



Trends in
Telecommunication
Reform 2002
Effective Regulation

**Chapter 2:
WHY REGULATE?**

Rohan Samarajiva
LIRNE.NET
**Delft University of
Technology**

The views expressed in this presentation are those of the author and do not necessarily reflect the opinions of the ITU or its membership. The author can be contacted at samarajiva@lirne.net



Purpose

- Rationales for sector-specific ex-ante regulation
- Independence
- Legitimacy as means of effective regulation in imperfect circumstances
 - Expertise
 - Transparency
 - Public interest
 - Communication



Rationales for regulation

- Necessary condition for private investment
 - Safeguard against administrative expropriation
 - Long-term contracts (concessions) inadequate
 - Islands of good governance
- Safeguard against monopoly/oligopoly
 - ICT infrastructure will not reach the “nirvana” of perfect competition
 - Tight oligopoly is what results from liberalization
 - Added responsibilities of implementing competition-law principles ex ante



Rationales for regulation

- To achieve socio-political objectives
 - Designing market incentives for operators to do the “right thing”
 - Example of asymmetric and cost-reflective interconnection rates that improve the business case for rural telecom provision
- As reform manager
 - May be better positioned than Ministry because NRA is closer to the action



Independence?

- Minimal definition
 - The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services
 - World Trade Organization (1997), GATS Fourth Protocol, Reference Paper, article 5
- Common sense, but not always adhered to
 - E.g.. When NRA reports to Ministry which is principal shareholder of incumbent



Independence?

- NRA cannot be fully independent from government, but requires
 - Insulation from day-to-day interference
 - Financial autonomy
 - Accountability
- But most of all, legitimacy
- NRA as low-lying island of good governance; formal independence as protective dike; legitimacy building as dike maintenance



What is legitimacy?

- Acceptance of the existence and the power of an entity by those who can affect it or are affected by it
- Distinguished from powers and duties set out in formal legal documents
- A subjective category that resides in the eyes of others



Regulating in an imperfect world: Legitimacy

- Expertise
 - Sector-specific regulation requires continuing efforts to develop expertise
- Transparency
 - Exercise of discretion requires openness
- Commitment to the public interest
 - Different from consumer interest
 - Rhetorical construction that encompasses multiple interests



Legitimacy strategy

- **Credibility**
 - Value of a defining conflict
- **Efficacy**
 - Must show results for any of the above to work
- **Communication**
 - of all of the above
- **By maintaining the dikes, it may be possible to preserve the island; perhaps even to extend it**



Good governance is what it's all about

- ***Without good governance – without the rule of law, predictable administration, legitimate power and responsive regulation – no amount of funding, no short-term economic miracle will set the developing world on the path to prosperity. Without good governance, the foundations of society – both national and international – are built on sand. (Original in French)***

– Kofi Annan, 1997.



For further information . .

- Chapter 2 of 2002 *Trends in telecom Reform*
- WWW.LIRNE.NET
- samarajiva@lirne.net