

Progress towards best practice in regulating electronic communications markets

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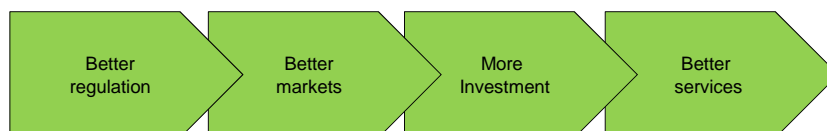
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Overall trends in electronic communications

- Liberalisation: competitive markets with minimum state ownership
- Growth: broadband communications (fixed and mobile)
- Regulation: from “command and control” to “market-based” approach:
 - Creation of better conditions for investors and service providers
 - Creation of more consumer choice



What is regulatory best practice?

- World Trade Organisation principles (1997):
 - Competitive safeguards;
 - Prevention of anti-competitive practices
 - Interconnection;
 - Transparency
 - Universal service;
 - Transparent and not anti-competitive
 - Transparent licensing criteria;
 - Independent regulators;
 - Impartial decisions and procedures
 - Allocation and use of scarce resources;
 - Objective, timely, transparent and non-discriminatory

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Best practice in implementation: The EU regulatory framework (from 1998)

EU 2003 Regulatory Framework	EU 2009 Regulatory Framework
Framework Directive 2002/21/EC	Amended by: Better Regulation Directive 2009/140/EC
Access Directive 2002/19/EC	
Authorisation Directive 2002/20/EC	
Universal Service Directive 2002/22/EC	Amended by: Citizen's Rights Directive 2009/136/EC
Privacy and Electronic Communications (e-Privacy) Directive 2002/58/EC	
Competition Directive 2002/77/EC	Not amended
Radio Spectrum Decision 676/2002/EC	Not amended
	BEREC Regulation EC/1211/2009

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Key components of regulatory best practice

- Removal of unnecessary market entry barriers;
 - No need to get permission to enter the market (licence, authorisation) unless there are scarce resources involved
- Key competitive safeguards;
 - The regulator imposes regulation only when there is a reason, based on market evidence, or there is a risk of uncompetitive behaviour (market analysis approach)
- The objective of regulation is to make the market more effective!
 - Let the market determine the outcomes, not the regulator

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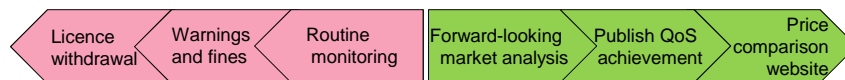
Approaches to regulation

“Control and monitoring” approach

“Market-based” approach

Penalising bad behaviour

Creation of good market conditions



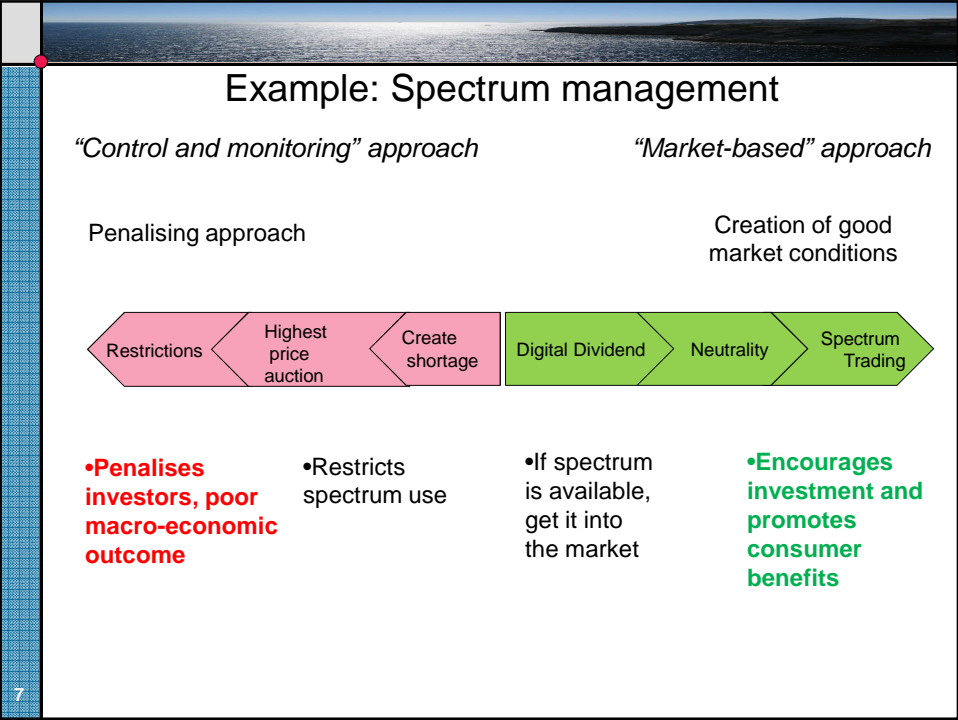
•Discourages investment and reduces consumer choice

•Uses up technical resources

•Market definition
•SMP designation
•Selective remedies

•Encourages investment and promotes consumer choice

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Example: Implementation of key competitive safeguards

	Croatia	Montenegro	FYR Macedonia	Turkey	Albania	Bosnia-Herzegovina	Serbia	Kosovo
Carrier selection/pre-selection	✓	✓	✓	✓	✗	✓	✗	✗
Fixed number portability	✓	✓	✓	✓	✗	✓	✗	✗
Mobile number portability	✓	✓	✓	✓	✓	✗	✓	✗
Fixed RIO	✓	✓	✓	✓	✓	✓	✓	✓
Local Loop Unbundling	✓	✓	✓	✓	✓	✓	✓	✗
Wholesale broadband access	✓	✓	✓	✓	✗	✗	✓	✗
Wholesale line rental	✓	✓	✓	✓	✗	✗	✗	✗
Mobile RIO	✓	✓	✓	✓	✓	✓	✓	✗
National roaming	✓	✓	✓	✓	✓	✓	✓	✗
MVNO entry allowed	✗	✓	✓	✓	✓	✓	✗	✓

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✓ - available/regulated
✗ - not available
[Source: Cullen International 2012]

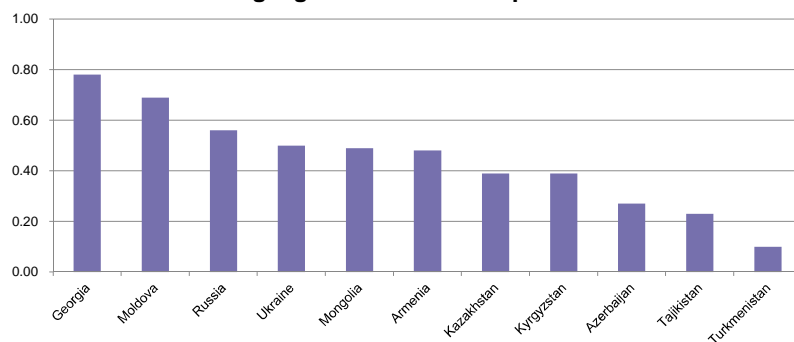
Alignment with EU regulatory framework

	Croatia	Montenegro	Macedonia FYR	Turkey	Albania	Herzegovina- Bosnia	Serbia	Kosovo	Romania	Bulgaria
EU 1998						✓		✓		
EU 2003		✓	✓	✓	✓		✓		✓	✓
EU 2009 (draft)					✓			✓	✓	✓
EU 2009	✓									

[Source: Cullen International database]

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Existing legal framework compared to EU



Note:

-A best-practice legal framework for a modern electronic communications sector would score 1.0 (EU countries have achieved over 0.85)

-The factors used to assess each country include the legal basis for regulatory independence, authorisation, interconnection and infrastructure access, market analysis and enforcement, spectrum management, universal service, consumer protection and numbering

[Source: EBRD 2012 Assessment]

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Market access conditions

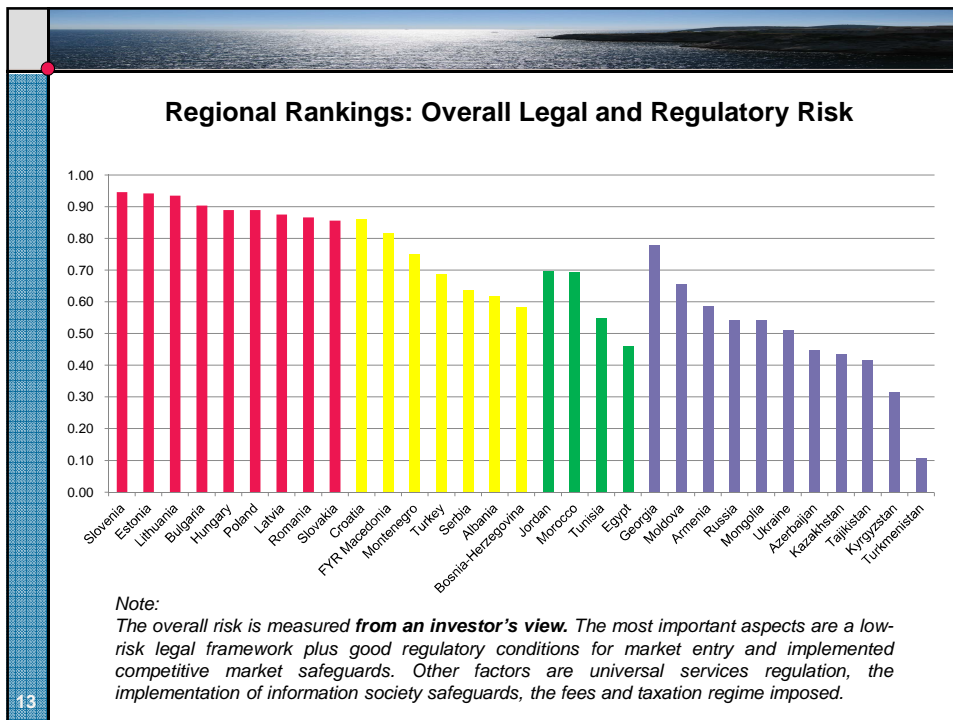
	Armenia	Azerbaijan	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Moldova	Mongolia	Russia	Tajikistan	Turkmenistan	Ukraine
General authorisation procedure	X	X	X	✓	X	X	✓	X	X	X	X	X
Technology neutrality for fixed licences	✓	✓	✓	✓	✓	X	✓	✓	X	X	X	✓
Technology neutrality for mobile licences	✓	X	X	X	X	X	X	✓	X	✓	X	X
Reasonable access to rights of way	X	✓	X	X	X	X	X	X	X	X	X	✓
Infrastructure sharing mandated	Duct only	✓	Duct only	✓	X	X	✓	✓	X	X	X	Duct only
Regulated interconnection charges	✓	✓	✓	✓	✓	X	✓	✓	Fixed only	X	X	✓
Access to international gateways	✓	✓	X	✓	✓	✓	✓	✓	✓	✓	X	✓
Spectrum granted on fair, transparent basis	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	X	✓
Spectrum secondary trading allowed	X	X	X	✓	X	X	X	X	X	X	X	X
Fixed line retail tariff rebalancing completed?	✓	X	X	X	X	X	X	X	X	X	X	X

11 [Source: EBRD 2012 Assessment]

Key competitive safeguards

	Armenia	Azerbaijan	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Moldova	Mongolia	Russia	Tajikistan	Turkmenistan	Ukraine
Fixed number portability	X	X	X	✓	X	X	X	X	X	X	X	X
Mobile number portability	X	X	✓	✓	X	X	X	X	X	X	X	X
Reference Interconnection Offer (Fixed)	✓	X	✓	✓	✓	X	✓	✓	✓	✓	X	✓
Reference Interconnection Offer (Mobile)	✓	X	X	✓	✓	X	✓	✓	✓	✓	X	X
Local Loop Unbundling	X	X	X	✓	X	X	✓	✓	X	X	X	X
Wholesale broadband access	X	✓	✓	✓	X	X	✓	✓	X	X	X	X
Carrier selection/ pre-selection	X	X	✓	✓	X	X	CS Only	X	X	X	X	X
Wholesale line rental	X	X	✓	✓	X	X	X	X	X	X	X	X
National mobile roaming	X	✓	X	X	X	X	X	X	✓	X	X	✓
Mobile Virtual Network Operators allowed	X	✓	✓	✓	X	X	✓	X	✓	✓	X	✓

12 [Source: EBRD 2012 Assessment]



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- ### Key issues
- Infrastructure sharing;
 - Monopoly is not an option (it results in poor quality and no consumer choice)
 - Neither is full infrastructure competition an option (it is too expensive)
 - Therefore use infrastructure sharing at wholesale level and allow full competition at retail level (EU approach)
 - Spectrum liberalisation;
 - Do not create false shortages
 - If spectrum is available, put it into the market for the benefit of the economy
 - Technological neutrality (removes restrictions)
 - Use the “digital dividend” to remove the “digital divide”
 - Market analysis approach;
 - Use EU market definitions, focus on wholesale markets
 - Best practice analysis to determine if significant market power exists in each market
 - Use of key competitive safeguards to improve competitive market conditions

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