



Dr Rohan Samarajiva, Professor

Delft University of Technology, Netherlands

Highlights of discussion by Rohan Samarajiva

Regulation is not about perfection. In a perfect world, regulation would not be necessary: the markets would be perfect and so would government. But we live in a world where all markets are imperfect, in particular the markets in the telecommunication sector, broadly defined. For the foreseeable future what are likely to exist are markets that are characterized by tight oligopoly; are rife with bottlenecks and essential facilities; and where oligopolists make continual efforts to extend market power from one segment to another.

Government is far from perfect, but it will intervene when markets do not work. Notwithstanding claims of deregulation, continuing government intervention in the telecommunication sector is to be expected. The form of intervention is what is open to question.

The ultimate objective is sector performance: all those who desire services based on the telecommunication infrastructure should have access to them at affordable prices, adequate quality and choice; socio-political objectives such as universal access and contribution to disaster preparedness and management should be facilitated. The short experience with liberalization has demonstrated that multiple, rivalrous suppliers with incentives to innovate are more likely to produce these outcomes than private or government-owned monopoly suppliers. Effective regulation, or government intervention that is certain and fair, is necessary for the productive co-existence of rivalrous suppliers in these highly imperfect markets.

The performance of imperfect markets can be improved through government intervention; it can also be worsened. "Good" government intervention, in the form of regulation that creates conditions of certainty, that is fair, and facilitates compe-

tion, can improve performance. "Bad" government intervention in the form of regulation that increases uncertainty, favors the incumbent, and hinders competitive forces, can exacerbate the imperfections of telecommunication markets. The challenge in designing and operationalizing regulatory mechanisms is to ensure not only that good outcomes are produced, but that the probability of bad outcomes, or "regulatory risk," is reduced. The ethical principle of "above all, do no harm" applies to policymakers and experts who design regulatory instruments and regulators, not only to physicians.

Especially where government as a whole works poorly and is unlikely to yield certainty and fairness, it is important that regulatory agencies be adequately insulated from day-to-day government interference, subject to the condition that it engages in good governance. This is important not only for the purpose of improving sector performance, but also in terms of addressing the problem of investor perception. If investors believe, rightly or wrongly, that regulatory risk is high, they will not invest in a country or will factor the risk into their investment decision. In the former case, sector performance will suffer for the lack of capital for network rollout and improved quality and choice. In the latter, the yields from privatization and licensing will be much reduced and investment will be biased toward the short term and the high yield, again deleteriously affecting sector performance.

Independent and effective regulation cannot be seen in isolation from the larger context of the crisis of governance. Independence is the dike that preserves the island of good governance a regulatory agency is intended to be, from the onslaughts of the surrounding ocean of bad governance. But like any dike, independence requires continuous maintenance and reinforcement. In addition to formal safeguards for

independent action by regulators, it is essential that regulatory agencies continually build and reinforce their legitimacy. Legitimacy can be achieved through effective communication of claims based on expertise, transparency and attention to the public interest. It is only by taking concrete steps to build and reinforce legitimacy on a day-to-day basis that regulatory agencies can engage in the accountable and effective

governance essential for the satisfaction of the needs of current and potential users of telecommunication services.

Reference

Samarajiva, Rohan (2001). Regulating in an imperfect world: Building independence through legitimacy. *TelecomReform*, vol. 1(2). At: <http://www.telecomreform.net>.