



## **Outsourcing a National Telecommunications Regulator**

### **A Case Study of a Middle East country Outsourcing the Function of a Telecommunications Regulator**

A Middle East government embarked on liberalising the telecommunications market, one of the first in the region to do so, introducing competition as a means of driving efficiencies, increasing service penetration, introducing new technology and services and contributing to GDP, as a long term diversification into new markets to protect against the forecast decline in oil revenues.

This case study illustrates a case of a government outsourcing the operation of a telecommunications regulator.

#### **The Scene**

The government empowered the Ministry of Transport and Communications (MoTC) to liberalise the telecommunications market. The first stage called for the development of the liberalisation strategy and a policy for the sector. A consultancy was appointed to develop the liberalisation strategy and prepare legislative instruments. The second stage called for the creation of an independent regulator for the telecommunications sector (the MoTC was defacto regulator under the monopoly scenario).

#### **The Problem**

In most liberalisation exercises, but particularly in this case, there was an imperative to balance the mechanisms forcing the monopoly incumbent to adapt to competition with the need to maintain, or even enhance, its value. Allowing, or even incentivising, new players to enter the telecommunications market to force the incumbent to increase efficiency needed to be tempered by the need to challenge the incumbent to act as a champion in entering neighbouring markets as conditions permitted. The Ministry had a number of concerns in this respect:

- Consequences for the market valuation of the incumbent, given the nature of its public shareholding and its significance to the capital markets
- Future partnership issues for the incumbent
- The consequences of reciprocity in terms of the regional (and international) telecommunications opportunities presented to local companies, and the threats posed by the entry of other regional (and international) operators into the sector
- The inducement of new entrants into the telecommunications sector
- Consequences for public/private expenditures as a result of the liberalisation
- Consumer prices and the profitability of the incumbent
- Innovative services and their economic provision by the incumbent or potential new entrants

Given these concerns, **six fundamental objectives** were identified and agreed with the Government for the liberalisation strategy, policy blueprint and which would serve as primarily goals for the outsourced regulator:

**Stimulus of economic activity**

Relative ability to optimise the impact of communications as a general driver of economic growth (penetration – traffic volume – price levels), informed by generally accepted multinational GDP/teledensity relationships

Within the constraints set by conflicts with other objectives, the country was seeking to create ‘free market’ conditions.

**Private investment focus**

Relative ability to move toward optimisation of conditions that would attract entry by private sector players into the communications market, informed by an “attractiveness factor index” – including the nature of regulation and USO considerations.

**Attractiveness of the country as a business centre**

Within the constraints imposed by scale and the other ‘objectives’ Government sought to have a more liberal regime than its neighbours, and consequently take ‘first mover’ advantage in the attraction of new businesses, or further stimulation of existing businesses.

Relative contribution to enhancement of attractiveness in terms of range, quantity, price and quality of communications services made available - over the previous levels.

**Retain opportunities for incumbent value growth**

Relative ability to achieve other reform objectives - with the least extreme structural change to incumbent (cost and perception issues).

Relative ability to achieve other reform objectives within the least extreme tariff rebalancing environment.

Relative ability to stimulate/facilitate incumbent exploitation of additional sectors/overseas opportunities.

Relative perceived ability to minimise risk of disruptive (value damaging) major shareholder exit, or substantive curtailment of fund raising ability.

**Minimisation of export of benefits**

Relative ability to achieve other reform objectives - with no net loss of liberalisation benefit to States that have not implemented similar levels of reform.

Relative ability to avoid preclusion of entrants from neighbouring States, as part of a competitive strategy.

Relative ability to ensure via auditable undertakings that any incremental economic benefits accruing from locating operating resources outside the country, are passed directly to users within the country

### **Balance stakeholder interests**

Relative ability to directly distribute long-run sector reform benefits to all stakeholders, on a demonstrably equitable basis.

Relative ability to minimise short-run sector reform downside risk/development costs.

Relative ability to ensure that short-run sector reform costs are equitably distributed to stakeholders that stand to gain from upside potential.

## **The Solution**

Upon development of a liberalisation strategy, the approval of a policy blueprint (by the Cabinet) and establishment of the legal instruments to bring about liberalisation, it was imperative to establish an independent, transparent and empowered regulator with appropriate skills and resources to create an environment that promoted investment, innovation and expansion in the scope of service, and which ensured the incumbent did not abuse its dominant position or act anti-competitively to suppress competition.

Government however was well aware that it did not have the skill sets or experience to establish such a regulator (nor were such skill sets available in the region, it being one of the first countries to liberalise the market). To do so, required significant and diverse skill sets in telecommunications technology, economics, legal and commercial and business management disciplines. In addition it was recognised that an independent non-partisan entity managing the role of the regulator would serve to enhance the liberalisation programme, minimising partisan arguments and possible influences on regulatory decisions.

Government sought to outsource the function of the regulator, with a longer term aim to recruit permanent staff, which would be trained and educated by the outsource service provider.

Government sought to list the activities and scope of the outsourced functions and developed an RFP which listed the regulatory activities that would need to be fulfilled by the outsourced regulator over a three year time frame. These included:

- Licensing of new entrants (mobile and fixed).
- Price control, including the definition and management of any tariff rebalancing that may be needed to align the income from telecommunication services with the cost of their provision.
- Monitoring the fairness of the interconnection regime between the incumbent and new entrants.
- Levying administrative fines or other sanctions on authorised providers for non-compliance with directives.
- Control of the National Numbering Plan.
- Defining and monitoring the quality of telecommunications service provided by operators.
- Resolution of disputes between users and operators and between competing operators.
- The specification of technical and safety standards for telecommunications equipment.
- Ensuring that there was no unfair cross-subsidisation between separate trading units within the dominant operator's organisation.
- Supervision of the incumbent's universal service obligation.
- Administration of allocated spectrum.
- Recruitment of permanent staff.
- Establishing a training program, both academic and through shadowing to ensure responsibility could be transferred from the outsourcer to the new permanent staff.



Government also understood that the workload of the regulator varies with the difficulty of the responsibilities they have to fulfil. Some activities, such as the management of fair interconnection and price control, call for a significant level of skill. In addition, they can demand more effort from the regulator as the level of competition in the telecommunications marketplace grows. Other activities are either less demanding and/or do not grow in line with the market size or complexity.

This called for innovative pricing structures which balanced the effort required and incentivised the outsourcer to become more efficient in its operation. It was also recognised that attracting and retaining the right calibre of staff was widely reported to be very difficult and therefore service level agreements were cognisant of such issues.

An outsourcing service provider was chosen who was given operational responsibility and executive powers to implement sector policy and given the goals and aims as described above. Government worked closely with the outsourcing service provider to transfer skills and knowledge and adapt the service levels and scope of the work as the regulator evolved. The outsourcing service provider recruited and trained permanent staff and over a period of six months operational responsibility was handed over, after three year contract to the new permanent regulator, having achieved almost all the aims and set out in the service level agreement.

## Key Success Factors

- Empowering the outsourcer to take the necessary decisions (which some parts of the government of incumbent may not agree to).
- Close consultation with Government and veto rights for head of government for actions where public concerns are significant.
- Multi-disciplinary teams.
- Flexible working arrangements (allowing teams to be based across the world).
- Strong emphasis on confidentiality (need to gain the trust of the industry).
- Explicit terms of reference and aims of the policy (some of which may be contradictory).
- Separation of regulatory decisions from other policy objectives (Economics being the primary driver for regulatory decision making).
- Contracts and service levels flexible to allow changes over time as deemed necessary.
- Strong emphasis and incentives for staff recruitment and training.
- Clear prioritisation of tasks with timing.
- Requirement for robust documentation and audit trails for all decisions.

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