Scottish independence: Telecommunications

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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
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?

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
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 communitaire*
- 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
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<th>Population (M)</th>
<th>ISO 3166</th>
<th>ITU-T E.164</th>
<th>National Regulatory Authority</th>
<th>Telecom</th>
<th>Posts</th>
<th>Broadcast</th>
<th>Energy</th>
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<th>Competition</th>
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Source: Cullen International for the EC

Ewan Sutherland, 30 November 2012, Strathclyde Business School, Glasgow
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

Parliament

Ministry

NCA

Regulator

Court of Session

Appeals Tribunal

Consumers

Operators

ITU

OECD

EU

Ministry

NCA

Regulator

Consumers

Operators

ITU

OECD

EU
OFCOM is not the only regulator

- Advertising Standards Authority
- Telephone Preference Service
- Ombudsman Services Communications
- CISAS
- Phonepay Plus
- UK Safer Internet Centre
- CLICK CEOP Internet Safety
- UK Council for Child Internet Safety
- NICC
- NGN UK
- Office of the Telecommunications Adjudicator
- GO ON
- Gambling Commission
- ICO
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
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/
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

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