Challenges to Telecommunications Regulation in the MENA Region

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OECD Global Conference on Telecommunications Policy for the Digital Economy

Dubai, UAE, January 21-23, 2002

Starting Point

Three propositions:

- **An efficient and technologically advanced telecommunications market is a necessary -but not sufficient- condition for the development of the information economy;**
- **The wealth of nations in the twenty-first century will be shaped by telecommunications access, pricing, quality, and speed of data transmission;**
- **Competition makes markets efficient and provides sustainable market incentives for technological advancement**

Structure of the presentation

Propositions:

- **There is a new paradigm of telecommunication regulation based on a competitive market model**
- **Arab countries have to continue the twin processes of De-regulation and Re-regulation**
- **Telecommunication regulation in the MENA region has made important steps forward but is still far from providing competitive telecommunications markets**

Dimensions of Regulation: E³ - Efficiency, Equity, and Effectiveness

The success of telecommunication regulation can be measured along the following dimensions:

- Efficiency of the Market
- Equity towards Service Providers and Users
- Effectiveness of the Regulator

Dimensions of Regulation: E³

Efficiency of the Market

- Promote competition by reducing barriers to entry and exit
- Protect market from anti-competitive practices (predatory pricing, cartels, etc.) and sanctioning abuse of market power
- Manage scarce resources in objective, transparent, non-discriminatory way: radio spectrum, numbering plan, infrastructure

Dimensions of Regulation: E³

Equity

- Adjudicate conflicts between service providers
- Resolve conflicts between providers and users
- Protect consumers
- Promote the delivery of universal service obligations (USO)

Dimensions of Regulation: E^3

Effectiveness of the Regulator

•Strategy

•Institutional design

•Organizational resources

A successful regulator has to:

- Make credible commitments ⇒ regulatory stability ⇒ lower cost of capital ⇒ more investments and lower prices to users
- Minimize transaction costs ⇒ more efficient markets

Two Paradigms of Telecom Regulation

Old

- Regulation of natural monopolies
- Competition ***for*** the market
- Price regulation - price cap (RPI-x)- or Profit regulation (rate of return)
- Technology specific
- Investments predictable
- “Separate” was enough

New

- Competition ***in*** the market
- Regulation of last resort
- Price regulation: “significant market power” (SMP)
- Technology neutral
- Investments left to market forces
- Independent regulator

Telecommunications in MENA Region

In the last few years, there has been

- Greater private participation in telecommunications
- Telecommunications regulatory reform, but only three current attempts to implement telecom regulation based on competition (Morocco, Jordan, Egypt, and Lebanon -possibly)

Private Participation in Telecommunications

in MENA

- 1981 : Bahrain (Batelco)
- 1991: UAE (Etisalat)
- 1994: Lebanon (2 GSM BOTs)
- 1995: Jordan (1st GSM)
- 1998 : Qatar (Q-Tel)
- 1998: Egypt (2 GSM)
- 2000: Jordan (JTC)
- 1999: Morocco, (2nd GSM)
- 2001: Morocco (MT)
- 2001: Mauritania (MauriTel)
- 2001: Algeria, 2nd GSM
- 2001: Syria (2 GSM BOTs)

... UNDERWAY

- 2002 : Saudi Arabia
  Kuwait
  Egypt (TE)
  Oman
  Lebanon

MENA Telecom Reform: Work in Progress (1)

Legal Framework in MENA

Telecom Laws

- Algeria (**2000**)
- Egypt (**1998**)
- Jordan (**1995**)
- Mauritania (**1999**)
- Morocco (**1997**)
- Saudi Arabia (**2001**)

Draft Laws

- Bahrain (under consideration)
- Egypt
- Jordan
- Lebanon
- Morocco
- Oman

MENA Telecom Reform: Work in Progress (2)

Telecom Market Structures in MENA

- **Egypt**: Gradual liberalization
  Monopoly in PSTN, partial competition in mobile - 3rd operator to provide services after 12/2002, competition in ISP, complete liberalization in 2005.
- **Jordan**: Negotiated liberalization
  Monopoly in PSTN and leased lines until end-2004, partial competition in mobile until end-2003, competition in data and ISP.

MENA Telecom Reform: Work in Progress (3)

Telecom Market Structures in MENA

- **Lebanon**: No-Commitment Liberalization
  Monopoly in PSTN, limited competition in mobile, competition in data and ISP. Draft law: competition immediately, local voice in 2-3 years later. Difficult transition from BOT to licenses.
- **Morocco**: Liberalization checked?
  Monopoly until 2002 for fixed, competition in mobile services (great success), competition in data and ISP

Regulation Strategy in MENA (1)

- Government policy and vision: still unclear in the region except for Jordan and Egypt (ICT development); the rest are mired in the myth of exceptionalism
- International commitments (WTO, etc.): Jordan, Morocco, Tunisia, and Egypt
- Regulatory practices consistent with international norms:
  - Morocco and Egypt and Jordan's draft laws are all WTO compliant
  - Morocco's ANRT award of 2nd GSM license in 1999, interconnection dispute, discriminatory pricing by MT
- Non-discriminatory treatment of all operators: Telecom Egypt's mobile license; ANRT and MT
- Tariff rebalancing: Morocco, Jordan

Regulation Strategy in MENA (2)

Authority to Promote Competition

- **Algeria:** Technical issues such as interconnection, frequency management, etc
- **Egypt:**
  - None
  - Draft law: TRA issues licenses; interconnection; frequency management approved by consultative committee
- **Jordan:**
  - Limited to some technical issues: frequency management (*de jure* only), numbering plan (cite case in court on numbering plan)
  - Draft law: TRC issues licenses, encourages competition, sets interconnection terms, forebears from applying regulations, manages spectrum, numbering plan
- **Lebanon:** Wide mandate to promote competition, interconnection, frequency management, numbering plan
- **Morocco:** Limited powers to drawing technical specs of licenses, frequency management, numbering plan, etc.
- **Saudi Arabia:** Limited powers to promote competition, can issue licenses, establish numbering plan, frequency management plan submitted to ministry then COM

Regulation Strategy in MENA (3)

Specific Powers

- **Algeria:** Approve tariffs**,** customer complaints**, e**nforcement powers, imposing fines, USO fund
- **Egypt:**
  - Draft law: Approve tariffs, customer complaints, enforcement powers, imposing fines, USO fund
- **Jordan**
  - Weak provisions for universal service, information to be provided by operators, etc.
  - Draft law: review tariffs, USO,
- **Lebanon:** Draft law gives regulator wide powers to set tariffs for dominant operators, quality standards, USO, to sanction, and to investigate
- **Morocco:** ANRT can set maximum tariff; has little coercive powers except revoking license. New amendments give it control over universal service and research funds. ANRT vs. Maroc Telecom in Spring '01
- **Saudi Arabia:** universal service conditions outlined in contract, fees for frequency use "suggested" to minister, standards for fees for telecom services set by SCC

Institutional Design in MENA (1)

- Independence from operators, i.e. at equal distance from all operators, including incumbent operator
- Relations with political authority to be rule-based and transparent and ministry disengaged from regulatory authority (no overlap of jurisdictions)
- Decision-making body safe from arbitrary dismissal

Institutional Design in MENA (2)

Institutional Structure of Regulators

Separate Regulatory Authority

- **Jordan – TRC (1996)**
- **Morocco – ANRT (1998)**
- **Egypt – TRU (1999)**
- **Mauritania – ART (2000)**
- **Algeria – ARPT (2001)**
- **Saudi Arabia – SCC (2001)**

Proposed

- **Egypt (TRA)**
- **Lebanon**
- **Oman**

Institutional Design in MENA (3)

Independence of regulator

- **Algeria**: *De jure* independent
- **Egypt**:
  - Not independent
  - Draft law: *De jure* independent
- **Jordan**:
  - *De jure* independent
  - Draft law: Independent
- **Lebanon**: Independent
- **Morocco**: Independent
- **Saudi Arabia**: *De jure* independent

Institutional Design in MENA (4)

Relation to Political Authorities

- **Algeria**: Director general and council appointed by President
- **Egypt**:
  - Minister chairs TRU; director appointed by PM
  - Draft law: TRA board of 13, chaired by minister, CEO appointed by PM
- **Jordan**:
  - Minister chairs BOD
  - Draft law: COM appoints board of commissioners and CEO
- **Lebanon**: COM appoints president and members of BOD upon minister's recommendation
- **Morocco**: PM chairs board; DG appointed by royal decree
- **Saudi Arabia**: Minister chairs BOD; governor appointed by royal decree upon minister's recommendation.

Institutional Design in MENA (4)

Security of Top Decision-Making Body

- **Algeria**: No security; President can dismiss DG and council
- **Egypt:**
  - No security;
  - Draft law: No security; TRA appointments for 2 years made by minister
- **Jordan**:
  - No security under current law (1995): DG relieved of functions in 2000
  - Draft law: Term extended from 4 to 5 years and conditions for dismissal limited
- **Lebanon**: Draft law limits dismissal conditions; high court to approve
- **Morocco**: Relative security from dismissal, members assigned for 5 renewable years
- **Saudi Arabia**: No security

Organizational Resources in MENA (1)

- Qualified regulators appointed to lead
- Qualified staff, which requires flexible staffing rules and flexibility to hire and retain qualified staff (problem of many regulators is staff legacy)
- Adequate and sustainable funding from “own” revenues
- Ability to contract out for expertise (external assistance important in this respect)

Organizational Resources in MENA (2)

Qualified Regulators and Staff

- In MENA countries -except Morocco: dearth of regulatory expertise
- Problem compounded when regulator is forced to inherit ministry or incumbent staff
- In Jordan, problem is compounded by civil service legislation that limits flexibility to hire and retain qualified staff. New bylaws that gives the regulator flexibility is under consideration but encounters opposition

Organizational Resources in MENA (3)

Financial Independence

- **Algeria**:funding from spectrum revenues, share from license proceeds, fee for service, and operator contributions to universal service
- **Egypt**:
  - Funding from budget, share from fee-for-service revenues as approved by COM
  - Draft law: Funding from government budget, license proceeds, donations, fee for service, loans, returns on investments, proceeds from sale of “Telecom Egypt”, and penalties; TRA has independent budget, **with surplus carried year-to-year**
- **Jordan**:
  - funding from license proceeds, penalties, grants, government budget, other sources approved by COM; budget independent, surplus accrues to state treasury; accounts audited by chartered auditor (revenues exceed expenditures by factor of 5)
  - Draft law: bid proceeds added to TRC revenues

Organizational Resources in MENA (4)

Financial Independence

- **Lebanon**: funding from license proceeds, fee for service, spectrum management fees, grants; monetary grant from government only for first 2 years; external audit; license proceeds transferred by treasury to cover costs.
- **Morocco**: funding from service remunerations, license fees, collected revenues, loans; budget controlled by ANRT administrative council
- **Saudi Arabia**:funding from license fees, fee for service, penalties; external auditor reviews accounts; surplus accrues to government treasury

Conclusion: Challenges Ahead (1)

Capacity-building first

- Regulatory capabilities and expertise
- Ability to hire and retain qualified staff
- Contract with qualified consultants
- Training
- Review and streamline internal procedures, including E-government and online regulator
- Good management: HR and financial

Prospects are mixed. Long term process. External assistance available.

Conclusion: Challenges Ahead (2)

Institutional Design

- Delineate clearly scope of ministry and regulator's powers
- "Buy-in" from politicians
- Focus on key issues: independence and financial independence
- This is a very long term process.

Conclusion: Challenges Ahead (3)

Strategy (1)

- "Telecommunications as cash cow" enemy of liberalization
- Rapid tariff rebalancing (in all countries)
- Clean up the radio spectrum and allocate for commercial use
- Correct information asymmetry with existing operators. Enforce cost accounting for operators with significant market power

Conclusion: Challenges Ahead (4)

Strategy (2)

- Build alliances: consumer associations,user groups, academia, media, and internationally with other regulators, ITU, EC, WB, OECD
- Exploit loopholes in exclusivity agreements
- Push for liberalization. More competition means lighter regulation.
- Regulators: which battles to fight and when

Conclusion: Challenges Ahead (5)

- There is no pro-competition telecommunications regulation in most MENA countries
- Progress towards that goal has been made in Morocco and is being made in Egypt and Jordan, possibly in Lebanon
- The regulators lack the resources and institutional design to effectively push for competition
- But that can be remedied if governments adopt a pro-competition strategy