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**Wrap-up Summary from the Role-play
Arab States Regional Dispute Resolution Workshop**

31 May – 1 June 2005, Manama, Bahrain

This is a summary wrap-up of the role-play sessions conducted at the Arab States Regional Dispute Resolution Workshop, 31 May – 1 June 2005 in Manama, Bahrain.

Officials from regulatory agencies in several Arab states, as well as executives from several operators in Arab states, participated in a dispute role play designed and facilitated by Rory Macmillan, a mediator, adjudicator and expert in telecom sector dispute resolution and regulation.

The primary subject matter of the dispute concerned interconnection pricing, although the fact pattern was designed to raise various other adjacent issues. The dispute featured an incumbent fixed line operator (Mumtazcom), a mobile operator (Mobilkiteer) and the sector regulator (Telecom Authority) in an anonymous country. The fact pattern was modelled on a mixture of facts from real disputes in various countries, although the fact pattern bore no direct relationship to any true situation.

The core problem in the dispute between Mumtazcom and Mobilkiteer was that at the time when interconnection pricing had been agreed a few years previously, the mobile operator had only recently entered the market. As a result, the mobile operator's termination fees had been set at a high rate in order to enable it to recover its investment. As in many countries, rapid uptake of mobile services led to a sharp increase in penetration and traffic, resulting in an imbalanced relationship between the fixed termination rate and the mobile termination rate. This imbalance led to the breakdown of negotiations between the fixed and mobile providers. In addition, a mixture of problems, including anti-competitive behaviour, discriminatory pricing and personal antagonism, added to the complexity and intractability of the dispute.

The Telecom Authority had certain dispute resolution powers by law, but its exercise of these was hampered by a lack of resources. In particular, the Telecom Authority lacked real information about the cost-base of the interconnection for both parties, since cost-accounting was still in the process of being introduced. Furthermore, the Telecom Authority lacked the resources to handle a full adjudicatory procedure at this stage, and wanted to avoid this by acting as a mediator to encourage a negotiated outcome. Various jurisdictional and legal problems also made the Telecom Authority's role uncertain.

The participants played the roles of Mumtazcom, Mobilkiteer or the Telecom Authority. Several groups reached a negotiated solution. After the role-play session, Mr. Macmillan facilitated a discussion of the lessons that could be learned from the exercise. These included the following:

- Dispute resolution is very much part of an on-going regulatory process. Thus, for example, several groups in the role-play did reach an interim agreement on the pricing, which was to be updated when cost-accounting was properly implemented. The main impact of the result was to commit to a process by which reliable cost-accounting would be produced over a specified time period.
- Disputes may arise for various reasons, but where they arise due to the fundamental structure of a market which is changing rapidly, it is important to the regulatory agenda to find a rapid solution, but one that is also fair and sustainable.
- There is a tension between a regulatory authority's role as both mediator and regulator. In some cases, the role of regulator helped in the mediation, since the Telecom Authority could indirectly and discreetly warn the parties that they could expect full enforcement of the regulations, including for example cost-accounting. This provided a useful "reality checking" element to the mediator's role, since the parties would be negotiating while conscious of the power of the regulator to impose a decision if the negotiation failed. However, the Telecom Authority's power to impose a decision if necessary also made some parties more reticent when it came to disclosing information. This tension between the roles of mediator and regulator is one that has to be delicately managed. The regulator needs to be aware that it is not really a neutral party because it has a regulatory agenda of developing the sector.
- Where there is a lack of actual information about the market or operators' costs, benchmarking on the basis of information from other markets may be helpful to make parties more realistic about what they are claiming, as well as providing a basis for an adjudicated ruling.
- The difference between a "complaint" and a "dispute" will determine the type of procedure to be used, and the parties' ability to present their respective cases. How a situation is characterized will depend on the underlying legislation, and may be different in each country.
- Where resources are lacking, alternative dispute resolution (ADR) techniques such as mediation can be a valuable addition to the standard adjudicatory powers of a regulator. They take skill, however. Knowing when and how to open a session with credibility, judge when to adjourn to separate the parties for private caucus meetings, when to bring them back together, the usefulness of interventions – all of this takes judgment that needs to be accumulated through experience and further training.