

Inwards Investment

Stakeholders Forum on Further
Liberalization of the Telecomm
Market in Botswana 31Jan-02
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Regulation

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Need for inwards investment

- Inwards investment not for developing countries only; it is needed by developed countries as well
- Developing countries have greater need for inwards investment

Clear Policy and Legislation (1)

- Clear Policy
 - Policy statement: sets objectives and direction
 - Some countries in Eastern and Southern Africa including Botswana, Kenya, Malawi, South Africa and Uganda adopted policy statements before enacting legislation
 - Others like Mauritius, Tanzania, Zambia and Zimbabwe enacted legislation first and adopted policy statements afterwards, not a good approach

Clear Policy and Legislation (2)

- A few countries like Kenya added a roadmap to the policy statement indicating level of liberalization and milestones over a given period e.g. 5 years
- Clear legislation: gives stability to the policy
 - Initial liberalization legislation in many countries in ESA broad, gives regulator very wide discretion on substantive and procedural issues. Short on predictability and transparency

Clear Policy and Legislation (3)

- Recent or proposed new legislation more detailed on principles, criteria and procedures for regulatory decisions: more transparency and predictability
 - Examples: Mauritius Information Technology and Communications Act, 2001; Nigerian Communications Act, 2003; Tanzania Communications Regulatory Authority Act, 2003; and proposed Tanzania Communications Bill

Clear Policy and legislation(3)

- Defines roles and responsibilities:
 - Government through sector minister: adoption and review of policy and legislation
 - Independent Regulator: objective and impartial regulatory oversight and enforcement
 - Operators/investors: efficient provision of services
 - Customers/users/public: appropriate use of services and provision of feedback

Regulatory Independence (1)

- Consensus on need for regulatory independence: ensures credible regulation
- Controversy is on “independence” in practice
 - Questions arise: independent of what? Whom?
- Independence from:
 - unwarranted influence from industry
 - ad hoc intervention or formalized but excessive intervention by Government in day-to-day regulatory activities

Regulatory Independence (2): Minister-Regulator Relationship

- Norm: Regulator operates at-arms length from Government
 - Tends to leave Minister uninvolved/uninformed on important regulatory decisions
- Minister answerable to Parliament and public on ongoing basis for the sectors he/she supervises

Regulatory Independence (3): Minister-Regulator Relationship

- Ministers have legitimate need for regular updates on regulatory development
- Issue is “how” to keep ministers involved or informed without negating the benefits of independent regulation
 - Informal briefings by the Regulator?
 - Annual and other periodic report?

Regulatory Independence (4): Minister-Regulator Relationship

- Minister expresses his/her views to Regulator on various issues handled by Regulator (Nigeria Communications Act 2003)
- Formal consultations that result in binding directions to the Regulator regarding major licences. Example: Tanzania Communications Regulatory Authority Act, 2003. Considered by some to be a step backward

Minister-Regulator Relationship (5)

- Basis for a constructive Minister-Regulator Relationship
 - Ministerial and regulatory roles are complimentary: both government agents for achieving identical development objectives
 - Need for mutually supportive relationship between Minister and Regulator without negating the benefits of independent regulation
 - Nigerian Communications Act, 2003 provides example: requires that in his/her relationship with the Regulator the Minister will promote the independence of the Regulator

Credible Regulation (1)

- Entails the Regulator acquiring the capacity and ability to perform its functions professionally: with integrity, skillfully, transparently, efficiently and consistency
 - Actual or perceived weakness in this area can discourage investment; undermine Regulator's credibility or result in use of political pressure or expensive litigation to obtain redress.

- In Malawi in 2003 an operator dissatisfied with an interconnection determination on account of alleged lack of analysis prior to the decision, used political pressure to prevail on the Regulator to review it
- When checked with the Regulator he confirmed he had carried out an analysis; it seems it was just perception on the part of the operator

Credible Regulation (2)

- Acquiring necessary capacity requires adequate resources, preferably from independent funding sources e.g. licensing fees and charges for other services provided by the Regulator

Credible Regulation (3)

- Accountability for regulatory actions and use of resources:
 - To Minister and Parliament through annual/ periodic performance reports and audits
 - Appeals from decisions to courts of law and/or special tribunals. In Tanzania a Fair Competition Tribunal established under TCRA Act 2003 has exclusive jurisdiction on appeals communications matters

Regulators Challenges (1)

- Regulating in a fast changing technology, policy and business environment
- Must seek to get to the cutting edge of technology, regulatory strategies and techniques, including letting go of old regulatory approaches and embracing new ones

Regulators Challenges (2)

- Balancing the conflicting interests of stakeholders in the ICT sector:
 - Government, under pressure from the investing community and the public
 - Consumers, pressing for quality and lower prices
 - Investors, under pressure of competition, seeking to maximize market shares and profits

Conclusion

- Botswana is one of the countries that entered its first phase of liberalization of the telecommunications sector based on most of the best practices alluded to in this presentation and elsewhere
- Has been lauded internationally for its good regulatory practices within the existing policy framework

Conclusion contd

- Recommendation
 - That current efforts build on the initial policy and regulatory framework and achievements to get to the next level of liberalization under a revised policy and regulatory framework that will take into account current best regulatory practices and the country's specific circumstances

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THANK YOU

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