

# Periodic recalibration of the regulatory mechanism (including convergence)

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# Agenda

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- ❑ Objectives of regulation
  - Additional objectives of convergence regulation
- ❑ Identify environmental constraints in South Asia
  - Also temptations deriving from government culture
- ❑ Convergence and industry/sector/multisector regulation
- ❑ A walk through the process of institutional design with reference to Public Utility Commission & proposed InfoComm Commission of Sri Lanka
  - Law (necessary conditions for effective regulation)
  - Organization & staffing (sufficient conditions)



# Objectives of telecom regulation

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- Improve performance
  - Increased supply/connectivity
  - Value for money (price & quality)
  - Choice
- Necessary condition is increased investment
  - One factor is reduction of regulatory risk (likelihood of administrative expropriation)
  - Dysfunctional governments/regulatory regimes increase regulatory risk



# If indicators are not good . . .

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- ❑ Generally, telecom sector legislation needs updating every five years
- ❑ If investment is dipping, maybe even sooner
- ❑ With new legislation, possible to design greenfield regulatory agencies
- ❑ More difficult to fix agencies in midstream



# Additional objectives of convergence regulation

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- Allow the greatest flexibility to suppliers and users
- Avoid dictating technology choices
- Realize economies of regulation



# Why independent regulation?

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- Government seeks to reduce regulatory risk through reforms that
  - Create new industrial structure, enabling private investment
  - Constrain discretion
  - Create new government organizations to exercise constrained discretion (administrative/quasi-judicial functions)
  - Insulate above organizations from day-to-day interference by govt/incumbents



# Constraints

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- ❑ Difficulties of adequately insulating discretion-exercising agency from “ocean of bad governance”
  - Does govt really want to let go?
  - Should govt procedures be applied to new agency?
- ❑ Availability of skilled personnel
  - Artificial segmentation of labor markets
  - Limits on compensation



# Constraints

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- ❑ Problems of positioning regulatory agencies
  - Closer to judicial end of continuum in India
    - ❑ Less so in TRAI, after TDSAT established
  - Closer to administrative/executive end in Sri Lanka
- ❑ Relations with existing centers of authority
  - Courts
  - President's/Prime Minister's Office/Cabinet
  - Ministry
  - Parliament
  - Auditor General





# Temptations

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- Use the new agency to ease the pain of industry reform
  - Move (excess) staff from reformed incumbents to regulatory agency
    - Expertise as a justification
- Postpone decisions on staffing
  - Rely on secondments
- If high salaries set, put retirees and associates into agency



# Convergence and multisector regulation

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- Pure convergence
  - Products are completely substitutes
  - Regulatory treatment is identical
- Mostly what is meant by convergence regulation is sector (versus industry) regulation
  - Closely related, though not substitutable products
  - Similar, but not identical, regulatory treatment
- Useful to think of convergence regulation in terms of industry/sector/multisector regulation



# A walk through the design process .

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- A discussion of the institutional design process, with reference to the Public Utility Commission of Sri Lanka (2002-) & stillborn legislation for InfoComm Commission (2003)
  - Recognizing that the institutional environment differs in different jurisdictions



# Multi-sector approach adopted

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- Response to constraints of
  - Human resource scarcity, including desire to contract (at least, not expand) already bloated government
- Response to challenge of ensuring effective independence
  - Because “line” ministries tend to identify with reformed incumbents



# Scope of regulation: examples

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- Industry regulation
  - Electricity (OFFER, until 2001)
- Sector regulation
  - Electricity plus gas (OFGEM, since 2001)
  - Telecom, broadly defined (FCC, CRTC, OFCOM)
- Multi-sector regulation
  - Telecom + energy + water + transport (+ insurance in VA) (state PUCs in USA)
  - Telecom + electricity + water + transport (OUR Jamaica)




# Basic design

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- Public Utilities Commission of Sri Lanka Act, No. 35 of 2002
  - Modular design
  - Act sets out constitution, funding and general powers of Commission
  - Commission exercises powers set out in Industry Acts
    - Electricity (2002); Water (2003 proposed); Petroleum (2003 proposed); Transport; Ports & marine services; Airports & aviation services



# Sri Lanka's physical infrastructure regulation framework



Public Utilities Commission of Sri Lanka Act

Electricity  
Reforms  
Act

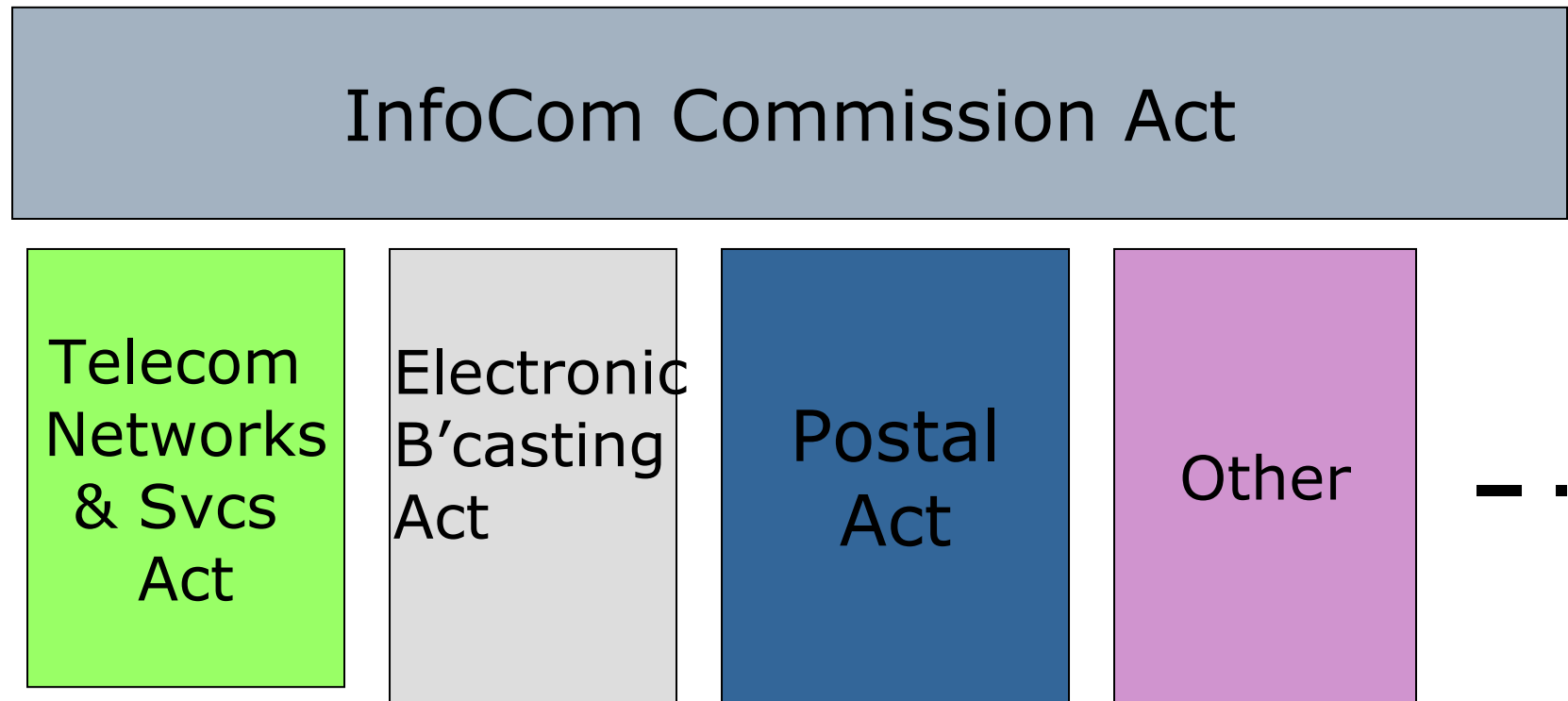
Water  
Reforms  
Act

Petroleum  
Reforms  
Act

Other



# An information & communication sector regulation framework





# Options . . .

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- ❑ Competition chapter can be included if country lacks competition law/authority
  - Applies only to industries that come under PUCSL which has sole jurisdiction
  - Search and seizure powers limited to competition functions only
- ❑ Include provisions for coordination with other regulatory agencies



# Effective regulation: Necessary conditions

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## □ Independence

- Own fund; license fees & start up money from government
- Accountability to Parliament through annual report
- Staggered appointments of members by entity that has bipartisan profile (could be Parliament, if feasible)
- Defined removal procedures by Parliament



# Effective regulation: Necessary conditions

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- Collegial body
  - Members defined by subject expertise and experience
  - Part-time
- Director General (CEO), appointed by Commission
  - Attend meetings, but no vote
  - Separate “proposal” and “disposal” functions
- Policy directions
  - May be given, but create screens and channels



# Sufficient conditions: Implementation

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- ❑ Organizational structure, recruitment and training that
  - Emphasizes commitment to new regulation
  - Breaks from command and control mindset
- ❑ Effective leadership
- ❑ Adequate compensation packages to attract persons with skills and potential
- ❑ Significant reliance on outsourcing for
  - International best practice
  - Domestic entities as well



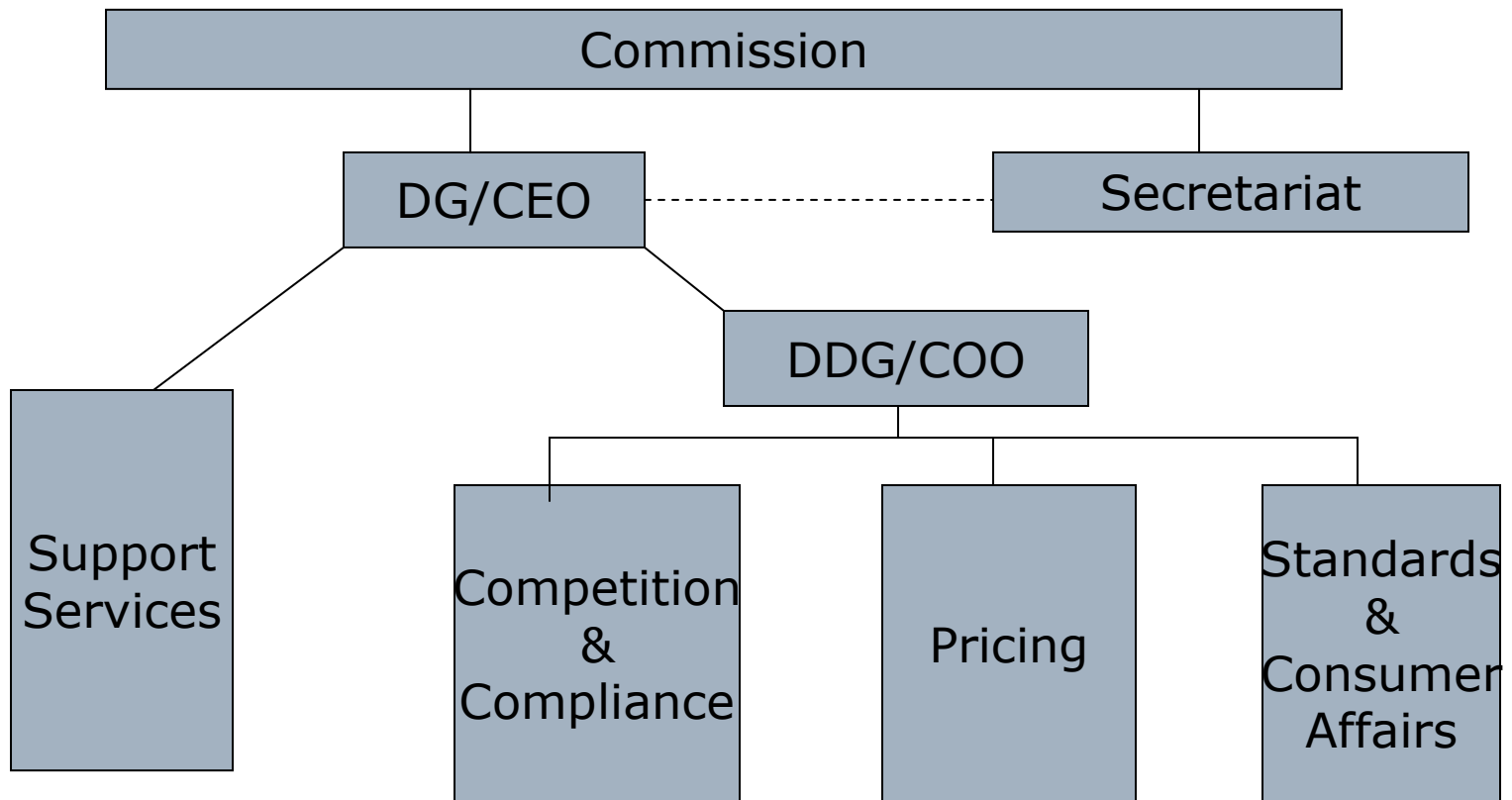
# Sufficient conditions: Implementation

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- Trans-industry organizational structure
  - Emphasizing commonalties of infrastructure and core economic principles
  - Relying on multi-disciplinary task teams
  - In line with trend away from industry silos in US state regulatory agencies and towards teams



# An organogram for consideration. . .



Credit: Nalin Jayasuriya & PIPU Staff

# Sequence of typical regulatory task

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- ❑ External input, or internal trigger
- ❑ Commission/DG/DDG/team leader/committee flags as worthy of preparing a Terms of Reference/budget; assigns task to team leader
- ❑ TOR prepared by team leader, including
  - qualifications of team members
  - person-day and money budget
  - schedule



# Sequence of typical regulatory task

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- ❑ DG/DDG/Committee decides on insourcing/outourcing
- ❑ Unit reporting to DDG is mandated to supervise task
- ❑ If insourcing
  - Unit negotiates with support services (under DG) for resources
    - ❑ Checks and balances
  - Team is created with
    - ❑ Task leader
    - ❑ Specified life span
    - ❑ Budget
    - ❑ Teams use time sheets/not necessarily on one project





# Sequence of typical regulatory task

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- ☐ If outsourcing
  - Unit (under DDG) works with support services (under DG) to procure external consultants
    - ☐ Checks and balances
  - To manage the consultants an internal counterpart team is created with
    - ☐ Task leader
    - ☐ Specified life span
    - ☐ Budget
  - External consultants are commissioned and work with counterpart team



# Sequence of typical regulatory task

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- When task is ended
  - Support services will not signoff until complete docket is accepted by the archives unit
    - Electronic document management system is most relevant in this structure
  - Team members go back to unassigned work
- Specified procedures for modifying TOR, budget, schedule, etc.
  - Checks and balances



# Key design elements

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- Functional units do not have permanently assigned staff
  - Except for team leader and her “cabinet”
- Staff rotate through
  - Avoid empire building; factionalism
  - Staff get a good sense of the overall organization
- Reward structure
  - Committee made up of team leaders
  - Committee takes input from task leaders



# Key design elements

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- Need an appropriate physical space
- Organized around the web
  - Web-based work practices
  - Organically linked to transparency and consultation aspects
- Passing laws is easy; completing transactions is doable; making a regulatory agency run well all the time is hardest task



# Pragmatic approach to regulatory design

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- Always look for simplicity
  - Optimal is what works in your setting; not theoretical ideal
- Give serious consideration to multisector approach, even within ICT space
- Use regional collaboration as much as possible
  - Framework for knowledge sharing
  - Model agreements, license templates, etc.
  - Review mechanism made up of regional regulators

