What is an Effective and Independent Regulator: General Overview (1)

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Contents

- Why Regulate?
- Roles of the Regulator
- Powers of the Regulator
- Regulatory Processes and Procedures
What is a regulator and why should it exist?

– Regulator = reform manager who is expected to create a stable regulatory environment within the context of government policy

– Regulator = protector of investors, who is expected to provide assurance against “administrative expropriation” of investments made by private operators

– Regulator = promoter of competition

– Regulator = advocate and defender of socio-political objectives such as universal service/access, promotion of research and development, and consumer protection
Why Regulate?

- Address market failure
- Ensure consumer interests are protected
- Implement safeguards to create effective competition
- Prevent anticompetitive practices
Legal Basis

• Several legal elements must be in place to ensure the success of the regulatory body:
  
  – Legal framework for ICT sector must be implemented (i.e., ICT law and regulations)
  
  – Law must give regulator the authority and means to effectively define and apply regulations in a market. These characteristics are important, especially in markets where incumbent operators have extensive political and financial power
Elements of an Effective Regulator

1. **Structural Independence**
   - Reduces possibility of political or industry capture
   - Separation of regulator from operator, insulation from external pressure, not being wholly dependent on the related ministry in charge of telecom/ICT policy

2. **Financial Independence**
   - Funding should be free from political and private interest influence
   - Two main sources of budget: (1) allocation from government budget; (2) collection of regulatory fees for licenses, fines, spectrum usage etc.

3. **Functionality**
   - Ability of regulator to carry out its daily activities effectively
Although functionally independent, the regulator will have relationships with various other entities, such as the ministry in charge of communications and other ministries, coordination with competition authorities, interaction with consumer groups, investors, operators etc.
Coordination Between Entities

• Ministry and regulator each have key role to play
  – Need for spectrum to be managed by both, but for the state to have a strong and legitimate role (e.g., national security).
  – Ministry’s key role is to set broad policies for the ICT sector and the state. However, polices should not serve as the “regulations” that are imposed on regulators.
  – Regulator must have a clear and separate focus on technical, economic and consumer issues.
Need for Clear Mandate

- Regulatory powers (mandate) are the tools needed by regulators to monitor, enforce and balance the sector:
  - Essential to be an effective regulator
  - Must be clear and provide enough authority
  - Must cover all the key issues of the sector
  - However, regulators should take care not to abuse these powers
  - Independent of the regulator’s structure – they can be shared among different entities – in this case though there is a need for clear coordination procedures
Powers of the Regulator

- **Rulemaking function**
  - Allows regulators to issue proposed regulations setting forth the intended procedures before issuing new rules
  - Need for internal procedures detailing the rulemaking process

- **Regulatory Function**
  - Licensing, Competition policy and safeguards, Tariff regulation, Interconnection, Quality of service, Consumer protection, Universal service

- **Oversight Function**
  - The ability of the regulator to monitor the performance of telecommunications companies and ensure compliance with subordinate rules and regulations
Rulemaking Function: Overview

• Allows regulators to issue proposed regulations setting forth the intended procedures before issuing new rules

• Need for internal procedures detailing the rule-making process
Benefits of Transparent Procedures

- **Efficiency and Effectiveness**: open processes promote consensus and increase confidence; public participation brings in new ideas and increases support for decisions
- **Certainty and Reliability**: transparency builds stability which in turn attracts investment
- **Accountability and Independence**: reduces political interference
- **Continuity**: transcends political changes
Public Consultations: Rationale

- Provide due process and opportunity for parties affected by the regulator’s decision to comment on the issue
- Increase transparency and regulatory accountability
- Force regulator to provide reasoning to support and substantiate its decisions
Overview of Regulatory Functions of Regulators

World Survey of Regulatory Functions

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Regulatory Functions: Licensing

- The tool to implement policies to open the market
  - In addition it may be used to complement other policies, such as provision of services to underserved areas
- Licensing frameworks and their management by regulators must be fair, transparent and clear.
  - The right balance must be struck between ease of market entry, competition between different access technologies, technical efficiency and consumer protection
Regulatory Functions: Licensing

- Licensing responsibilities generally include:
  - Preparation and publication of model licenses
  - Development of license application guidelines and evaluation criteria
  - Management of licensing process
  - Establishment of license fees
  - License renewals
  - Monitoring and enforcement of licensing conditions
Regulatory Functions: Spectrum Management

- Spectrum management is typically a function of telecommunications regulators
  - Includes development of a national frequency plans, allocations and licensing
  - International coordination (ITU, regional)
- Necessary to ensure efficient use of a scarce resource
  - Monitoring of spectrum use to avoid interference and illegal use
- Clear rules and transparent planning (public spectrum charts)
- If the authority is divided among agencies:
  - Need a clear “map” of who does what regarding spectrum management
    - Government management
    - Regulatory management
    - Coordination mechanisms
Regulatory Functions: Interconnection

- Regulators play a critical role in overseeing interconnection
  - It is one of the most important regulations to put in place before competition can be successfully introduced
  - It is the most contentious regulatory issue given its fundamental impact on the overall operation of competing telecommunications networks.

- To facilitate competition, regulators must ensure that:
  - the interconnection framework is clearly defined
  - interconnection charges between networks are based on objective, economically sound, and solidly substantiated costs
Regulatory Functions: Interconnection

- To manage interconnection powers effectively, regulators must:
  - Meet with the operators (incumbent and new entrants) to understand their needs and problems
  - Review interconnection regulations/decisions whenever necessary to adapt them to the market
    - RIO review
    - From asymmetrical to symmetrical
  - Monitor interconnection processes
Regulatory Functions: Cost Accounting Issues

• Key Action Points for Regulator:
  – Ensure existence of detailed cost modeling model
  – Define Type of Cost Accounting Methodology to be used (e.g.: LRIC)
  – Effective Disclosure of Parameters used for assessing Cost Accounting Methodologies (e.g.: number of subscribers, key for cost allocation between network components,…)
  – Ensure Publication of Accounts in accordance with obligations
  – Effective Enforcement of Cost Accounting Separation Obligations by Regulator
Regulatory Functions: Rate Regulation

- Rate regulation facilitates opening the market to competition and prevents abuse of dominance
  - Rate regimes must be effective and transparent in order to contribute to the orderly evolution to competition in the telecommunications sector
- Asymmetrical for dominant operators before markets are competitive
  - Ex ante regulations prevent abuse of dominance
- Prices should be just and reasonable
  - A balance between allowing competition and not constraining dominant operators
- Clear and transparent: explain methodologies
- Meet with operators to obtain their inputs
Regulatory Functions: Competition Safeguards

• Specific obligations may be imposed on dominant operators or service providers or those providing universal service.

• Differences in regulatory treatment are due to differences in position in the market.

• In order to guarantee transparency in relation to companies, all criteria and procedures by which specific obligations may be imposed must be specified in the license or authorization or in the applicable rules.
Regulatory Functions: Universal Access/Service

- The tool for regulators to make certain that telecom services are accessible to the widest number of users at affordable prices

- Regulators may decide which operator/s must provide universal service
  - One operator to provide universal service – nationwide
  - Different operators – divide the territory or the elements of the universal service.
  - Designation mechanism must be efficient, objective, transparent and non-discriminatory

- Regulators may decide the services to be included in universal service
  - Need for input from operators and consumers

- Regulators decide on the financing instrument
  - Universal Service Funds or others (e.g., taxation)
  - Establish clear procedures to manage the financing instrument
Regulatory Functions: Consumer Protection

- Consumer Protection function:
  - Involves the regulator’s oversight of operators’ obligations to ensure protection of consumer rights
  - Accurate billing
  - Privacy
  - Contract policies & procedures
  - Consumer complaints
  - Slamming & cramming, etc.
Regulatory Functions: Quality of Service

- Regulator may establish guidelines to ensure that consumers receive adequate service and consumers are aware of the variations in performance from different operators allowing them to make an educated choice regarding their preferred service provider.
- Meet the operators and consumers to understand their needs.
Oversight Function

• The oversight function of a telecommunications regulator consists of its ability to monitor the performance of telecommunications companies and ensure compliance with the telecommunications regulation and other subordinate rules.

• To ensure the effectiveness and transparency of the oversight function, regulators must put in place detailed subordinate guidelines such as dispute resolution and enforcement procedures.
Oversight Function: Dispute Resolution

- Dispute: a class or kind of conflict which manifests itself in distinct, adjudicable issues. It generally involves disagreement over issues capable of resolution by negotiation, mediation or third-party adjudication.

- Dispute resolution regulations generally include procedures for handling and resolving disputes between:
  - licensees and consumers;
  - licensees, and
  - the regulator and investors, operators or service providers.
Importance of Effective Dispute Resolution

• Structural changes in the sector such as privatization, liberalization, and convergence, increasingly require countries to have an effective and efficient dispute resolution system.

• In this environment failure to resolve disputes quickly can:
  – Limit competition
  – Cause delays in the introduction of new services and infrastructures
  – Block or reduce investment in the sector
  – Impede liberalization and development of the sector

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Approaches Towards Dispute Resolution

• When designing and evaluating the role of the official sector in dispute resolution processes, the concern should be:
  – *Less* about rigid lines between official and non-official sectors, and
  – *More* about seeking the roles in which the official sector can best use its efforts and presence to assist in the speedy resolution of disputes – and in a manner consistent with regulatory policy, the rule of law, and due process
Dispute Resolution: Role of the Regulator

• The problems posed by the operation of a telecommunications service or infrastructure are sufficiently specific to require deep knowledge of technical, economic, financial, regulatory and legal issues on the part of the adjudicator, particularly judges, arbitrators and mediator.

• Regulators are generally more familiar with the basic understanding of telecommunications technologies systems and operations.
The role of the regulator in the dispute resolution might be one or both of the following:

- **Mediator / conciliator**, a neutral part in order to facilitate the contractual negotiations. As a neutral part the regulator guides the negotiation process, advising and listening to all sides, and helps the parties arrive, if possible, at a “win-win” settlement, or at best one which the parties can live with.

- **Adjudicator**, exercise of their legal powers to make decisions and adjudicate on disputes brought before them.

Ultimately the role of the regulator depends on its legal mandate.
Oversight Function: Enforcement

- Maintains order in the sector and imposes compliance with laws and policies
- Facilitates predictability, stability and growth of the sectors
- Stimulates competition
- Deters wrongdoing
- Protects consumers and ensures effective exercise of licensees’ rights
- Ensures service quality
- Guards public safety and other services from interference and promotes efficient use of scarce resources such as spectrum
Enforcement: Principles of Enforcement

- **FAST**
  - Enforcement decisions must be made quickly, decisively and clearly
  - Prompt decisions reduce uncertainty and allow businesses to resume their activities and consumers to resolve their complaints

- **FIRM**
  - Regulators should have enough sanctioning power to compel licensees to follow the rules
  - Enforcement actions should be consistent and severe enough to deter violation

- **FAIR**
  - Enforcement action should be based on sufficient evidence and allow for proper defense to ensure due process
  - Process should be transparent, objective and impartial

- **FLEXIBLE**
  - Severity of the punishment should be flexible and varied to match the severity of the violation
  - Regulator should have other means apart from formal litigation to enforce compliance
Oversight Function: Sanctions

• **Main Principles**
  – Sanctions should be varied and flexible to ensure that the penalty fits the offense

• **Relevant considerations in determining sanctions:**
  – Nature of violation and severity of the harm caused
  – Number of users affected by the violation
  – Prior violations
  – Cost of enforcement
  – Repetition of violations
  – Economic and financial situation of the infringing party
  – Benefits derived due to violation
  – Any aggravating or mitigating circumstances
## Sanctions: Range of Sanctions

- Warnings
- Fines
- Temporary suspension of service
- Revocation of license or part of a license
- Order to cease and desist
- Declaration of disreputability
- Redress to service users
- Citation (to entities who are not licensees)
- Seizure of equipment
- Consent decrees (does not constitute an admission of violation and is issued in lieu of fines – violating party agrees to settle enforcement action by taking steps to ensure compliance or make voluntary payment of fine)
- Criminal prosecution
Regulatory Processes: Decision Making

- Ensure principles of transparency, openness and public participation

**Generic Consultation Process**

1. Initiate action 
   *e.g., Prepare consultation document*
2. Publish consultation document with timeframe for comments (usually 7-30 days)
3. Written comments received
4. Evaluate input and publish comments
5. Reply comments (strongly recommended) (usually 7-14 days)
6. Evaluate input/publish reply comments
7. Publish final decision

Informal consultations to help define the issue (as necessary)

Supplementary consultations: public hearings; surveys; workshops (as necessary)
What is an Effective and Independent Regulator:
General Overview (1)

- Responsibility over consumer complaints, consumer education, protecting consumer interests in policies and regulations
- Accountability to government (government oversight & judicial review)
- Most regulators have reporting requirements to sector ministry or other government body

**Reporting Requirements**

- None: 3%
- Other Government: 13%
- Ministry & Legislature: 14%
- Legislature: 31%
- Ministry: 63%

*Whom the regulator reports to*
Regulatory Processes: Dispute Resolution

Dispute resolution mechanisms generally include:

Official Mechanisms:
- Governmental authorities
- Statutory bodies
- Courts

Non-Official Mechanisms (ADR):
- Arbitration
- Mediation
- Negotiation
Regulatory Processes: Enforcement

• Minimum attributes of an enforcement regime:
  – Adequate resources for regulator to exercise enforcement activities
  – Enabling legislation empowering regulator with ability to: dispose of substantive matters, conduct inquiries, collect and request information, determine culpability, impose sanctions
  – Efficient mechanism for dealing with complaints regarding non-compliance of rules, regulations and license conditions
  – Transparent procedures for investigations, judgment criteria, sanctions and appeals, and dispute resolution
  – Accountability and appeal mechanism to a higher level within the regulator or outside body, such as a court or ministry
Thank You

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