector by capturing the perceptions of informed stakeholders in the telecommunications policy and regulatory space. As such, this method sits well with the interpretivist philosophy that underlies my

⁷² Sri Lanka is a signatory to the WTO Agreement on Basic Telecommunications Services and has fully adopted the General Agreement on Trade in Services (GATS) Telecommunications Reference Paper.

research process and with concepts such as “mental models” that are central to North’s NIE framework that I use to explore my research problem in this thesis.

As mentioned previously, the TRE method is not designed to evaluate telecommunications sector performance. Instead, it is carefully structured to evaluate regulatory efficacy in the telecommunications sector, using particular dimensions of regulatory governance such as market entry, access to scarce resources, interconnection, tariff regulation, regulation of anti-competitive practices, USOs and QoS. (See Appendix 3.4 for the 2008 Sample Questionnaire). What is important to note is that the TRE method looks primarily at the regulatory process in relation to each of these dimensions as reflected in the definition of each of these dimensions set out in the TRE Questionnaire. For instance, the objective of the TRE method in relation to “tariff regulation” is to understand the process (rules of the game) by which tariffs are regulated in Sri Lanka’s telecommunications sector; evaluating the actual levels of tariffs are not within the scope of this analysis. This emphasis on the regulatory process and regulatory governance is also highlighted in the events contained in the “fact sheet” attached to the survey questionnaire. (See Appendix 3.2 for the 2006 and 2008 Fact Sheets).

The TRE analysis carried out in the rest of this Section is based on six of the seven dimensions detailed in Chapter 3: market entry, access to scarce resources, interconnection, tariff regulation, anti-competitive practices and USOs. I did not include the seventh dimension – QoS – as it was added on only in the 2008 TRE project, making comparative analysis impossible. Similarly, the analysis in this Section focuses only on the fixed and mobile segments of the telecommunication sector. As mentioned earlier on in Chapter 3, the broadband segment was only included in an experimental fashion in the 2008 TRE survey.

In light of the brief description of the TRE method above and the detailed discussion in Chapter 3, a “TRE score” – as indicated in Table 5.3 below - reflects the average perceptions of three informed stakeholder categories on regulatory governance and regulatory efficacy in Sri Lanka’s telecommunications sector. Although assessing regulatory substance and sector performance are not the objectives of the TRE exercise, some of the unsolicited comments received from the survey suggest that these other elements may have also influenced the thinking of some of the TRE respondents. This is not surprising given the fact that the TRE method is based on perceptions and that perceptions/ “mental models” can be influenced by a range of factors. As emphasised in North’s framework, mental models are shaped by a whole array of dynamic interactions

between institutions, organisations and individuals with constructs such as path dependence also playing a very important role.

As emphasised in Chapter 3, the TRE method is an extremely useful and parsimonious technique to explore regulatory governance in the telecommunications sector. I would argue moreover, that the richest and most meaningful conclusions that one can draw from TRE scores come out of a single country, one time period study; in other words, context-specific information. As such, in the case of Sri Lanka, looking only at the 2006 survey results or only at the 2008 survey results provide for a richer understanding of real world socio-political and economic factors that underpin regulatory governance. Nevertheless, “thick” information can still be derived from a comparative time-period analysis as set out in Table 5.3 given that the dimensions, the sub-sectors and the stakeholder categories remain the same. However, it is important to keep in mind the fact that the socio-political and economic realities and “institutional endowments” that prevailed in 2006 may be different from those that prevailed in 2008.

This issue of comparison is more of an issue when looking at TRE scores across countries, as set out in Table 5.4 below. As emphasised throughout the discussion in this thesis context matters; what works for one country may not work for another. Thus, policy makers need to be careful when using cross-country findings of TRE surveys to make decisions in regard to regulatory governance. Whilst it is useful to understand how a particular country is placed in general in relation to other countries, policy transfer cannot be readily undertaken without also taking a country’s political and socio-economic environment into consideration.

A comparative picture of telecommunications sector regulatory governance for 2006 and 2008, with respect to fixed and mobile telephony– along six dimensions selected for the TRE analysis - is shown in Table 5.3 below.

Table 5.3. Comparing average TRE scores for Sri Lanka: 2005-2006 and 2007-2008

TRE Dimension	Fixed		Mobile	
	2005-2006	2007-2008	2005-2006	2007-2008
Market entry	2.70	2.74	3.10	2.75
Access to scarce resources	2.50	2.47	2.80	2.73
Interconnection	2.30	2.86	2.40	2.64
Tariff regulation	2.70	2.70	2.90	2.73
Anti-competitive practices	2.40	2.65	2.60	2.70
USOs	2.50	2.77	2.60	3.03
Overall	2.51	2.69	2.73	2.76

There are several observations that emerge from reviewing this Table of results as a whole. First, for both the fixed and mobile segments, the overall TRE scores increased over the time periods, although only marginally for the mobile segment. Second, the mobile segment's overall TRE scores exceeded that of the fixed segment, although the fixed segment had narrowed the gap by 2008. Third, in the context of the Likert Scale used in the surveys (and described in Chapter 3) all the scores were in the average range.

These general findings from the TRE analysis are broadly consistent with the analysis set out thus far in this Chapter using other research methods such as interviews, focus group observations and document analysis. In contrast to other utility sectors discussed in Chapter 4, competition has managed to flourish effectively in the telecommunications industry, particularly in the mobile segment. Indeed, competition increased, especially in the mobile sector, from the early to late 2000s. Thus, even with the episodes of ineffective regulatory governance discussed in preceding Sections of this Chapter, the telecommunications sector has expanded substantially as illustrated in Figures 5.1 and 5.2.

Nevertheless, the middling marks show that the TRE survey respondents do not hold regulatory efficacy in the sector in high regard. This backdrop is important to keep in mind when evaluating the disaggregated scores. These TRE scores are analysed in detail below in the context of the socio-political and economic environment pertaining to Sri Lanka's telecommunications sector set forth in Sections 5.1 and 5.2.

Market entry

The TRE questionnaire for 2008 (contained in Appendix 3.4) defines the scope of market entry largely in terms of the transparency of licensing and licensing conditions. As illustrated in Table 5.3 above, the TRE scores for market entry for 2006 and 2008 indicate a significant drop in the scores pertaining to the mobile sector (3.10 to 2.75) and a marginal increase in the scores pertaining to the fixed sector (2.70 to 2.74).

The significant drop in the mobile segment's score corresponds to several negative regulatory governance episodes set forth in Table 5.2 and discussed in Section 5.2, based on my interviews, focus group observations and document analysis. First, contrary to Sri Lanka's GATS commitments, TRCSL awarded the Bharti Airtel license in a non-transparent manner. Second, despite this issuance, Airtel was unable to enter the market for an extended period of time, an exclusion unexplained publicly by the TRCSL. Third, as illustrated by the problems encountered by SLT described in Section 5.2, the issuing of WiMax licenses also occurred in a questionable manner.

By contrast, there were no specific events of bad regulatory governance in fixed sector licensing making the stability of the fixed scores unsurprising. Whilst the TRE questionnaire defines market entry largely in terms of licensing procedures and conditions, some of the unsolicited comments received by survey respondents indicates that events in 2008 such as the sale of NTT's shares in SLT and the entry of UT and the US\$ 26 million investment made by Lanka Bell in Reliance's FLAG undersea network may have had an impact on responses in the fixed market entry category.

Access to scarce resources

As indicated in Table 5.3, the 2008 TRE score for scarce resources in the fixed sector (2.47) is the lowest amongst the six dimensions for that year and is also below the overall average 2008 TRE score for the fixed sector (2.69). There is no significant difference between the TRE scores reported for the two survey periods in terms of this dimension for either the fixed (2.50 to 2.47) or the mobile (2.80 to 2.73) sectors.

In light of internal discussions amongst the Sri Lanka research team (which consisted of me as lead country researcher, and two researchers from LIRNEasia) and with Sri Lanka country experts outside the team (including three independent telecommunications consultants) as well as some of the unsolicited comments from the respondents, it appears that most respondents perceived access to scarce resources in terms of spectrum/frequency allocation and rights of way. As per Sri Lanka's WTO commitments, procedures for the allocation and use of scarce resources such as frequencies and rights of way have to be carried out in an objective, timely, transparent and non-discriminatory manner.

However, these procedures still remain opaque in Sri Lanka. For example, the TRCSL website indicates that simple exercises such as updating the Master Frequency Register (which sets out the radio frequency spectrum allocations in Sri Lanka) are neglected; the CDMA frequency allocations of 2005 were not recorded in this Register even as at 2007. Moreover, in spite of hiring outside technical consultants to review and provide recommendations for a better spectrum allocation process (see for instance, Telecommunications Regulatory Commission of Sri Lanka, 2004), TRCSL continued to use *ad hoc* processes in this regard (see for instance, Jain, 2007). The one exception to this *ad hoc* process was the utilisation of auctions for the assignment of the 1800 GSM frequencies in 2003 as shown in Table 5.2 above.

Discussions amongst the Sri Lanka research team detailed above together with my stakeholder interviews with telecommunications sector operators referred to in Appendix

3.3 and listed in Appendix 3.5 suggest that problems pertaining to rights of way may well explain the relatively low TRE scores for the access to scarce resources dimension in the fixed sector. For instance, as at 2007, Sri Lanka did not have a national telecommunications backbone. SLT has exclusive access to the nation-wide optic fibre network with no regulatory or policy initiative to derive a cost-effective solution for other operators to access this backbone as at 2007. Dialog through its acquisition of the MTT Network mentioned in Section 5.2 has its own digital microwave backbone.

As expressed by the telecommunications operators referred to in Appendix 3.3 (Category 1) interviewed for the TRE research, microwave transmission is not sufficient to effectively carry voice and data traffic. As at 2007, TRCSL had not mandated infrastructure sharing and there is no formal system in place for access pricing (Sri Lanka Telecom, 2010). However, an example of operator strategies that by pass regulatory inaction is reflected in the case of the Lanka Bell purchase of the FLAG global undersea cable in 2008 which effectively ended SLT's exclusive hold in this segment.

Interconnection

The key elements contained in the TRE survey questionnaire on interconnection included the following: interconnection with a major operator being ensured at any technically feasible point in the network; quality of interconnection comparable to similar services offered by own network; and interconnection offered without delay. A comparison of the two survey periods shown in Table 5.3 indicates that both the fixed (from 2.30 in 2006 to 2.86 in 2008) and the mobile (from 2.40 in 2006 to 2.64 in 2008) sectors score higher in 2008 in comparison to 2006. Moreover, the mobile sector TRE score (2.64) is lower than that of the fixed sector (2.86) in 2008.

The relatively lower score for mobile sector interconnection in 2008 corresponds with the interconnection imbroglio surrounding the entry of Bharti Airtel discussed in Section 5.2 of this Chapter. As pointed out in the feed-back I received at the various fora where I presented the country analysis, the improved scores for both sectors between the two survey periods is a reflection of the ground realities of business strategies. According to the information I gathered at these sessions, the major operators in both sectors have an informal collusive arrangement to ensure relatively smooth interconnection amongst them in spite of the bad regulatory practices in terms of interconnection, such as the failure to provide interconnection to all the licensed EGOs as highlighted in Section 5.2.

Tariff Regulation

The TRE survey questionnaire defined this dimension as the regulation of tariffs charged from consumers. As per Section 5 (C) of the Act of 1991 (Government of Sri Lanka, 1991a) as amended by the Act 1996 (Government of Sri Lanka, 1996a), the TRCSL has the power to advise the GOSL on matters relating to telecommunications including policies on tariffs, pricing and subsidies.

The comparison of TRE scores with respect to tariff regulation between the two survey periods shown in Table 5.3 presents a rather puzzling scenario at first glance. In particular, TRE scores decrease for the category of mobile sector tariff regulation between 2006 and 2008 (from 2.90 to 2.73) even in the context of the dropping of prices by Mobitel followed by Dialog and Tigo's actions to make all incoming calls free.

The unsolicited comments received from some survey respondents combined with the internal discussions amongst the Sri Lanka country team and the feedback from the various local fora suggest that the imposition of taxes on mobile users in 2007 - widely reported in the media⁷³ - appears to have had a strong negative impact on stakeholder perceptions in terms of the cost of mobile usage. As such, it appears that the "mental models" of stakeholders have slotted the imposition of taxes into the category of tariff regulation. The following comment made by a participant at one of the local workshops where the TRE analysis was presented appears to confirm this perception.

"The mobile levy is counter-productive. Now a lot of poor people use mobile phones to do business. Farmers, fishermen, trishaw drivers. This is a good example of the government killing the goose that is laying golden eggs."
(Quote 5:9)

Regulation of anti-competitive practices

The TRE survey requested respondents' assessment of regulatory efficacy with respect to the regulation of anti-competitive practices. Such practices include, for example, elements such as anti-competitive cross-subsidisation, price discrimination and predatory pricing, and the sharing of towers and facilities by a parent company and subsidiaries in the fixed and mobile segments of the market.

The TRE scores for both periods and for both sectors (fixed scores were 2.40 in 2006 and 2.65 in 2008; mobile scores were 2.60 in 2006 and 2.70 in 2008) were slightly below the overall averages (fixed overall averages were 2.51 in 2006 and 2.69 in 2008;

⁷³ See for instance: Lanka Business Online (2007) Choices: Goose or eggs? *LBO*, 3 February. [Online] Available from: <http://www.lbo.lk/fullstory.php?nid=1160489410> [Accessed on 13 September, 2011].

mobile overall averages were 2.73 in 2006 and 2.76 in 2008). These low scores suggest that respondents did not perceive there to be effective regulation in this dimension.

As previously detailed in this Chapter, there were a number of instances of potentially anti-competitive behaviour in the sector, including possible cross-subsidisation and manipulation of the licensing and interconnection processes. In addition, although the price war in the mobile sector is not an instance of predatory pricing as per the standard economic definition⁷⁴ unsolicited comments from respondents did suggest that the price war - which I actually perceive as an exercise of competition - was viewed by several stakeholders as anti-competitive behaviour. As set forth in media reports⁷⁵, the price war was beginning to affect the revenues of the mobile operators with operators voicing concerns on future growth of their operations.

What remains puzzling is the improvement in scores for this category between the two periods for both the fixed and mobile segments. The subsequent discussion amongst the Sri Lanka research team immediately following the analysis and between the research team and participants at various interim presentations of the Sri Lanka TRE project results at the mid-cycle and pre-final stages of the project did not produce a satisfactory explanation for these trends.

USOs

The key element defining the regulation of USOs as per the TRE questionnaire was the administration of the USO fund in a transparent, non-discriminatory and competitively neutral manner. This category performs relatively well in both segments with mobile sector TRE scores recording above average performance in 2008 (3.03) and both the fixed (from 2.50 in 2006 to 2.77 in 2008) and mobile (from 2.60 to 3.03) sectors showing improved scores between the two survey periods.

Although USOs were defined in the context of the administration of the USO fund in the TRE questionnaire, an analysis of the survey responses and the unsolicited respondent comments by the country research team combined with feedback from country experts and observations of participants in the local seminars where these results were presented, suggests that respondents answered this question in the context of access to services rather than in the specific context of the USO fund. Given the growth and

⁷⁴ Predatory pricing is a strategy carried out by a dominant firm to drive competitors out of the market by setting prices below average variable costs with the intention of raising prices and earning profits at a later time period once competitors have been driven out of the market or deterred from entering the market.

⁷⁵ See for instance: , Lanka Business Online (LBO) (2008) Street Fight. *LBO*, 23 November. [Online] Available from: <http://vanguard1.vanguardlk.com/lbo/fullstory.php?nid=233160788>. [Accessed on 11 September 2011].

expansion of telecommunications sector services described in Section 5.1 above therefore, the high TRE scores for USOs do not come as a surprise.

Summary of key findings from the TRE analysis

Some of the key findings that emerge from a comparison of the 2006 and 2008 survey periods are that overall TRE scores have improved considerably in the fixed sector (2.51 to 2.69) and marginally in the mobile sector (2.73 to 2.76); scores for market entry in the mobile sector have shown a significant drop (3.10 to 2.75), and scores for USOs in both sectors have recorded increases (from 2.50 to 2.77 in the fixed sector and from 2.60 to 3.03 in the mobile sector).

But the central observation is the low levels of all the disaggregated scores for both sectors and both periods. Only two individual values, the 2006 mobile market entry score (3.10) and the 2008 mobile USO score (3.03), exceed 3.0, the half-way mark on the Likert Scale between “Highly Ineffective” and “Highly Effective” (see Appendix 3.4). The rest of the scores are towards the “Highly Ineffective” end of the Likert Scale. Based on these TRE results and confirmed by discussions within the Sri Lanka research team and between the research team and interim presentation participants, TRE survey respondents have a low regard for regulatory efficacy in Sri Lanka’s telecommunications sector.

In fact, as set out in the discussion on each TRE dimension above, some of the TRE scores seem to reflect the influence of strategic solutions by telecommunications operators (“mental models” pertaining to business strategies) to regulatory governance problems. For example, as described above, the rise in the TRE scores from 2006 to 2008 for the interconnection dimension (from 2.30 to 2.86 in the fixed sector and from 2.40 to 2.64 in the mobile sector) stem partly from the implementation of a collusive agreement between operators to ensure interconnection. From a regulatory governance standpoint however, such a non-transparent arrangement is sub-optimal, and the absolute levels of the interconnection scores still reflect the perception that regulatory efficacy is more ineffective than not in this area.

In many instances, as indicated in the discussion pertaining to each dimension above, the movements in the TRE scores correspond to the regulatory and policy episodes discussed in Section 5.2. As such, the findings of the TRE analysis largely confirm the rich findings gathered through interviews, focus group observations and document analysis.

As discussed in Chapter 3, the usefulness of any research process lies in its ability to draw meaningful conclusions. What this means in the context of this Chapter is that the value of my research findings lie in the extent to which they provide for a “thick” understanding of the policy process as it pertains to privatisation, competition and regulatory governance in Sri Lanka’s telecommunications sector. The fact that my research process provides for rich findings that are confirmed, based on the triangulation of methods such as interviews, focus group observations, document analysis and TRE, indicates that this research is indeed meaningful in the context of the research problem being explored in this thesis.

Cross-country context

As previously mentioned, TRE comparisons across countries should be viewed with caution. Each country has its own unique political and socio-economic milieu that underpins the survey results. Nevertheless, to provide some general context as to where Sri Lanka stands in relation to the other seven countries in the TRE survey for 2008, Table 5.4 sets out the 2008 cross-country TRE survey results.

Table 5.4. Cross-country weighted average TRE scores: 2008

Country	Dimension						Overall
	Market Entry	Access to Scarce Resources	Inter-connection	Tariff Reg.	Anti-comp. Practices	USO	
Sri Lanka-Fixed	2.7	2.5	2.9	2.7	2.6	2.8	2.7
Sri Lanka-Mobile	2.7	2.7	2.6	2.7	2.7	2.9	2.7
Bangladesh-Fixed	3.4	2.8	3.0	2.9	2.8	2.2	2.9
Bangladesh-Mobile	3.0	2.7	3.2	3.3	2.9	2.3	2.9
Indonesia-Fixed	2.6	2.4	2.9	2.5	2.4	2.1	2.5
Indonesia-Mobile	3.0	2.7	2.7	2.6	2.5	2.1	2.6
India-Fixed	2.7	2.3	2.7	3.9	2.3	2.6	2.8
India-Mobile	3.1	2.2	2.8	3.9	2.7	3.1	3.0
Maldives-Fixed	2.9	3.6	3.4	3.2	2.8	3.6	3.3
Maldives-Mobile	3.8	3.6	3.5	3.4	3.1	3.5	3.5
Pakistan-Fixed	3.0	3.1	3.2	2.7	2.4	2.8	2.9
Pakistan-Mobile	3.9	3.5	3.7	3.2	2.8	3.2	3.4
Philippines-Fixed	2.9	2.7	2.8	2.9	2.7	2.7	2.8
Philippines-Mobile	3.2	2.8	2.8	2.9	2.5	2.6	2.8
Thailand-Fixed	3.1	2.9	2.3	2.8	2.6	2.6	2.7
Thailand-Mobile	2.7	2.6	2.6	2.9	2.6	2.5	2.7

Source: Galpaya and Samarajiva (2009)

The broad conclusion that emerges from the 2008 cross-country comparison is that Sri Lanka's TRE scores are relatively poor compared to its South Asian neighbours. Across almost all categories, Sri Lanka's scores end up at or near the bottom of the country grouping. Only Indonesia has worse overall average scores with Thailand at the same overall average with Sri Lanka. The remaining countries all have better overall average scores than Sri Lanka, with the Maldives and Pakistan having relatively better scores than the other countries in the group. That being said, none of the South Asian countries have particularly impressive TRE scores, indicating that perceptions of regulatory efficacy in the telecommunications sector are low throughout the South Asian region.

It is worth reemphasising that I do not believe that it is wise to draw strong policy conclusions from this "league table" approach. Table 5.4 is only presented to provide some basic context. The key findings applicable to my research question and issues in this thesis from the TRE survey are only derived from the Sri Lanka 2006 and 2008 scores as set out in Table 5.3 above.

5.4. Privatisation, Competition and Regulatory Governance in Sri Lanka's Telecommunications Sector: Unpacking the Policy Process

In this Section, I draw from the analysis of the policy process in relation to privatisation, competition and regulatory governance in Sri Lanka's telecommunications sector set out in this Chapter to address my research question and issues. The rich and "thick" information that I set out in these preceding Sections are derived using my research methods detailed in Chapter 3: TRE perceptions survey, interviews, focus group observations and document analysis. I also evaluate these findings from the telecommunications sector in light of the analysis of the overall privatisation, competition and regulatory governance trends in Sri Lanka described in Chapter 4. By synthesising my research findings from both Chapter 4 and from the preceding Sections of Chapter 5 and placing them within the context of the policy process and North's conceptual framework outlined in Sections 2.1 and 2.2, I draw a number of conclusions about the Sri Lankan telecommunications policy process.

In Chapter 4, I observed that the Sri Lankan policy process from 1977 to 2007 has been marked by high levels of rent-seeking, political patronage and interest group politics driven by the nature of the country's "institutional endowments" as described in Levy and Spiller (1994, 1996a,b), corresponding also with North's NIE framework. The structure and dynamics of the political system, specifically the all-powerful Executive

Presidency and the syndrome of coalition governments resulting from the 1978 Constitution, the suppression of citizen voice, and the perpetuation of “mental models” in which insiders/ those close to the political leadership seek to take advantage of rent-seeking opportunities, among other factors, have fostered a dysfunctional policy making process and ineffective regulatory governance. (See for example, Quotes 4:6, 4:12 and 4:13). Liberalisation and SOE reforms, including privatisation, have occurred along the way but were invariably accompanied by opportunism that undermined the effectiveness of the reform process. (See for instance, Quotes 4:5, 4:7 and 4:19). Wide policy gaps existed on multiple levels in relation to SOE reforms, privatisation and regulatory governance. (See for example, Quotes 4:5, 4:6, 4:9, 4:10, 4:11, 4:12 and 4:13).

The telecommunications sector has not been immune from this dynamic interplay between political and socio-economic institutions, organisations and individuals that has impacted the general policy process in Sri Lanka discussed in Chapter 4. As set out in Section 5.1, there have only been limited steps towards effective regulatory governance in the telecommunications sector. The initial sector regulator established in 1991, ODGT, comprised only a single Director General, had no financial independence and also reported to the same Ministry as did the incumbent telecommunications operator SLT. Whilst the five member regulatory commission, TRCSL, established in 1996, did provide for financial independence (through licensing fees), the entity still lacked operational independence given that it had to report to a single Ministry. In addition, TRCSL, like the ODGT, was not able to attract a full cadre of professional staff due to low salaries.

As such, as discussed in Section 5.2, regulatory capture was the norm and politically well-connected interest groups and individuals utilised TRCSL as a rent-seeking vehicle; a regulatory governance situation very similar to that described in Chapter 4. (See for example, Quotes 4:9 and 5:7). TRCSL has outsourced regulation by utilising outside technical experts – as in the case of the consultancy on spectrum allocation mentioned above - but these reports have largely been ignored, once again pointing to the problems surrounding policy implementation (policy gap).

Unsurprisingly, regulatory governance in the telecommunications sector suffered in the 2000s with a number of key examples related in Section 5.2, including non-transparent licensing, political manipulation of the CPP versus RPP regulatory proceeding and the interconnection imbroglio surrounding EGOs.

The TRE survey results discussed in Section 5.3 confirm this bleak picture of regulatory governance in the telecommunications sector. The central observation coming

out of the analysis of the TRE survey for Sri Lanka is that most of the disaggregated (dimension-wise) scores for both the fixed and mobile segments and in both 2006 and 2008 are low (below the half-way mark on the Likert Scale shown in Appendix 3.4). What this indicates is that informed observers in the telecommunications policy and regulatory space perceive regulatory efficacy in the sector to be weak. Further, as pointed out in the discussion on each TRE dimension above, the “mental models” of key stakeholders such as the telecommunications operators have influenced strategic business solutions to get around weak regulatory governance. Examples include the collusive interconnection arrangement amongst the major fixed and mobile operators and the mobile operators’ decision to make incoming calls free which in turn made TRCSL’s decision on CPP redundant.

Viewing the Sri Lankan telecommunications policy process through the lens of North’s conceptual framework, the same patterns of dysfunctional policy making and regulatory governance described in Chapter 4 emerge for the same reasons:

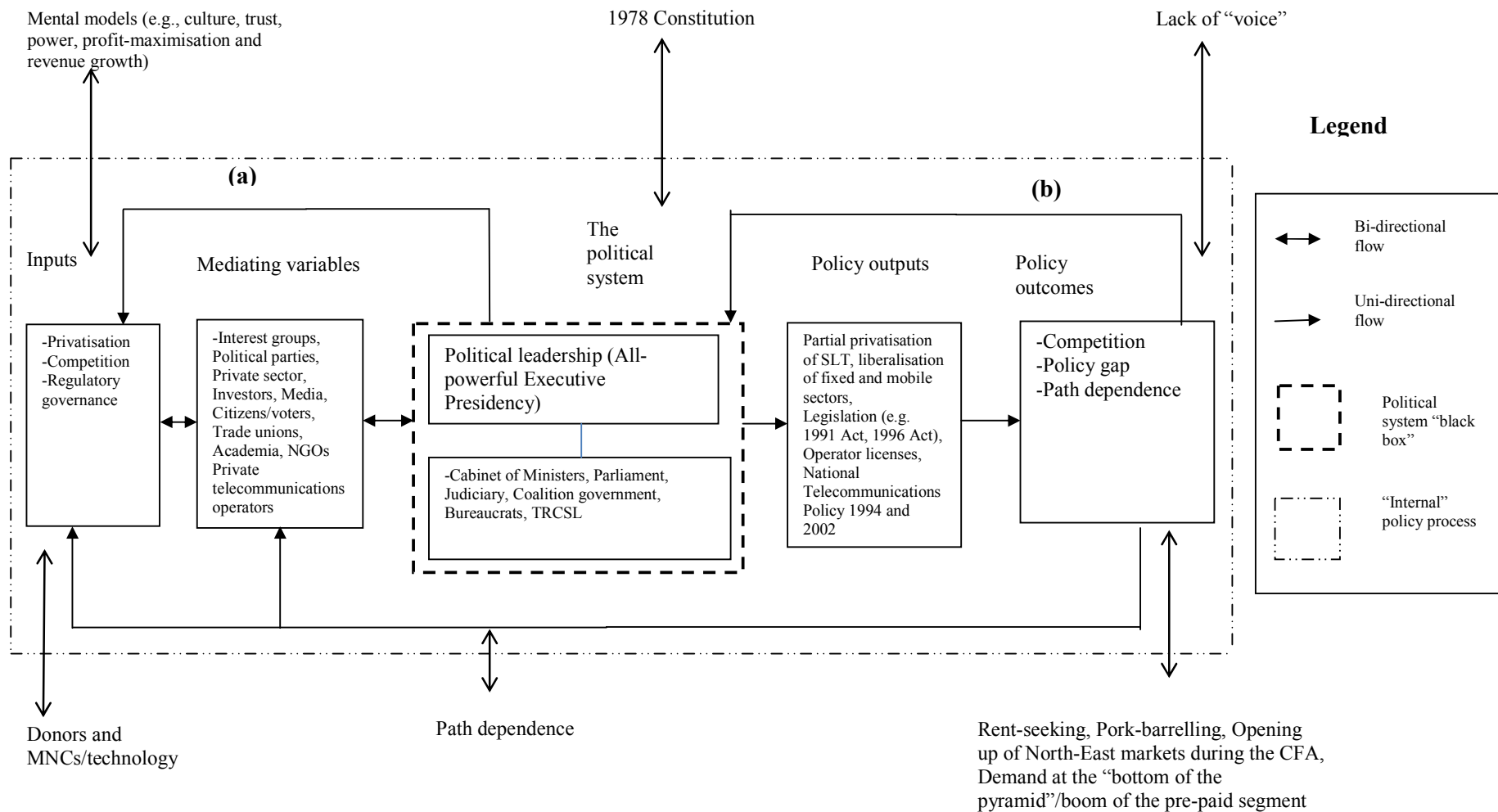
- The need to cater to coalition-party politics has created an environment of political patronage and embedded interest groups that has not only hindered cohesive and consistent policy making in the telecommunications sector but has also hardened the mental models of the political leadership and its allies (path dependence).
- These perverse principal-agent dynamics combined with a lack of voice of the citizenry has led to the exploitation of the rent-seeking opportunities widely prevalent in the telecommunications sector as well as ineffective regulatory governance. Regulatory independence as conceptualised in Chapter 2 or even “workable independence” (see Quote 4:15) has not been achieved with the TRCSL.
- The culture of rampant rent-seeking combined with weak regulatory governance have undermined citizenry and market participants’ trust in the political leadership and the regulator with respect to the telecommunications sector; the credibility of policy makers and of the regulator is low.
- Global governance mechanisms such as Sri Lanka’s GATS commitments have had little impact on domestic regulatory governance (as evidenced for instance in the non-transparent licencing processes and delays in interconnection set out in Section 5.2 and 5.3).

These elements are depicted in Figure 5.3, a stylised depiction of the telecommunications policy process in Sri Lanka. Figure 5.3 modifies Figure 4.2 and adds in sector-specific components. Thus, although many of the organisations, institutions and individuals remain the same, the Figure incorporates additional “environmental” factors

such as the “mental models” of telecommunications operators, the influence of MNCs, increased demand for telecommunications services due to the opening up of the war-torn regions and the proliferation of pre-paid telephony at the “bottom of the pyramid”. It also reflects telecommunications-specific policy outputs such as the partial privatisation of SLT, liberalisation of the fixed and mobile segments and legislation such as the Acts of 1991 and 1996, and policy outcomes such as the increased competition in the sector.

Path dependence, policy gaps and other negative outcomes of the policy process track the problems described in Chapter 4. Just as in Figure 4.2, negative influences such as rent-seeking, lack of trust, repression of citizenry voice and so forth have fed back onto the telecommunications policy process, perpetuating a vicious public policy cycle and reinforcing path dependence. However, as discussed below, additional elements depicted in Figure 5.3 have resulted in sector expansion despite these problems.

Figure 5.3. The policy process in Sri Lanka's telecommunications sector: privatisation, competition and regulatory governance



The telecommunications policy process and regulatory governance have followed the same dispiriting trends set forth in Chapter 4 discussing privatisation, competition and regulatory governance in Sri Lanka. Yet, unlike the other loss-making sectors discussed in Chapter 4, the telecommunications sector has grown tremendously since the mid-1990s, particularly in the mobile segment. As illustrated in Figures 5.1 and 5.2, subscriber growth and penetration have increased significantly starting in the mid-1990s (prior to SLT's privatisation) with the mobile segment increasing rapidly from 1999 onwards. Additional competitors have entered into the marketplace, including dynamic MNCs into the mobile telecommunications sphere.

What explains this trajectory for the Sri Lankan telecommunications sector given the problems in regulatory governance? How did the sector grow despite the massive rent-seeking, political patronage and adverse interest group dynamics that have been the hallmarks of the Sri Lankan policy making process? Why did competition accelerate and flourish in this sector as compared to other areas of the economy dominated by SOEs?

The key difference, I posit, is the dynamism of the telecommunications sector in terms of competition, high and growing demand for telecommunications services as the economy grew (demand at the BOP and the pre-paid segment as well as the expansion after the CFA as illustrated in Figure 5.3) and technological and business innovation (through global channels such as MNCs as illustrated in Figure 5.3) taking place in the industry. These forces offset the ineffective regulatory governance that the industry faced at least during the period under study. The positive effects of increased competition combined with the "mental models" of telecommunications operators (profit-maximisation and revenue growth as illustrated in Figure 5.3) resulted in business strategies to work around regulatory inefficacy, offsetting the negative impacts of bad regulatory governance.

The high potential and actual growth of the sector also shaped the "mental models" of the political leadership and its insider allies. As described in Section 5.2, rent-seeking and political patronage frequently occurred in the telecommunications sector and on a massive scale. The size and potential growth of the sector provided the political leadership with an opportunity to conduct large scale rent extraction by privatising SLT (as reflected for instance in Quote 4:19 from my focus group session). Moreover, the government had incentives to introduce competition via issuing licenses to the private WLL operators. As noted in a stakeholder interview that I held with a telecommunications sector consultant (Quote 5:5), SLT improved its management

practices and increased its efficiency in view of the potential threat of competition, thereby increasing contributions to government coffers as well as providing for further rent-seeking opportunities. This perception was also expressed in a stakeholder interview that I had with a member of the academic community as well as in an elite interview with a donor representative:

“The government’s intentions in giving out more licenses in the telecom sector has really got nothing to do with their interest in the future of the industry. Everyone knows that there are huge rents in the telecom sector. When there is the type of weak regulation as we have in this country it is very easy for politicians and their allies to hijack this process and to make money.” (Quote 5:10)

“The privatisation of SLT was strategically done by the government because they knew that there is a lot of money at stake in telecom. This is why the Minister went all out to get the support of the trade unions. Bottom line: privatising SLT was in the interest of the political leadership.” (Quote 5:11)

Therefore, the difference between the experience of the telecommunications sector and that of the loss-making sectors discussed in Chapter 4 lies in the fact that there was political buy-in for reform in the telecommunications sector. However, what is important to note is that political buy-in was not a reflection of a good macro-governance environment. Clearly, rent-seeking and political patronage also underpinned the dynamics between political and socio-economic institutions, organisations and individuals in the telecommunications policy space as in Sri Lanka’s general policy space described in Chapter 4.

What is important to note is that the reform process in the telecommunications sector enhanced these dynamics - such as the opportunistic behaviour of the political leadership and allied interest groups. The recognition on the part of these actors of the massive rent-seeking opportunities emanating from the liberalisation and partial privatisation exercises provided the incentive for political buy-in. As such, reforms in the telecommunications sector did not in any way indicate a fundamental reshaping of the path dependence that has characterised the Sri Lankan policy process.

One question that arises is the sustainability of the telecommunications sector in the absence of sound regulatory governance. As indicated in the interviews that I carried out for this research, the telecommunications sector as at 2008-2009 is showing signs of stagnation with leading operators such as Dialog reporting significant losses (US\$ 1.6 million in September 2008 for instance) and retrenching a large number of employees due to sector-specific factors such as the imposition of the mobile telecommunications

levy and more recently a tripling of spectrum charges and macro-economic factors such as high interest rates (Dialog Telekom, various). If regulatory governance does not improve and if rent-seeking by connected insiders continues, the telecommunications sector may be increasingly hobbled, and growth may slow.

As noted in Section 4.4, it is too much to expect fundamental changes in Sri Lanka's macro-governance framework, and it is likely that behaviour such as rent-seeking and political patronage will continue. The challenge for telecommunications sector policymakers is to focus on incremental, achievable reforms to TRCSL that would improve regulatory governance. For example, it is unlikely that a substantial shift to regulatory independence as found in some developed countries would be practical (given the underdeveloped bureaucracy) or politically feasible (given the pathological path dependence in Sri Lankan policy making). Likewise, more detailed regulatory contracts, as discussed in sub-Section 2.3.2, that might rein in TRCSL's discretion would be difficult to implement technically, especially given the rapid nature of technological change in telecommunications. In addition, such contracts would be subject to political influence and susceptible to the problems associated with non-expert judicial review.

These examples underscore the problem of policy transfer and the importance of taking into consideration Sri Lanka's institutional endowments. As discussed in Section 4.4, the Levy and Spiller decision tree (Figure 4.3) in the Sri Lankan context recommends simple regulatory rules. Simple rules seem appropriate for Sri Lanka's telecommunications sector particularly given the weak bureaucracy currently in place. TRCSL has not inspired confidence since its formation in 1996, and recent developments described in Sections 5.2 and 5.3 do not seem to have changed this perception. Simple rules and incremental reforms are all that appear possible in the telecommunications regulatory space.

These reforms likely would be some package of intermediate or hybrid regulatory governance changes that would help increase transparency, accountability and independence incrementally. For example, TRCSL could begin publishing technical assistance reports along with medium range plans on how it intends to begin implementing some of the recommendations. Additionally, TRCSL could begin updating its website with more public information on the licensing and interconnection process and also carry out more transparent public consultancy processes, making small moves to more responsive regulation.

Of course, even these halfway measures will not be possible without political buy-in. The likely key to obtaining buy-in will be to convince elements of the political leadership that it risks stifling the dynamism of the telecommunications sector through bad regulatory governance. From a cynical perspective, one could view the exercise as persuading members of the political leadership and allied interest groups who have benefited from the crony capitalism and rent-seeking opportunities that the sector has provided that they risk “killing the golden goose”.

5.5. Concluding Remarks

This Chapter has presented my research findings on the policy making process in relation to privatisation, competition and regulatory governance in Sri Lanka’s telecommunications sector based on my second research question and research issues set out in Chapter 1 and using North’s NIE conceptual framework. This Chapter has also analysed the similarities/ differences between the telecommunications sector case study and the broader Sri Lanka country case study discussed in Chapter 4.

The Chapter has found that, like the broader policy process in Sri Lanka, the political and socio-economic dynamics of the telecommunications sector in Sri Lanka have not been conducive to good policy or effective regulatory governance. The telecommunications sector has recorded remarkable growth in the period under study in spite of bad regulatory governance. What differentiates the telecommunication industry from other sectors is a high level of competition in the mobile segment and the use of innovative business practices harnessing technological developments, particularly from MNCs. These factors have allowed the industry to grow, often by-passing obtuse regulatory practices. However, as evidenced in recent developments in the sector, the sustainability of growth remains a crucial issue, and re-examining regulatory governance practices is becoming more and more critical.

CHAPTER 6: CONCLUSION

6.0. Introduction

This thesis explores the public policy process in relation to privatisation, competition and regulatory governance. By exploring the complex processes of policy making using the Sri Lanka country and telecommunications sector case study, I aim to identify and analyse the political, social and economic processes that have influenced public policy in Sri Lanka and evaluate the impacts of these processes on policy and regulatory efficacy.

My goal is to draw meaningful information and lessons for scholars and practitioners interested in understanding the policy process in developing countries. Whilst acknowledging the limitations of policy transfer and of single case study research, I believe that the rich information that I draw from this case study is useful to understand the broad political and socio-economic canvass within which the policy process is situated.

In particular, my research underscores the importance of adopting a holistic approach and integrating political and socio-economic factors when undertaking reforms in developing countries. In the specific case of privatisation, competition and regulatory governance for instance, I argue that a policy process that neglects to effectively encompass these real world factors when assessing and undertaking reforms would be incomplete and is likely to produce policy errors or even policy failure (policy gaps), especially through the effects on policy implementation and outcome.

As described in Chapter 2, to explore the dynamics of public policy, I use the multi-disciplinary theoretical framework expounded in North's conceptualisation of New Institutional Economics (NIE), combined with the conceptualisation of the policy process drawn from Easton's "political systems approach" and Lasswell's "stages approach" and modified by Jenkins. This framework emphasises the centrality of the dynamic interplay between political and socio-economic institutions, organisations and individuals embedded in constructs such as "mental models" and "path dependence" in real world phenomena such as the policy process. My theoretical framework together with my research process consisting of an interpretivist research philosophy, inductive approach, case study methodology and multiple qualitative methods as detailed in Chapter 3, provide for a "thick" and rich understanding of policy making in relation to privatisation, competition and regulatory governance in Sri Lanka and in Sri Lanka's telecommunications sector.

The rest of this Chapter is organised as follows. Section 6.1 lays out and synthesises my key research findings. Section 6.2 discusses the implications of my research in the context of the existing literature set forth in Chapter 2, describes the limitations of my research and outlines potential areas for further research.

6.1. Key Research Findings

My exploration of and findings for the research questions and issues outlined in Chapter 1 are set out in Chapters 4 and 5 of this thesis. Chapter 4 explores and discusses the policy process in relation to privatisation, competition and regulatory governance in Sri Lanka from 1977 to 2007, and Chapter 5 explores these processes in the specific context of policy and regulatory efficacy in Sri Lanka's telecommunications sector.

These Chapters should be viewed as two components of a cohesive whole. The political and socio-economic factors that have shaped the overall policy process during the period of study – a case in point being the “macro-governance environment” – have had similar effects on the policy process in the telecommunications sector. As such, corrosive real world phenomena such as rent-seeking and the perpetuation of political patronage that have been the hallmark of Sri Lanka's policy making process have also characterised policy making in relation to the telecommunications sector.

In Chapter 5, I take an in-depth look at privatisation, competition and regulatory governance episodes in one particular sector within the overall Sri Lankan country milieu, using the country analysis contained in Chapter 4 as a backdrop. What I attempt to explore and understand is why the telecommunications sector – in particular the mobile segment – has continued to expand significantly since the 1990s even whilst the industry has faced the same country-specific obstacles as other utility sectors discussed in Chapter 4.

I conclude that it has not been the case that regulatory governance and efficacy have been sound in the telecommunications sector. Neither has ownership change per se – the partial privatisation of the incumbent operator – played a major role in the growth of this sector. Instead, the opening up of the telecommunications sector to competition from private operators has provided an impetus for expansion despite the prevalence of ineffective regulatory governance.

6.1.1. Research question 1: What are the political, social and economic processes that have influenced public policy with respect to privatisation, competition and regulatory governance in Sri Lanka from 1977 to 2007?

A country's "macro-governance environment" – what Levy and Spiller (1994, 1996a,b) describe as "institutional endowments" in line with North's framework – plays a crucial role in defining the parameters of the policy process. Therefore, deconstructing the political and socio-economic elements that make up a country's macro-governance environment is key to understanding the workings of the policy making process. Using North's terminology, the dynamic interplay between socio-political and economic institutions, organisations and individuals embedded within particular mental models and situated in the context of real world phenomena such as path dependence has to be "thickly" explored to unpack the complexities of public policy.

Certain prominent features of Sri Lanka's governmental framework created by the Constitution of 1978 have had deep-seated influences on public policy in the country. First, the proportional representation electoral system resulted in the emergence of coalition-party politics and interest group dynamics conducive to political patronage. Second, the Constitution accords the executive with immense authority and minimal accountability. These provisions have given the President substantial powers to dictate the policy process and dole out political favours and the ability to take advantage of rent-seeking opportunities. Third, the electoral cycle is relatively short, further increasing incentives for patronage and crony capitalism. Finally, the judiciary, although independent, does not have authority to review legislation, allowing the political leadership and its allies to set up corrupt regulatory processes and governance with relative impunity.

Rent-seeking, political patronage and pork-barrelling behaviour have been particularly prevalent in the SOE sector, a huge presence in the Sri Lankan economy. In the three decades of study, the SOE sector consistently served as a vehicle for patronage and has been subject to political interference, resulting in an enormous government bureaucracy, inefficient public administration processes and bloated, loss-making enterprises. Based on the analysis of focus group observations and interviews with influential and informed stakeholders in Sri Lanka's policy space, I find distrust and cynicism of the policy making process in general and the SOE sector in particular, including of regulatory governance and fiscal accountability in the sector.

Other characteristics of the political and socio-economic landscape also have had deep impacts on the policy process. Partly as a result of the civil conflict, the government

has suppressed citizenry voice and limited transparency and accountability mechanisms such as freedom of information legislation. Moreover, the non-transparent milieu within which policy making takes place has also provided room for privatisation exercises that have been hijacked by the political leadership and their allies. The discouragement of voice and expression, the lack of transparency and the imposition of the culture of authoritarianism have inevitably led to lack of trust in the government, in political leadership, in formal institutions and organisations, in the SOE sector and in regulatory governance.

Utilising the Levy and Spiller regulatory decision tree, Sri Lanka's institutional endowments, particularly its weak bureaucratic capacity, indicate that simple regulatory rules are the best approach to regulatory governance. However, Sri Lanka's regulatory governance structure has been characterised by murkiness, red tape, blurred lines of accountability, unclear formal mechanisms and non-transparent decision making. These problems with regulatory governance and the resultant weak regulatory efficacy further cement perverse principal-agent dynamics and reinforce the culture of mistrust prevalent in Sri Lanka's policy and regulatory space.

Using the terminology of North, what this has resulted in are mental models of organisations and individuals that view the SOE sector as a vehicle for political patronage and rent-seeking. These mental models, as seen in my interviews and focus group session, are pervasive and held by many members of society. In turn, pathological path dependence has emerged in Sri Lanka's policy process: these mental models have become so entrenched and rent-seeking so much the norm that it has become very difficult to implement policy reversals to a more productive path.

This self-reinforcing dynamic is depicted in a stylised fashion in Figure 4.2. Policy demands are mediated through various organisations and individuals into the political system "black box" which, as described above, has a macro-governance overlay that incentivises rent-seeking and patronage. The policy outputs from this process have not produced beneficial results in terms of competition or regulatory efficacy, and policy gaps have emerged.

It is the feedback between the different stages illustrated in Figure 4.2 and between the "internal policy process" and the "external environment" that has served to perpetuate policy lock-in and path dependence. For instance, continued rent-seeking and pork-barrelling influence policy outcomes which feed back into the political system. Bad policy outcomes feed back into the policy demands and mediating variables process to

further encourage demands by organisations and individuals to participate in rent-seeking opportunities. With limited voice and influence, citizens already distrustful of the policy process become further apathetic, reinforcing the existing policy path.

A key potential source of breaking this cycle could be the donor/local epistemic community – whilst of course taking into consideration concerns of policy transfer that these mechanisms may impose on the domestic policy making process. However, this possibility has hardly been realised. Indeed, in the initial stages of liberalisation from 1977 to 1988, the flow of donor funds without strong pressures to implement politically difficult reforms such as privatisation, allowed the political leadership to continue even more energetically its previous rent-seeking and patronage behaviour. As losses from SOEs increased and fiscal pressures grew more sweeping, donors began making macro-economic stability a prerequisite for additional aid. Although donors did not specifically include privatisation in loan conditionality, the government made privatisation part of the public sector reform that began in the late 1980s. However, these reforms were lacking the effective regulatory governance necessary to make them sustainable and reduce the rent-seeking opportunities. As such, the episodes of privatisation provided even greater space for crony capitalism to operate.

The Sri Lankan government has tended to either ignore the donor community or to strategically use external donor pressure as an excuse for unpopular reforms such as privatisation, which the political leadership also exploited for its own gain. Given this conduct, it is not surprising that the impact of the local epistemic community has been negligible. The political leadership, as agents for the citizenry, consistently failed in its obligations, and path dependence with respect to privatisation, competition and regulatory governance continued.

The one small exception to this political failure was the 2001-2004 UNP government. The UNP attempted to accelerate the privatisation and reform process and directly involved donor agencies. The UNP made real steps to improve technical expertise and regulatory governance, notably through the establishment of the PIPU and the independence given to this entity to drive the reform process. Ultimately, however, the UNP reform process was undone by its failure to gather sufficient internal and external political support and more significantly, by its failure to take note of the practicalities of policy transfer in a socio-political environment that was embedded in real world phenomena such as political patronage and rent-seeking. Moreover, the 2004 dissolution of Parliament pre-empted any additional reform efforts.

6.1.2. Research question 2: What are the impacts of these processes (set forth in research question 1) on policy and regulatory efficacy in Sri Lanka’s telecommunications sector during the period under study?

As discussed in Chapter 5, Sri Lanka’s telecommunications sector is widely perceived in the policy space as being one of the foremost drivers of socio-economic growth in the country. The telecommunications sector in Sri Lanka, in particular the mobile segment, has expanded dynamically through the 1990s and 2000s. Whilst official estimates of sector growth do not include the significant positive externalities linked to the telecommunications industry, my research findings from in-depth interviews point to indirect spill over effects such as the facilitation of job creation in both the informal and formal sectors of Sri Lanka’s economy.

As noted in these interviews, mobile connectivity has had a positive impact on the livelihoods of the farming and fishing communities for instance, whilst the overall expansion in telecommunications in general has been an important factor in the development of the business process outsourcing industry. Moreover, the proliferation of pre-paid mobile telephony and usage patterns such as shared access have been influential features of social mobility in the case of low-income users – users at the “bottom of the pyramid”.

Given this positive socio-economic context in regard to the telecommunications industry, has this sector, formerly dominated by an SOE (SLT), experienced sound policy making and effective regulatory governance? Unfortunately, this has not been the case. Instead, several unique characteristics of the telecommunications industry, including the potential for increased competition, surging demand, and technological and business innovation from multi-national private operators, have combined to overcome the negative impact of rent seeking behaviour and regulatory inefficacy.

Chapter 4 describes the pathological path dependence that has developed in the policy process with respect to privatisation, competition and regulatory governance in Sri Lanka. Rent-seeking and political patronage has been the norm, driven by the macro-governance environment and institutional endowments specific to Sri Lanka. Lack of independence, weak accountability and lack of transparency have characterised regulatory governance during the period of study.

The telecommunications sector has been no exception to these trends. The inherent weaknesses with both the initial sector regulator, ODGT, and its successor, TRCSL, include a lack of operational independence and non-transparent regulatory governance procedures. The telecommunications sector has seen repeated instances of

political interference and crony capitalism, including discriminatory treatment against certain private operators (and in at least one instance, against SLT), manipulation of critical regulatory proceedings and opaque licensing and interconnection decisions.

Rent-seeking has been prevalent in the telecommunications sector. The 1997 partial privatisation was viewed as an example of particularly large-scale rent-seeking. The interviews, focus group session and TRE perception surveys that I conducted in my research process all confirm the low trust in regulatory governance and regulatory efficacy. A number of interviewees and focus group participants also stated their perception that politically well-connected interest groups and individuals have exploited the telecommunications sector for personal advantage. As such, in the eyes of informed stakeholders in the telecommunications policy and regulatory space, the credibility of the regulator is low, much like in the other sectors discussed in Chapter 4.

What has proven to be the major difference in telecommunications in contrast to sectors such as energy and transport, however, has been the introduction of competition and contestability and the subsequent entry of MNC operators into the market. The licensing of the two WLL operators in 1996, the efficiency-enhancing changes in SLT's management in 1997 and the entry of a number of mobile operators throughout the 1990s and onwards all increased competition markedly. The MNC private operators in particular brought in rapid innovation, both in terms of technology and in terms of business strategies. In addition, the private telecommunications firms operated with "mental models" that focused on profit-maximisation and revenue growth as indicated in Figure 5.3. As such, they were driven to find solutions around regulatory inefficacy and poor regulatory governance. A case in point is that of the mobile operators adopting strategies such as making all incoming calls free and rendering the need for CPP redundant, whilst the TRCSL wavered on taking a decision in this regard.

The increase in the number of competitors also corresponded with the large rise in demand for telecommunications services, particularly given the Cease Fire Agreement in the early 2000s. The potential and actual growth of the telecommunications sector had an important influence on the mental models of political insiders searching for rent-seeking opportunities. The political leadership perceived the introduction of competition as a way to expand the sector which would in turn provide greater rent-seeking returns as well as increased revenue for government coffers.

Thus, in a fundamental sense, the infirmities undermining the overall Sri Lankan policy process were the same for the telecommunications sphere, resulting in massive

rent-seeking and regulatory inefficacy. But unique attributes of the telecommunications industry as referred to earlier on in this sub-Section permitted it to expand despite these problems. However, without improvements to regulatory governance, the sustainability of the sector may be in jeopardy in future years.

Chapter 5 also highlights important observations from the Sri Lankan telecommunications experience related to competition and privatisation, and different forms of regulatory governance. First, it is apparent that competition and contestability, not ownership change per se, were the driving forces behind the sector's growth in Sri Lanka. Fixed line growth began with the issuance of the WLL licenses, prior to the partial privatisation of SLT in 1997. This conclusion is reinforced by the fact that the GOSL continued to be the primary shareholder in SLT even after the 1997 partial privatisation. Mobile growth was entirely unrelated to SLT's privatisation as private operators and MNCs entered the market prior to 1997. For the mobile sector, growth was driven by the dynamism of the MNC private operators, harnessing technological changes to meet the growing demand for services.

Second, different forms of regulatory governance are limited not only by considerations of bureaucratic capacity but also by political will. Regulation can take a variety of forms, from independent regulation to regulation by contract to regulation via outsourcing, and intermediate and hybrid variations in between. For developing countries like Sri Lanka with limited technical and bureaucratic capacity as well as wide-spread political interference, it is unlikely that an "independent" regulator with wide-ranging sector expertise is feasible.

But perhaps more importantly, without the political will to create an effective regulatory governance structure, the form of the regulator may not matter. For example, TRCSL has employed outside technical experts but has regularly ignored their reports and findings. Alternatively, implementing a regulatory contract system to rein in the discretion of TRCSL simply would move the locus of political interference to the Ministry or political elites charged with shaping the contract in the first instance. In addition, the absence of judicial review and effective legal enforcement mechanisms would undermine the efficacy of a regulatory process based on regulatory contracts.

6.2. Contribution, Limitations and Further Research

6.2.1. Contributions to the existing literature

This thesis emphasises the importance of incorporating political and socio-economic factors in exploring and understanding the policy process by using North's NIE theory as an analytical framework. It also attempts to extend the development literature by analysing the interplay between privatisation, competition and regulatory governance in developing countries through this multi-disciplinary approach using Sri Lanka as a case study. Finally, it seeks to draw meaningful lessons for policy makers and those interested in the field of public policy by deconstructing the complex policy process using the Sri Lanka country and Sri Lanka telecommunications sector experience.

I posit that my thesis makes a positive contribution to the public policy literature by demonstrating how North's theoretical framework was used to get to a meaningful interpretation of policy dynamics in Sri Lanka. Specifically, my analysis of policy making in relation to privatisation, competition and regulatory governance in Sri Lanka extends and infuses a real-world context to the abstract discussions of public policy set forth in works such as Hill (1993, 2009), Parsons (1995) and Hill and Hupe (2009) as described in Chapter 2. In addition, I also extend the Levy and Spiller (1994, 1996a,b) "institutional endowments" framework by integrating it with the North and public policy process framework and applying it beyond the telecommunications sector.

My thesis also confirms the important argument set forth in works such as Minogue (1993) that a complete understanding of the policy process requires a multi-disciplinary perspective; that a thorough understanding of the political and socio-economic actors and processes that underpin policy making is vital. As such, my theoretical approach provides a useful framework for other researchers to potentially utilise in conducting their own multi-disciplinary investigation of the policy process.

The in-depth analysis of the Sri Lankan experience provides a real-world understanding of constructs such as policy drivers, policy space, policy gap, policy lock-in, the "black box" of policy making and the "web of decisions". The overlay of key constructs drawn from North's NIE framework – such as the dynamic interaction between formal and informal institutions, organisations and individuals embedded in particular mental models – further enriches the real-world connotations of these policy constructs. For instance, the infusion of "mental models" into the analysis of public policy is akin to understanding the perceptions of key stakeholders in the policy process. This construct sits well with public opinion polls on privatisation set out in works such as

Kikeri and Kolo (2005) and Checchi et al (2009) and with the TRE method used to assess telecommunications sector regulatory efficacy.

My use of an in-depth and multi-disciplinary theoretical and analytical framework confirms the “apples and oranges” policy transfer problem of attempting to import developed countries’ models into the developing country context and underscores the need to analyse specific country details before implementing reform measures. Cautions on policy transfer have been a consistent theme throughout, and these cautions also apply to implementing generic “developing country” prescriptions into a specific country situation. My thesis makes several small contributions on the potential perils of policy transfer.

First, analysis and reforms emerging from the concept of the “regulatory state” propounded by scholars such as Majone (1997, 1999) are potentially not as helpful as more decentred reforms and analysis coming from the “regulatory space” model set forth in works such as Hancher and Moran (1989) and Stirton and Lodge (2002) in the real world of policy making in developing countries. The regulatory state framework is in any event often an academic conceptualisation separated from country-level detail as argued in works such as Moran (2002). What this also means is that regulatory governance approaches such as responsive regulation proposed by scholars such as Ayres and Braithwaite (1992) and regulatory society as set forth by scholars such as Black (2002) are better placed to address regulatory gaps than more narrow approaches centred on the regulatory state.

Second, even decentred prescriptions to enhance regulatory governance hinge on institutional endowments/the macro-governance milieu and may not be appropriate for a particular country. For example, the responsive regulation “pyramid” involving multiple layers of actors set forth by Braithwaite (2006) as a potential model for developing countries requires a high level of societal trust. For Sri Lanka, my findings are more akin to the regulatory approach described by Hall (2000) which characterises regulatory governance as the outcome of tensions between various interest groups each seeking to advance their own agenda. Given the nature of the perverse interest group dynamics embedded in Sri Lanka’s policy and regulatory space, and the low level of societal trust and lack of “voice” that prevail in the country, reforms based on responsive regulation likely would not result in positive regulatory outputs and outcomes.

Third, achieving independent regulatory governance as a policy prescription for many developing countries, and certainly Sri Lanka, is wishful thinking. Given the close

linkages to the state, the use of the regulator as a vehicle for rent-seeking, and general lack of transparency and accountability, truly independent regulatory governance is not a realistic goal. The most that can be hoped for are small incremental changes in regulatory governance to enhance operational or “workable” independence.

On a related note, as set forth by Eberhard (2006), there are alternative regulatory governance mechanisms short of regulatory independence that may be possible in a developing country context. These hybrid and intermediate forms include regulation by contract and regulatory outsourcing. The fundamental problem with such reforms in many developing countries is the necessity for political will to implement reforms. If well-connected interest groups and political insiders still view regulatory governance as an instrument for opportunism and personal gain, they can continue to utilise the regulatory system for continued rent-seeking, whatever the form of governance in place may be. This certainly has been and continues to be the case with Sri Lankan regulatory governance.

My findings on the privatisation experience in the Sri Lankan telecommunications sector also contribute to the existing development literature set forth in Chapter 2. On the necessity of privatisation for development and the success of reforms, I find that in line with the thinking set out by scholars such as Chang and Singh (1992), Cook and Uchida (2001) and Nellis and Birdsall (2005) ownership change was not the major driver of telecommunications growth in Sri Lanka. Instead, based on my research findings, I conclude that the sector expanded dramatically due to increased competition as evidenced by the entry of private MNC operators.

Moreover, my research findings extend and modify the debate in the literature on ownership change versus the forces of competition by taking into consideration political and socio-economic factors such as the mental models of key decision-makers in the policy space. Specifically, as set forth previously in this Chapter, competition and the expansion of the telecommunications sector in Sri Lanka was perceived by the political leadership and its powerful allies as an opportunity for rent-seeking.

Relatedly, on sequencing of reforms, I find that competition in both the mobile and fixed segments began occurring prior to the 1997 partial privatisation of SLT. Indeed, SLT began competing more vigorously when the WLL licenses issued in 1996. This supports the general consensus in the literature, set forth by scholars such as Wallsten (2002, 2003) and Fink et al (2002) for instance, that introducing competition

prior to privatisation is helpful for the reform process in terms of policy outputs and outcomes.

In addition to these theoretical contributions, my thesis also provides some practical insights into the research process that may prove useful for other researchers. First, the case study approach proved to be an invaluable instrument in understanding the practical ramifications of theoretical constructs pertaining to public policy and North's framework as outlined above. The usefulness of the case study approach is evident in the ability to get to "thick" and rich information pertaining to my research problem. Whilst acknowledging the inherent limitations associated with case study research – concerns of generalisability as set out for instance in Blaikie (2000) and Flyvberg (2001) – I take the view set forth by scholars such as Llewellyn (2007) for instance that the value of this approach lies in its ability to explore the deep subjective and inter-subjective underpinnings of real world phenomena.

My research process also sheds light on two much-debated and related concepts in research: reflexivity (considering the researcher as integral to and impacting upon the research process) and positionality (considering the researcher's status as an insider or an outsider within the social context of the research project). My success in obtaining information through interviews, the focus group and the TRE surveys was in no small part due to my role as an established policy researcher in Sri Lanka and the connections that I have developed in that position. By engaging in self-reflexivity and deliberately taking advantage of my status as an "insider" when possible, I inserted myself into the research process in an active way. I argue that this self-reflexivity along with my positionality do in fact enhance the quality of my research.

In conclusion, although the findings that my research generates stem from the particular political and socio-economic context underlying public policy in Sri Lanka, I argue that the insights gained from this research process do add value to the field of public policy in developing countries if considered in a meaningful manner and not used for *ad hoc* lesson drawing or policy transfer as set out in Rose (1991). For instance, a policy maker in another developing country could gain insights on the value of competition as opposed to ownership change, on the kind of regulatory processes that may work in a situation of dysfunctional macro and regulatory governance, or on the importance of understanding the political and socio-economic dynamics between institutions, organisations and individuals in the public policy space, from the discussion set out in this thesis.

6.2.2. Limitations of my research and further research opportunities

There are limitations in my research and findings; some of these limitations are related to my theoretical framework, and others are related to my research process and data availability. These limitations also highlight potential areas for further research.

In my analysis of the telecommunications sector, my findings are limited by insufficient or unreliable data, particularly with respect to sector performance. Moreover, the cost of compiling a robust methodological instrument capable of comprehensively evaluating both regulatory governance and regulatory substance is prohibitive. However, access to higher quality data through funded research projects may allow for incorporation of performance indicators that could help isolate the impacts of regulatory governance from other factors such as technology, global linkages, competition and privatisation on the telecommunication sector's performance.

As discussed throughout this thesis, any generalising of research findings and conclusions must be done with caution. Although my research findings provide significant insights into the policy process and the dynamics of privatisation, competition and regulatory governance in developing countries, policy makers and researchers should also carefully consider the specific country and sector context before applying any of these "lessons".

Another inherent limitation in my theoretical approach is the necessity to gather very detailed evidence. As I argue in my thesis, attempting to analyse the policy process must consider a multitude of political and socio-economic factors. Gathering the necessary evidence is a time-consuming and laborious exercise and likely will not be possible in many circumstances. A potential area for further research is determining an approach that could economise on the need for comprehensive information yet still yield interesting and valuable insights consistent with North's framework.

These limitations point to an avenue for further research. Applying the theoretical framework developed in this thesis to other countries and sectors is a natural extension for additional research. Indeed, reviewing further case studies of different country situations would allow researchers to better draw more generalised conclusions and policy lessons. The accumulation of analyses using a similar approach as argued by scholars such as Shirley (2005) for instance may help to identify similar patterns in the policy process and provide for meaningful policy transfer.

APPENDICES

Appendix 3.1. Ethical practice in conducting research – statement

PhD Thesis Title: The Political Economy of Telecommunications Reform and Regulation in Developing Countries: A Case Study of Sri Lanka

A brief description of the research

My research is organised around two main research questions:

- What are the economic, political, legal and social processes that have shaped regulatory policy, reform and design in the telecommunications sector in Sri Lanka from 1977 to 2004?
- What are the impacts of these processes and of the regulatory reforms and strategies they have produced on the performance of the telecommunications industry in the period under study?

The research strategy will be inductive in nature and the research methodology will involve, *inter alia*, the following:

- Extensive document analysis of academic materials, policy documents, consultancy reports, various grey materials, parliamentary resources and legal enactments.
- Semi-structured interviews with policy makers in government, telecommunication companies, and telecommunication regulatory agencies; and with consultants, donors, and consumers
- Focus group session with telecommunications consumers (and maybe with other key stakeholders in telecommunications reform and regulation in Sri Lanka)
- Secondary data analysis from Central Bank Report, telecommunication company annual reports, International Telecommunication Union Reports, and telecommunication regulator reports.

Relations with and responsibilities towards research participants

The principal concern to be addressed in this regard and that I intend to adhere to, is to explain the nature and objectives of my research to research participants such as interviewees and focus group members. A full explanation will be given of the publication aspects of the thesis; and where the need to maintain confidentiality is expressed by a research participant this will be adhered to in the research process.

Relations with and responsibilities towards sponsors, funders and employers

My PhD research is fully funded and approved by the Centre on Regulation and Competition (CRC), of the Institute for Development and Policy Management (IDPM), University of Manchester. The funding for my PhD is linked to a collaborative research programme between my employer in Sri Lanka – the Institute of Policy Studies, which is an independent policy think tank on socio-economic issues – and the CRC, under a split-site arrangement.

Relations with own Government

The IPS – where I work as a Research Fellow – is established under an Act of Parliament in Sri Lanka, and is therefore a semi-government entity. As such, the research work that is carried out under the auspices of this Institute has the approval of the Government of Sri Lanka. The research I am undertaking for my PhD is to a large degree an extension of the work that I have been doing at the IPS for several years.

Responsibilities to the wider society

Given that my PhD research looks at issues of state, regulation and governance that are of immense significance to citizens of the country, and that issues of telecommunications regulation touch on aspects of consumer welfare as well as investment in the sector, I strongly believe that this research will be beneficial to the wider community and intend that its publication should contribute to a wider public debate on the policy issues involved.

Appendix 3.2. Fact Sheet of Key Events 2005/2006 and 2007/2008

a) Fact sheet of key events in the Telecom Regulatory Environment in Sri Lanka: June 2005-June 2006

- Regulator attempts in 2005 to revive an overdue access-code plan for External Gateway Operators (EGOs) under the 2003 international voice telephony liberalisation
- Court case between the 7 major operators and the ICT Agency over alleged exclusivity clauses in regional telecom network licenses in early 2005
- Consumer lobby taking the regulator and Sri Lanka Telecom to Courts in 2005 over the fifth and final tariff rebalancing exercise
- Issuing of Code Division Multiple Access (CDMA) licenses from March 2005
- Telecom operators holding back June 2005 payments to the Telecom Development Fund (TDF)
- Calling Party Pays (CPP) hearing in August 2005
- Regulator dilemma on defining un-served and underserved areas for cellular service providers
- Issuing of Sri Lanka's first commercial 3G mobile license
- Lanka Bell seeking regulator assistance to increase interconnection capacity with Sri Lanka Telecom
- Sri Lanka Telecom's foreign currency debt outlook revised from stable to negative by Fitch Ratings in May 2006
- Decision – in June 2006 - to open the mobile market to a fifth player with a license fee fixed by the regulator at USD 4 million

b) Fact sheet of key events in the Telecom Regulatory Environment in Sri Lanka: May 2007-May 2008

- May 2007: The TRCSL grants permission to 8 PSTN operators to appoint a third party to operate and maintain a public phone booth on a revenue sharing model
- September 2007: A new tax imposed on mobile users by the Finance Ministry. A 10% tax on all call charges was introduced in place of a 2.5% tax and the Rs. 50 monthly fixed tax was removed
- November 2007: TRCSL invites telecom operators to submit their requests and suggestions to remove technological limitations and allow them to share network resources to further liberalise the market
- January 2008: Sri Lanka Ministry of Transport gives approval to TRCSL to select telecom operators to lease the country's 1200 km rail track, after a study jointly conducted by the Ministry of Transport and the TRCSL
- April 1st 2008: A new tax imposed on CDMA phones by the Finance Ministry. Tax rate increased to 10% on call charges from the previous 2.5%
- April 4th 2008: TRCSL invites project proposals from the licensed ISPs to establish their own links for last mile access using wireless technologies operating in the 5.4 GHz and 5.7 GHz bands on a shared basis
- April 4th 2008: TRCSL publishes a consultation paper on "Planning and Implementation of National Fibre Backbone Network"
- May 2008: TRCSL invites applications from entrepreneurs interested in obtaining a license to provide non-voice telephony services using cable distribution networks and satellite communication networks

Appendix 3.3. Breakdown of TRE respondent categories for 2008

- Category 1:* Stakeholders directly involved in the telecommunications sector (such as operators, industry associations, equipment suppliers)
- Category 2:* Stakeholders who observe the sector with broader interest (such as equity and investment research analysts, credit rating agencies, telecom consultants and law firms)
- Category 3:* Stakeholders representing the public interest (such as the media, civil society personnel, academics and research organisations, telecom user groups, former members of regulatory and other government agencies, donors, current government employees with knowledge on the telecom sector EXCLUDING those directly in the telecom regulatory and policy hierarchy – i.e. excludes anyone from the TRCSL and the Ministry of Telecommunications)

Appendix 3.4. TRE 2008 Sample questionnaire

Sample questionnaire: 2008

Questionnaire Number:

Telecom Regulatory Environment for Sri Lanka

You are kindly requested to make your frank assessments of the telecom regulatory environment (TRE) for the year 12 months ending May,2008 for the fixed, mobile and broadband telecom sectors on a five-point scale.

The dimensions used in this questionnaire are broadly based on the WTO Regulatory Reference Paper (GATS Protocol 4) and are briefly described below. A fact-sheet of key events in the Telecom Regulatory Environment is also attached for your reference for the period May 2007– May 2008.

Completing the Questionnaire should take less than 5 minutes of your time. Please email the completed questionnaire to ----- or fax it to ----- . If you prefer, you can complete the same survey online.

Dimension	Aspects Covered
Market Entry	Transparency of licensing. Applicants should know the terms, conditions, criteria and length of time needed to reach a decision on their application. License conditions. Exclusivity issues.
Scarce Resources	Timely, transparent and non-discriminatory access to spectrum allocation. Numbering and rights of way: frequency allocation, telephone number allocation, tower location rights.
Interconnection	Interconnection with a major operator should be ensured at any technically feasible point in the network. Quality of interconnection comparable to similar services offered by own network. Reasonable rates for interconnection. Unbundling of interconnection. Interconnection offered without delay. Sharing of incoming and outgoing IDD revenue. Payment for cost of interconnection links and switch interface. Payment for cost of technical disruption of interconnection.
Tariff Regulation	Regulation of tariffs charged from consumers.
Regulation of Anti Competitive Practices	Anti-competitive cross subsidisation. Using information obtained from competitors with anti-competitive results. Not making technical information about essential facilities and commercially relevant information available to competitors on a timely basis. Excessive prices. Price discrimination and predatory low pricing. Refusal to deal with operators and other parties. Vertical restraints. Technical disruption of interconnection. Sharing of towers and facilities by parent company and subsidiaries in different segments of the market.
Universal Service Obligation (USO)	Administration of the universal service program/fund in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the policymakers.
Quality of Service (QoS)	The actual performance of a service with respect to what is promised, depending upon the network traffic control mechanisms. Specific criteria may be call quality (for mobile and fixed), connection speeds or throughput (for broadband)

FIXED SECTOR Telecom Regulatory Environment, for May, 2007 – May, 2008

Please **TICK** the number that best represents the **quality of the regulatory environment** for each dimension. The lower number (1) represents Highly Ineffective and the higher number (5) represents Highly Effective. If you feel you do not have sufficient information about a particular question, you may choose to leave it blank.

Market Entry	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Access to Scarce Resources	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Interconnection	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Tariff Regulation	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Regulation of Anti-Competitive Practices	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Universal Service Obligation (USO)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Quality of Service (QoS)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Comments	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective

MOBILE SECTOR Telecom Regulatory Environment, for May, 2007- May, 2008

Please **TICK** the number that best represents the **quality of the regulatory environment** for each dimension. The lower number represents Highly Ineffective and the higher number represents Highly Effective. If you feel you do not have sufficient information about a particular question, you may choose to leave it blank.

Market Entry	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Access to Scarce Resources	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Interconnection	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Tariff Regulation	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Regulation of Anti-Competitive Practices	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Universal Service Obligation (USO)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Quality of Service (QoS)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Comments	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective

BROADBAND SECTOR Telecom Regulatory Environment, for May, 2007-May, 2008 (Broadband = greater than 256kbps upload/download)

Please **TICK** the number that best represents the **quality of the regulatory environment** for each dimension. The lower number represents Highly Ineffective and the higher number represents Highly Effective. If you feel you do not have sufficient information about a particular question, you may choose to leave it blank.

Market Entry	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Access to Scarce Resources	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Interconnection	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Tariff Regulation	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Regulation of Anti-Competitive Practices	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Universal Service Obligation (USO)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Quality of Service (QoS)	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective
Comments	Highly Ineffective <<< 1 () 2 () 3 () 4 () 5 () >>>Highly Effective

Appendix 3.5. Profile of Interviewees: Elite and “Other”
Elite Interviews

Identifier	Group	Organisation	Job Role	Time	Year
1	Senior Government Official	Government Ministry	Economist	60 minutes	2005
2	Politician	Ruling Party	Minister	30 minutes	2006
3	Donor	Multilateral Donor Agency	Economist	60 minutes	2006
4	Senior Government Official	Treasury	Retired Civil Servant	60 minutes	2006
5	Senior Government Official	Government Department	Economist	60 minutes	2006
6	Donor	Multilateral Donor Agency	Economist	60 minutes	2007
7	Politician	Opposition Party	Junior Parliamentarian	40 minutes	2007
8	Donor	Multilateral Donor Agency	Economist	60 minutes	2007
9	Senior Government Official	Government Ministry	Engineer	60 minutes	2008
10	Senior Government Official	Government Ministry	Economist	60 minutes	2008

Note: All interviews took place in Colombo, Sri Lanka. These interviews were informal/free-form based on the semi-structured questionnaire contained in Appendix 3.6.

“Other” Interviews

Identifier	Group	Organisation	Job Role	Time	Year
11	Academics	Research Institute	Head of Socio-Economic Research	60 minutes	2005
12	Lower-level Government Officials	Regulatory Organisation	Head of Policy	60 minutes	2005
13	NGOs	NGO	Political Scientist	60 minutes	2005
14	Academics	Research Institute	Head of Economic Research	60 minutes	2005
15	Academics	University	Political Scientist	60 minutes	2006
16	Media	Print Media	Business Journalist	60 minutes	2006
17	Lower-level Government Officials	Regulatory Organisation	Head of Technical	60 minutes	2006
18	Private Sector	Telecom Operator	Head of Regulation	60 minutes	2006
19	Lawyer	Government Department	Senior Attorney	60 minutes	2006
20	NGOs	NGO	Sociologist	60 minutes	2006
21	Private Sector	Telecom Operator	Senior Management	60 minutes	2006
22	Lawyer	Private Law Firm	Partner	60 minutes	2007
23	Private Sector	Telecom Operator	Head of Regulation	40 minutes	2007
24	Private Sector	Chambers of Commerce	Economist	60 minutes	2007
25	Lower-level Government Official	Regulatory Organisation	Head of Policy	60 minutes	2007
26	Private Sector	Investment Research Firm	Telecom Sector Consultant	60 minutes	2007
27	Lawyer	Private Law Firm	Partner	60 minutes	2007
28	NGOs	NGO	Political Activist	60 minutes	2008
29	Media	Print and Social Media	Political Journalist	60 minutes	2008
30	Consumer Groups	Consumer group	Civil Society Activist	60 minutes	2009

Note: All interviews took place in Colombo, Sri Lanka. These interviews were informal/free-form based on the semi-structured questionnaire contained in Appendix 3.6.

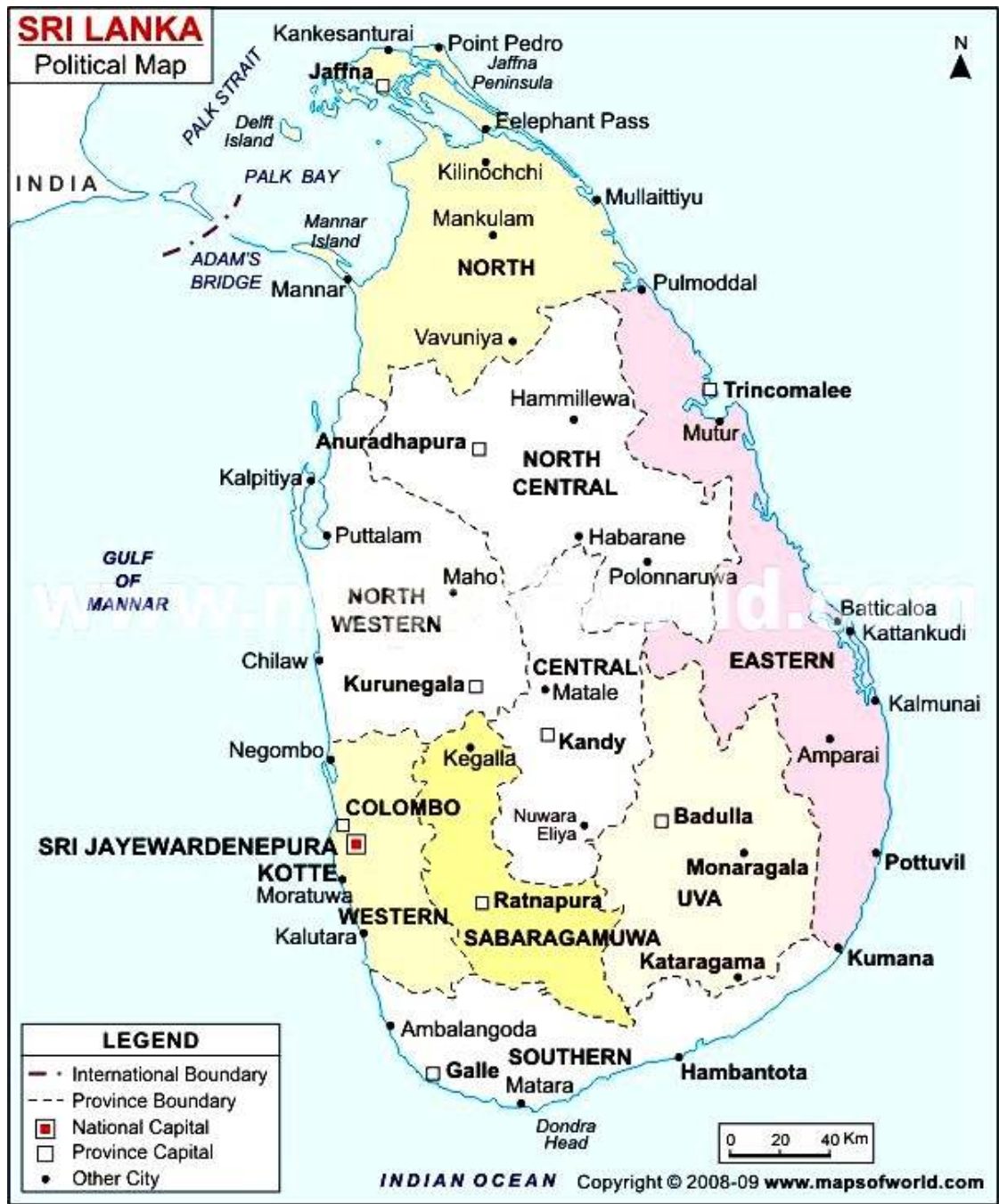
Appendix 3.6. Focus Group and Interview Questionnaire

1. What in your view are the main strengths and weaknesses in the policy making process in Sri Lanka in the following areas?
 - a) Privatisation, SOE reforms, competition (for instance, consider the following sectors: the transport sector, the energy sector and the telecommunications sector)
 - b) Regulatory governance (for instance, consider the processes by which regulatory decisions are made, independence of the regulator, transparency of the regulatory process)
2. What drives this policy process?
3. Do you think that there is a need for change in this policy making process?
4. What in your view are the feasible and realistic policy options for change (taking into consideration the political and socio-economic conditions in Sri Lanka)?
5. What in your view are the road-blocks in implementing these policy options for change (reforms)?
6. Who are the key stakeholders involved in this policy making process (for instance, consider the role of politicians, donors, industrialists/private sector, media, users)?
 - a) What are the different expectations of these stakeholders?
 - b) Do these stakeholders want change; why/why not?
7. Where do we go from here: how do we get to a practical roadmap for change?

Appendix 3.7. Profile of Focus Group

Identifier	Focus Group No.	Stakeholder Category	Organisation	Job Role
1	1	Government Official	Government Ministry	Secretary to the Minister
2	1	Government Official	Government Department	Head of Department
3	1	Private Sector	Chambers of Commerce	President
4	1	Labour	Trade Union	President
5	1	Academic	University	Engineer
6	2	Government Official	Government Ministry	Economist
7	2	Government Official	Government Regulatory Department	Economist
8	2	Private Sector	Private Energy Firm	Partner
9	2	Consumer Group	Consumer Group	President
10	2	Academic	University	Economist
11	3	Government Official	Government Ministry	Engineer
12	3	Government Official	Government Department	Deputy Head of Department
13	3	Private Sector	Private Energy and Gas Firm	Partner
14	3	Media	Print Media	Business Journalist
15	3	NGO	NGO	Political Scientist
16	4	Government Official	Government Ministry	Deputy Secretary to the Minister
17	4	Government Official	Government Department	Engineer
18	4	Private Sector	Private Bus Transport Firm	Owner
19	4	Labour	Trade Union	Secretary
20	4	NGO	NGO	Civil Society Activist

Appendix 4.1. Geographical map of Sri Lanka



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