



GSR13 Best practice guidelines on the evolving roles of both regulation and the regulators in a digital environment¹

The communications sector is experiencing tremendous change led by the deployment of broadband networks (next-generation networks) that facilitate converged media, Internet and communications services, the arrival of new market players, the rapid development of smart devices, the connectivity of things (Internet of things) and people, and growing consumer demand for always-on, immediate and ubiquitous access to ICTs. In addition, the arrival of new content and application providers, such as over-the-top players, are changing the rules of the game, the market dynamics and business practices. Coupled with a sharp increase in data flow, and rapid development of new services and applications such as cloud services and mobile applications, the ever-increasing complexity of global ICT markets challenges the traditional role and mandate of the regulator, and calls for modern approaches to regulation in the digital ecosystem.

Mindful of the critical role electronic communications play in today's digital society, and recognizing the need for efficient ICT regulation that will both respond to changing market expectations, and improve social inclusiveness and development, we the regulators participating in the 2013 Global Symposium for Regulators, recognizing that regulatory reforms take place across a wide continuum of evolving perspectives, have identified and endorsed these best practice guidelines as innovative and smart regulatory measures that will facilitate the inclusion of all.

1. Regulation 4.0: Innovative and smart regulatory approaches fostering equal treatment of market players without putting extra burden on operators and service providers

While respecting their jurisdictions, we recognize that regulators need to be mindful of the transformational and trans-national aspects of regulation in a digital environment and take into consideration the changes in social norms and behaviors led by the advent of new applications and social media. Reviewing existing ICT policy and regulatory frameworks to adapt to the fast-changing environment is an ongoing process requiring coordination with multiple stakeholders. Regulators have a critical role to play in ensuring the smooth development of the ICT sector to further sustainable economic and social development benefits of the people. More effective use and implementation of digital technologies in areas such as healthcare, e-government, environment and transport, will facilitate employment and productivity and ensure a better quality of life.

We acknowledge the importance of conducting market analysis to assess the market situation in a converged environment, in order to identify operators with significant market power (SMP) and stimulate competition in the market. Ensuring that the principles of fair, equal and non-discriminatory treatment of all market players continue to prevail will foster a level playing field among regulated and unregulated players.

¹ The Guidelines are based on contributions from Barbados, Bulgaria, Burkina Faso, Egypt, Georgia, Jordan, Lebanon, Lesotho, Lithuania, Mauritius, Moldova, Poland, Portugal, Romania, Rwanda, Saint Lucia, Saudi Arabia, Tunisia, Ukraine, United States, and Vanuatu.

We acknowledge that when adopting a regulatory framework that eliminates barriers to new entrants, ensuring the inclusion of competitive provisions that guarantee a healthy relationship between all players (operators, Internet providers, OTT providers, etc.), is one way to promote the deployment of next-generation broadband networks and access to online applications and services. Regulators can also encourage network and facility sharing through soft measures such as cross-sector infrastructure mapping that enables the coordination of civil works. Empowering consumers to make informed decisions through the development of online tools to check speed, quality of service and price of access is another measure regulators may take to foster competition.

We also recognize that in reviewing their spectrum management policy, regulators need to ensure that available and underutilized spectrum is rapidly made available for the benefit of users, and that rules to manage interferences are in place. Efficient and effective use of the radio frequency spectrum may be made by allowing a new generation of auctioning and flexible use of spectrum. By leveraging the “digital dividend” spectrum, the footprint of mobile broadband access can be extended, while “white spaces” can be available for unlicensed use enabling more powerful broadband services. We believe that adopting administratively simplified and flexible models such as general authorizations or unified licenses, where appropriate, can further contribute to facilitating market entry and stimulate competition and innovation.

We believe that regulators and policy makers should seek to implement measures to monitor the use of traffic management techniques to ensure that those do not unfairly discriminate between market players. Regulators also need to review existing competition laws to determine whether measures based on regulation or competition law, such as equal treatment of players, are already in place and whether they adequately address the issues that tend to impact net neutrality.

We acknowledge the importance for regulators to understand all parameters at play in a digital environment to ensure not only affordability of access but also to promote and ensure a certain level of quality of service to the user (in particular for communication services that are sensitive to time delay), the need for interoperability, without putting extra burden on operators and service providers.

We encourage regulators to ensure the highest level of transparency and openness, such as by making relevant market data and regulations publicly available, and to carry out multi-stakeholder consultation on policy and regulatory matters affecting the development of the digital society in order to move to a more consensual regulatory decision making process whereby ensuring greater compliance from industry players.

We are mindful of the necessity for the 4th Generation regulator to adopt a “light touch” regulatory approach, calling for regulatory intervention only when necessary, while ensuring that market forces work without constraints and towards innovation within the prescribed national legal environment taking into consideration both traditional and new regulatory concepts. In particular, regulators should continue to ensure regulatory predictability, and foster co-regulation (e.g., voluntary standards) wherever possible, facilitating the adoption of a regulatory solution collectively developed and administered by the regulator and the industry. Regulators can also work with other interested stakeholders to reduce or remove practical barriers to broadband infrastructure deployment. We

particularly recognize that encouraging operators and service providers to propose and implement innovative solutions to develop the sector may provide for a win-win solution for both the state and the industry. Regulation should ensure the sustainable development of the ICT sector that is essential to attracting the investments needed in a global digital environment.

Stimulating services uptake and access to online services and applications

We recognize that stimulation of service uptake and access to online services and applications requires flexible regulatory approaches.

We acknowledge that understanding people's needs and how they can benefit from using ICTs is key to innovation, as both business and individual consumers are providers of incentives for innovation.

We encourage governments to work collaboratively with all stakeholders and in particular with the industry and regulators to facilitate and support the development of infrastructure and provision of services, particularly in rural, un-served and underserved areas. From the supply side, predictable and stable regulations are needed to maintain effective competition and drive the development of innovative services. In particular, regulators are encouraged to modernize Universal Service programs to extend broadband to the un-served and underserved, notably through a redefinition of the scope of universal service. From the demand side, measures such as deferring or altogether discouraging heavy or special taxes on ICT equipment and services, encouraging research and development, and endorsing special programs to stimulate e-literacy, will result in higher penetration, increased demand, better social inclusion and contribute to national economic growth. Governments and regulators have a key role to play in promoting and increasing awareness of the use and benefits of ICTs.

We recognize the role regulators can play in encouraging the development of digital local content at the national and regional levels and in stimulating the creation of online business incubators to foster the development of new applications and services, and digital cities.

2. The evolving role of the regulator: the regulator as a partner for development and social inclusion

We acknowledge that the regulator has a critical role to play in advising governments when preparing policies on development and social inclusion. Regulators can also act as a partner for ICT development and social inclusion, by facilitating (and sometimes creating) partnerships, such as private-public-partnerships (PPP), with aid-donors, governments, ministries and NGOs, in particular to meet universal access goals for rural, remote and unserved areas and for people with special needs. Regulators can further facilitate and extend partnerships with schools and local communities through projects for improving the connectivity of schools and communities to enhance use of ICT applications, provide access to technology and promote economic development. Regulators may also employ voluntary, strategic partnerships to bring comprehensive (e.g., connectivity, literacy training and equipment) solutions to low income consumers, and to ensure that persons with disabilities have access to new broadband technology, applications and services. We also encourage partnerships between the regulator and other public agencies to offer a coordinated approach for the benefit of the government

and the community, as a whole. The regulator may further provide advisory and educational assistance to local communities.

We stress the need for the regulator to be autonomous in fulfilling its mandate and have clear reporting and/or communication lines to and with the sector Minister to ensure that national objectives are harmonised and achievable.

We further recognize the importance of working in conjunction with the sector ministry to take a proactive role in promoting, informing, encouraging and raising awareness on the benefits of technology applications and service uptake to stakeholders. To encourage uptake, governments and regulators may facilitate access to low-cost hand-held broadband-enabled mobile devices, thus allowing citizens to access web applications to leapfrog barriers (such as remoteness, cost and availability) of computer-enabled Internet access.

We acknowledge the importance of collaborating with research institutes, public agencies, content providers, service providers, and NGOs to make the Internet a safer place for children.

3. The need to adapt the structure and institutional design of the regulator to develop future regulation.

We recognize that as new technologies and services emerge and converge, governments may also consider converging the regulatory institutions or adapting their structure to reflect the changes within the ICT markets. Furthermore, to respond to the transnational and interconnected nature of the converged digital ecosystem, there is a need to adapt the structure of the regulator to be more reactive and flexible.

To perform its role in encouraging innovation, future growth and sustainable development, the regulator needs to be granted sufficient flexibility and autonomy in decision making and enforcing legal and regulatory instruments.

We acknowledge the need for regulators and their staff to keep abreast of the latest technical development to address matters such as IP interconnection and charging mechanisms, IPv4 to IPv6 transition, and other emerging issues.

We believe regulators have a role to play in building consumer trust and protecting security of services by appropriately addressing data protection, privacy issues and cybersecurity matters. It could be done by strengthening cooperation with other government agencies at the national level and by collaborating with other regulators and other partners at the regional and international levels. We are mindful that the exchange of experience, knowledge and ideas is vital in facing the new challenges in an interconnected global borderless digital ecosystem. Furthermore, we encourage regulators to make available online both sector information and the smart regulatory approaches they have adopted.