Intelligent regulation

Rohan Samarajiva
An oxymoron?

Hubris?
Oxymoron =

- “a figure of speech that combines two normally contradictory terms”

- Can we have intelligent and regulation in the same sentence?
  - As a former regulator who counts many regulators as friends and colleagues, I cannot but say YES
  - Intelligent regulation is not an oxymoron
Hubris =

- “overweening pride, self-confidence or arrogance, often resulting in fatal retribution”

- If South Asian mobile operators are being acclaimed for a new business model, why should South Asian regulators not be acclaimed for new innovation too?
  - If this be hubris, let me plead guilty
What is intelligent?

- ... actions that are based on prioritization and efficient use of resources
- ... actions that are based on processing of information (evidence-based policy making/regulation)
- ... actions that are effective; that yield good results
South Asia is experiencing massive growth

<table>
<thead>
<tr>
<th>Country</th>
<th>SIMs/100 (Dec 2007)</th>
<th>Fixed/100 (Dec 2007)</th>
<th>Mobile CAGR (2002-07)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan</td>
<td>48.61</td>
<td>4.33</td>
<td>114.36 %</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>21.66</td>
<td>0.75</td>
<td>99.97 %</td>
</tr>
<tr>
<td>India</td>
<td>20.44</td>
<td>3.43</td>
<td>78.20 %</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>41.37</td>
<td>13.6</td>
<td>53.67 %</td>
</tr>
</tbody>
</table>
South Asia is experiencing massive change

- New services being offered
  - E.g., 3G

- New steps to help operators reduce costs
  - E.g., Sharing of passive and active infrastructure

- New steps being taken to improve consumer rights
  - E.g., Mobile number portability
... means massive workloads for regulatory agencies and their staff
If there’s a time to be intelligent, it’s now
## Ranking regulatory tasks...

(take 100 units of regulatory resources and divide it up)

<table>
<thead>
<tr>
<th>Task</th>
<th>Value</th>
</tr>
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<tbody>
<tr>
<td>Market entry/licensing</td>
<td></td>
</tr>
<tr>
<td>Spectrum management, including refarming</td>
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<td>Access and interconnection</td>
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## Ranking regulatory tasks

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<tr>
<td>Universal service</td>
</tr>
<tr>
<td>Mobile number portability</td>
</tr>
<tr>
<td>Rights of way</td>
</tr>
<tr>
<td>Consumer protection</td>
</tr>
<tr>
<td>Internet governance</td>
</tr>
<tr>
<td>Type approval of equipment</td>
</tr>
</tbody>
</table>
Even if we can’t all agree on priorities . . .

- Wouldn’t it be nice to get one or two of these off the table?
  - Then see how much additional resources you would have for the rest

- TRAI has taken one off the table: tariff regulation, with good results
  - Why do others not follow?
TRAI’s approach is appreciated by informed stakeholders . . .

[Bar chart showing mobile and fixed highest numbers for Pakistan, India, Indonesia, Sri Lanka, and Philippines]
... and has yielded some of the lowest mobile prices in the world

Nokia TCO study says India is second lowest out of 77 emerging economies
Why not follow India?

- Concern about Indian-style forbearance on tariffs
  - There may be a risk of predatory pricing
  - India has the highest levels of competition in the region
    - Even at Circle level
# Hirschman-Herfindahl Index

(upper = more competitive)

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<tr>
<th>Country</th>
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<tr>
<td>Pakistan</td>
<td>0.27</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>0.31</td>
</tr>
<tr>
<td>India</td>
<td>0.16</td>
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</table>
Indian HHI by circle, 2003 & 2007 compared

Comparison of Circle-wise HHI 2003-2007

2007 lower
Why not follow India?

- Concern about Indian-style forbearance on tariffs
  - There may be a risk of predatory pricing given less competition
- If not full forbearance, why not asymmetric regulation?
  - Regulate the tariffs of the SMP operator, but forbear on the rest
    - Two problems
Asymmetric regulation: Problem 1

- How to regulate tariffs of the SMP operator?
  - Have to go through whole process of determining SMP operator
    - Highly resource intensive; but can be done with external consultants
  - Then RPI-x?
    - Has anyone calculated x for a mobile operator?
      - What has RPI got to do with mobile prices anyway?
  - If not RPI-x, what? Ratebase rate-of-return regulation (this is what RPI-x is in practice anyway)?
    - Anyone calculated the Ratebase of a mobile operator recently?
Asymmetric regulation: Problem 2

- In addition to the difficulties and disputes around SMP determination, asymmetric regulation leaves SMP operators bitter and uncooperative.
  - They face a real problem of playing in a dynamic market without pricing flexibility.
Banded forbearance as a solution?

- Forbearance, with safeguards derived from benchmark regulation
Methodology

- Identify peer group
  - Must have data that can be compiled into benchmarks
  - Define benchmark and period (once a year; once every two years . . . )
  - Need not be the lowest
    - EU uses third from the bottom
    - Can be lowest plus x% 
- Define band: floor and ceiling
Methodology

☐ Anything goes within the band
  ■ Tariffs must be filed
  ■ Evaluated only for
    ☐ Clarity to consumer
    ☐ Whether within the band
    ☐ Default approval within x days/or sanctions if criteria not met

☐ When tariff dips below the floor, investigate for anti-competitive impact only

☐ If tariff goes above ceiling, no alternative but to start a cost inquiry
  ■ Need to identify interim solution, while inquiry is underway
Merits of banded forbearance

- Asymmetric regulation, which also saves regulatory resources, deregulates non-dominant operators but requires dominant operator to file tariffs
  - Cause of great unhappiness for SMP operator
  - Regulator still has difficulty properly regulating dominant operator’s tariffs
  - In oligopoly/duopoly conditions, non-dominant operators may just shadow the incumbent’s prices
- Banded forbearance applies to all operators and is much, much cheaper
- Is also the most conducive for Budget Telecom Network business model
**Ranking regulatory tasks . . .** (take 100 units of regulatory resources and divide it up)

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Now with one off the table, shall we start taking off another . . . ?

Then, we would be doing fewer things, better

Addressing priorities
Using data and analysis . . .

Is this not intelligent regulation?
What is intelligent?

- . . . actions that are based on prioritization and efficient use of resources
- . . . actions that are based on processing of information (evidence-based policy making/regulation)
- . . . actions that are effective; that yield good results
Declining mobile prices & increasing connections — India, 1998-2007