<u>**INDEPENDENCE OF THE REGULATOR**</u>

<u>**A POTENTIAL UNTAPPED FOR ADDRESSING**</u>

<u>**REGULATORY CHALLENGES**</u>

By

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I.   <u>**Introduction**</u>

1.   I thank the ITU and BDT for organising this Global Symposium for Regulators, following a highly successful one that took place last year. I notice from the programme that wide-ranging discussions have been planned and look forward to three days of highly fruitful and rewarding interactions with the Delegates to this Symposium. I have today, the privilege of expressing some thoughts at the beginning of the Symposium and would like to utilise this opportunity of placing before you some issues relating to the independence of the Regulators, as I feel, it covers a good part of agenda that we will be addressing at this meeting, including major regulatory challenges and effective regulation. I hope that in the discussions that follow in the coming two days, these will receive some attention and may be, catalyse further thinking on the subject so as to provide us, especially the newly set up Regulators, with some answers which most of us seem to be looking for.

2.   By now, the independence of the Regulator is no more an issue. Save exceptions, in principle, whether or not the Regulator should be independent is a settled question; the answer is unequivocal that the Regulator should be independent. However, differences surface as soon as one begins to probe deeper into the meaning given to independence. In this regard, I wish to raise some questions for your consideration and also propose that we try to develop an approach which would help us handle

these issues in our respective environs with greater confidence. We could, at this meeting itself, take some initiatives aimed at assisting our decision making processes in future. I do hope that we end this meeting with a clearer understanding of the various issues that need to be addressed regarding Regulatory independence, and lay a firm ground for establishing and enhancing the Regulators' independence.

Potential for Independence

3.   The question of the independence of Regulators can be viewed from two different aspects both of which are crucial. One is the potential for independence that is provided in the legal basis which creates and empowers the Regulators. This addresses the scope of a Regulator's powers and defines, what may be called, the "possibility frontier" for the Regulator.   It is about enabling the Regulator to be independent and may cover inter-alia, such factors as its funding, manning, modes and terms of appointments and dismissals, manner of accountability and its standing vis-à-vis other Regulators like the Competition Regulator and the judiciary. These work as the limits of the "possibility frontier" or one may say, provide the boundaries of the independence the Regulator is going to enjoy in its functioning.

4.   The various elements that build independent functioning of the Regulator are well known, I will not dwell on them in detail. Suffice it to say that independence depends not only on the extent of flexibility available to the Regulator but the predictability and impartiality with which it exercises that flexibility.

Effective Independence

5.   The other aspect is that of effective independence i.e. the extent of independence that a Regulator earns for itself by building its credibility on the basis of its functioning. While effective independence is, to a great extent, circumscribed by the potential for independence which, as I have stated earlier, is provided by the legal basis, it is possible for a regulator to

transcend the "possibility frontier" and enhance its potential. It amounts to earning independence.

6.   To earn independence is to convert potential independence into effective independence by one's own efforts. Earning such independence, however, is not easy because in most cases, the Regulator is a new entity and has to establish its value in the eyes of all concerned, viz. the Government, the service providers (in particular the incumbent), the end users, and the media. While the Government often takes time to come to terms with the divestment of powers to the Regulator, the service providers find it worth their while to test the limits of the Regulator's powers. The end user is often in a hurry to obtain results and in the initial phase has expectations which are, perhaps, difficult to satisfy even for established Regulators. The media too seems to be looking for quick fix solutions and often provides to the pressure groups a platform for questioning regulatory decisions in a manner that may raise more questions than provide answers. Often, it appears, that the regulator and its different stakeholders are working at cross purposes. It, therefore, occurs to me, that there is an urgent need to engender some kind of complementarity between the regulator and each of these stakeholders. It is also important to search for mechanisms to increase such complementarity.

7.   Regulator's credibility depends not only on a job well done but also on a job perceived to be well done. It would, therefore, be useful to gain insights from the several participants here on how to address the problems that a Regulator faces when dealing with the various entities such as the Government, end user, service providers and the media.   Do we need to project our performance so that there is a clearer and better understanding about our important objectives and achievements amongst all the stakeholders? If so, what would be the ways of doing so. Should there be seminars, special training sessions, media relations, or any other means? Or should the Regulator keep an image of being distant from any publicity of its achievements?

8. I believe that the results of the deliberations and initiatives at this gathering can be of great help to us all in establishing effective independence in our respective domains. Our meeting today includes Regulators with varied experiences and ability to effectively deal with the variety of policy matters that we face today. From those with more experience than others, we would surely gain insights on how to enhance our credibility and effectiveness. However, in the past few years, the changes in the telecom sector have taken place so rapidly that all Regulators commonly face a number of issues to which, it seems, there are yet no ready or final answers. This observation will gain further validity in the next few years as the era of greater convergence engulfs us all. For a large number of Regulatory bodies established in the past few years, the situation is quite complex as they have to simultaneously

- deal with legacy in their effort to change the policy environment,
- work on developing institutions and methodologies in the absence of which even routine and simple regulatory functions turn into big challenges,
- take crucial policy initiatives with inadequate information,
- deal with several emerging policy concerns and uncertainties in the environment as technology and services converge.

The opportunity for developing a commonality of approach which this meeting provides for Regulators of various vintage, can help us all.

Special Studies on Regulatory Issues

9. Last year the Regulatory Forum established the G-Rex which has been a useful source of support for the new Regulators and can be more useful if its scope is enhanced. However, we should now be developing other more focussed sources for assistance to the Regulators in problem solving. In my

opinion, it is possible to develop a good basis to enhance regulatory effectiveness if we can identify key areas in which most of us would need assistance. Once such areas are identified, arrangements may be made to commission special studies to be completed urgently, let us say, within the next six months. A more detailed study can take place over a longer period of the next one or two years. Completing the initial set of studies within a period of the next six months or so would equip us with well researched views on these issues which could form the basis for further initiatives when we meet at the next regulatory symposium.

10.   For these studies, we may decide to identify subjects and experts, persons as well as institutions, who will prepare reports on matters that arise with respect to the policies followed in different countries, their techno-commercial effects and the relevant benchmarks.   These preparatory studies, in my opinion, should focus on the practical approaches by which anticipated regulatory problems can be tackled based on how similar problems have been tackled in the past and what lessons have already been learnt. A prior knowledge of possible responses to the emerging situations will greatly enhance the performance ability of the new regulators which in turn will add to their credibility and effective independence in future.

11.   To select subjects for such studies we may identify issues, the non-resolution of which constrain our operational flexibility or add complexity or uncertainty to our decision making process. May I offer a few examples of such issues, from my own experience.

(i)   Dealing with Legacy

12.   Most of the Regulators who were established within the last ten years have to deal with past legacy when addressing major changes. This legacy could be in terms of the old technology in use, or the existence of a prevailing License regime or existing Licensees that may not wish to migrate

to another regime, or tariff/access charge regimes which are not easy to change quickly. With this past legacy, introducing a multi-operator environment, ensuring interconnection, equal ease of access, or even a regime of calling party pays for cellular mobile, may require considerable time and involve technological changes and costs that are not easy to deal with. Views on how these problems have been addressed or should be addressed would be very useful to us.

1. I have often wondered whether:
   - a part of the answer lies in changing the contents of the License to make it simple,
   - a number of problems can be dealt with through a model interconnect agreement,
   - self regulation by the operators in comparatively early stages of market development has any value,
   - special mechanisms are required for bearing the cost of upgradation of technology so that customers do not have a major burden in the short term. If introduced would such mechanisms hinder the development of a competitive market.

(ii)   Regulating the dominance of the incumbent

13.   Ensuring the incumbent's adherence to the regulatory framework is an important objective of the regulator, and requires it to take steps to ensure timely, equitable action by the operator in areas such as interconnection, quality of service, data sharing etc. Availability of benchmarks in areas like these would help the new regulators immensely by adding to their confidence and lowering the incumbent's resistance to regulation.

14.   The private sector has a major stake in the stability and effectiveness of a Regulator, because the Regulator is the key to maintaining level playing

field and stabilising competition. The private sector can significantly fill the gaps in the information required by the regulator in its efforts to encourage and stabilise competition in the market. However, in actual practice often considerable hesitation is noticed on the part of the new operators in providing the regulator with the required information and cooperation. Lack of such cooperation, is, indeed a set-back to the regulator's endeavours to control the dominance of the incumbent in the interests of developing a competitive market.

(iii)   Introduction of self-regulation by the industry

15.   An important issue to which, I hope, the conference would give some consideration is whether the industry should adopt, at least, in some areas, self-regulation much earlier than is normally expected during the process of reform. For this process to be properly implemented, however, it would be necessary to establish practices for managing exceptions.

(iv)   Link between different policies and the sequence of adopting these policies

16.   Efficiency of regulation increases if we are aware of the links between different types of polices, e.g. tariffs, interconnection charge, and USO, and are able to identify whether some of these policies should be implemented earlier than others for greater overall consistency and efficiency. We could consider prioritising the policy issues that need to be addressed in the initial phases of reforms.

(v)   Major issues likely to arise in the future

17.   At a time when we have to address a number of basic policy matters relating to costs, market linkages and quality of service, the technological and service-related developments are creating new areas and uncertainties that both expand the work-programme of telecom Regulators and make it

more difficult to take decisions based on a consistent and comprehensive understanding of the situation. For example, with internet technology, there will be changes in the present mechanism for implementing the settlement rates, the prevailing tariff structure, and even in respect of Universal Service Obligations and the ways in which these could be met in the short to medium term. I commend the ITU/BDT for producing in the last two years its publications on two important subjects, namely convergence and interconnection. At the time of their publication, the changes in the environment were more anticipated than real. Today, these changes are imminent, and several countries have already started developing regulatory processes and institutions to deal with them. These developments complicate the task of those Regulatory Agencies which have been established in the past few years, and are yet battling with policy decisions on conventional issues.

18.   I think, as convergence closes in, we need to address the issue of regulating competition far more effectively than most of us are in a position to do at present. What would be the building blocks of an effective competition policy which may be followed? I feel, it would be a step forward if we support our preparations for a converged environment by looking for approaches.

- that would be relevant for all countries, irrespective of the extent of development of their telecom sector;
- and those that are linked to certain developments in the telecom sector

(vi)   Suggestions from the Private sector operations

19.   In this regard, I suggest that we may also seek specific views from the private sector (which is a special invitee to this session) on the likely developments in the telecom sector that should be considered by

Regulators, and whether in their opinion these developments would alter or modify their expectations from the Regulators.

(vii) Linking up with Regional Organizations

20.   There is a need to strengthen the regional organizations and to encourage interaction among the Regulators at the regional level.   The relevant information, including on regulatory practices and benchmarks, may be collected for identified regions under the aegis of ITU/BDT and discussions and interactions organised at that level. The idea would be to provide assurance and confidence to the regulators in different stages of their growth and stability that a strong support system is working for them. Such an approach, in my opinion, will add to the value and credibility of not only the regulators and the regulatory organizations at the regional levels but also of the ITU/BDT.

21.   To improve effectiveness of Regulatory Bodies, regional and international organizations can provide training, information and expertise. For those who wish to obtain general specific training, one possibility is to consider organizing trainings back-to-back with various meetings including, for example, this meeting.

Conclusion

22.   I hope I have been able to provide some thoughts and suggestions in respect of a few of our current pressing concerns. At least, some of these will receive this august body's consideration in the deliberations that follow. It is also my hope that it will be possible for us to decide upon some joint initiatives which will facilitate our tasks and add to our ability as regulators. I thank you all for your patient hearing.