

Nauru Licensing Workshop

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Yaren 8 November 2011

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The Project

- ITU-EC joint project for "Capacity Building and ICT Policy, Regulatory and Legislative Frameworks support for Pacific Island Countries (ICB4PAC) is a new project funded by the European Commission (EC) and ITU for Pacific Island Countries.
- It aims at developing and promoting capacity building in ICT policies, regulatory and legislative frameworks for these countries through a range of targeted training, education and knowledge sharing measures.

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Agenda

1. Welcome
2. The project
3. Licensing Principles and Best Practice
4. Licensing in Nauru
5. Guidelines
6. Next steps
7. Further discussion
8. Close Workshop

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The Project – Terms of Reference

- Review Nauru's existing Licensing regime and regulatory framework
- Make recommendations on improvements and propose changes to the licensing regime and regulatory framework
- Draft a policy document outlining the new licensing framework based on best practices and covering:
 - Licences and authorisation
 - Licence categories
 - Licence process
 - Relevant fees
 - Identify migration issues related to transition to the new framework
 - Human Resource requirements

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The Project – Deliverables

1. A review report of relevant documentation
2. Report on the existing licensing framework with recommendations for an improved framework
3. Draft of licensing guidelines and licence templates to be used for public consultation
4. Report on appropriate levels of staffing for roles and responsibilities of the office and recommendations for appropriate training

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Licensing Principles and Best Practice

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Various goals sought through licensing

- 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

Sources of best practice

- ITU reviews practices
- The book is 6 years old but still very useful
- The March 2010 study for the Pacific
 - Practices differed widely
 - Generally the more recent the review of licensing the better the practices – for example, in PNG in 2010

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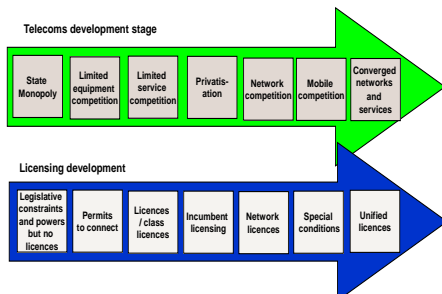
Best practices

So what is current licensing best practice?

- Licence is a unilateral permit (not a contract)
- Facilitates the objects of the act – especially competition where feasible
- General conditions rather than special as far as possible
- Conditions in Act and regulations
- Service and technology neutral
- Transparency of process and streamlined administration
- Facilitates convergence
- Brevity

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Evolution of telecom operator licences



The development of licensing has matched the development of the telecoms industry and reflects the important issues at various stages of industry development.

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Best practices

Convergence and future proofing (unified licensing)

- Unified licensing permits the licensee to provide all or any services and does not require further intervention by the Regulator to license new and innovative services
- Unified licences may also extend to platforms as well as services
- With convergence at technology, service and market levels it is inappropriate to have licensing based on historical distinctions no longer relevant – otherwise we will have a major regulatory barrier to investment and market development

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Best practices

Transparency of process

- Licensing processes and administration need to be very clear
- Regulators should reduce process complexity and cycle times.
- This is a classic case for keeping it simple, and removing barriers

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How does Nauru's licensing regulatory framework rate against best practice

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Best practices

Streamlined administration

- Simplified applications
- Regulators should reduce the volumes of unused information requested of applicants and licensees.
- Lots of information does not equal control

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The Telecommunications Act 2002

- Older in content and style than its date implies
- RONTEL established as an operator with exclusive rights
- RONTEL effectively an operator and a regulator
- No competition is contemplated in any form
- Any licensing will be done by RONTEL
- RONTEL established in a corporate form – consistent with its commercial charter
- RONTEL's powers are unfettered and without guidance

The Act repeatedly fails the tests based on the principles of transparency, fairness, certainty, accountability, competition and consumer welfare

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Best practices

Brevity

- Traditional licences were extremely detailed – why?
- Dangers of repeating the Act and Regulations in licences
- How brief can we keep licences?



versus



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Digicel Licence 2009

- Formal licence template is short and formal
- The schedules contain the conditions
- Although stated to be a unilateral grant of permission the conditions read like a contract. Minister's power of amendment is severely constrained
- No licence or spectrum fees

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Competition

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Digicel Licence 2009 (2)

- Clause 16
 - No regulatory burdens without cost benefit analysis
 - No burden on Digicel for universal access, number portability, carrier selection, carrier pre-selection, and system sharing for at least 5 years and then only after a rigorous CBA showing benefits to the public significantly outweigh cost to Digicel
 - Exclusivity for first year unless Digicel approves
 - Licensing competitive service providers after the first year is subject to conditions including consideration of retail prices charged in comparable countries. Benchmarking is not a scientific process and judgments have to be made.

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Competition and Nauru

Is competition possible in a country like Nauru?

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Discussion

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Digicel Licence 2009 (3)

- Clause 17 - Prices
 - Clause 17.1 provides that "the Licensee shall not set excessive wholesale or retail prices or tariffs for the provision of telecommunications services in the Republic".
 - Clause 17.2 defines 'excessive' as the price of a basket of services that "significantly exceeds its average total costs for a long term time period".
 - The result is that prices cannot be considered to be excessive except after a long time has passed.

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Considerations

- Demand
- History of service to 2009
- Caribbean cases – mobile competition
- Service based competition
- Limited service-specific competition
- If possible, is it worth the problems?**
 - Why have competition anyway if service quality, price, coverage and other factors are and remain satisfactory?
 - Licence terms
 - Nauru's reputation
 - Investment by Digicel

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Regulatory Framework and Guidelines for Licensing



Preliminary recommendations - Guidelines

- Assume that the new Act is of the kind already outlined
... and that a NTRA is established
Content of Guidelines will depend on the Act and what it covers – the matters that must be covered in one place or other are listed in the following issues slate.



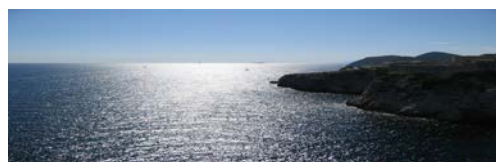
Preliminary recommendations – Act

- Why preliminary?
Needs further consultation and discussion with stakeholders
Legal issues to be considered
A fuller draft is needed
Act
Will be developed in Nauru in any case
Assume that ROKTEL in its present form is abolished and replaced by a regulatory body (which I call for convenience the NTRA – Nauru Telecommunications Regulatory Authority)
Act should set out the policy aims for telecoms in Nauru
Act should set out the powers of NTRA to achieve objectives



Preliminary recommendations – Guidelines (2)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
1	Classes of Licence	a. Whether licences should only be individual or whether there may also be class licences b. Whether classes should be established for system operation and service provision c. Whether licences should be technology and service neutral	a. Authorise the Agency to develop a class licensing system for certain content and service-based operators but hold in suspension pending resolution of the Digital licence issues. In the meantime, establish all licences as individual licences. b. Establish licences as Network, Applications (covering services) and Content (covering broadcasting and narrowcasting) c. Yes, licences should be neutral on these dimensions, but special conditions may be included in schedules for as long as required.	a. Is Nauru too small ever to need to consider class licences for any services? b. Are there any problems with service providers using their own network facilities requiring both Network and Applications Operator Licences?



Preliminary recommendations – Act (2)

- Act (continued)
With or without competition the NTRA needs to have a licensing role
Role covers monitoring of Digital content including CBA and benchmarking of prices, etc.
Act will provide some guidance for the NTRA (and the industry) on licensing and other regulation and policy priorities
Main source of guidance will be the various regulations – including the Operator Licensing Regulations
There are plenty of good legislation templates in the Pacific and in other developing economies around the world



Preliminary recommendations – Guidelines (3)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
2	Eligibility of Applicants for licences in each class	How extensive should eligibility criteria be for any operator licence?	Eligibility criteria should be kept to a minimum and relate only to Nauruan registration or residency to ensure attachment to the jurisdiction and a certificate that neither the applicant nor the Directors or partners have previous criminal convictions in Nauru or elsewhere. The Agency may exempt in some circumstances from the latter – e.g. where the crimes are not related to financial or commercial honesty or integrity.	What should be the minimum requirements of any individual, company or partnership to be eligible to be issued with an operator's licence in Nauru?

Preliminary recommendations – Guidelines (4)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
3	Process for applying for a licence	<p>a. What documents and information must an applicant provide when applying for a new licence?</p> <p>b. Whether the process differed depending on the class of licence</p> <p>c. Process expectations and protections</p>	<p>a. Licence applications should require the minimal information necessary to establish eligibility, contact details, and the class or type of licence being sought, and the application fee. Given the specific circumstances in Nauru at present applicants will need to be asked how they intend to use their licence and the details of their business plan. This should be an interim requirement only.</p> <p>b. Yes, class licensing should be a matter of completing a registration form that clarifies matters going to eligibility and contact details.</p> <p>c. The Guidelines should provide for expected processing times once completed applications are received, standard correspondence acknowledging receipt of application, and advising the</p>	<p>Should licence applicant be required to submit business plans – or business intention statements?</p> <p>Should licence applicants be required to prove financial capacity?</p> <p>Should licence applicants be required to show that they have certain expertise (engineering or other) before being granted a licence?</p> <p>How long should it take the Agency to process a licence application?</p>

Preliminary recommendations – Guidelines (7)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
6	Variation of terms and conditions	Under what conditions should licences be subject to unilateral variation of terms and conditions by the regulator?	<p>In the absence of agreement to change, a licensee may retain current licence conditions unless the variations proposed have been subjected to all elements of the following process:</p> <p>a. proposed variations to the licensee for comment</p> <p>b. the licensee has a reasonable time (say no less than four weeks) to comment</p> <p>c. if the proposal is to continue in its original form then the licensee shall be given notice to enable it to adjust its business in the light of the changes.</p> <p>d. notice shall range from one year for licence fee changes up to three years for other changes, based on the assessment of the impact on</p>	<p>Should licensees be able to veto changes to conditions in existing licences?</p> <p>Should regulators be able to vary licence conditions unilaterally, and if so, under what circumstances?</p>

Preliminary recommendations – Guidelines (5)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
4	Renewal of licences	<p>Whether there should be a right or expectation of renewal of a licence for a similar term and subject to the same conditions, and, if so, whether this right or expectation should be conditional.</p>	<p>This right or expectation should not automatically apply in Nauru because the current arrangements are barriers to liberalisation and competition in the market.</p> <p>The right or expectation is might be progressively extended to classes of licensed operator in future. This issue is not of immediate concern in Nauru. It is better to include licence conditions in a separate statutory instrument than in the licence itself. (see next item).</p>	<p>Will the failure to recognise a right to renewal of a licence on the same terms lead to investment or service continuity problems in Nauru?</p> <p>What conditions are appropriate for such a right or expectation to exist?</p>

Preliminary recommendations – Guidelines (8)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
7	Reasons for denying a licence	Many licensing frameworks require a regulator to provide written reasons to an applicant to justify refusing the application and often give a time limit for the reasons to be supplied.	Such a provision needs to be incorporated into the Nauruan framework	
8	Fees and charges	How should fees be established, and what classes of fee should be applied.	<p>A licence fee and related charge structure should be established for Nauru following best practice.</p> <p>Even if exemptions may be granted under special conditions (e.g. as an inducement for investment) the fees and charges and scarcity values should be established so that the value of the exemption can be assessed and taken into account in other policy and regulatory decisions.</p>	<p>What licence fee structure should apply in Nauru?</p> <p>What circumstances justify exemptions being granted in Nauru?</p>

Preliminary recommendations – Guidelines (6)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
5	Conditions of licences	<p>a. Whether it makes sense to have general and special conditions of licence</p> <p>b. Where should general conditions be set out</p> <p>c. Whether there should be limitations on the imposition of special conditions</p>	<p>a. Special and general conditions of licence will be required in Nauru.</p> <p>b. General conditions should be set out in the Guidelines. If the Act is amended some of the more basic general conditions might be included there.</p> <p>c. Special conditions should be attached to individual licences and published on the Agency's website.</p>	<p>Should all licensees have the right to have the special conditions that apply to other licensees in the interests of a level playing field for competition?</p> <p>Are there any circumstances where the above is particularly appropriate or particularly inappropriate?</p>

Preliminary recommendations – Guidelines (9)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
9	Suspension, revocation and cancellation	The issue is the circumstances that warrant suspension, cancellation and revocation of a licence and what follows from each.	<p>All three administrative actions should be preserved in the Act or the guidelines in Nauru.</p> <p>The alternative of imposing fines should be permitted at the discretion of the Agency. This will enable an escalating scale of penalties to be applied as appropriate.</p>	<p>What licensee behaviour is sufficient to justify each of (a) suspension; (b) cancellation; and (c) revocation of terms of licences or of full licences in Nauru?</p>

Preliminary recommendations – Guidelines (11)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
10	Term	Should licences be subject to specific periods after which they either expire or are renewed, or should they be on-going unless surrendered, abandoned, cancelled, or revoked.	Nauru should attempt to move to on-going operator licences rather than terms of years, but it should ensure that a suitable licence variation mechanism is in place so that it does not become locked into inappropriate terms that limit competition or institutionalise concessions and exemptions.	If terms of years are to apply in future, what period should apply for facilities-based licensees (network operator licences) and what period should apply for service based licensees (or service provider licences) and, in both cases, why? In the case of licensees who are both network operators and service providers should their licences be co-terminus? If so, why and if not, why not?

Next steps

- A further period of consultation in the light of the issues discussed at this workshop – based on fuller texts for matters that might be in the Act or Guidelines
- As soon as possible after the close of the Consultation Period a final version will be submitted to the Government for formal consideration and adoption.
- Aiming for completion this calendar year

Preliminary recommendations – Guidelines (12)

Item	Topic	Issues	Expert's Recommendation	Questions for Stakeholders
11	Migration of existing licences	What rules should apply to migration of existing licences to a new licensing regime.	The Expert is inclined to give a notice of 12 months. There will be few licences to consider in Nauru in any case, so the issue is notice and adjustment rather than workload or regulator resource. The major issue will be the Digicel licence and how it should be managed.	How long should migration of licences take in Nauru? What guarantees of continuity should be given to migrating licensees? If a licence is not migrated what should happen to it – should it expire and should that be automatic?