Core Principles for Effective Telecommunication Regulation

Introduction
A clear, concise and effective legal, regulatory and institutional framework is critical for the attraction of private investment into the telecommunications sector (the “Sector”) of transition economies. Such a framework is also critical to ensure that the transition economies maximise the benefits that flow from a competitive Sector and from the introduction of, and widespread access to, the information communication technologies (ICT) that support today’s “information society”. The need for such a framework is particularly acute where there are increasing demands on limited capital investment for infrastructure upgrade and expansion, whereby potential investors have a wide range of opportunities to choose from globally, both in transition economies and otherwise. A clear, concise and effective legal, regulatory and institutional framework can be achieved through government and Sector authorities ensuring that fundamental core principles for Sector regulation, such as those promoted by the World Trade Organisation (WTO), the European Union (EU) and other regional bodies, are fully reflected in Sector policy, legislation, regulatory implementation and administration. These core principles, endorsed by EBRD, include the following:

1. Sector policy should be clear and precise
Sector policy generally refers to strategic aims of government for the Sector, as published by the responsible Minister and approved by government. It reflects government’s overall vision for Sector evolution and describes at a high level the main steps towards achieving that vision. The ultimate goal of policy is to create conditions under which the full power of ICT can be applied to the growth and development of transition economies and the increased democratisation and social cohesion of their people. Sector policy should focus upon creating and sustaining the conditions for private investment. With that in mind, Sector policy should identify liberalisation and privatisation of state assets within the Sector as the cornerstones of Sector development. Sector policy should set out a comprehensive framework applying the minimum necessary rules, simply stated, published or publicly available, enforced consistently, fairly and transparently. It should be based upon a clear understanding of commercial and economic realities underpinning the market and its future development and should address all elements of the framework in a concrete and specific fashion setting out key government objectives for the Sector, the means by which these objectives are to be achieved and a specific timetable for their achievement. The policy should clearly identify the parties responsible for specific policy elements and provide a means for regular monitoring of implementation.

2. Legislative base underpinning the Sector should seek maximum legal certainty
Sector policy should be fully underpinned by clear and precise primary legislation, supplemented by appropriately detailed secondary legislation. This legislation should provide a concise and explicit statement of rights and obligations attaching to the various sector actors. Sector framework legislation should be prepared by the cabinet ministry responsible for the Sector and enacted by parliament subsequent to appropriate parliamentary debate. Sector primary legislation should fully enable the implementation of Sector policy and reflect fundamental widely accepted Sector standards, such as competitive provision of services, transparent licensing procedures and non-discriminatory network access. All laws, regulations and administrative guidance should be published or otherwise publicly available. While, generally speaking, detailed administrative procedures applicable to individual elements should be contained in secondary legislation, the level of detail of primary legislation will depend upon the level of sophistication of the local legal environment and the maturity of the market place. However, certain basic content of primary legislation can be distilled from international best practice and dictate that Sector primary legislation (the “Law”) should, at a minimum:
i) Clearly identify the objectives of the responsible ministry/Sector policymaker and the sector regulatory authority, together with their respective powers, functions, duties and enforcement powers. The separation of policymaking and regulation should be specifically delineated in the Law, however, provision for a mechanism for their transparent interaction should be set out;

ii) Clearly specify the nature of the licensing regime together with the types of licences, requirements, process and conditions, while promoting “light-touch” licensing that will encourage investment.

iii) Provide for and fully entrench the establishment of an autonomous regulatory authority, together with provisions guaranteeing its independence (through, for example, guarantees of financing, strict appointment and removal procedures for Chairperson and Governing Board and sufficient conflict of interest provisions) while allowing for appropriate accountability;

iv) Set out a statement of rights and obligations with respect to non-discriminatory network interconnection for competing operators, together with a workable mechanism for investigation of complaints and dispute resolution;

v) Provide a clear statement of tariffing policy with cost-orientation as its foundation;

vi) Set out a universal service objective, together with an indication of the means of financing this objective and a transparent procedure for its administration;

vii) Precisely identify offences arising from the Law together with applicable penalty;

Secondary legislation should be designed to supplement primary legislation, providing sufficient detail for the full implementation of individual elements of the legal and regulatory framework, covering the following key elements:

3. Key individual legal, regulatory and institutional framework elements

a) Licensing process should transparent and text publicly available

A licensing process for the Sector which is fair, objective and, above all, transparent must be ensured. Rules must allow for the criteria for licence allocation to be applied in an objective and non-discriminatory manner, particularly where the scarce resources (such as radio frequency spectrum) are involved. Criteria which prospective operators have to meet and terms/conditions applicable to licences should be either published or publicly available. Model licences (or conditions for operation under registration, where appropriate) should also be publicly available. The licensing process should facilitate liberalisation, be technology neutral and work toward the international trend of authorisation through registration (where appropriate). Licence duration should be reasonable, renewal process clear and fees attached to all licences should reflect the administrative cost of issuing licence1;

b) Sector framework should be predicated upon achievement of full sector liberalisation as soon as feasible

Consumers are better served under competitive conditions and all practical steps necessary to abolish any traditional Sector exclusivity should be taken at the earliest opportunity. For this to occur it will be necessary to relieve the incumbent operator of traditional exclusivity rights and allow new market players to compete in the provision of networks and services2. Otherwise the absence of competition will prevent the full realisation of benefits from ICT. Whilst full liberalisation is the goal, speed of and level at which it will occur differs from economy to economy, depending upon individual national policies3. Nonetheless, a clear, concise and unambiguous timetable for liberalisation is essential - without this interested investors will not be in a position to accurately assess potential for investment.

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1 Except in the case of licences with accompanying allocation of scarce resources (e.g. radio frequency spectrum), in which case internationally consistent procedure for setting fees and the factors for consideration should be specified.

2 This principle does not necessarily apply to mobile network licensing where scarcity of radio frequency spectrum resources is the dictating factor in limitation of licences.

3 Pursuit of a phased liberalisation model (whereby parts of the market are gradually opened) will help achieve a maximised value for the state operators in the privatisation process. Phased liberalisation can also facilitate development of a universal service policy objective, though this can be also be achieved through insertion of conditions as to capital expenditure, infrastructure build out and network upgrade in a privatisation sale agreement (or licence of the privatised operator).
c) **End-to-end network interconnection at cost-oriented tariffs and under non-discriminatory terms and conditions should be ensured**

Interconnection\(^4\) is the lifeblood of competition in the Sector. A transparent interconnection framework guaranteeing fair terms and conditions is essential for operators to compete effectively in a liberalised market place. Publication of, or public access to, written interconnection agreements, terms and conditions to establish the necessary transparency should be ensured. Primary legislation should apply to all major operators and entrench the basic principles applying to interconnection, empowering the regulatory function with the ability to enforce those principles. In particular, interconnection tariffs of regulated operators should be cost-oriented and non-discriminatory. Where a regulated operator is not in a position to fully determine their costs, a phased regime may be appropriate until such time as efficient methods of cost calculation and allocation have been implemented. While operators should be encouraged to agree interconnection on the basis of commercial negotiation, this may not always succeed and effective procedures handling inter-operator interconnection disputes by the regulator, together with a timetable for decision-making, should be guaranteed.

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4 The physical and logical linking of telecommunications networks used by the same or a different telecommunications operator in order to allow the users of one telecommunications operator to communicate with the users of the same or another telecommunications operator to access services provided by the parties involved or other parties who have access to the telecommunications network.
f) **Tariffs should be rebalanced** as soon as possible, in coordination with universal service policy

Where Sector tariffs are out of line with cost of provision this imbalance should be addressed immediately. The timetable for achieving such rebalancing will vary from economy to economy, however, the more excessive imbalances should not take anymore than 2 to 3 years to implement through a pre-agreed schedule not to be deviated from, except in exceptional circumstances. Because unbalanced tariffs are not sustainable in a competitive marketplace, every effort should be made to rebalance tariffs to an appropriate level before full liberalisation or within the shortest period thereafter. Rebalancing of tariffs will generally deprive the operator with the historic universal service obligation of a source of funds to cross-subsidise provision of service to uneconomic areas, therefore any timetable to rebalance should be fully co-ordinated with other policies, particularly that covering universal access/service.

g) **Sector framework should make provision for timely provision of minimum services of specified quality, available to all independent of location, at an affordable price.**

Policies and mechanisms to ensure the provision of a minimum set of services of specified quality, available to all independent of location at affordable price, within a reasonable period of time (i.e. Universal Service Objective) should be put in place as soon as possible. This will include access to emergency services and provision for customers with disabilities or special needs, taking account of the short-term impact of rebalancing on certain sections of the community. Procedures must be clearly defined by government regulations and coordinated with other elements of Sector policy (e.g. tariff rebalancing). Whatever model chosen it must be administered in a transparent, non-discriminatory and competitively neutral manner and are not be any more burdensome than necessary for the kind of universal service objective pursued.

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5 Historically in undeveloped telecommunications markets international voice telephony rates were kept artificially high to cross-subsidise the provision of artificially low local call rates. Rebalancing refers to the process of reducing the international call charges while correspondingly increasing the local call charges, moving towards a level where the tariffs for services reflect their cost basis.

6 There are a number of options for implementing universal service ranging including imposition on one or more dominant operators, with a provision for compensation or competitive selection through least cost subsidy auction, whereby private telecom operators bid for the minimum government subsidy they require to provide telecom services in targeted un- or under-served (usually rural) areas. Financing can be by operator contributions according to principles of transparency, non-discrimination and proportionality (with possible provision for government subsidy).