

Challenges in Governing Competitive Mobile Markets in Transitional Economies

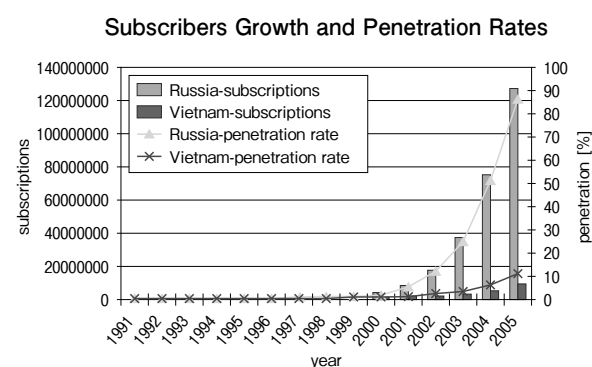
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1 Introduction

Transitional economies are those that experienced a centrally planned mechanism for decades, but currently are changing to a market-based system. In the centrally planned mechanism, the provisioning of goods and services were mostly carried out by state-owned enterprises and under prices set forth by the governments. From the late 1970s to early 1990s, economic reform was initiated in almost all affected countries by adopting various market-based schemes. Some countries, such as China and Vietnam¹ (Kolodko, 2000, pp.34-35), chose a gradual reform approach by maintaining state control on sectors that were considered to be sensitive to the national economies and fully opening other market segments for private participation. Meanwhile, others used the “shock therapy” approach to achieve their reform target: they wanted to foster rapid change in the economic structure by implementing privatization and liberalization as soon as possible (Stiglitz, 1999; Godoy & Stiglitz, 2006). The Russian Federation case is a typical illustration of the shock therapy approach.²

The differences in economic reform can be seen in the case of mobile services provisioning in Russia and Vietnam; these two are ranked as the second and third largest transitional economies in terms of population, respectively (Russia has a population of 142.8 million, with an annual population growth rate of -0.5% in 2005³ [Federal State Statistics Service, 2006], while Vietnam has a population of 82 million with a 1.4% annual population growth rate [Vietnam General Statistics Office, 2005]). Mobile services were first provided in Russia in 1991 and the country immediately allowed private participants to engage in the building and operating of mobile networks without any limitation. In 2006, there were three national and four regional mobile operators in Russia; all national mobile

operators are fully private-owned, while the Federation holds minor equity shares in the four regional mobile operators. In comparison, mobile services were commenced in Vietnam in 1992 with limited private participation; all mobile operators were required to be state-owned⁴ as per legislation,⁵ and foreign companies could only invest in this sector under the form of business cooperation contracts.⁶ This limitation was loosened in December 2005, allowing US companies the right to invest up to 49% of the registered capital of a Vietnamese mobile operator.⁷ This stipulation was further extended to all other foreign investors as of January 2007, when Vietnam officially became a World Trade Organization (WTO) member. Since 2000, mobile penetration in Russia doubled yearly, and in 2005, the penetration reached 86.5%, approximately threefold higher than the fixed rate. Standing modestly at 10.84% in 2005, the mobile rate in Vietnam also surpassed the previous fixed rate (8.17%) in 2005. The rapid growth of mobile services in the surveyed countries confirms their advantages and substitution for fixed services in satisfying



Sources: International Telecommunications Union, 1991-2004; IKS-Consulting, 2005; Vietnam Ministry of Posts and Telematics, 2005

Figure 1. Mobile Development in Russia and Vietnam – Subscriptions and Penetrations

1 Vietnam formally initiated economic reform in 1986.

2 Economic reform was officially started in the Russian Federation in 1991.

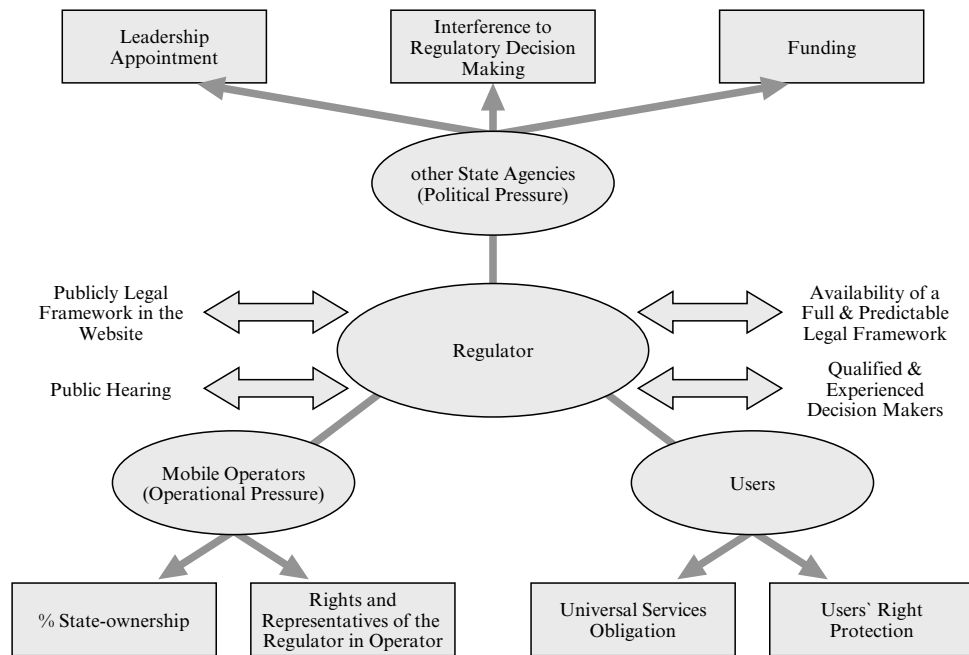
3 Due to economic difficulties, many Russians decided to have fewer children or none at all, which caused the birth rate to decrease. Besides, the death rate increased because of the war in Chechnya, while average male life expectancy was only 56 years. All these factors contributed to the negative population growth rate in Russia.

4 State-owned entities are entities in which the state holds more than 50% of their registered capital (Article 4, Enterprise Law 2005).

5 Article 38.1.a, Ordinance on Posts and Telecommunications 2002

6 Law on Foreign Investment 1988 and 1996

7 US-Vietnam Bilateral Trade Agreement, which originally came into effect in December 2001



Source: authors

Figure 2. Independent Regulator – Triangular Relationship and Indicators

the inhabitants' telecommunication needs.

Even while mobile development and liberalization in Russia and Vietnam are being reached at dissimilar levels, several comparable shortcomings remain in these newly created market-based systems. This research was undertaken based on the hypothesis that an independent regulator does neither exist in Russia nor in Vietnam and such absence negatively affects to the formation of a fair and competitive mobile market.

An independent regulator, as defined by the WTO Telecommunications Reference Paper, is a body "separate from, and not accountable to, any supplier of basic telecommunications services" (WTO, 1996). When discussing independent telecommunications regulators, Tarjanne (1999) also clearly emphasized the separation between the regulators and their regulated industries. Later, Invent (2000) and Wu (2005) further expanded the definition of an independent regulator. They summarized that independence increases when the regulators are insulated from both political and operational pressures. Additionally, they presented a set of indicators to evaluate the regulators' dependence based on the relationship between the regulators and other state agencies and regulated industries, and to evaluate their attitudes toward users. Further, Invent (2000) and Wu (2005) expressed that independence can be achieved when fair decision making is available and when related parties have a chance to

comment on the drafts of regulatory rules and decisions. They used two main indicators — public hearings and availability of regulatory developments on a regulatory website — to evaluate the fairness of decision making. However, regulatory decisions are not only limited to the issuance of rules, regulations and decisions, but extended to the application of such rules and regulations to govern the market. In its document submitted to the WTO (WTO, 1999), the United States pointed out that independence can be attained when "a predictable and fair legal and regulatory framework" is developed to ensure that "the same rules apply to everyone and that rules apply consistently" (UNDP Vietnam & MPI, 2005, p.48) and that the regulators can not employ their own subjective point of view in making a decision and deny that necessary rules are absent. Moreover, the authors believe that in order to achieve independence, the regulatory decision-makers themselves must be qualified and experienced to utilize various rules and regulations in making a decision. Figure 2 illustrates relevant indicators to measure the independence of regulators in governing the mobile telecommunications market.

These indicators were employed to analyze the cases of Russia and Vietnam to prove the research's hypothesis. The main source for analyzing and comparing is the laws and regulations in the surveyed countries⁸, in which the regulators' rights, responsibilities and relationships with

8 All relevant legislations can be found at www.luatvietnam.com.vn, www.mpt.gov.vn (Vietnamese version), the Public Gazette (English version, hard copy), www.minsvyaz.ru

(Russian and English Version), and www.government.ru (Russian version).

others are legally prescribed. Obviously, the laws and regulations of different countries differ because they are means to reflect social, economic and political concerns of those countries, but they also act as a tool to express state policies on such subjects, and functional methodology is the most suitable method to make such a comparison (Markesinis, 1997, p.4).

Following the above Introduction, this paper is constructed as follows: Part 2 describes the establishment of the regulatory agencies and their responsibilities; Part 3 analyzes the regulators in a triangular relationship context; subsequently, Part 4 examines regulatory decision making in the surveyed countries; and finally, Part 5 sets forth findings and proposals to overcome the observed regulatory deficiencies.

2 Establishment of the Regulators and their responsibilities

The telecommunications regulatory body in Russia is the Federation Ministry of Information and Communications Technologies (MICT) - an executive agency which was restructured from the Ministry of Posts and Transportation in 2004 and is responsible for implementing state policies on telecommunications, posts and information.⁹ The MICT is in charge of policy-making initiatives and legal enactments pertaining to regulating communications, including developing and implementing basic policies and master plans, preparing bills of federal laws and other standard regulatory acts, and managing the development and expansion of the national information-telecommunication infrastructure. There are several regulatory divisions within the MICT, which implement regulatory functions in related communications aspects:

- The Federal Service for Supervision controls operational aspects of the communication industry and is responsible for interconnection and licensing issues;
- The Federal Communication Agency administers state property, manages numbers and frequency assignment in detail; and
- The State Commission on Radio Frequencies (SCRF) governs the spectrum allocations.

Thus, the MICT performs the role of general policy maker, while other Federal Agencies under the MICT's jurisdiction are responsible for the detailed functions of regulation.

In Vietnam, the Department General of Posts and

Telecommunications (DGPT) was created in 1993 as a ministerial agency to separate policy and regulatory functions from operational functions. In 2002, the Ministry of Posts and Telematics (MPT) was established to replace the DGPT, and it is in charge of governing telecommunications, post and information activities. Like its Russian counterpart, the MPT plays both the roles of policy maker and regulator of posts and telecommunications.¹⁰ Some divisions of the MPT are responsible for specific regulatory functions involving certain telecommunications aspects; for example, the Radio Frequency Department is in charge of regulatory activities affecting spectrum allocation. However, other main mobile-related issues like licensing, numbers and interconnection are directly regulated by the MPT.

3 The regulators in a Triangular Relationship Context

3.1 Relationship with Mobile Operators

The first and foremost issue concerning the designation of "independent regulator" is whether the regulatory function is separated from the operating function (WTO, 1996; Invent, 2000, pp.1-6) and whether these two activities are being implemented by different entities, to ensure that their benefits are not mixed and one entity cannot act both as a "referee" and as a "player." It is observed that regulatory function is distinguished from operating function in the surveyed countries; Russia and Vietnam have separate authorities responsible for dealing with regulatory issues and are not in charge of operating functions. However, the significant question pertaining to the label "independent regulator" is whether the State holds any equity shares in the mobile companies, and particularly, whether the regulators have any specific ownership rights in those companies.

There are three national mobile operators in Russia: Megafon, which is authorized to provide services in all 89 regions; and MTS and VimpelKom, which are licensed to provide services in 87 and 71 regions, respectively. None of these "big three" companies has any State ownership. However, the State directly owns 38% of the voting shares in the four regional mobile operators. Since the regional operators can only provide services in their authorized regions, they can neither be considered dominators in the mobile market nor competitors to the "big three." To ensure independence between the MICT and mobile operators, the Federation is considering privatizing State ownership or

⁹ Decree No.649 dated May 20, 2004, on Structural Issues of Federal Executive Authorities Decree No.649 dated May 20, 2004, on Structural Issues of Federal Executive Authorities

¹⁰ The MPT's structure, rights and responsibilities are prescribed in the Decree 90/2002/ND-CP, dated November 11, 2002.

restructuring the regional operators.¹¹ Moreover, the MICT does not exercise any specific rights of state ownership of these regional operators. In Vietnam, all six mobile operators are nationwide licensed, must be state-owned, and are under the authorized state-ownership responsibility of the MPT.¹² Nevertheless, the existence of 100% state-owned capital in four out of six mobile operators, a majority ownership in the other two operators, and the above-noted authorization do not fully mean that the regulator treats all mobile operators in a fair and impartial manner. There are two major reasons that lead one to doubt the independence of the regulator. First, the regulator has a unique relationship with the incumbent Vietnam Posts and Telecommunications Group (VNPT) — who operates two different mobile networks and has been dominating the mobile market with a 75% mobile market share in 2005 (MPT, 2006) — because it exercises ownership rights for the incumbent only, while other relevant ministries and organizations perform such roles for the other operators. Particularly, the MPT has the responsibility to propose candidates for all positions of the VNPT's management board and has its own representative on that board.¹³ Second, the VNPT operated under a monopoly scheme in all telecommunications services markets until the end of 1997 and maintained such a role in the mobile market until 2003, hence there is a close personnel relationship between the regulator and the incumbent; many employees who are currently working for the regulator previously worked for the incumbent operator, especially the regulator's high-ranking personnel.

3.2 Relationship with Other State Agencies

Theoretically, a regulator has greater independence if it has less interference from daily political pressure when performing regulatory activities and if it is not wholly funded by the political allocated budget (Invent, 2000; Wu, 2005). In Russia, the MICT is headed by a minister who is appointed and dismissed by the president based on the prime minister's proposal. No limitation is set on the minister's term in office. However, a new prime minister

may propose a new candidate for the position of minister, and the president has the right to approve any other candidate for the position of prime minister. Thus, candidates for the position of minister are strongly affected by political changes.

Further, complicated procedures among different governmental agencies are being applied in regulating the Russian mobile market, and the MICT is not independent in making decisions regarding licensing issues. In Russia, obtaining preliminary permits for using certain spectrums is a pre-condition when applying for a mobile acquisition license. The SCRF, which is in charge of frequency allocation, is an interdepartmental coordination body that is collectively formed by representatives of several federal ministries and agencies.¹⁴ The decisions on frequency allocation are made by the SCRF based on preliminary approval by the Ministry of Defense, the Federal Protection Service, the Federal Communication Agency and other concerned members of the SCRF. Once such approval is received, the SCRF makes the final decision on frequency allocation at its voting sessions.¹⁵ Based on the SCRF's decision, the Federal Communication Agency assigns the frequency to the applicants, while the Federal Service for Supervision conducts the required licensing procedures.

Another important area in which the MICT is dependent on other federal ministries is the adoption of subordinate acts on information and communication technologies. All regulating acts that are developed by the MICT have to be approved by the government. Regulating acts require consensus among all federal ministers, and in some cases, require agreement by the heads of other federal executive authorities before being submitted to the government. In such a scenario, federal ministries or other federal executive authorities can block the adoption of the MICT's proposed acts if they consider them unacceptable.

With regards to funding, all telecommunications fees collected in Russia, such as licensing fees and frequency usage fees, go into the Federation budget, and that budget covers the operational costs of all telecommunications-related agencies.

On the other hand, the head of MPT of Vietnam is

11 News obtained from the MICT site http://www.minsvyaz.ru/news.shtml?n_id=4677

12 Article 1, Governmental Decree 90/2002/ND-CP dated November 11, 2002, on the Structure, Rights and Responsibilities of the MPT

13 Article 7, Decision 06/2006/QD-TTg dated January 9, 2006, of the Prime Minister on the Establishment of Vietnam Posts and Telecommunications Group

14 The MICT, Ministry of Justice, Ministry of Defense, Ministry of Internal Defense, Federal Security Service, Federal Service for Supervision in Communications, Federal Service for Hydrometeorology and Environmental Monitoring,

Federal Agency of the Russian Federation on Technical Regulating and Metrology, Federal Communications Agency, Federal Agency for Informatization, Federal Space Agency, Federal Industry Agency, Federal Service for External Investigation, Federal Protection Service, Federal Agency for Press and Mass Media.

15 Since the SCRF is an interdepartmental body and combines representatives of different ministries and ministerial agencies who do not serve in the SCRF full time, all authorized matters are decided only at the SCRF's sessions by voting. Related parties who are not satisfied with the SCRF's decisions may bring their case to court.

proposed by the prime minister, approved by the National Assembly and appointed by the president.¹⁶ The prime minister can also submit to re-designate or exempt the minister. Normally, a minister can serve up to the age of 60 (for males) or 55 (for females), except:

- when he/she is a member of the National Assembly (in that case, the individual may keep the position past the age limit until his/her term in the National Assembly ends); or
- the minister is proposed to another position; or
- the minister did not duly perform the required duties and the prime minister asks him/her to be exempted¹⁷

In other words, the head of the regulatory agency is not heavily affected by daily political pressure and the minister has a suitable timeframe to pursue regulatory purposes.

However, the Vietnamese regulator is not fully independent in governing licensing. As prescribed by the current applicable laws and regulations,¹⁸ the MPT must consult with other relevant administrative agencies when processing applications for a mobile license, and the regulator can only grant a license to a successful applicant if such licensing is approved by the prime minister. Meanwhile, the legal framework neither specifies the terms and conditions that the prime minister should refer to when making a final decision, nor does it indicate which administrative agencies the regulator has to consult with. Such a mechanism causes both dependence and non-transparency in the regulator's activities.

The MPT is generally funded by the national budget, except for some regulatory divisions that have an independent financial mechanism, such as the Radio Frequency Department or the National Internet Center; these are fully funded by related collected fees.

3.3 Relationship with the Users

In competitive environments, the regulators' duties toward users are mainly ensuring universal access and protecting users' rights. These two issues are considerably focused upon by the regulators in the surveyed countries.

Overall, the mobile penetration rate in Russia reached 86.5% as of 2005 (MICT, 2006), but such rates differed widely among the regions: the Moscow and Saint Petersburg areas had mobile penetration rates of 133.9%

and 118.1%, respectively, while such rates in the two most under-developed areas in terms of mobile access, Ingushetia and Chukotka, were only 3.8% and 2.2%, respectively. Besides, the country had achieved barely a 30% fixed-line penetration rate by the end of 2005 (MICT, 2006). In order to mitigate the digital divide, the government has pledged universal service provisioning and established a Universal Service Fund. Since 2005, all operators are required to contribute 1.2% of their revenue to the Fund, excluding revenue from interconnection and traffic transmission services. As defined by the Communications Law (granted in 2003 and put into effect in 2004, hereinafter called the Law 2003), universal services include payphone and Internet access services, while universal service providers are either selected via tendering or appointed by the MICT,¹⁹ thereby only the four regional mobile service providers who are also licensed to provide fixed-services can benefit from the Fund. Consumer rights protection is ensured by the Law 2003, while the Civil Code and the Consumers Union of Russian Federation are responsible for dealing with user complaints.

Meanwhile, teledensity in Vietnam is still low in comparison with other regional countries (19.01%, of which fixed is 8.17% and mobile is 10.84% [MPT, 2006]). In 2004, the MPT established a Universal Services Fund, which is administered by the MPT and financed by contributions from operators, the national budget, and various international loans and aid. All mobile regulators have to contribute 5% of their revenue to the Fund. A surcharge for universal service obligations is also being calculated into interconnection charges. The concept of providing universal services in Vietnam is limited to the provisioning of fixed-telephone services,²⁰ so that only four mobile licensees who are also authorized to provide fixed services can indirectly benefit from their contributions to the Fund. In addition to the Consumers' Rights Protection Association, the MPT is also responsible for protecting users' rights. However, current observations indicate that the users normally do not use this channel to voice their dissatisfactions with service provisioning. In the case of dissatisfaction, users normally make complaints via mass media channels, and mobile service providers may adjust their services as a result of the pressure exerted by the mass media.

16 Article 3, Law No 32/2001/QH10 dated December 25, 2001, on the Structure, Rights and Responsibilities of the Government

17 Articles 5 and 20, Law No 32/2001/QH10 dated December 25, 2001, on the Structure, Rights and Responsibilities of the Government

18 Article 46, Ordinance 43/2002/PL-UBTVQH10 dated June 7, 2002, on Posts and Telecommunications; Article 39,

Decree 160/2002/ND-CP dated September 3, 2002, on Telecommunications

19 Universal service issues are prescribed in Chapter 8, Russian Communication Law 2003

20 Decision 74/2006/QĐ-TTg dated April 7, 2006 of the Prime Minister on the Approval of the Universal Services Provisioning Plan to 2010

4 Regulatory Decision Making

The decision-making process in Russia and Vietnam basically satisfies two indicators: the availability of the legal framework on a regulatory website and the implementation of public hearings, whereby all applicable laws and regulations can be found on the regulators' websites and concerned parties are provided opportunities to raise their opinions on the drafts of many relevant regulations and decisions. However, problematic matters are being observed in those legal frameworks and regulatory personnel, as analyzed below.

4.1 Availability and Applicability of Related Laws and Regulations

In any competitive mobile environment, licensing, interconnection and fair allocation of scarce resources are considered key factors in facilitating the development of fair competition. Therefore, the availability and applicability of laws and regulations pertaining to these topics will primarily indicate whether regulatory decisions are being well made in pursuit of such competition.

The Law 2003 delineated various responsibilities and interactions of Russia's telecommunications authorities, as well as providing significant details on interconnection, licensing and frequency application procedures. However, the full applicability of the Law 2003 requires subordinate legal acts to be approved by the government, but such acts are still under consideration by various federal ministries and agencies. To manage frequency allocation, the government needs to approve frequency usage fees and a national spectrum allocation plan. Those drafts were developed and approved by the SCRF²¹ and sent to the MICT for further consideration and submission to the government for approval, but the governmental resolution on the initial unique formula for determining usage fees was blocked by the militarists, who are unwilling to pay for the broad range of frequencies that they have been allocated (about 91% of available radio-frequencies²²). As a result, there are no specific rules to regulate frequency usage fees and spectrum allocation.

The delays in the adoption of legislation and the high

dependence of the MICT on the Ministry of Defense for frequency allocation in Russia resulted in the development of a highly non-predictable regulatory decision-making process. In many cases, the regulator manages frequency allocation in an unfounded manner, assigning spectrum to one applicant without any feedback being provided to a previous applicant, or applying different frequency usage fees to different users of similar frequency bandwidths.²³ This has given rise to many conflicts among the operators, who lodged complaints to the Federal Antitrust Agency. On the 10th of April, 2006, the Federal Antitrust Agency made a proposal to the government to bring the SCRF under the government's jurisdiction. The Federal Antitrust Agency argued that in order to ensure fair competition in the mobile market, the SCRF's actions should be approved by the government rather than by the SCRF itself, as is the current practice. Besides, the International Tribunal in Zurich²⁴ on May 16, 2006²⁵ concluded that the SCRF is de-facto controlled by the MICT since the MICT Minister heads the SCRF²⁶ and the members of the Commission — during its voting sessions — are voting not for separate issues, but for the whole agenda.

The licensing procedure is also not fully prescribed. Although the Law 2003 contains detailed rules pertaining to licensing procedures, such prescriptions did not make them applicable or predictable. While the MICT holds exclusive licensing authority on the issuance, rejection, suspension and change of licenses, no clear selection criteria have been promulgated or clarified in the Law 2003. Moreover, such exclusive authority allows the Ministry to apply different licensing requirements to different operators; it even allows the MICT to amend and change individual licenses' terms and conditions after issuance, because the Law 2003 fails to specify clear cases in which the regulator can make such changes. In addition to comparative evaluation, auctioning is currently promulgated as one of the licensing methods, though this new approach is not yet deployed by the Russian regulator.

On the other hand, in 2002, an Ordinance on Posts and Telecommunications was approved by the Steering Committee of the Vietnamese National Assembly. The Ordinance provides general rules and principles on

21 Decision SCRF No.06-12-07-001 dated February 27, 2006

22 ComNews <http://comnews.ru/index.cfm?id=23507&tempo=130>

23 See news at

<http://www.cnews.ru/newtop/index.shtml?2005/11/16/191646>

http://www.newsru.ru/Megafon/Meganovosti/mega_news_march2003/110403_egsm.htm

24 The International Tribunal in Zurich was examining a claim by the IPOC fund to recognize it as rightful owner of 25 one-percent shares of Megafon (one the three biggest mobile operators in Russia) which are currently owned by

Alfa Group.

25 ComNews, news on July 6, 2006, <http://comnews.ru/index.cfm?id=23472>

26 Although the SCRF is an interdepartmental body, it is still under the jurisdiction of the MICT. According to the 2004 Law, the SCRF is headed by the Minister of the MICT and deputed by the head of the Federal Communication Agency, who is appointed and dismissed by the government based on a proposal by the Minister of the MICT. Moreover, members of the SCRF are proposed by the chair of the Commission (i.e. Minister of the MICT) and approved by the government.

governing posts and telecommunications issues, while it also contains articles on licensing, interconnection, spectrum allocation and numbering. Accordingly, the competent ministries released approximately 30 legal documents to detail the Ordinance on related issues.²⁷ Particularly, of those 30 documents, eight govern spectrums and six are dedicated to interconnection issues. However, one component of the scarce resources, a numbering plan, so far has not been covered by any detailed regulation. The lack of a national numbering plan that clearly defines numbers and prefixes that are to be reserved for different networks and services is causing operators — especially new entrants — to passively prepare for their network expansion. The recent unnecessarily-prolonged arguments among mobile operators on the allocation of new network access codes to the VNPT is a typical illustration of the problems that are being caused by the lack of a numbering plan.²⁸ Further, licensing procedures are not properly regulated. The licensing is governed by articles of both the Ordinance on Posts and Telecommunications and the Decree on Telecommunications,²⁹ but none of these documents define criteria to select successful applicants or the period of time to review applications for a license. Recent licensing activities have illustrated the regulator's lack of competence in dealing with this tough issue and some licenses were granted without duly considering the licensees' potential financial resources and business competitiveness (World Bank Vietnam, 2006).

4.2 Regulatory Staff

Together with the availability of a predictable legal framework, impartial and timely regulatory decision making can be guaranteed if regulatory decision makers are qualified and experienced. However, it appears that the regulators in both countries have to address staff qualification issues. The two ministries are being funded by national budgets and staff salaries are significantly low in comparison to those of employees in telecommunications industries, thus the regulators are facing difficulties in retaining experienced and qualified personnel as well as recruiting new professionals. This problem is especially pronounced when foreign offices and mobile operators are

trying to attract the regulators' experienced staff by offering higher salaries and good promotions. Research completed in June 2004 in Vietnam indicated that in approximately one year (mid-2003 to mid-2004), around 20 employees shifted their workplaces from the MPT to Viettel Mobile, a mobile operator that began operations in October 2003 (Hong Mai, 2004).

5 Conclusion and Recommendations

5.1 Conclusion

The above analysis and comparison confirmed the research's hypothesis that although several differences in mobile regulation exist between Russia and Vietnam, such as the level of state ownership in mobile operators, the impact of daily political change on the positions of the regulatory leaders, and the funding for those agencies, these two countries have the same typical deficiencies: a dependence on the regulators and a non-transparent regulatory decision making process. Such dependence and non-transparency in turn did not support the development of fair competition in the mobile markets.

This research showed that telecommunications regulators in both countries are dependent on other state agencies/authorities in deciding one of the most important regulatory issues – licensing. While the MPT of Vietnam has to consult with other relevant state agencies and obtain approval from the prime minister when deciding to choose a successful applicant for a license, the Russian MICT is required to get preliminary approval from the Ministry of Defense on matters pertaining to the same issue.

Both regulatory agencies depend (partly in Vietnam and wholly in Russia) on national budgets to cover regulatory expenses, including salaries for staff. These salaries are considerably low in comparison to salaries paid by the industries, such that the regulators are facing difficulties in keeping and recruiting qualified personnel. Low salaries may result in staff corruption or neglect of regulatory responsibilities, which in turn could result in further unfairness in the decision-making process.

On the other hand, deficiencies in the legislative frameworks also brought about a lack of fairness in decision

27 This number does not include documents that regulate tariffs, as since before 2004, each tariff must be approved by a specific legal decision of the MPT; and from 2004, all tariffs provided by the dominator(s) must also receive such approval.

28 Currently, mobile network access codes in Vietnam are numbered by 09x, which means a maximum of 10 different access codes are available. As of January 2006, six different access codes have been already assigned to six mobile networks. The incumbent's application for two other mobile access codes in January 2006 caused a serious argument

among mobile operators, since a legal numbering plan does not yet exist and new entrants argued that it was unfair while there were only two access codes reserved for the other four mobile networks. The new entrants unwillingly accepted the regulator's allocation when this organization declared the intention to reserve numbers from 010 to 017 for mobile access codes. See more at http://www.vnpost.mpt.gov.vn/bao_2006/so05/bcvt/t7b3.htm and <http://vietnamnet.vn/cntt/vienthong/2006/01/531907/>.

29 Ordinance 43/2002/PL-UBTVQH10 dated June 7, 2002 and Decree 160/2002/ND-CP dated September 3, 2004

making. The responsible authorities in both countries have not enacted all necessary legal documents to regulate the mobile sectors, for example, a numbering plan is not in effect in Vietnam, while a spectrum allocation plan and unique frequency usage fees are still under consideration for approval in Russia. Further, the current legal frameworks exhibit several confusing and/or illogical prescriptions, such as stipulations on licensing in Vietnam and the possibility of cancellation of previously-made decisions on frequency allocation by the SCRF in Russia.

More than a few reasons can be used to explain the regulatory dependence in the surveyed countries; two of them are:

- the existence of a centrally-planned mechanism for a significant period of time, where the economies were primarily managed by administrative orders and the relationships between governmental agencies and their regulated entities were psychologically accepted as necessary relationships between “givers and askers” on a broad, national scale; and
- the limitation of capabilities in creating legislative frameworks that are applicable to competitive, market-based environments and in compliance with basic international rules and principles.

It is noteworthy that the challenge of creating an independent regulator of telecommunications is facing not only Russia and Vietnam, but also other transitional countries such as China (USTR, 2004, p.79; Roseman, 2005, pp.15-16).

5.2 The Need to Establish Independent Regulators

The challenges in licensing, and consequently, challenges in managing important regulatory issues like allocation of scarce resources in a fair and transparent manner require the countries to strengthen the regulators and their existing regulatory decision making. Creating a good decision-making process and an independent regulatory agency is especially important when the two countries further integrate into global markets and become WTO members.³⁰ Currently, the related parties can file a complaint case with the responsible authorities in the host countries or with limited authorities under related bilateral agreements if the regulators treat them unfairly, but when

the two countries become WTO members, such parties can use their rights to file a complaint case with various responsible international dispute settlement organizations. This will lead to a much more complicated scenario and not result in any benefit to the regulator if any unfair treatment is perceived.

5.3 Proposals to Establish Independent Regulators

5.3.1 Creating/Strengthening Independent Regulators

Establishing multi-sector regulators in the surveyed countries is impossible in the short-run, since competitive situations in different industries are largely different. On the one hand, creating new organizations under the direct control of the governments will increase the independence of such agencies because it removes layers in which the regulators have to be reported to and governed by; but on the other hand, such creation requires a significant amount of time and complicated procedures.³¹ In the short term, the most realizable way is forming and/or strengthening quasi-independent regulators inside the ministries and upgrading the current quasi-independent regulator(s). These entities are quasi-independent if they do not satisfy all independent indicators; for instance, they are neither funded by the national budget nor have any relationship with operators, but are partially independent from state agencies because they are under the ministries` jurisdiction: they are created by and their leaders are appointed based on the ministers` submission.

Spectrum issues are already managed by the quasi-independent organizations in the surveyed countries (the SCRF in Russia and the Radio Frequency Department in Vietnam). These entities should be upgraded to be fully independent by separating them from the ministries and bringing them under the direct jurisdiction of the governments. Quasi-independent regulators inside the ministries should be formed (in Vietnam) or strengthened (two MICT Federal agencies in Russia), and authorized to address other regulatory responsibilities, such as licensing, numbering, interconnections, anti-trust and user rights protection. Further, the management of the spectrum issue is the most typical characteristic of mobile regulation, and so far, it is the only difference between governing fixed and mobile telecommunications. Consequently the quasi-independent regulators should be in charge of managing telecommunications as a whole, not just the mobile

30 Vietnam is possibly becoming a WTO member this year, while Russia is in the final steps toward the membership. See more at the WTO homepage, Accession.

31 In Vietnam, creating a new governmental agency requires

the Prime Minister's agreement and approval of the National Assembly (Law on the Structure and Responsibilities of the Government)

communications market.

In Russia, the separation of two federal regulatory agencies inside the MICT is ensured by the respective regulations but not by the Law 2003. The only specific organization whose responsibilities are described in the Law is the SCRF. Basically, the Law 2003 is quite adaptable and allows different interpretations depending on accepted legal acts. Existing structural separation should be strengthened by setting forth the respective powers of these federal agencies in the Law 2003 and by allowing them to determine yearly working and financing plans independently from the MICT.

The most controversial issue in regulating the mobile market in Russia is frequency management. The SCRF is an interdepartmental coordination body within the control of the MICT and, at the same time, depends on the expertise of the federal military bodies. Such interdependence constrains the sole power of the members, but that does not ensure an impartial or objective decision-making process. Moreover, in a situation where the federal military bodies are actually exercising the rights of frequency ownership on behalf of the State, the efficiency of frequency spectrum management can not be made certain by the MICT. Therefore, to increase independence in regulating frequency spectrum, the influence of both the MICT and the military bodies should be reduced or eliminated by bringing the SCRF under the government's direct jurisdiction and by specifying frequency usage rights. The approval of frequency usage fees, as foreseen by the Law 2003, will clarify the frequency terms for all users and speed up the liberation of unused frequencies by the militarists. Besides the situation of its subordination to the MICT, the membership of the SCRF should also be revised. The Law 2003 requires that the SCRF consists of representatives of all interested federal executive authorities. However, the examination of electromagnetic controversies and the determination of available frequency spectrum are solely conducted by concerned members whose positive conclusions are necessary to bring a decision on frequency allocation to a vote, while voting is done by all the members. In this case, it is not really clear on what criteria the decisions of other members are made. If the decision on frequency allocation doesn't infringe on interests of the

majority of the members, their interference can result in the manipulation of final decisions by the interested parties. Therefore, it is necessary to strictly define the concept of concernment and to narrow current membership accordingly.

To make these regulatory bodies as independent as possible, funding for them should not be extracted wholly from national budgets, and should be covered by various fees — such as licensing fees or scarce resources usage fees — or by contributions of operators. Experience with managing frequency in Vietnam proved that the regulatory framework and decision-making process would be more effective if the agency in charge were funded by collected fees; the agency strived to draft and submit all necessary legal documents for regulating its sector since its revenue depended on collected fees, and to be possible to collect such fees, the agency would have to be provided a clear legal framework to exercise its duties. Additionally, such stipulations cannot be in favor of any mobile operators.³² The relevant collected fees are significant. In Vietnam, annual collected mobile number usage fees may reach around US\$4 million.³³ In Russia, according to the Vice Minister of the MICT, mobile operators pay about US\$51.9 million yearly for frequency usage.³⁴ With the future conversion of at least one fourth of the spectrum reserved for militarists, yearly frequency payment to the budget can rise by US\$259-296 million. Such significant financial resources could be used to cover the cost of regulatory activities and help the regulators to keep/recruit qualified staff by paying adequate salaries.

5.3.2 Improving Legislative Framework

Independent regulators cannot implement their activities in a transparent manner if they are not being provided with the necessary legal basis or if the basis is not well-designed, even though they do not institutionally or financially depend upon any external sources. As analyzed in the previous sections, there are several legal documents that need to be enacted or revised by the responsible authorities in Russia and Vietnam.

In Russia, these activities include, but are not limited to:

- the inclusion of powers of the Federal

32 The spectrum issue is regulated by eight legal documents in Vietnam. The spectrum allocation plan and the table of frequency usage fees are available and predictable, all mobile operators are treated equally in allocating spectrum and paying usage fees.

33 The authors' calculation based on the mobile usability assigned to mobile operators and rates applied to numbers' usage in Vietnam. Yearly fee/usable number is 1000 Vietnamese dong. Eight network access codes are assigned to six mobile operators, while each network access code has

8,000,000 usable numbers (the length of a mobile subscription number is 10 digits, of which 3 digits are network access code. Numbers begin by 0 or 1 are not applicable, since 0 is used for identifying domestic long distance calls and 1 is used to identify special services). The annual collected fee number will be $1,000 \times 8,000,000 \times 8 = 64,000,000,000$ Vietnamese dong, equivalent to around US\$4 million (US\$1 \approx 16 000 Vietnamese dong as informed by the State Bank of Vietnam on October 23, 2006 <http://www.sbv.gov.vn/home/index.asp>)

34 ComNews <http://comnews.ru/index.cfm?id=23507&tempo=130>

Communication Agency and the Federal Service for Supervision in the Law 2003;

- the revision and clarification of regulations pertaining to the SCRF; and
- the enactment of frequency usage fees, national frequency allocation tables and relevant subordinating acts.

In Vietnam, the responsible authorities should implement at least the following modifications:

- clearly defining selection licensing criteria and authorizing all licensing duties exclusively to the regulator;
- enacting a numbering plan and revising interconnection regulations; and abolishing the authorization of State ownership rights in VNPT to the MPT and transferring such authorization to another State agency, for instance the Ministry of Finance, in order to decrease the inter-dependence between the MPT and the incumbent.

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