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HURDLES TO OVERCOME IN REACHING REGULATORY EXCELLENCE: The Kenyan Case

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ITU-D seminar, Nairobi, May 2005

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Agenda

- Background
- Status of Telecoms sector in Kenya
- Hurdles to regulatory excellence
- Future licensing regime

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Why Restructure?

- Government and controlled monopolies are not efficient.
- Known benefits associated with restructuring and introduction competition, includes:
 - realigning prices to costs,
 - improvements in quality of service,
 - responsiveness to customer demands,
 - increased pace of innovation,
 - improved efficiency in resource allocated,
 - stimulation of market growth,

Restructuring of the sector

- The two key words in the restructuring of a market are:
 - **liberalization**
 - **Privatization**
- Liberalization & Privatization of the communications sector have become necessary in order to, among others:
 - Encourage private sector investment
 - Improve economic accessibility to services
 - Improve quality in service delivery
 - Increase diversity, choice and innovation
 - Encourage Competition and Growth
- A competitive market requires a level playing field \Rightarrow an independent regulator.



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The Role of the regulator

- The regulator's functions in a restructured environment:
 - Issuing Operating Licences
 - Enforcing license terms and conditions
 - Promoting fair competition among all players
 - Encouraging private investment, innovation & infrastructure roll-out
 - Managing scarce resources (e.g. Frequency Spectrum, Geostationary satellite Orbital locations, and numbering).
 - Maintaining proper standards through type approval and inspection of installations.
 - Promoting public interest where market dynamic may not (e.g. fair pricing principles and universal service obligations)
 - Promoting and maintaining standards
 - Ensuring interconnection of networks of different service providers

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Methods of Licensing

- **Comparative Evaluation (Beauty Contest)**
 - A method used for choosing among multiple applications that are comparable. It entails evaluation of merits and qualifications of each applicant.
- **Lottery**
 - Lottery is a competitively neutral and non discriminatory method of granting licenses.
- **Auction**
 - This is the method of granting licenses to the highest bidders. In many auction schemes, bidders are pre – qualified using similar criteria to those used in comparative evaluation.
- **Open Entry**
 - In this method, all parties that have submitted their application within a given period and have been found legally, financially and technically qualified are entitled to license.
- **First-Come-First-Served**
 - This method entails granting licenses to the first applicants who are legally, technically and financially qualified.

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STATUS OF TELECOMS SECTOR IN KENYA

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Telecoms History in Kenya

- Telecoms services originally provided by East African Posts & Telecommunications Corporation, a 3 country partnership under the East African Community consisting of Kenya, Uganda and Tanzania.
- Community broke up in 1977, Kenya P&T Corporation established under an Act of Parliament as a government monopoly.
- KPTC de-established in 1999.
 - Regulator : **Communications Commission of Kenya**
 - Telecom operator : **Telkom Kenya Limited**
 - Postal Operator: **Postal Corporation of Kenya.**

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Enabling Legislation.

- The communications sector in Kenya is under the Ministry of Information and Communications. The National Communications Secretariat (NCS) within the Ministry.
- The Kenya communications Act of 1998, provides for;
 - Establishment of CCK as a corporate body, its Board and management
 - The Appeals Tribunal as the independent arbitrator
 - National Communications Secretariat serves as the policy advisory arm within the Ministry
- Kenya Telecommunications Regulations 2001

CCK Mandate

- CCK mandated under the Act to regulate and licence;
 - Telecommunication services
 - Postal services,
 - Radiocommunications
- to discharge functions such as
 - Licensing and enforcement
 - price regulation,
 - Standardisation of equipment and networks,
 - Radio frequency management,
 - Telecommunications numbering,
 - interconnection,
 - Ensure provision of universal service obligations;
 - International obligations

International Obligations

CCK discharges international obligations on behalf of GoK with regard to:

- International Telecommunications Union
- Universal Postal Union,
- Other International organisations, inter alia;
 - Commonwealth Telecommunications Organisation
 - African Telecommunications Union,
 - African postal Union,
 - East African Regulatory, Postal and Telecommunications Organisation

Current Players

- Telkom Kenya Limited (TKL):
 - established in 1999, following the de-establishment of the defunct KP&TC , Government owned.
 - granted a 5-year exclusivity in certain key market segments. Performed far below their license rollout and operational targets despite the 5-year exclusivity. Subscriber base declined from 320,000 to 240,000.
 - The Government intends to privatise TKL
- 1 regional telecoms operator.
- Several Local loop operators licensed, but yet to start roll out.

Current Players (cont'd)

- The two cellular mobile phone service providers, (Safaricom & Celtel). Both have a combined subscriber base of approx 3.5 million
- Over 100 other licensees such as internet service providers, value added service providers, etc.
- 1 Public data network operator licensed and has started network rollout.

HURDLES TO REGULATORY EXCELLENCE

Rapid pace of telecommunications development

- Technology is always ahead of regulation ⇒ inadequate legislation
 - Powers of delegated legislation given to the Minister and CCK
- CCK keeps abreast of technology trends by;
 - Closely following the work of ITU
 - Regular contact with other regulatory agencies,
- Close collaboration with industry and MoU with other government agencies
- Moving towards encouraging self regulation in some areas.

Diversity of equipment, including imitations

- The Commission ensures networks and equipment standards through:
 - Equipment type approval and Network certification
 - Class licensing of contractors and technical personnel
- However, large volume of network installations , diversity of equipment and proliferation of counterfeits is a big challenge
 - Type acceptance and introduction of equipment labelling
 - Industry self regulation in certification of wiring and equipment installation.

Management of Scarce Resources

- CCK manages scarce telecommunications resources such as radio frequency spectrum and telecommunication numbers.
- Hitherto unprecedented demand of these resources presents tremendous challenge;
 - ever increasing number of new telecommunications and radiocommunication services
 - ever increasing number of currently existing users of telecommunications and radiocommunication services

Management of Scarce Resources (2)

- Better spectrum engineering methods and record keeping
 - CCK procured a spectrum management system for engineering and record keeping.
 - CCK modernised its radiomonitoring capabilities
- CCK has developed a new telecommunications numbering system

Anticompetitive practices

An even playing field essential in a liberalised environment, operators with SMP could easily abuse their market power, and they usually do.

- Kenya Communications Regulations, 2001, Part IV (Fair Competition and Equality of Treatment) .
- Intended to ensure that players do not involve in anticompetitive practices such as cross-subsidization, discriminatory service provisioning and other activities that may lead to market distortion.
- Cross-ownership; no restriction of ownership of different business as long as they are operated as separate entities and books of accounts.

Anticompetitive practices (2)

- **Ministry of Finance;** Monopolies and price controls department which ensures that competition is maintained in the interest of the public and investors. The provisions include:
 - **Non-discriminatory** service provision and pricing
 - Preventing **anti-competitive** behavior
 - Preventing **cross-subsidization** and
 - Preventing **predatory pricing**
 - Abuse of **Dominant Position**
 - Anti-Competitive **mergers & Acquisition**

Interconnection Issues

- Part VII of Kenya Communication Regulations. All licensed operators obligated to interconnect & facilitate seamless end-to-end connectivity.
- Interconnection a licence condition and mandatory. Sometimes resisted by some operators.
- CCK encourages negotiations based on commercial considerations, arbitrates n events of non-agreements
- CCK rulings quite fair and only challenged once at the Appeals Tribunal.

Price Regulation

- Price regulation necessary in order to avoid abuse of market power . CCK found it necessary to implement price cap regulation in the liberalized environment for operators.
- Price regulation applies to providers of basic services and those with significant market power (SMP).
- The Commission overseen the imposed process a tariff rebalancing for the incumbent operator.

Quality of Service

- Minimum QoS values have been incorporated in the licences
- Service providers obligated to maintain information records, in a form to be agreed with the Commission such as call completion ratios, statistics on fault occurrence and clearance statistics, serviceability of payphones etc.
- Annual audits of service providers
- Penalties for failure to meet minimum QoS standards.

Access of Right of Way

- Big challenge to CCK
- Causes delay in rollout by licensed operators
- Consultations ongoing with other agencies to come up with common regulations pertaining to access of right of way
- Operators being encouraged to share usage of resource such as cable ducts and microwave towers, and other infrastructure.

Dispute Resolution

- The Commission has procedures in place for attending to and ensuring speedy resolution of disputes.
- Communications Appeals Tribunal, provides an avenue where unsatisfied parties could appeal against the decision of the Commission.

Universal Access Obligations

- All major licences have a clause for obligatory provision of universal access
- Resistance by operators to implement these obligations; Incentives by say reduced spectrum fees,
- CCK commissioned a study on universal access. Recently concluded and CCK studying its recommendations



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FUTURE LICENSING REGIME

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Convergence to Single network platforms

To allow any form of communications infrastructure to be used to provide any type communications service that is technically capable of providing .

- Cellular mobile operators allowed to construct and operate their own international gateways if they wish
- Hitherto exclusive services to be opened to competition, e.g.. Licensing of additional Internet Backbone and Gateway Operators, Commercial VSAT Operators, etc.
- Public Data Network Operators allowed to establish their own International Gateways for data communications services.

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Shifting market trends

- The technological convergence has resulted in the blurring of boundaries among market segments.
- As a new licensing strategy, CCK has abolished licensing through a bidding process, save for a few areas with resource limitations.
- In the long term, CCK intends to adopt a unified and absolute technology neutral licensing framework that permits any form of communications infrastructure to be used to provide any type of communications service that is technically capable of providing.



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Future Market Structure

CCK also intends to adopt a model based on the following distinct and technology neutral market categorization:

- **Network Facilities Provider (NFP)** – who shall own and operate any form of communications infrastructure (based on either satellite, terrestrial, mobile or fixed)
- **Applications Service Provider (ASP)** – to provide all forms of services to end users using the network services of a facilities provider
- **Contents Services Provider (CSP)** – to provide contents services such as broadcast material.



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Thank you

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