SESSION 6: LICENSING REGIMES IN A CONVERGED DIGITAL ENVIRONMENT IN ASIA AND PACIFIC

ITU-D REGIONAL ECONOMIC AND FINANCIAL FORUM OF TELECOMMUNICATIONS/ICTs FOR ASIA AND PACIFIC

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Agenda

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Presentation aims

- The aim of this presentation is to examine the ways in which licensing regimes must change to ensure that the industry and economy in which they operate will meet the challenges of convergence
- Clinging to legacy licensing practices is dangerous for industry development and economic health
- The sources contributing to the views in this presentation are:
    - 'Telecommunications Licensing in the Pacific: Assessment and Review', June 2010, (ICB4PAC ITU study program)
    - 'Trends in telecommunication reform 2004/5 – licensing in an era of convergence' (ITU, 2005)
    - Consulting to regulators on licensing in Asia, the Pacific and ME
    - Licensing workshops, especially in the Pacific

A word of explanation

This presentation is about operator and service provider licensing

It is not about spectrum licences or about individual skill-based licences (such as premises cabler licences) – important as they may be

A licence is not a contract or an agreement. A licence is the grant of lawful authority to eligible legal persons for the provision telecommunications services to the public and/or to operate telecommunications networks
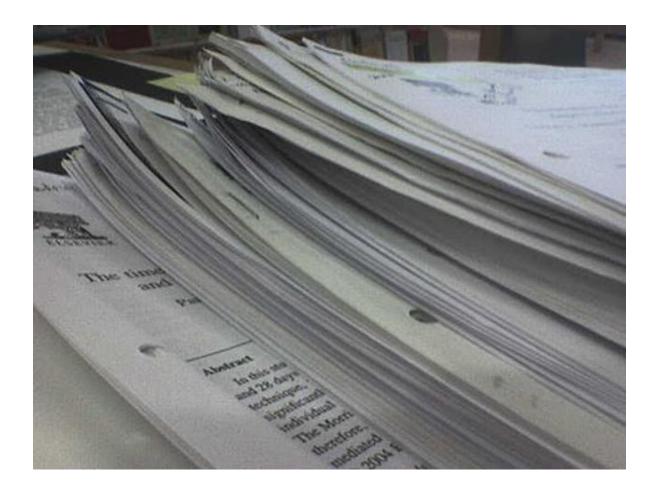
Licensing BCE – Bronze Age

Before proper regulatory settings were established in legislation licences were used to achieve many different objectives:

- The allocation of scarce resources
- Expansion of networks and services
- Privatisation and commercialisation
- Regulatory certainty
- Establishing a competitive framework
- Consumer protection
- Regulating market structure
- Generating government revenue

These objectives are better achieved through other means – especially through legislation, regulations and orders. Licensing conditions were often varied depending on when the licence was issued. Usually licences were very detailed and ….

… voluminous

Traditional licensing – Iron Age

- Reflect the services categories and technological choices of times past
- In the worst cases new licence categories have been created for each new service category identified by the regulator
- Traditional licences tend to dwell on divergence and superseded contrasts such as –
  - Basic services v. value added services
  - Voice v. data
  - Fixed v. mobile
  - Narrowband v. broadband
  - Specific medium v. multimedia
  - Analogue v. digital

Traditional licensing is based on specialised networks for separate types of service

Licensing was changing anyhow

- Various attempts to categorise services and operators in the late 1980s and early 1990s
    - such as in Type I and Type II in Japan, Canada
- Initial class licence arrangements
    - such as for non-network service provision, CIGs, etc
- Initial emergence of various forms of unified licences and functionally based licensing, such as:
    - general operator licences in UK, Australia
    - unified licences (at local level) in India
    - the functional structure in Malaysia, 1998

… in some places

Convergence

- Convergence in ICT involves the separation of platform and services, so that a single platform (such as the internet) may sustain multiple service types, and particular services or applications (such as voice) can be supported by many platforms or network types
- The notion of a specific service requiring its own separate network disappears – and with it the foundation of much traditional licensing
- Convergence is occurring at many levels and in ways that cannot be anticipated by regulators
- Convergence spurs new services and innovation, and barriers to convergence retard these changes and the dynamic and productive efficiencies that result.

Best practice licensing regimes today

Best practice involves:
1. Transparency of all licensing processes
2. Licence terms that are either on-going or match investment recovery cycles
3. Embracing convergence
4. Being generally functional rather than service oriented – that is, network / service / content structure
5. Leaving service and technology choices to licensees *
6. Minimising special conditions and making maximum use of general conditions in legislation or regulations

* There may be roll out or coverage targets as special conditions

Regulatory burdens

Legacy licensing practices constitute major industry and economic burdens that will become heavier as time passes. The cost of such outmoded arrangements will be expressed in terms of:

- Administrative costs for the industry and the regulator – all of which are ultimately borne by the user
- Avoidable operator and sector uncertainty
- Retarding the development and provision of new categories of service (such as converged services or even bundled offerings) until the "right" type of licence is found or created
- Removing incentives for efficiency, such as the use of common platforms for different services
- Complexities leading to long administrative cycle times
- Inappropriate empowering of licensees – they must agree
- Propping up inefficient exclusive arrangements – such as state owned incumbents

Migration – the big challenge

Why migration is a big challenge

Migrating from traditional to convergent licensing regimes is difficult and complex. Some contributory factors are:

- Privileges built into current licences
- Exclusive provisions in current licences
  - many cases in the Pacific where those provisions were the inducement for investment in unpromising economies and markets
- New general obligations in legislation or regulations – such as new and stricter eligibility criteria.

Migration – inducements or patience

- Some existing licences require licensee agreement to amendments – not exactly a contractual provision but similar – as a protection for licensee investments
- The choices for regulators in migrating to new licences are:
  a) To wait for licence expiry (can be a long time); or
  b) To offer inducements for early migration, such as –
    - Waiver of certain fees
    - Automatic migration – no application or assessment
    - Reduced licence fees for early response
    - Stricter enforcement of conditions in continuing legacy licences

Conclusions

1. Best practice licensing regimes must embrace convergence and substitute a functional approach to licensing for legacy systems based on service / technology categories and other pre-convergence regulatory distinctions

2. There are very substantial and growing costs that will be borne by the sector and the economy – and ultimately consumers – if regulators continue with outmoded legacy licensing regimes

Conclusions - **continued**

3. Migrating to a licensing regime that embraces convergence is easier said than done. Regulators must recognise that the process can be very protracted and may need to be facilitated with inducements (and even sanctions)

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