Market entry and scarce resources 1

Rohan Samarajiva

LIRNEasia
Learning Initiatives on Reforms for Network Economies
www.lirneasia.net

Agenda

- Basic principles
- Three modes of governing provision of telecom services
  - Justifications for favoring authorizations
  - Problems with authorizations in developing countries
- Conditions for individual licensing
  - Value of linking with spectrum licenses
- Who should have power to issue/modify?

GATS 4th Protocol Reference Paper

- More than 90 countries have made telecom sector commitments
- Telecom commitments now almost compulsory for joining GATS
- GATS Fourth Protocol Regulatory Reference Paper is a useful benchmark of good regulatory practice

Regulatory Reference Paper

- Where a licence is required, the following will be made publicly available:
  - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
  - (b) the terms and conditions of individual licences.
- The reasons for the denial of a licence will be made known to the applicant upon request.

Three forms of governing the provision of telecom services

- Individual licenses
- General authorizations
- No authorization required (open entry)

- All three can be in operation in the same country at the same time
- Tendency is to minimize individual licenses and move toward authorizations/open entry

A general principle

- "Licenses where scarce resources are involved; authorizations otherwise"
- Rationale
  - When scarce resources (spectrum, rights of way, numbers) are required for providing the service, not everyone who wants can offer the service
  - In this limited case, an individual license (involving discretion = authority to say yes/no) may be justified

Another way of looking . . .

- Licensing is an unusual act; use it only where absolutely necessary
- Anyone is free to provide telecom services, unless
  - Government/regulator needs to know who they are/impose duties on them/subject them to some form of control
  - Even then, use the less intrusive method which is general authorization, as much as possible
- Heavy artillery (individual licenses) only in extreme cases where greatest control in needed
- **Part of a worldview that sees government doing a few things well; most appropriate for states with personnel constraints**

Another justification. . .

- If discretion (authority to say yes/no) that is part of licensing is to be allowed, it must be constrained
  - Discretion may be abused for undue gain
  - Even if discretion is given, ensure the process is fair and transparent
    - Discretion must be exercised following principles of natural justice (due process in US system)
- Authorizations reduce discretion: any who satisfy criteria are allowed (no numerical limits)

Substantive advantages

- Eliminate individual differences in treatment of service providers and create a level playing field;
- More consistent with technological neutrality principles;
- More consistent with open market entry policies;
- Simplify the regulatory process;
- Reduce regulatory and administrative costs; and
- Facilitate the introduction of industry-wide regulatory changes to reflect changing technologies and sector conditions (i.e., no need to amend individual authorizations).

Possible shortcomings in developing-country context

- Banks/investors may want the security of a license/concession document because
  - They do not trust the fair application of general principles and rules
  - Are not comfortable with rules/conditions being changed in midstream (regulatory risk)
  - No direct relationship with regulator
- Success of authorizations regime depends on effective and credible regulator and open, consultative procedures for changing rules and conditions

Example: VSAT service authorization

- Might approve operations of all providers that meet certain conditions, such as:
  - Registration with the regulator [can find the operator]
  - Use of ITU-co-ordinated satellite service providers authorized in an ITU member country [interference]
  - Approval of earth station equipment under national spectrum regulations [interference], and
  - Compliance with any consumer protection or spectrum management regulations established by the regulator [information asymmetry/interference]
  - Payment of prescribed fees [cost recovery/revenue]

Variant of authorizations that comes close to licensing

- Limit to number of authorizations issued
  - Discretion involved
  - Some form of previously announced fair procedure (e.g., beauty contest, lottery, first-come-first-served) must be used
- Some advantages of authorizations retained, e.g.,
  - Same conditions apply to all in one class

Variant that comes close to open entry

- No registration required (or at most a "postcard" notification)
  - Simple form that is available on website that licensees send to regulator
    - ISP licenses in Morocco
- But the terms and conditions of the authorization are well publicized and the law is clear of their application

Discussion: How to deal with WiFi (or IEEE 802.11x) hotspots?

- Individual licenses?
- General authorization with registration and fees, but no numerical limits?
- General authorization with numerical limits?
- General authorization with postcard notification?
- Unlicensing (open entry/no notification)?

- In your response assume that the person wanting the license is located in the most remote part of your country

Case study: Sri Lanka External Gateway Operator "licenses"

- 1991 Sri Lanka Telecom Act s. 17 provides that the Minister may issue "system licenses" on recommendation of regulatory commission: no provision for authorizations
- Government decided to end incumbent's 5-year exclusivity on international telephonic services in 2002
- Broadly consulted (but not adopted) National Telecom Policy contained the principle "licenses where scarce resources are involved; authorizations otherwise"

Options

- [1] Decide on the number of EGO licenses and issue them using a transparent and fair procedure
  - [1A] Auction?
  - [1B] Fixed-fee licenses to all interested members of a class (e.g., all PSTN operators)
- [2] Issue "licenses" under the Act, but without numerical limit

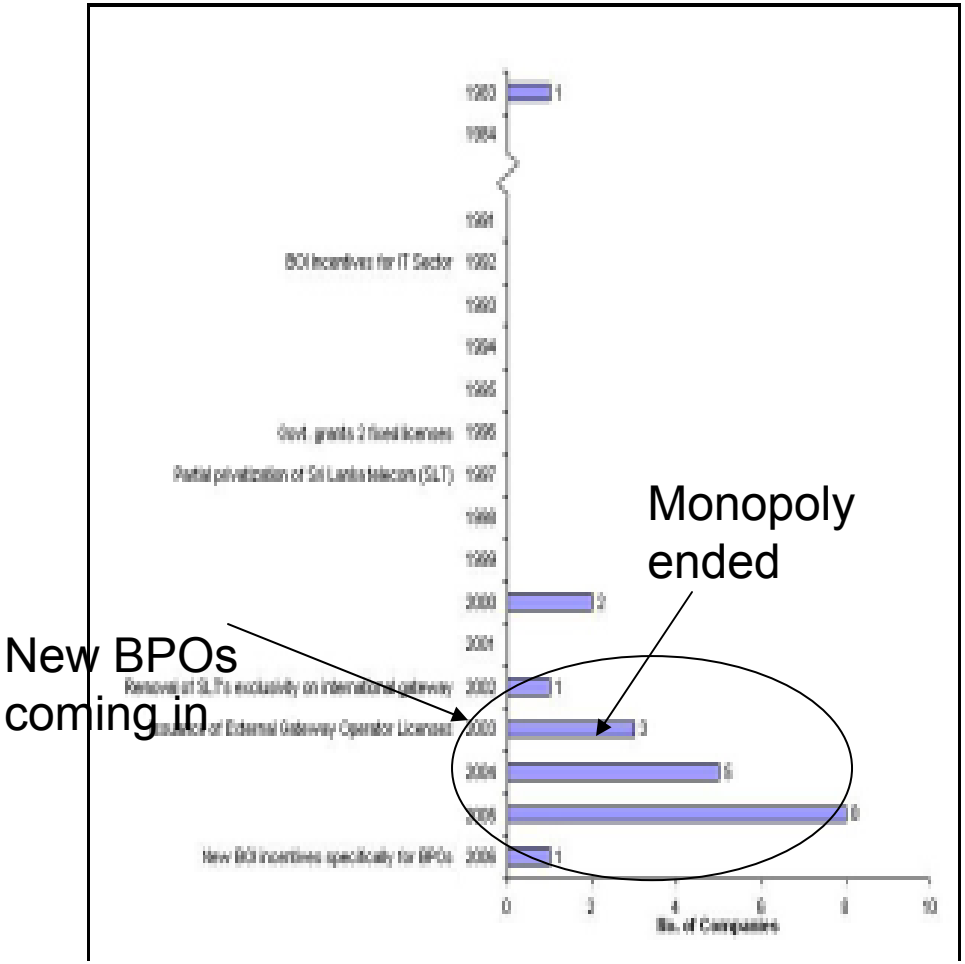
What would you choose?

- What scarce resources are required for operation of External Gateways?
- Which option is consistent with the principle?

End result

- Government objective of creating conditions for BPO industry achieved
  - Incumbent, largest mobile operator and VSNL Lanka [subsidiary of Indian International operator] provide telecom services to BPO industry, with option for more
- Objective of allowing for broad competition in international voice and data communications not achieved, because regulator failed to implement the adopted Interconnection Regulations
  - [2] adopted but [1B] more like the result

BPO boomlet started



- Sri Lanka similar to South India, but missed the BPO wave
- By 2006, 13.2 million USD invested in BPOs
- 3,700 persons employed now with 30% growth projected for 2006

* http://www.lirneasia.net/2006/08/baseline-sector-analysis-of-sri-lankas-bpo-industry/

What lessons can be drawn?

- More success if government went for [1B] in the first place?
  - But would BPO objective have been achieved?
  - Threat of entry ➔ better behavior?
- Anything wrong with the principle?

Issuing individual licenses

- Bangladesh issued "fixed service" licenses to 17+ companies in 2004
  - Partly influenced by advisors who believed that fixed licenses did not require use of scarce resources
  - Yet, all the licensees requested frequencies
  - Combined with litigation, end result has been slow progress in giving service to consumers

Licenses and spectrum: best practice

- Authorizations to operate a telecommunications service and to use the required radio spectrum should be granted at the same time
- There should be no delays or risks of inconsistent regulatory requirements as between the two types of authorizations
- If two separate authorizations are issued, they should be issued simultaneously
  - A good approach is to attach a draft spectrum authorization as well as a draft service provider's authorization to a request for applications for authorizations

Why general authorizations won't work when spectrum is involved

- For specific services, equipment is manufactured for specific bands, e.g.,
  - GSM 900 and 1800 bands in Regions 1 & 3 and GSM 1900 in Region 2
  - CDMA 800 and CDMA 1900 etc.
- There are a finite amount of frequencies in each band (depending on ITU allocations and previous assignments)
  - Depending on how much is to be given to each operator, natural limit on how many can be supported ➔ natural limit on how many licenses can be given

Is this the case for numbering resources (also considered scarce in GTS Regulatory Reference Paper?)

Is this the case for rights of way and tower-location permissions also (RRP)?

Who should issue licenses and authorizations?

- If all three modalities are in operation, who decides which service gets authorized under which mode?
  - Importance of a principle/rule
- If abuse of discretionary power is a concern
  - Best to specify procedures for selecting mode
  - Give power to independent agency, bound to transparency
- Minister/government should be given power to set overall policy

Who should have power to change terms of authorizations?

- Especially in countries with sub-optimal government structures, giving Minister this power can increase regulatory risk
- Need to specify procedures for changes and clear assignment of responsibility

In sum

- Licenses, authorizations and "no licenses" are three ways of allowing market entry
- Taking into account country characteristics, resource constraints, etc. appropriate mix must be chosen
- If market entry is messed up, regulatory process will be plagued by problems
  - If corruption occurs or perceptions of corruption take hold, entire sector environment will be corroded