Regulation & convergence change and structures

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Introduction

- What is causing change?
- Why do we regulate?
- “regulatory certainty” in times of change
- What regulatory structures are used?
- Conclusions

The causes of change

- Traditional multi-national corporations:
  - research and development
  - new products and services for new revenues
- The Silicon Valley model:
  - the search for the next big thing
  - venture capitalists and engineers
  - the desire to be a dollar billionaire before you are 30
- Shortening product life-cycles
- Willingness of consumers to adopt new technologies:
  - vast new markets created for services

Eating someone else’s lunch

- Disintermediation:
  – travel agencies
  – book stores
  – music producers and distributors
- Moving faster, moving smarter
- Getting people to pay for something that used to be free

Networks

- Many services can be delivered over networks
- Existing players want to keep their place in the food chain
  - they do not want to become a mere “bit pipe”
- New players want to create new markets
- However, artificial differences in costs and access conditions greatly distorts market outcomes

Uncertainty

- Technological forecasting is inaccurate
  - – nearly always wrong
- We need to allow for market failures
- We need to be able to change course
- Ideally, we want commercial operators to take those risks, not government or regulators
- Big operators are spreading risks across many national markets

Regulatory certainty

- Operators demand “certainty” from regulators and policy-makers:
  - is it really regulatory certainty?
  - is it protection from competition?
- Yet we privatised telecommunications primarily because policy-makers could not respond to change!
- We need open markets
- We need to ensure enforcement of:
  - competition law principles
  - market entry
  - market exit and bankruptcy

Why do we regulate?

- It is an international tradition
- It is a transition to full liberalisation
- It is a buffer against short-term political change
- It is a surrogate for direct state provision
- Competition law enforcement is insufficient
- A regulatory authority reassures investors that everyone will be treated fairly

What types of regulation?

- Technical:
  - standards, spectrum, etc.
- Economic:
  - wholesale prices, price caps, etc.
- Consumer protection:
  - contracts, accuracy of information, fair & reasonable terms, etc.
- Social:
  - universal service, special access needs, etc.
- Moral:
  - classifying content, outlawing the obscene and the indecent
- Cultural:
  - diversity, minority rights, preservation of national traditions, etc.
- National security:
  - wire-tapping, traffic data retention, banning the seditious, etc.

National strategies

- Different areas of regulation relate to different national strategies and goals:
  - economic growth and competitiveness
  - cultural strength and diversity
  - free markets and consumer choice
  - national security
- Common technical base, but very different:
  - tools
  - methodologies
  - metrics
  - values
- Are there economies of scope in regulation of these?
- Conflicts will arise and can only be resolved at a political level

What sort of structures?

- Ministry and regulator
- Converged regulation of different types of networks
- Converged regulation of networks and of content
- Competition authority
- Collaboration:
  - globally
  - regionally

European Union

- Framework legislation at EU level:
  - proposed by the European Commission after consultation
  - adopted by Parliament and Council of Ministers
- Member states then:
  - transpose EU directives into national law
  - implement the measures
- Telecommunications regulatory package:
  - currently under review
- Audio-Visual Media Directive:
  - recent review completed
  - awaiting final texts in all official languages
  - implementation by MSs due by December 2009

EU liberalisation

- Regulatory barriers to market entry have systematically been removed or reduced
- General authorisation for telecoms
- Licences for spectrum
- Television content allowed to be distributed amongst the member states

Television without frontiers

- A directive adopted in 1989, modified in 1997
- To ensure free movement of television:
  - country of origin principle
  - freedom of reception and retransmission principles
- Minimum protection rules for:
  - minors (children)
  - advertising and sponsorship
  - teleshopping
  - promotion of European works
  - right of reply
  - broadcasting of major events

Audio Visual Media Service Directive

- Legal certainty
- Widened to on-demand services for general public
- Excludes on-line versions of printed publications
- Graduated rules:
  - strongest in advertising and protection of minors
- Country of origin principle
- Circumvention procedure
- On-demand producers must promote European works
- Codes of conduct on advertising unhealthy food and drink in children's programmes
- Promotion of access to the disabled

United Kingdom

- Ministries:
  - Department of Business, Enterprise and Regulatory Reform – BERR (formerly DTI)
  - Home Office
  - Department for Children, Schools and Families
- Parliament
  - Committees
  - National Audit Office (NAO)
- Information Commissioner
- Gambling Commission
- Active participation in EC/EU networks:
  - EC Communications Committee (COCOM)
  - European Regulators Group
- Office of Communications (OFCOM)
  - Content Board
  - Consumer Panel
  - PhonePay Plus (formerly ICSTIS)
  - Office of the Telecommunications Adjudicator (OTA)
- Office of Fair Trading (OFT)
- Competition Commission (CC)
- Competition Appeals Tribunal (CAT)
- Ombudsman services (e.g., OTELO)

Australia

- Department of Broadband, Communications and the Digital Economy (formerly DCITA)
- Australian Competition and Consumer Commission (ACCC):
  - implementing the Trades Practices Act
- Australian Communications and Media Authority
  - technical issues
  - content
- Telecommunications Industry Ombudsman (TIO)
- Active in OECD, APECTEL and ITU

South Korea

- Ministry of Information Communication (MIC)
  - Korean Communications Commission (KCC)
  - National Information Society Agency (NIA)
  - Korea Agency for Digital Opportunity & Promotion (KADO)
  - Electronics and Telecommunications Research Institute (ETRI)
  - National Internet Development Agency (NIDA)
  - Korean Information Society Development Insitute (KISDI)
  - Korea Information Security Agency (KISA)
  - Korea Internet Safety Commission
- Ministry of Commerce, Industry and Energy
  - Korean Fair Trade Commission (FTC)
- Ministry of Culture and Tourism
  - Korean Broadcasting Commission (KBC)

Singapore

- Ministry of Information, Communications and Arts
  - – Info-comm Development Authority (iDA)
    - iN2015 An intelligent nation, A global city
  - – Media Development Authority (MDA)
- Ministry of Trade and Industry (MTI)
  - – Competition Commission of Singapore (CCS)

South Africa

- Presidency:
  – Accelerated and Shared Growth Initiative for South Africa (ASGISA)
- Department of Communications (DOC):
  – owns 1/3 of the fixed incumbent operator
  – Independent Communications Authority of South Africa (ICASA)
    - created in 2001 by merging SATRA and SABA
- Department of Public Enterprise (DPE)
  – owns Infraco and part of Neotel
- Department of Trade and Industry (DTI)
  – Competition Commission
  – Competition Tribunal
  – Competition Appeal Court

Independence

- Regulators are supposed to be “independent”
- But there is no clear or agreed definition
- It is very hard to demonstrate independence, except by long-term observation
- There are no measurements or proxies
- It is relatively easy for a government to change the rules:
  - merge agencies
  - split an agency

Regulatory best practice

- Impact Assessment (IA):
  - formal evaluation of the policy options
- Consultations before reaching decisions:
  - supposedly of the public
  - usually just a few of the “usual suspects”
- Market analyses:
  - an approach developed in the EU from competition law
  - very demanding and expensive

Balancing objectives

- Economic arguments will invariably favour market entry:
  - in the long run creative destruction wins
- However, this is likely to conflict with:
  - potential short-term employment effects
  - commitments to existing operators
  - loss of control to multi-national corporations
  - cultural policies

Conclusions

- Substantial forces for change
- Widespread recognition that traditional models of regulation no longer work
- Many different types of detailed response
- Many possible structures
- Some common methodologies
- It remains very difficult to get different industries under the same set of rules

Thank you

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