

# International Telecommunication Union



## ROLES OF REGULATORS

CRC, MONGOLIA  
July 2003

Eun-Ju Kim  
Senior Advisor for the Asia & Pacific  
ITU  
eun-ju.kim@itu.int



## Agenda

- Trends of regulators: Different scenarios
- Main objectives of regulators with examples
  - Major functions of regulators
- Fundamental issues of regulators: e.g.,
  - ✓ independence
  - ✓ accountability
  - ✓ expertise etc.
- Challenges faced by regulators
- Balanced regulations and regulator !



## INTRODUCTION

A question of 'how to manage regulation or its process' – i.e., roles of regulators - is being raised with growing concerns especially in the ever fast evolving, liberalized, de-regulated, privatized, even re-regulated and/or converged information and communication technology (ICT) sectors.'

Thus, let's focus on

*'What will be the major roles and accountability of independent or separate regulators in the dynamic ICT sectors?'*



## Emergence of regulatory authorities

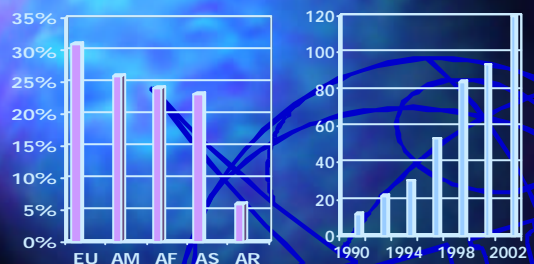
Some 10 separate regulators in Asian region:

- Malaysia: Malaysian Communications & Multimedia Commission;
- Singapore: Infocomm Development Authority;
- Hong Kong: Office of Telecom Authority;
- Bhutan: Bhutan Telecom Authority;
- India: Telecom Regulatory Authority of India;
- Australia: Australian Communications Authority;
- Sri Lanka: Telecoms Regulatory Commission;
- R.O.Korea: Korea Communications Commission;
- Nepal: Nepal Telecommunications Authority; and
- Mongolia: Communication Regulatory Commission

*With different structures, legal enforcement and powers*



## Booming growth of regulators



## Five Different Scenarios of Regulators

1. Regulatory responsibilities within a ministry (e.g., Japan, China etc. many in the Asia & Pacific);
2. A fully autonomous & independent regulator (e.g., the USA, the UK, Hong Kong)
3. A semi-autonomous independent regulator (e.g., Canada);
4. Industry self-regulation (e.g., some developing countries etc.);
5. No telecommunication-specific regulation (e.g., New Zealand)



## The Main Objectives of Independent Regulators ?

(1)

- ✓ Protecting user interests and considering user complaints;
- ✓ Supervising the dominant operator to prevent them from anti-competitive behavior;
- ✓ Moving towards a level playing field for fair competition in deregulated/liberalized telecom industry/market;



## The Main Objectives of Independent Regulators ?

(2)

- Stimulating innovation and/or implementation for ICT technologies suitable to the countries concerned;
- Assuring technical preconditions for effective operation such as the numbering plan, interconnection and so on;
- Managing common resources such as radio spectrum and numbers; and
- Stimulating investment in the public network / infrastructure particularly in the developing countries.



## Objective - Example (1): OFTEL, the UK

- ✓ To promote fair, efficient and sustainable network competition;
- ✓ To promote fair, efficient and sustainable service competition;
- ✓ To secure licence enforcement and fair trading;
- ✓ To secure fair distribution of the benefits of competition for different groups of customers; and
- ✓ To protect consumer interests.



## Objective - Example (2): OFTA, Hong Kong

- ✓ To provide consumers with good quality of service at reasonable prices with a variety of choices;
- ✓ To ensure telecommunication networks and services to be interconnected among liberalized & privatized companies in competitive ICT markets;
- ✓ To ensure healthy competition in the market through creating a level-playing field; and
- ✓ To ensure efficient and effective management of scarce resources such as spectrum and numbering.



## The Major Functions Of Regulators (1)

### A Case of the USA: The FCC

- Developing and implementing regulatory programs;
- Processing applications for licences or other filings;
- Analyzing complaints;
- Conducting investigations; and
- Taking part in FCC hearings.



## The Major Functions Of Regulators (2)

### A Case of the UK: OFTEL

- Ensuring that licensees comply with their licence conditions;
- Initiating the modification of licence;
- Advising the Secretary of State for Trade and Industry (DTI);
- Obtaining information and arranging for publication;
- Considering complaints and inquiry made about telecommunications services or apparatus.



## The Major Functions Of Regulators (3)

### A Case of Hong Kong/China: OFTA

- Implement technical & economic regulatory frameworks (e.g., interconnection, numbering, spectrum management and coordination etc.)
- Promote economic efficiency & competition in the provision of telecommunications networks, systems, installations, customer equipment and services;
- Protect consumers' interests through ensuring competition and safety/quality of telecom services;
- Grant and administer licences
- Investigate, and take appropriate action for, breaches of terms and conditions of the Telecommunication Ordinance and licences;



## The Major Functions Of Regulators (4)

### A Case of Mongolia: CRC

- Grant, suspend and revoke **licenses**
- Determine **technical conditions** & requirements for equipment of communication networks and customers, and certify;
- Approve general terms of **interconnection** agreements
- Approve accounting methodologies for service tariffs
- Create conditions for **fair competition** {How to manage / ensure the fair competition ?}
- Ensure implementation of **universal service obligations** {How to raise USO funds – limits of donation, loan, grants ?}
- Work out communication **standards**
- Elaborate an integrated **numbering plan**
- Make **radio frequency** allocations and conduct monitoring
- Determine regulatory service **fees** – i.e., licence fees



## Fundamental Issues for Regulators

- How to maintain its **independence & autonomy** ?
- How to **finance** its setting-up and operational costs ?
- How to **appoint or select** its head or chair ?
- How to legislate its **structure and functions** ?
- How to ensure effective regulation for **public interests** and **industry**: what to or not-to regulate ?



## What independence & autonomy from ?

Regulators should be to some degree of independence or autonomy in such areas as:

- Day-to-day implementation of policies decided by the relevant ministry;
- Day-to-day operation of telecommunication facilities and services
- Decisions independent from interest parties or groups.



## Prerequisites for Independence

1. Accountability
2. Trained staff: expertise
3. Clear legal mandate
4. Transparency in regulatory procedures
5. Public hearings
6. Established mechanisms to avoid capture from the industry's stakeholders.



## Accountabilities of Regulators

- ✓ Necessity for executing actions and decision: i.e., competency and expertise in the specific sector (e.g., ICT)
- ✓ Decisions challengeable at the Courts
- ✓ Decisions to be appealed to the Telecommunications Licensing Appeal Board
- ✓ Annual report to the Secretary of Information Technology & Broadcasting Bureau
- ✓ Report laid before the Legislative Council
- ✓ Audit Commission's review on efficiency and effectiveness
- ✓ Necessity for broad public support
- ✓ Concern about political opinion etc.



## Why for accountability & expertise ?

- Complex technical, economic, financial and legal issues of regulatory frameworks (e.g., interconnection)
- Great implications on the success (or failure) in promoting competition and ensuring consumers' uninhibited enjoyment of communications and choice of services especially in the converged ICT sectors
- Operators' interest at stake in competitive markets
- Required for various aspects and background: e.g., telecom engineers, competition experts, lawyers, economists, accountants etc.



## How to finance?

- Finance its establishment and operational costs **by the government** as a start-up.
- Adopt a **separate budget for operation** (e.g., the Trading Fund Agreement between the government and OFTA to cover staffing and other administration costs of regulator)
- Utilize the **licence fees** covering administrative costs



## How to Appoint DG or Chairman?

- Whether to be a chairman supported by commissioners ?
- Whether to be a Head (e.g., DG) appointed or selected by the government (e.g., Minister or President) ?
- Whether to be a political appointee or civil servant ?
- Whether to be on a full-time basis or part-time basis ?
- Whether to be on a fixed or flexible term ?



## Any Legislation Required for Independent Regulators ?

- > **USA:** The Communications Act of 1934 with amendments;
- > **UK:** The Telecommunications Act of 1984
- > **Hong Kong/ China:** The Telecommunication Ordinance of 1963, supplemented by the Telecommunication Regulations and the Telecommunication Ordinance 2000
- > **Malaysia:** Malaysian Communications & Multimedia Commission Act 1998
- > **Mongolia:** Charter of the Communications Regulatory Commission, 2002.



## What To or Not-To Regulate ? (1)

Some or more combined by the following regulatory areas can be regulated with respect to each country's circumstances:

- **Licensing** carriers or service providers for different types of licences, but ideally on 'technology-neutral', subject to availability of scarce resources (e.g., radio spectrum);
- **Pricing** services through various mechanisms ranging from price-cap, rate of return, to rebalancing of tariffs in accordance with maturity of markets or industries;
- **Quality of Services** through setting its criteria and monitoring them;



## What To or Not-To Regulate ? (2)

- Ensuring **interconnection** among different fixed & mobile carriers' networks on a fair, open, transparent, and non-discriminatory base through setting the financial, administrative and technical terms;
- Managing **radio spectrum** for maximizing its limited resources with coordination with neighboring countries and regions to avoid any harmful interference;
- Ensuring **competition** to provide various operators with level playing grounds or non-discriminatory bases through removing entry barriers to new entrants *inter alia*;
- Universal Service or Access** to ensure that, as far as possible, no geographic area or social group (including people with disabilities and in needs) is deprived of access to telecoms service on reasonable terms; and so on ....



## How To Make Regulatory Consideration & Decisions ?

- Public Consultative Documents, which specify a problem to be solved with various pre-consultations;
- Public Hearings, in which verbal testimony is taken from interest groups;
- Structured Consultative Proceedings based on the submission of written comments by interest groups;
- Use of Analytic Findings by interested groups;
- Reply Comments by interest groups;
- Advice from various forums or advisory committees;
- Analytical Research by an independent regulator's own staff or contractors on specific issues; and so forth

For **TRANSPARENCY**



## What are the challenges for regulators ?

- To meet **fast changing ICT environment** such as convergence of telecoms, broadcasting and computers as well as of fixed and mobile communications in technology, services, legislation and even institutions;
- To satisfy the **rising expectation** from the community for its transparency and accountability;
- To deal with **issues of different nature (e.g., constraints of expertise, budgets, resources)**, which may often require competition with even the industry;
- To face **symmetry of the relevant information** in privatized and liberalized telecoms environment, where the industry has more accurate and practical data with increasing reluctance to provide regulators with such commercially sensitive information.



## What kind of challenges further ahead ?



- How to balance traditionally regulated telecom and no-regulated computing sectors in the converged era ?
- How to determine ways to regulate or not-to regulate new technologies and services (e.g., IP telephony, ECommerce etc.) that are ever fast evolving and converging ?
- How to determine the structures and roles of the regulator in a converged sector ?
- How to develop & execute consistent and relevant regulations (i.e., regulatory frameworks) which do not inhibit the growth of sector, but rather encourage technological innovation and market economy ?



## Why need balanced regulations & regulators ?

- |  |   |
|--|---|
| <p><b>Q. Why hands-on ?</b></p> <ul style="list-style-type: none"><li>for vulnerable groups (e.g., those in rural &amp; remote areas, low-income and minority consumers) to have access, if deployment is left to market forces alone</li><li>for policing or protecting from cyber-crimes</li></ul> |  <p><b>Q. Why hands-off ?</b></p> <ul style="list-style-type: none"><li>for markets or industries to provide consumers with:<ul style="list-style-type: none"><li>- innovative technologies;</li><li>- quality services;</li><li>- with choices;</li><li>- at competitive prices;</li><li>- in a timely manner</li></ul></li></ul> |
|--|---|



## Any more ?

**'Public availability for transparency !!!'**

*It will benefit for any parties, should regulators' activities be publicly available and transparent through announcing and updating their ordinances, orders, directions, determinations, licensing conditions and criteria, the list of licensees, performance pledge and so forth in their annual reports, newsletters, or even Internet Homepages.*



# The End Thank you

For more information  
please contact:

Dr. Eun-Ju Kim  
Senior Advisor for Asia & the Pacific, ITU  
at [eun-ju.kim@itu.int](mailto:eun-ju.kim@itu.int)

