



Licensing in an Era of Convergence

Nairobi, 9-12 May 2005

Sofie Maddens Toscano
Senior Regulatory and Policy Advisor
Telecommunications Management Group, Inc.
1600 Wilson Boulevard, Suite 710
Arlington, VA 22209
USA

Agenda

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- Trends
- Factors Determining Future Licensing
- Key Licensing Issues
- Other Transitional Issues
- Recommendations on Licensing in an Era of Convergence
- International Best Practices

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Introduction

- Until recently, the ICT market was dominated by statutory monopolies with mostly (fixed) telephone services being provided over a basic access network
- The rapid development of the (tele-) communications sector and recent technological advances (mobile, broadband,...) have brought about new challenges for regulators globally
 - No one solution exists as the ultimate regulatory response to convergence, just as no one definition of convergence exists
 - The crucial policy decisions facing countries around the world relate to ensuring efficient markets and an optimal use of resources given the administrative, legal, cultural and social framework of the country
 - Regulators around the world are looking at creating dynamic and responsive policies and regulatory frameworks that address the issues raised by convergence in a proactive and flexible manner

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Licensing Approach - Trends

- Traditional approach under predominantly monopolistic framework was to use licensing as a means to control entry and ensure the “appropriate” provision of a public service

Results:

- focus was more on who could apply for a license than on promoting competition
- Service-specific licensing
- Restrictive Licensing

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Licensing Approach – Trends (2)

- Recent Trend is that there is a greater reliance on private markets to supply telecommunications services and on competition to ensure this goal

Results:

- Move towards general authorizations or open entry in order to facilitate market entry
- Individual rights of use only required in the case of the use of scarce resources
- Move towards generally applicable rules
- Move towards more unified licensing

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Example: The EU's New Regulatory Framework

- The old legislative framework was primarily designed to manage the transition from monopoly to competition and was therefore focused on the creation of a competitive market and the rights of new entrants
- In line with convergence between services, networks and technologies, the rules had to be adapted from a traditional telecommunications oriented framework to cover all electronic communications infrastructure and associated services in a consistent manner
- The new policy framework caters for new, dynamic and largely unpredictable markets with many more market players than earlier and a much more developed and detailed market environment

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Example 2: SADC/TRASA

- Since the mid-1990's, most SADC countries have been pursuing a 'managed liberalisation' strategy in telecommunications that has been proceeding at different speeds in different countries. This approach is advocated by the Telecommunications Regulators Association of Southern Africa (TRASA) in their model telecommunications policy.
- In the fixed line sector, the 'managed liberalisation' approach has involved:
 - establishing a regulator,
 - corporatising the public operator,
 - granting an exclusivity period to the public operator of around five years coupled with finding the operator a foreign strategic partner to assist in building competitiveness and financing the rolling out universal access infrastructure. Exclusivity on voice traffic usually implies the outlawing of Voice-Over-Internet Protocol (VOIP), the need to direct all international traffic through the public operator or lease their facilities (including mobile and VANS operators),
 - introduction of a second national operator (SNO) to provide facilities-based competition for another exclusive period
 - introduction of voice resale competition and broader facilities-based competition

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Factors Determining Future Licensing

- **Degree of Evolution of the Market**
 - Status of the Incumbent
 - Level of Competition already in the Market
 - Accommodation (or not) of Convergence and of New Services and Technologies
- **Vision of the Market**

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Factors Determining Future Licensing (2)

- International and Regional Trends and Commitments
- Legal, Institutional and Administrative Framework

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Degree of Evolution of the Market

The September 2004 Recommendations from India's National Regulatory Authority (TRAI) include the following paragraphs which are indeed applicable to many countries around the world :

"In an ideal market situation, one could imagine that there should be no licensing regime. If at all there is a licensing regime, then terms and conditions should be such that ease of entry, lowest possible license fee, etc. are ensured. This ideal situation could have been possible if we were starting from scratch. But we started this process in 1994-95 with the liberalization of cellular mobile services and basic services and then subsequently competition was opened to all other telecommunication services. We have different service areas (city to whole nation), different entry fees (zero to few hundred crores) and different license fees (zero to 15%) for different telecommunication services. With this type of legacy, it may not be possible to reach an ideal situation in one step but we should plan in a manner that it may be achieved in a few years"

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Vision of the Market

- Any licensing framework must be designed to cater for specific competition and consumer protection issues expected to be encountered, and can therefore only be developed with a specific vision of the structure of the liberalized market in mind
- The right balance between ease of market entry, competition between different access technologies, technical efficiency and customer protection must be struck

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International and Regional Trends and Commitments

- **WTO**
 - BTA
 - Telecommunications Reference Paper
- **EU**
 - Influence on New Member States and Accession Countries
 - Other initiatives
- **African Regional Initiatives**
 - ECOWAS, WATRA
 - SADC, TRASA
 - COMESA

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Legal, Institutional and Administrative Issues

- Licenses comprise only one element of the legal and regulatory framework
- Regulators are a stakeholder amongst stakeholders
 - Stakeholder Interests and Participation in Process
 - General Acceptance of Proposals

Key Issues:

- Time-table/phasing of transition
- Convergence and Level of Maturity of Institutions
- Dispute settlement and enforcement,
- Internal procedures, including rule-making and stakeholder consultation

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Key Licensing Issues

- **Licensing Approach**
 - Licensing Mechanisms
 - Mapping of Existing License Categories
 - Form of License
 - Accommodating Technological Development
- **Speed of Transition**
- **Treatment of New and Existing Licensees**
 - Competition Safeguards
 - Mechanisms to Transition Existing Licensees
- **Public Policy Objectives (Universal Access/Service)**

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Licensing Mechanisms

- **“Traditional” classification** - Licensing based on type of service, facility or technology provided: e.g.: fixed; fixed international long distance; national long distance; fixed local services; mobile (GSM, AMPS, CDMA, DECT); PCS; voice, data or value added services; VoIP; VSAT; various other satellite services, undersea cables, etc.
- **Generic Classifications-** e.g.:
 - Classification based on the common characteristics of the different activities (e.g. Malaysia model)
 - Classification based on Facilities-based vs. Services-based competition (e.g.: Singapore model, Australia)
 - Classification based on differentiation between “basic” services and ancillary services (e.g.: Oman, Brazil)

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Licensing Mechanisms (2)

- **Converged Licensing**
 - Technology neutral licensing – meaning that the licensee will maintain the liberty to determine what technology it will use to provide the licensed service (e.g: EU, Australia, Jamaica, Malaysia)
 - Service neutral licensing –
 - meaning that licensees are allowed to offer a variety of services and applications (e.g. Uganda, Mali)
 - Some countries foresee that a single regulatory instrument authorizes all services (e.g. Singapore, Japan, Australia)
 - Other licensing regimes require a service provider to obtain multiple licenses (e.g. Malaysia, Mauritius,)
- **Unified Licensing:** e.g.: Single, General Authorization regime (EU, India)

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Licensing Mechanisms (3)

■ Other Mechanisms

- Geographically-based licenses : (e.g.: Brazil, India and the United States) - most countries have moved away from regional licenses and are taking a more nation-wide approach
- Licenses for rural or universal access providers: South Africa has such licenses according to the Balancing Act Issue 198 of 7 March 2004; Digitel, one of the mobile operators in Venezuela also has a Rural Telephone Service license
- Spectrum-based licenses (GSM, PCS, 3G, etc).

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TECHNOLOGY AND SERVICE
NEUTRAL LICENSING

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BEST WAY FORWARD TO
ENCOURAGE COMPETITION
AND TO ACCOMMODATE
CONVERGENCE.

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Form of License

■ Key questions:

- Where and how to reflect rights and obligations
- Flexibility vs. regulatory certainty
- Gradation of rights and obligations (e.g., generally applicable rights and obligations vs. conditions linked to the use of scarce resources or to the provision of very specific services or to a specific situation such as, for example dominance)
- How to ensure level playing field among operators (e.g., Competition Safeguards)

■ Determining Factors:

- Legal and regulatory (if complete) framework
- Role of the Regulator
- Capacity and Resources of Regulator
- Enforcement and Sanctions

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Other Transitional Issues

■ Institutional Issues

- Convergence (or not) of Regulator
- Need for Capacity Building to deal with converged framework

■ Internal Procedures

- Transparency of licensing and other decision making
- Stakeholder consultation

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Other Transitional Issues

- **Regulatory Issues**
 - **Quality of Service**
 - **Interconnection Issues**
 - Who may/must interconnect?
 - Nature of Interconnection
 - Market Segments
 - Access to Infrastructure
 - **Dispute Resolution, Sanctions and Enforcement**
 - **Scarce Resources**
 - Spectrum
 - Numbering

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Recommendations on Licensing in an Era of Convergence

- Countries should consider opening their markets to competition as soon as possible in order to facilitate convergence.
- A transition period may be required to move towards unified and converged licensing so as to allow appropriate consideration of all relevant issues
- Countries considering moving to a converged and/or unified licensing regime must also analyze their legal, political, administrative and institutional framework and make the necessary changes to accommodate the new regime (e.g. converged institutional framework for communications as a whole)

Source: ITU FTRA Meeting Kampala, November 2004

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Recommendations on Licensing in an Era of Convergence (2)

- The most appropriate structure to accommodate convergence is one which is technology and service neutral
- Universal Service and other rights and obligations of market players are to be accommodated in the new regime in the most appropriate fashion and in a way which reflects sector policy and ensures a level playing field
- Scarce resources must be properly managed and attributed by the most appropriate authority

Source: ITU FTRA Meeting Kampala, November 2004

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International Best Practices

- EU
- India
- Malaysia
- Australia
- Argentina

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International Best Practices: The EU'S NRF

Authorisation Directive of 7 March 2002:

“2. Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorization system covering all comparable services in a similar way regardless of the technologies used.”

- Technology-neutral regulation allows provision of new services and leads to competition between different access methods, known as facilities-based competition
- In the mid to long-term this is seen in the EU as the best way to lower prices and increased choice of services
- It also seen as the best way to stimulate innovation and to create resilience in communications infrastructure as a whole

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International Best Practices – the EU'S NRF (2)

- Principles Underlying the NRF
 - First - to create a coherent regulatory framework which applies to all transmission infrastructures, irrespective of the types of services carried over them (the so-called 'horizontal' approach)
 - The new framework therefore covers all electronic communications networks, associated facilities and electronic communications services, including those used to carry broadcasting content
 - Second - not to impose, nor discriminate in favour of the use of a particular type of technology, but ensure that the same service is regulated in an equivalent manner, irrespective of the means by which it is delivered (technology neutrality)
 - The new framework promotes the concept of technology neutral legislation

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International Best Practices – the EU'S NRF (3)

- Principles Underlying the NRF
 - Thirdly – to take account of the links between transmission and content regulation
 - These links concentrate on the following areas: authorization of networks and services, allocation and assignment of radio spectrum; must-carry; access to networks and associated facilities
 - Fourthly – NO content regulation
 - to leave the regulation of content broadcast over electronic communications networks (e.g. radio and television programs) outside the scope of the 2003 Regulatory Framework

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International Best Practices: India

Licensing through Authorization - This category will cover the services for the provision of passive infrastructure and bandwidth services to service provider(s) and Internet Services including existing restricted Internet telephony (PC to PC, SIP device to SIP device using lease line only and PC to phones-phones outside India only) but not internet telephony in general.

Class License - All services including satellite services which do not have both way connectivity with Public network shall be covered under Class license. There shall, however, be certain exceptions as follows:

- Radio Paging and PMRTS Services and
- Niche Operators.

Unified License - All Public networks including switched networks, irrespective of media (wireline including cable & fiber, wireless, etc.) and technology including IP based technology, capable of offering voice and/or non-voice (data services) including internet telephony shall be covered under this category.

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International Best Practices: Malaysia

- **Network Facilities Providers :** This category includes the owners of facilities, which are considered to be the fundamental building block of the convergence model upon which network, applications and content services are provided
- **Applications Service Providers** provide particular functions such as voice services, data services, content-based services, electronic commerce and other transmission services. Applications services are essentially the functions or capabilities that are delivered to end-users
- **Network Services Providers** provide the basic connectivity and bandwidth to support a variety of applications. Network services enable connectivity or transport between different networks. A network service provider is typically also the owner of the network facilities. However, a connectivity service may be provided by a person using network facilities owned by another
- **Content Applications Service Providers** are a special subset of applications service providers including traditional broadcast services and newer services such as online publishing and information services^[1]

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Argentina

- Decree 764/2000 establishes the principle of a single telecommunications license for the provision to the public of any type of telecommunications service, fixed or mobile, wired or wireless, national or international, with or without own infrastructure.
 - When the applicant's business requires the use of the radio frequencies, an additional (to the telecommunications license) permission must be obtained
- A National Public Telecommunications Network is the whole of the networks through which the telecommunications public correspondence is transported, and allows the communication between users and from or towards any other service or public telecommunications network, national or international.
- Telecommunications licenses are granted without a specific time limit and are valid throughout the Argentina's territory.

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Argentina (2)

- The lease of telecommunications infrastructure to service providers and the resale of telecommunications services require the possessing of the telecommunications license
- A telecommunications license authorizes its holder to provide telecommunications services as specified in the license. A licensed operator can apply for the radio frequencies permission, and can negotiate and establish interconnection agreements with other operators
- The licensee has three types of obligations: general obligations, obligations towards other operators and obligations towards end-users or customers

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Australia

- The Australian telecommunications industry is regulated by the [Telecommunications Act 1997](#) (Telecommunications Act), which allows full and open competition.
- Entry to all telecommunications markets is open and subject to minimal entry and ongoing operational requirements.
- The regime is technology neutral.
- The main entities regulated by the Telecommunications Act 1997 are carriers and service providers.
 - Carriers are persons who own telecommunications facilities.
 - Service providers use carriers to provide phone or Internet services, and/or content, such as Pay TV, to the public.

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Thank you for your attention!!

Sofie Maddens Toscano
Telecommunications Management Group, Inc.
1600 Wilson Boulevard, Suite 710
Arlington, VA 22209
USA

Tel: + 1 (703) 224 1501
Fax: + 1 (703) 224 1511

Email: sofie@tmgtelecom.com
Web-site: <http://www.tmgtelecom.com>