

## **CORRUPTION: GOVERNMENT'S SILENCE / RHETORIC**

Some of the relevant and cogent issues pertaining to the privatisation of Sri Lanka Telecom carried out by the Public Enterprise Reform Commission [PERC] have been recently highlighted. This has been one of the major privatisations undertaken by the government, of a public utility, that is crucially important for the growth and development for this country. Such relevant and cogent issues, highlighted on the privatisation of Sri Lanka Telecom and the sale of 35% of its shareholdings to Nippon Telegraph & Telephone Corporation [NTT], were based on the very restricted and limited information, that had been released in outline to the media.

Public spirited persons, obviously value transparency and public accountability in the conduct of public affairs, and decry that public transactions be questionably closeted away from public glare and scrutiny.

### **TELECOM PRIVATISATION DOCUMENTATIONS**

Following are the documentations pertaining to the privatisation of Sri Lanka Telecom.

1. Report of the Technical Evaluation Committee for the Phase II bid evaluation of Sri Lanka Telecom, signed by its Chairman K.C. Logeswaran and members Siripala Jayaweera and V.K. Samaranayake.
2. Share Purchase Agreement between the government and Nippon Telegraph & Telephone Corporation dated August 5, 1997, signed by B.C. Perera, Secretary to the Treasury and Jun-ichiro Miyazu, President, NTT witnessed by Dr. P.B. Jayasundera, Chairman, PERC.
3. Shareholders' Agreement between the government, NTT and Sri Lanka Telecom dated August 5, 1997, signed by B.C. Perera, Secretary to the Treasury, Jun-ichiro Miyazu, President, NTT, Hemasiri Fernando, Chairman & R.D. Somasiri, Managing Director, Sri Lanka Telecom witnessed by Dr. P.B. Jayasundera, Chairman, PERC.
4. Agreement for the Provision of Services and Procurement of Personnel between Sri Lanka Telecom and NTT dated August 5, 1997, signed by Hemasiri Fernando, Chairman, Sri Lanka Telecom & R.D. Somasiri, Managing Director, Sri Lanka Telecom and Jun-ichiro Miyazu, President, NTT.
5. Copies of relevant annexures and letters to the aforesaid Agreements.
6. New Articles of Association of Sri Lanka Telecom adopted in August 1997 signed by Hemasiri Fernando, Chairman, Sri Lanka Telecom and Masanobu Suzuki, Executive Vice President, NTT.
7. Bid proposal of NTT and bid proposal of France Telecom forwarded to the PERC on June 28, 1997.
8. Information Memorandum on Sri Lanka Telecom prepared by Deutsche Morgan Grenfell & Development Finance Corporation of Ceylon in October 1996.
9. Valuation Report on Sri Lanka Telecom dated November 29, 1996, prepared by the Chief Valuer, H.R. de Silva.

## SRI LANKA TELECOM VALUATION

These documentations relate to the conduct of public affairs and pertain to public transactions so, why should they be closeted away from public glare and public scrutiny, unless there is some hidden agenda, that could not stand up to the text of public scrutiny ? Would such avoidance or evasion from public scrutiny be the practice adopted in the developed democratic world ?

In the context of the very material and relevant issue raised - i.e. the minimum annual telecommunications tariff increases acquiesced to and agreed upon by the government with NTT for the ensuing years 1998, 1999, 2000, 2001 and 2002 of 25%, 25%, 20%, 15% and 15%, respectively, and the cognisable impact and incidence of such telecommunications tariff increases on the enhancement of the valuation attributable to Sri Lanka Telecom, In the public interest, the valuation computed on the basis of the net present value of a discounted projected cashflow is reproduced from the Chief Valuer's Valuation Report on Sri Lanka Telecom.

Such discounted projected cashflow prepared on the basis of a favourable scenario by the Chief Valuer, given in his Report of November 29, 1996 is reproduced. The net present value given is Rs. 35,471 million at 18% p.a. interest. It would be noted that such discounted projected cashflow had been prepared before the receipt of the bid proposal of NTT by PERC on June 28, 1997.

| DISCOUNTED CASHFLOW ANALYSIS  |                 |        |        |        |        |        |
|-------------------------------|-----------------|--------|--------|--------|--------|--------|
| Scenario I - @ 18% Favourable |                 |        |        |        |        |        |
|                               | In Rs. Millions |        |        |        |        |        |
|                               | 1997            | 1998   | 1999   | 2000   | 2001   | 2002   |
| Revenue                       |                 |        |        |        |        |        |
| (i) Local Services (Net)      | 12,912          | 14,461 | 16,168 | 18,120 | 20,373 | 22,994 |
| (ii) International Services   | 5,605           | 5,685  | 6,180  | 6,488  | 5,813  | 7,154  |
| Expenditure                   |                 |        |        |        |        |        |
| On-International Services     | 2,330           | 2,853  | 3,510  | 4,332  | 5,356  | 6,629  |
| Personnel                     | 1,300           | 1,429  | 1,572  | 1,730  | 1,903  | 2,093  |
| Other Operating               | 1,689           | 2,037  | 2,339  | 2,765  | 3,245  | 3,757  |
| Operating Profit              | 13,198          | 14,027 | 14,926 | 15,783 | 16,662 | 17,659 |
| Depreciation                  | 6,640           | 9,436  | 9,994  | 4,738  | 2,698  | 2,125  |
| Tax @ 40%                     | 2,623           | 1,836  | 2,013  | 4,418  | 5,596  | 6,214  |
| Net Profit                    | 3,935           | 2,755  | 3,019  | 6,627  | 8,397  | 9,320  |
| Depreciation                  | 6,640           | 9,436  | 9,994  | 4,738  | 2,585  | 2,125  |
| Capital Outlays               | 14,736          | 12,230 | 4,845  | 3,150  | 2,150  | 750    |
| Net Cash-Flow                 | (4,161)         | (39)   | 8,068  | 8,215  | 8,935  | 10,695 |
| PV @ 18%                      | 0.85            | 0.72   | 0.61   | 0.52   | 0.44   | 2.43   |
| Net Present Value             | 35,471          |        |        |        |        |        |

Such discounted projected cashflow had been prepared, inter-alia, on the assumption, that the annual telecommunications tariff would increase by only 10% p.a. and with a corporate tax liability of 40% p.a. The minimum annual telecommunications tariff increases acquiesced to and agreed upon by the government with NTT is very much more in excess of 10% p.a., whilst corporate tax liability for a public company, not listed, is 35% [listed company 30%], with a declared policy by the government to bring down corporate taxation to 25%.

The net present value of the projected cashflow had been reckoned at an interest rate of 18% p.a., which also would need consideration in the context of the government's policy to pursue a regime of interest rates of around 12% to 14% p.a., which is what it is at present. The net present value of the projected cashflow has also been reckoned, after deducting substantial capital outlays and had not been reckoned on the basis of projected annual operational cash profits of Sri Lanka Telecom, to have considered the appropriate net present value of such projected operational cashflow, as the indicative return to a potential investor.

### **WAS IT THE BEST DEAL ?**

Such discounted projected cashflow given in the Chief Valuer's Valuation Report on Sri Lanka Telecom is reproduced, so as to facilitate an understanding, as to how much and to what extent, the Sri Lanka Telecom share valuation would be enhanced, given the implications and incidence of the aforesaid factors, moreso particularly, the steep minimum annual telecommunications tariff increases of 25%, 25%, 20%, 15% and 15%, respectively for the ensuing 5 years, which is well and truly, over and above the 10% p.a. telecommunications tariff increases reckoned in such cashflow projections prepared for the valuation of Sri Lanka Telecom. Given the requisite and relevant adjustments, the relevant and appropriate analysis would quite easily reveal the pay-back period on the payment for the acquisition of 35% shareholding of the Sri Lanka Telecom by NTT.

The moot point in issue, is as to why such minimum annual telecommunications tariff increases, so readily acquiesced to and agreed upon by the government, was not publicly disclosed and well published, prior to inviting proposals from international investors for the privatisation of Sri Lanka Telecom. Ought this not have been, the right and proper procedure to have been adopted in the interest of this country, to have thereby attracted the widest possible spectrum of foreign investor interest, competing on a level playing field, to have afforded the best possible deal for this country ?

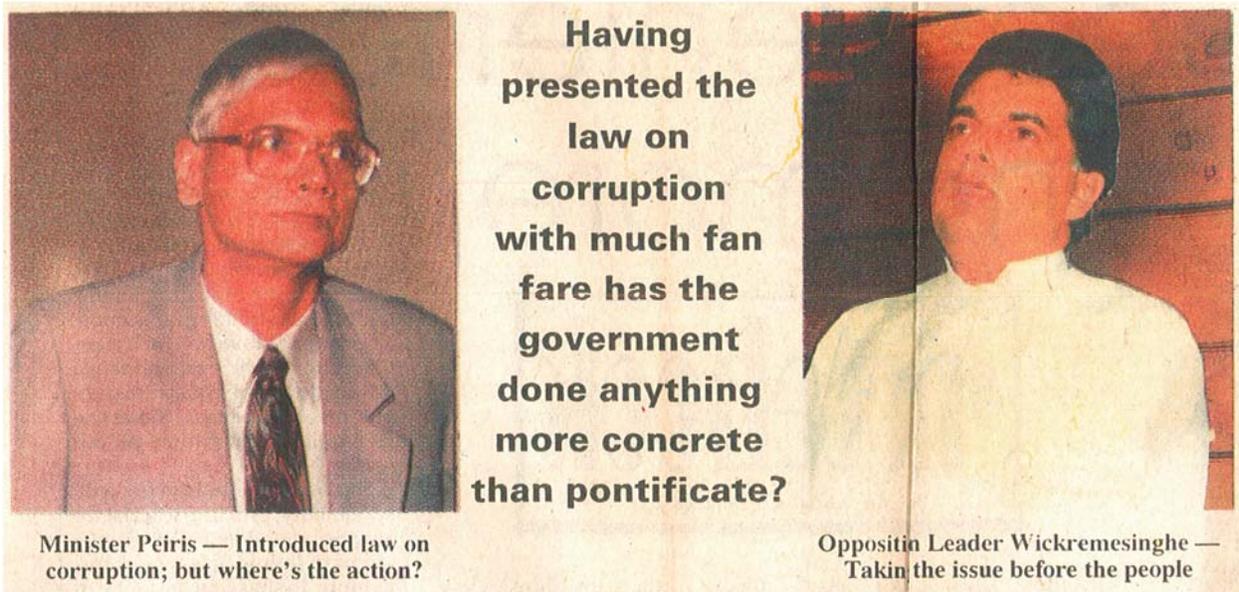
In the absence of such transparent procedure and process, how could one ever claim, that too, with much pomp and fanfare, that this was the best telecommunication privatisation deal for this country, when it was devoid of such fair and open competition, affording a level playing field ? In the given circumstances, could one even endorse the justification of the consideration for such privatisation deal ? More to follow !

### **PUBLIC CAMPAIGN ON CORRUPTION**

The UNP opposition, that was in government previously, is reported to have recently decided to activate a public awareness campaign on alleged large scale corruption by the present government. Ironically, one of the major planks, on which the PA, decrying the then UNP government came into power, not only at the General Elections, but also romped home at the Presidential Elections, was on the main issue of alleged mass scale corruption by the then UNP government. This was made a very big issue, well articulated and presented to the country.

Even before the Presidential Election of November 1994, no sooner the PA government took office in August 1994, in October 1994 itself, an Act was enacted establishing a permanent Commission to Investigate Allegations of Bribery or Corruption, i.e Act No. 19 of 1994 certified on October 27, 1994. At the very same time, the then prevalent Bribery Act was also amended by the Bribery (Amendment) Act, No. 20 of 1994, also certified on October 27, 1994.

## LEGISLATION ON CORRUPTION



These Acts were presented to Parliament, with great enthusiasm, by none other than the Minister of Justice & Constitutional Affairs, G.L. Peiris, who on the eve of the General Elections of 1994, having previously held several public offices, also as and by way of political appointment, under the previous UNP regime, jumped the PA bandwagon. Ironically, did he previously, acting as a special emissary, encourage the illustrious and eloquent Anura Bandaranaike to join the UNP visiting the Rosmead Place abode armed ofcourse, with nothing else, but a pile of books ? Minister G.L. Peiris in introducing this new anti-corruption legislation in October 1994, did so, enunciating eloquently the PA government's commitment to fight the menace of corruption that had pervaded society. However, during the entire tenure of the former UNP regime, there was nary a word on corruption, from then Prof. G.L. Peiris, though he regularly made, many a public dissertations, orally and in writing.

The October 1994 new legislation presented by Justice Minister G.L. Peiris, defined *corruption* and the consequences therefor by repealing Section 70 of the Bribery Act and by substituting the following new Section "70. Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person - (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant; (b) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant; (c) uses any information coming to his knowledge by virtue of his office as a public servant; (d) participates in the making of any decision by virtue of his office as a public servant; (e) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act, shall be guilty of the offence of corruption and shall upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine." *Such new legislation also defined a public servant to include, inter-alia, a Minister and Deputy Minister.*

## **ROLES REVERSED ON CORRUPTION**

It was in such background of such "holier-than-thou" and high profile commitment to combat corruption, that the PA government romped home in the consequent Presidential Elections of November 1994, where the issue of corruption was raised, as one of the major planks of such election campaign, castigating in no uncertain terms, the alleged corruption scandals under the previous UNP regime and holding out to the country, the promise of high profile transparency and public accountability in the conduct of public affairs.

By a strange turn of events, the UNP under the new leadership of Ranil Wickramasinghe, given his new vision and new deal, ably supported by the undaunted General Secretary, Gamini Athukorale, is now reportedly embarking on a grass-root level public awareness campaign on the alleged issue of large scale corruption by this very PA government, which came to power ironically decrying alleged corruption and ardently vowing to deal with the menace of corruption. Nevertheless, now in the eyes of the Leader of the Opposition, Ranil Wickremesinghe the PA government themselves have got bogged down in the quagmire of corruption, prompting Ranil Wickremesinghe to have recently exhorted, as reported in the media, describing the PA government as - *"a government of the corrupt, by the corrupt and for the corrupt"*. Coming from a political leader of the calibre and sobriety of Ranil Wickremesinghe, with many years of experience in the political arena, this, no doubt, is a very serious statement.

It is the PA government, with the former professor of law, Justice Minister, G.L. Peiris, who defined corruption, as set out in the enactment of the law, that he himself presented to Parliament. Corruption is defined, inter-alia, *"as a wrongful and unlawful loss caused to the government with knowledge and intent by a public servant, including a Minister or Deputy Minister etc., or to confer wrongful or unlawful benefit, favour or advantage on himself or on any other person"*.

## **WHY NO ACTION ON SCANDALOUS EXPOSURES ?**

The scandalous privatisations of the Plantation Companies, Steel Corporation, Orient Lanka and on the highly questionable Pacific Shore and Specialist Centre transactions have revealed in no uncertain terms, that colossal losses have been caused to the government, with huge benefits accruing to other persons. Time and again very correctly, aptly and pointedly, the cogent question was posed, as to whether or not such catastrophic transactions, causing colossal losses to the government come within the definition and meaning of corruption, with attended consequences therefor, in conformity with the very legislation enacted by this very government to deal with corruption, as so defined. Justice Minister G.L. Peiris, one of the chief spokesmen of the PA government, particularly on such issues, appears to be lost for words on such scandalous exposures no doubt a unique rarity given his regular rhetoric. Does he thereby silently acquiesce and endorse that the exposures are dead right ? Having presented the law with much enthusiasm, regrettably what action has he taken ?

It is in such very context, that the recent controversy of the Sri Lanka Government Railways locomotive tender was also brought into focus. The Technical Evaluation Committee and the Cabinet Appointed Tender Board, obviously after exhaustive and scientific examination and evaluation, made recommendation, which a very senior, respected and a well experienced civil servant, B.C. Perera courageously defended, even in the face of controversy, stating that a correct decision has been made for the right reasons.

Consequently, given the background of such controversy, a Cabinet Sub-Committee comprising Ministers Ratnasiri Wickramanayake, Lakshman Kadirgamar, Lakshman Jayakody and Kingsley T. Wickramaratne overturned such "correct decision made for the right reasons", so asserted by the Chairman of the Cabinet Appointed Tender Board, B.C. Perera, thereby causing additional substantial costs of Rs. 359,290,210/- to the government of Sri Lanka together with further attended consequential costs, which would easily be interpreted, as a loss caused to the government, also conferring benefit, favour or advantage to another person.

### **WERE ALL ISSUES CRITICALLY EXAMINED ?**

The whole issue revolved round the distance between the wheel sets of the locomotives referred to as the *Bogey Wheel Base*, which was stipulated as 10' 6". Was this stipulated as a specification, *on which no deviation was permitted* ? Was it critically examined, as to how and for what reasons such 10' 6" *Bogey Wheel Base* had come to be specified ? Was it to enable the negotiation of curves of 100 meters radius ? Was a 10' 9½" *Bogey Wheel Base* categorically stated to have been capable of negotiating, even a far sharper curve of 43.8 meters radius ? Do all the locomotives that are operating presently in the Sri Lanka Government Railways exactly have only 10' 6" *Bogey Wheel Bases* ? Was the issue of standardisation of locomotives and need to carry an inventory rationally examined ? Had the crucially important issue as to whether, such engines had been deployed on locomotives in other countries been ascertained ? Should not all these issues have been critically, rationally and scientifically examined, before one could have determined, as to what the correct decision was ?

Minister G.L. Peiris defending the decision of the Cabinet Sub-Committee that overturned the decision of the Cabinet Appointed Tender Board for buying locomotives of a *Bogey Wheel Base* 3½" more than 10' 6" specified, has been reported to have stated, that it was dangerous to have done so. Could such assertion be scientifically and statistically proven or endorsed by knowledgeable experts on the subject on a rational and scientific basis and not by mere conjecture or subjective dictum ? Would not the truth or otherwise of such assertion be quite easily ascertained and revealed by the *Bogey Wheel Base* distances on the locomotives that have been and are in actual operations in the Sri Lanka Government Railways on these very rail tracks in this country ? It stands to reason, that the knowledgeable members of the Technical Evaluation Committee and the Cabinet Appointed Tender Board, no doubt, would have been taken such factors into reckoning, in making their recommendation.

In fact, the Technical Evaluation Committee is reported to have stated that it is kinematically possible to negotiate the 100-meter curves with the 10' 9½" *Bogey Wheel Base*. Ought not the scientific and technical justification for the very inclusion of the specification of an exact distance of 10' 6" have been critically examined, as a relevant issue, or would it mean, that even, if a specification had been included erroneously or deviously, that the government would be committed to procuring from the highest supplier's source, merely because it conforms to such stipulation, which also had not been considered finitely material, where no deviation was permissible, and thereby, knowingly cause loss to the government, as defined as corruption by the very legislation presented to Parliament by Justice Minister, G.L. Peiris ?