

# **Scottish independence: Telecommunications**



**Ewan Sutherland**

LINK Centre, Wits University  
CRIDS, University of Namur

# The end state is quite conventional

- ▶ Regulated markets:
  - Ministry:
    - Legislation and policy directions
  - Independent regulatory authority:
    - Consultations and impact assessments
    - Licences, spectrum and rate-setting
  - A system of appeals
  - Parliamentary oversight
- ▶ Licences for operators
- ▶ Statistics:
  - Linked to Eurostat
- ▶ Participation in network governance:
  - Within Scotland
  - Within Europe
  - Globally

It is the transition that is tricky!

# Many small regulators

- ▶ Guernsey and Jersey
- ▶ Isle of Man
- ▶ Eastern Caribbean (ECTEL)
  - Dominica, Grenada, St Kitts, St Lucia & St Vincent
- ▶ Luxembourg
- ▶ Montenegro
- ▶ Iceland
- ▶ Faroe Islands
- ▶ São Tomé and Príncipe

# Union and independence

- ▶ 843 Unification of the Kingdoms of the Picts and the Scots
- ▶ 1266 Treaty of Perth – Hebrides
- ▶ 1468 Dowry of Margaret of Norway – Orkney and Shetland
- ▶ 1493 End of the Lordship of the Isles
  
- ▶ 1603 Union of the Crowns of Scotland & England
- ▶ 1707 Union of the parliaments
- ▶ 1801 Union with Ireland
  
- ▶ 1999 creation of a devolved Scottish Parliament
- ▶ 2011 election of an SNP majority government
- ▶ 2012 Scotland Act extended the devolved powers
  
- ▶ 2011 announcement of a referendum
- ▶ 2014 Independence referendum
- ▶ 2015 UK general election
- ▶ 2016 Scottish election:
  - SNP want this to be the first independent parliament

# Not total independence - retaining

- ▶ HM Queen Elizabeth II
  - Her heirs and successors
- ▶ Pound Sterling:
  - Bank of England and its MPC
- ▶ English language:
  - Gaelic as a second language
  - But not synthetic Scots
- ▶ “Social union”
- ▶ Eastenders (Salmond)
- ▶ DVLA (Sturgeon)
  - 91/439/EEC and 2006/126/EC



# Transitional measures

- ▶ Need to draft a written constitution:

- Adoption by referendum?
- Unicameral legislature?
- A supreme court?
- Will it exclude nuclear arms?

- ▶ No published plans for most major policy areas

- ▶ Negotiations over:

- National debt
- Currency
- Taxes and pensions
- Faslane and Coulport

- ▶ Heavy simultaneous burdens:

- Running present administration
- Adoption of a constitution
- Negotiations with London and Brussels
- Creation of and recruitment to new institutions



# Many new states but few precedents

- ▶ Sudan and South Sudan
- ▶ Ethiopia and Eritrea
- ▶ Drawn out fission of:
  - Czechoslovakia
  - Yugoslavia
  - USSR
  - Outstanding questions in the Balkans and Caucuses
- ▶ Telecoms was mostly straightforward:
  - Direct state provision
  - Very limited fixed networks
  - No mobile networks
- ▶ Scotland is ca. 8% of a *regulatory state*

# Institutions of a new regulatory state

- ▶ Competition authority
- ▶ Sector regulators:
  - Energy
  - Post
  - Railways
  - Telecommunications
- ▶ Appellate bodies
- ▶ Advertising standards body
- ▶ Data protection authority
- ▶ Consumer groups
- ▶ Alternative dispute resolution services
- ▶ Parliamentary oversight
- ▶ Network governance:
  - Scotland
  - European Union
  - Global

# Current UK ministries

- ▶ Cabinet Office
  - Overall government coordination
  - Intelligence
- ▶ Department of Culture, Media and Sport
  - Lead ministry for telecommunications (regulation delegated to OFCOM)
  - Gambling
- ▶ Home Office
  - National security and policing
- ▶ Ministry of Justice
  - Data protection
- ▶ HM Treasury
  - Finance and economic strategy
  - Statistics (now delegated to the Statistics Authority)
- ▶ Department of Business, Innovation & Skills
  - Economic policies
- ▶ Department for Education
  - Child protection
- ▶ Ministry of Defence
  - Spectrum user
- ▶ Department for International Development
  - ICTs for development

All of this would need to be replicated in Scotland

# GCHQ



- ▶ General Communications Headquarters
- ▶ Signals and communications intelligence:
  - Collection
  - Sifting
  - Decryption
  - Analysis and
  - linguistic deciphering
- ▶ Cooperation with USA, Canada, Australia & NZ
- ▶ Total cost of £2 billion + £200 million annually
  
- ▶ Would Scotland outsource to GCHQ?
- ▶ Develop its own facility?

[http://www.rusi.org/downloads/assets/Scottish\\_Defence\\_Forces\\_Oct\\_2012.pdf](http://www.rusi.org/downloads/assets/Scottish_Defence_Forces_Oct_2012.pdf)

# A new ministry

- ▶ Presently a reserved matter, no responsibility in Scottish government
- ▶ Nonetheless, a Cabinet Secretary for infrastructure and capital investment
- ▶ Telecommunications could remain there or be bundled with:
  - Business and economic development
  - Culture and sport
- ▶ Needs to have staff

# Competition law and policy

- ▶ Relatively easy to create a Scottish competition authority:
  - Economists
  - Lawyers
  - Administrators
- ▶ Could replicate or “roll over” existing UK law
- ▶ A choice of models:
  - OFT/CC/CAT
  - CMA/CAT
- ▶ Location:
  - Too much pressure on property and labour in Edinburgh
  - Economic development requires it be elsewhere
  - Co-locate with the NRAs?
- ▶ Network governance means participation in:
  - European Union
  - Organisation for Economic Cooperation and Development (OECD)
  - International Competition Network (ICN)

# A new competition authority

- ▶ Section 30 Order under the Scotland Act:
  - Immediately after the referendum
  - Empower the Scottish Parliament to create:
    - National Competition Authority
    - Competition Appeal Tribunal
  - To be ready to start work on day of independence
- ▶ Challenges:
  - Recruitment of staff
  - Selection of a building
  - Transfer of active cases
- ▶ Needs parliamentary oversight

# A new telecommunications regulator

- ▶ Communications Act 2003 could be rolled over
  - Presumed compliance with EU *acquis communautaire*
- ▶ After the referendum a Section 30 Order could enable Scottish Parliament to create an NRA:
  - Budget
  - Recruitment of senior executives
  - Renting a building
- ▶ The new NRA needs:
  - To be ready to takeover from OFCOM
- ▶ Statutory information collection powers
- ▶ To consult on post-independence:
  - Licences
  - General authorisations

	Population (M)	ISO 3166	ITU-T E.164	National Regulatory Authority	Telecom	Posts	Broadcast	Energy	Water	Competition	Railways	Commissioners	Staff	Budget (M)
Estonia	1.3	EE	372	<a href="#">Konkurent-siamet</a>	✓	✓		✓	✓	✓			63	
Finland	5.3	FI	358	<a href="#">Ficora</a>	✓	✓	✓					1	244	€34
Ireland	4.4	IE	353	<a href="#">Comreg</a>	✓	✓						2	122	€64
Latvia	2.3	LV	371	<a href="#">PUC</a>	✓	✓		✓			✓	5	111	€2
Norway	4.9	NO	47	<a href="#">Post- og Teletilsynet</a>	✓	✓						1	149	€22
Slovakia	5.4	SK	421	<a href="#">TUSR</a>	✓									
Slovenia	2.0	SI	386	<a href="#">APEK</a>	✓	✓	✓				✓	1	79	€5
United Kingdom	62.6	UK	44	<a href="#">OFCOM</a>	✓	✓	✓					9	832	£116

# Accession countries

	Popn. (millions)	ISO 3166	ITU E.164	Budget (€ millions)	Staff	Budget per employee
Albania	2.8	AL	355	1.6	60	27,000
Bosnia & Herzegovina	3.8	BA	387	4.5	113	40,000
Croatia	4.4	HR	385	11.7	174	67,000
Iceland	0.3	IS	354	2.0	26	75,000
Kosovo	1.7	XK	n/a	1.2	33	35,000
Macedonia	2.1	MK	389	4.6	121	38,000
Montenegro	0.6	ME	382	3.4	64	53,000
Serbia	7.1	RS	381	7.2	105	69,000

Source: Cullen International for the EC

# Timing of the transfer of powers

- ▶ In advance of independence:
  - UK could delegate powers
- ▶ On the day of independence:
  - Requires a lot of work in short order
- ▶ Some time after independence:
  - Could outsource back to London:
    - Policy, regulation and appeals
    - Would require an international treaty
  - Very few precedents:
    - UK regulates spectrum for Channel Is.
    - Micro-states in Eastern Caribbean share functions
  - Would still be a separate geographic market

# Risks of litigation

- ▶ New NRA cannot decide everything on the first day
- ▶ It is essential to rollover decisions previously taken by OFCOM by statute/treaty
- ▶ Existing decisions open to legal challenges, because of:
  - Different market shares
  - Different costs
- ▶ The litigious, the optimistic and those who just want to keep the NRA busy

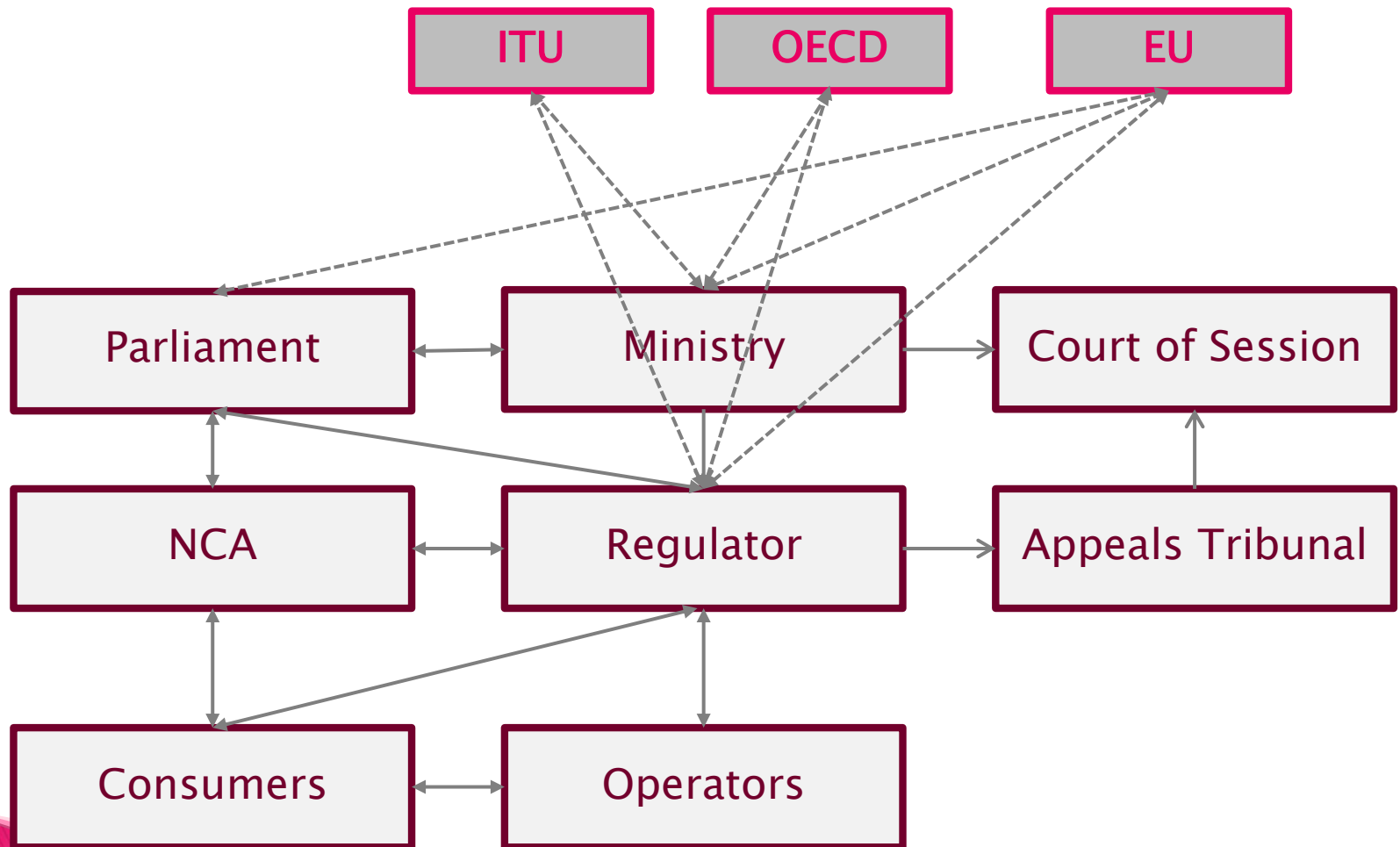
# Questions of design

- ▶ Should the NRA have competition law powers for the sector?
- ▶ Should the NRA also regulate content?
  - Should the Scottish BBC be integrated?
- ▶ Should the NRA also regulate posts?
- ▶ Should a multi-utility regulator be created? (e.g., combined with energy and rail)
- ▶ Should all sectoral regulation be given to the competition authority?
- ▶ Is a specialist appellate body necessary or should appeals go directly to the Court of Session?
- ▶ How should the new bodies be financed?
- ▶ How should their independence be ensured?

# Details

- ▶ A location:
  - Not Edinburgh
- ▶ A name:
  - Post and Communications Regulatory Authority (PCRA)?
  - Post, Communications and Content Regulator (PCCR)?
  - Scottish Office of Communications (ScotCOM)?

# Network governance after independence



# OFCOM is not the only regulator



Advertising Standards Authority



CISAS

PhonepayPlus



We make  
getting  
online easy.

GAMBLING  
COMMISSION



# Names and numbers

- ▶ No longer able to use .UK
  - Apply to ISO for a two-letter code (ISO 3133)
  - All the obvious names are taken
  - Perhaps .AB (Alba)
- ▶ No longer able to use +44
  - Once a member of the United Nations, Scotland would apply to ITU for an E.164 number
  - Perhaps +424
  - Add +44 to call England and Wales and vice versa
- ▶ Consider renumbering:
  - All fixed telephones
  - All mobile phones
  - Freephone and premium rate numbers
- ▶ Carry forward arrangements for number portability
- ▶ Separate IP addresses

# Splitting licences

- ▶ Mobile telecoms, terrestrial and satellite broadcasting
- ▶ Also general authorisations
- ▶ All existing licences would be split:
  - Scotland
  - England, Northern Ireland and Wales (ENIW)
- ▶ Consultations would be required on conditions:
  - England, N Ireland and Wales not greatly changed
  - Scotland would have considerable changes:
    - Size of market
    - Much lower population density
    - Unknown regulatory burden

# Information asymmetry

- ▶ Operators know much more than the regulator
- ▶ They might try bluffing the regulator:
  - Raise the price for wholesale access
  - Raise the mobile termination rates
- ▶ Obvious threats are:
  - To raise retail tariffs
  - To shut down operations
  - To spin off operations:
    - All of Scotland or just Highlands and Islands
    - Sell to private equity (c.f. Eircom or TDC)

# Is the Scottish market attractive?

- ▶ First ever evaluation by operators
- ▶ How onerous is the regulatory burden?
- ▶ How expensive would reconfiguration be?
  - Numbering
  - Network operation centres
  - National and international gateways
  - Branding
  - Consumer centres
- ▶ How profitable would networks be?

# Freeview network

- ▶ High definition television transmission network for UK
- ▶ Jointly owned by BBC, ITV, Channel 4, Sky & Arqiva (transmitter operator)
- ▶ Licence splits on independence:
  - Scotland
  - England, Northern Ireland and Wales (ENIW)
- ▶ Presumably the company also splits?
- ▶ Are the commercial channels and their advertisers interested in Scottish markets?
- ▶ SNP will buy Eastenders, but what else?

# DAB network

- ▶ 12 multiplexed transmissions 174–229 MHz
  - Of which 8 are used in Scotland
- ▶ Immediate loss of the UK-wide BBC multiplex
- ▶ Would new network operation centres be needed?
- ▶ Could commercial services recover costs on the Scottish market?
- ▶ Switch Digital:
  - Central Scotland
  - Aberdeenshire
- ▶ Bauer Media (formerly Score Glasgow)
- ▶ Broadly similar for FM, but fewer channels

<http://www.utvdab.com/>

# BBC

- ▶ First Minister has said Eastenders will be available after independence
- ▶ Scottish–BBC:
  - Licence fee raises about £320 million
  - BBC Scotland costs £100 million
  - £220 million to buy programmes from ENIW–BBC
  - Back catalogue available to both
- ▶ Would Scots want to pay the licence fee?
- ▶ STV seems relatively weak

# Conclusion

- ▶ Issues applicable to any split regulatory state (e.g., Vlaanderen, Cataluña, Lombardia or Freistaat Bayern)
- ▶ Scotland is a small market about which little is known:
  - Low population density
  - Slow adoption of new technologies
- ▶ Independence would be a jarring shock:
  - Creating new markets
  - Requiring new institutions
- ▶ Operators will have or seem to have dangerously more information than the ministry or regulator
- ▶ Rapid timetable to independence:
  - With many and more important tasks going in in parallel

# Thank you

Ewan Sutherland

<http://3wan.net/>

sutherla [at] gmail.com

+44 141 416 0666

<http://twitter.com/sutherla>

<skype://sutherla>

[http:// www.ssrn.com/author=927092](http://www.ssrn.com/author=927092)

<http://anti-corruption-telecoms.blogspot.com/>

