

The independence of regulators

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Introduction

- Multiple regulators and sectors
- Organisational structures and reporting
- WTO commitments
- ICANN
- Privatisation
- Dispute resolution
- Human resources
- Regulatory capture
- Conclusions

A view from OFCOM

- The EC “... should include a strong commitment to politically independent regulation. In some member states an unhealthy close relationship between an incumbent telecoms provider, government and regulator still exists”
- “... the ERG operates under the governance of national regulators and is therefore independent from political influence”

Ed Richards, CEO of OFCOM, in the *Financial Times* 30 October 2007.

Independence is a generic issue

- Central banks
- Finance and investment
- Competition authorities
- Gambling
- Railways and energy
- Data protection
- Freedom of information

Creating independence

- In the constitution (e.g., Thailand)
- In a statute (e.g., Australia):
- A few countries use a lesser instrument, but that makes changes far too easy
- Structures may be federal:
 - USA for telecommunications
 - Germany for broadcasting

It takes time for an institution to establish its credentials as not being susceptible to short term pressures.

European Central Bank

- Created by the Treaty of Maastricht
- Board is comprised of the heads of national central banks
- Sets its own objectives
- Not responsible to the:
 - European Commission
 - European Parliament
 - ECOFIN

President Sarkozy of France has argued for greater political influence. While Bundeskanzlerin Merkel has argued against this.

A network of agencies

- Ministry
- National Regulatory Authority (NRA)
 - advisory committees (e.g., SMEs and disabled)
- National Competition Authority (NCA)
- Consumer protection agency
- Advertising standards authority
- Data protection commission
- Telecommunications ombudsman
- specialist appeals tribunals and courts

**Many engage in extensive programmes of consultation.
Most are part of global and EC bodies.**

Accountability

- Annual report
- Work plan (with a consultation)
- Parliament:
 - debates
 - questions of ministers
 - committee
 - hearings
 - reports
 - analytical reports by the auditor-general

WTO Commitments – BTA

- The regulatory body should
 - be separate from the suppliers
 - employ procedures to ensure impartiality towards all market participants
- Regulation of “major suppliers”:
 - one controlling essential facilities that cannot reasonably be duplicated for either economic reasons, technical reasons or both.
- To ensure that they:
 - do not engage in anticompetitive practices
 - use information obtained from competitors
 - withhold needed technical information from competitors
- Ensure interconnection for competitors:
 - at any technically feasible point in the network
 - on nondiscriminatory terms
 - with timely provision
 - reasonable and transparent rates
 - not paying for network components or facilities not needed
 - terms must be publicly available and enforceable
- Universal service policy is justifiable, but must be administered in a transparent, nondiscriminatory and competitively neutral manner

ICANN

- Assignment of Internet Top Level Domain names (TLDs)
- ICANN was created as:
 - a private corporation registered in California
 - contracted by the US Government
- Governmental Advisory Committee (GAC)
- Global circuit of quarterly meetings
- Internet Governmental Forum (IGF)
- Many countries:
 - were very unhappy that the US Government controlled names and numbers
 - are unconvinced by the process making ICANN independent

Is ICANN now independent of the US Government and US Congress?

Privatisation of incumbents

- Seldom complete:
 - a residual holding by government
 - a golden share
 - a significant part of the economy and stock market
- Should privatisation be before or after liberalisation?
- An NRA can act as a guarantor against abuse by the incumbent operator
- Concern that the minister holding the shares will put pressure on the NRA:
 - especially if there is a government contribution to its budget

Human resources

- Where to find knowledgeable people who are not committed to one side or another?
 - in smaller states would they not be better employed in commercial operations?
- How to avoid having staff stolen by operators?
- Code of ethics:
 - no shares
 - no benefits (cash or kind)
- Salary levels:
 - paid from a tax on customers
 - can go above civil service pay scales
 - but then no upper limit or ceiling
- Cooling off period after leaving:
 - Martin “Ronaldo” Bangemann and Telefónica de España
 - CEO of France Telecom became the industry minister

Dispute resolution

- Requires impartiality
- NRA is often a legal back-stop
- UK has created:
 - Ombudsman
 - Adjudication schemes
- Japan has a Business Disputes Commission

Political interference

- When is political direction wrong?
- National strategies setting broad goals:
 - economic and social
 - ICTs
- Distorting competition:
 - Favouring one or a few operators
- Corruption:
 - Taking shares and licences
 - Taking bribes

South Africa

- Telecommunications Act 1996
 - NRA can propose regulations
 - Only the minister can adopt regulations
 - Sometimes amended proposed regulations
- Electronic Communications Act 2005
 - NRA can adopt regulations
 - Minister can issue directions to the NRA

Which system is more independent?

Conclusions

- Independence:
 - means many different things
 - particular interests interpret it their own way
- Many different national traditions:
 - often with few independent institutions
- Now everyone wants to be independent
- Governments make compromises:
 - In functions assigned and retained
 - In negotiating interpretation of policy goals
- Commitment to independence has gradually increased
- All authorities are part of networks:
 - domestic
 - international

Thank you

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