



INTERNATIONAL TELECOMMUNICATION UNION

**TELECOMMUNICATION
DEVELOPMENT BUREAU
ITU-D STUDY GROUPS**

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Question 8/1: Establishment of an independent regulatory body

STUDY GROUP 1

SOURCE: ARGENTINA

TITLE: REGULATORY BODY

1 The arrival on the scene of a large number of service providers and of competition resulted in the need to establish rules of the game and to separate service provision from the drawing up and enforcement of those rules. In this respect, the main concerns have been:

- 1) Independence of the regulatory body;
- 2) Aptitude of the regulators in respect of the technical feasibility, economic appropriateness and legal equity of their decisions;
- 3) Public and transparent procedures, and involvement of those subject to regulation in decision making.

2 The main functions of the competent authorities revolve around safeguarding competition, conflicts in relation to which must be resolved under the law (in court and/or through the Administration).

3 There will be other, new problems relating to content control, safeguarding ownership of content and mechanisms for guaranteeing freedom of information and of the press.

4 The establishment of technical standards and the administration of scarce resources such as the radio spectrum continue to be key activities which have a direct bearing on the prospects for developing genuine competition.

AGENDA ON REGULATORY BODY

1 Independence of the regulatory body

1.1 Independence from:

- a) Political arbitrariness
- b) Individual interests

1.2 Tools of independence:

- a) Budgetary autonomy
- b) Aptitude requirements
- c) Stability of responsibilities
- d) Salaries comparable with those in the market

1.3 Possible objectives of an independent regulatory body:

- 1.3.1 Safeguarding the public interest
- 1.3.2 Increasing the availability of telecommunications
- 1.3.3 Increasing the country's ability to compete on the international market
- 1.3.4 Equality of users
- 1.3.5 International tariffs and quality

1.4 Ways of appointing the regulator:

1.4.1 Appointment by the government:

- Advantages:
 - Consistency of policies
 - Political power of regulator
- Disadvantages:
 - Possibility of policy conflicts
 - Bias
 - Influence of real powers external to the telecommunication market
- Consequences:
 - Political power imposes itself with regard to objectives
 - Delays in development
 - Delays in demonopolization
 - Frequent changes of direction
 - Instability

1.4.2 Self-regulation by service providers:

- Advantages:
 - Corporate checks and balances
 - Depoliticization of decisions

- Disadvantages:
 - Impossibility of privatizing policy
 - Lack of consistency with official policy
 - Oligopolistic corporate agreements
 - Possible limiting of consumers' right to choose
 - Obstacles and inactivity caused by powers of veto
- 1.4.3 Mixed alternatives:
- Political appointment with corporate presence
 - Political appointment with legislative agreement
 - Division of powers within the regulatory body:
 - a) Political executive director
 - b) Tribunal with semi-judicial competence
 - c) Political regulatory authority with mandatory prior consultation
- 2 Authority and powers of the regulatory body**
- 2.1 Executive or administrative powers:
- Administration of the radio spectrum
 - Issuing of licences or concessions
 - Monitoring of quality of service
 - Monitoring of fulfillment of obligations
 - Enforcement of standards
- 2.2 Legislative or regulatory powers:
- 2.2.1 With business participation:
- Basic plans
 - Type approval of equipment and interfaces
- 2.2.2 With consultation:
- Protection of the consumer
 - Protection of competition
 - Regulation of services
 - Licensing standards
 - Competition standards
- 2.3 Jurisdictional:
- Competition-related disputes between service providers
 - Disputes involving users

3 Procedures of the regulatory body

3.1 Procedures for transparency and regulatory efficiency:

- Importance of prior consultation
- Importance of participation by parties subject to regulation
- Importance of transparency
- Publication

3.2 Recourse against decisions of the regulatory body:

- Control of arbitration
 - Possibility of administrative amendment
 - Possibility of judicial review. Limits.
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