Legal and Institutional Aspects of Regulation

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Introduction

Objectives of the module:
• Address the importance of an appropriate legal, regulatory, and institutional framework for effective regulation
• provide regulators, policy makers, and stakeholders with best practice guidelines, examples and practical approaches to ICT regulation
Online Module

Main Study
(divided into different chapters and subchapters as further described in the presentation)

Practice Notes
(consists of case studies and summaries of additional materials related to the subject matter)

Reference Materials
(resources used to prepare the study and module)

Overview of Online Module

LEGAL AND INSTITUTIONAL ASPECTS OF REGULATION

The telecommunications sector is undergoing extensive change in the past decade, from a monopoly to an open system of competition, followed by the liberalization of the industry. The resulting dynamics of the telecommunications sector have created new opportunities and challenges for the regulators, who need to define and implement regulatory frameworks that are able to attract investment and ensure the provision of universal service.

I. Introduction

The introduction provides a summary of the study and an overview of the objectives of the module.

II. Overview of Regulatory Reform

This chapter provides an overview of the regulatory reform process in the telecommunications sector, highlighting the key milestones and challenges.

III. Analysis of Regulatory Approaches

This chapter analyzes the various regulatory approaches used in the telecommunications sector, focusing on the strengths and weaknesses of each approach.

IV. Legal and Institutional Frameworks

This chapter describes the legal and institutional frameworks that underpin the telecommunications sector, including the legal and institutional frameworks for the provision of universal service.

V. Conclusion

The conclusion summarizes the key takeaways from the study and provides recommendations for future regulatory actions.
Why Regulate?

- To ensure effective transition and as a safeguard when market regulation fails
- To prevent anticompetitive practices
- To implement sector policy
- To enable growth and development in the sector
- To protect consumers

Why Regulate?

Legal Context of Regulatory Reform
Example: Using the Online Toolkit

ICT REGULATION TOOLKIT

3.5 Impact of Other Legislation

The effective implementation of information and telecommunications regulation and the achievement of its objectives may be affected by other laws that affect the sector. It is important that telecommunications legislation be complementary to such laws, and not be in conflict with them. For example, trade regulations, competition law, and property laws may all have an impact on the telecommunications sector, and it is important that these laws be harmonized. A good example of this is the role of competition law in regulating the market for telecommunications services.

Example: Spam Legislation

3.3.4 Spam Legislation

Spam, also known as electronic mail junk mail or junk e-mail, is unsolicited bulk electronic mail. It is a serious problem for the Internet as a whole, and for individuals and organizations that receive spam. Spam can be a significant waste of time and resources, and can also be used to distribute malicious software and phishing scams.

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Example: Spam Legislation Practice Notes

ICT Regulation Toolkit

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ICT Regulation Toolkit

Impact of Convergence

Regulators are responding in several ways:

- Shift to technology neutral treatment of information and communications infrastructure
- Reform of licensing frameworks
- Converged regulators (e.g., Malaysia, Hong Kong, Singapore, U.K.)
- Development of new laws to regulate ICT (e.g., spam, intellectual property, content, data protection, cyber-crime)
Elements of Effective Regulation

What is the checklist of items for effective regulation?

1. Adequate legal and regulatory framework
2. Proper consideration of organizational structure ensuring functional independence
3. Appropriate consideration of internal functions of regulatory authority
4. Adequate regulatory processes

Organizational and Institutional Approaches to Regulation (1)

- Single-sector regulator
- Converged regulator
- Multi-sector regulator
- No sector-specific regulator, reliance on competition law
Organizational and Institutional Approaches to Regulation (2)

- Separation of power & relationship with other entities
  - The regulator needs functional “independence” to enact and implement regulations without undue influence
- Legal status of regulatory authorities
  - Depends on the legal and political system of each country
  - Most regulators are either public or semi-public institutions, and some are corporate bodies
- Funding of regulators
  - Usually through one or combination of: government budget appropriations, licensing fees, spectrum fees, other regulatory fees

Functional Aspects of Regulation (1)

1. **Clear definition of functions and competencies of the regulator**

   Regulatory functions generally includes:
   - Rule-making
   - Enforcement & dispute resolution
   - Licensing
   - Spectrum management and allocation
   - Interconnection
   - Price regulation
   - Universal service obligations
   - Establishing and approving technical standards
   - Competition safeguards
   - Management of quality of service
Functional Aspects of Regulation (2)

2. Staffing and remuneration
   • Appointment process
   • Professional qualifications
   • Issues of conflict of interest in appointment of Board members
   • Removal from office
   • Independence from outside influence
   • Determination of salary

Functional Aspects of Regulation (3)

3. Ethics
   a. Avoidance of Conflict
      • Rules on gifts
      • Rules on confidentiality of information
      • Rules on disclosure of information
   b. Disclosure of Interests
      • Prohibitions on financial and personal gain
      • Divestment of interests
      • Resignation
      • Recusal
   c. Post Employment
      • Disclosure of outside employment offer
      • “cooling off” period before undertaking new employment
1. Decision-making processes – 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)

2. Accountability and consumer protection

- 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*
3. **Dispute resolution**

Dispute resolution mechanisms generally include:

1. “Official mechanisms” – derived from the constitutional, legislative and regulatory framework applicable to the telecommunications sector, e.g., regulatory adjudication, courts

2. “Non-official mechanisms” – or alternative dispute resolution (ADR), where individuals associated with such procedures do not discharge any judicial or executive duties
   - Negotiation
   - Mediation
   - Conciliation
   - Arbitration

4. **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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