

Meeting the challenge of legitimacy: Possible uses of indicators

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Learning Initiatives on Reforms for Network Economies

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Expectations . . .

- Regulatory agencies should be
 - Independent of operator
 - Independent of government
 - Based on expertise
 - Based on procedural legitimacy, and
 - Effective



In practice. . .

- Regulatory agencies tend to be
 - Not always fully independent of operator, e.g.
 - Government owns all/part of operator
 - Employees seconded from operator
 - Not independent of government
 - Lacking in human resources
 - Arbitrary, and
 - Semi-dormant (inaction as best defense)



Usual responses to criticism are

- Special circumstances of
 - Stage of development
 - Unique national circumstances
 - Larger objectives of universal service, maximizing privatization proceeds, etc., etc.
- It's someone else's fault
 - Legislation did not make agency truly independent
 - Not enough resources were made available



Objective of this presentation is

- ❑ To trigger innovative thinking about achieving results under non-optimal conditions
- ❑ To emphasize legitimacy over formal independence
- ❑ To show how a legitimacy strategy can create independence and show results



Outline

- What is independence?
- Necessary conditions of independence
- Legitimacy: the way to win independence
 - Expertise
 - Procedural legitimacy
 - Public interest
 - Showing results
 - Communication



Independence

- What is it?
- Why should regulators have it?



Maximal definition

- ***An effective regulator should be independent from those it regulates, protected from political pressure, and given the full ability to regulate the market by making policy and enforcement decisions. The regulator should have the authority and jurisdiction to carry out its regulatory and enforcement functions effectively and unambiguously. And the regulator must be adequately funded from reliable and predictable revenue sources.***
 - ***US Federal Communications Commission, 1999***



Minimal definition

- The regulatory body is separate from, and not accountable to, any supplier [. . .]. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.
- Adapted from Fourth Protocol of the GATS, Regulatory Reference Paper, 1997, article 5.



Regulator-government relations

- Insulation from day-to-day interference by politicians is basic element of good public administration practice
 - Political accountability for policy setting
 - Admin/legal accountability for implementation
- Additional insulation for some agencies
 - E.g., Attorney-general; Anti-corruption bodies
 - Do regulators fall within this category?



Independence for regulators?

- ❑ Not in all cases
 - Example of Nordic countries
- ❑ Yes, when overall governance is poor
- ❑ Basic (not sole) rationale of regulation in developing countries (=countries with poor governance) is protection of investors from arbitrary takings
- ❑ Analogy: dike to protect island of good governance from ocean of bad governance



Necessary conditions (details in regulatory design unit)

- Specified appointment procedures
- Removal procedures
 - Hard to remove; easy to appoint
 - Accountability through transparency
- Reporting relationship
 - “Line” Ministry?
 - President/Prime Minister?
 - Legislature?
- Financial autonomy
 - Certainty; ability to plan; invest in expertise
 - Prevent use as instrument of pressure



Sufficient conditions (emphasis now)

- Legitimacy: the way to win independence
 - Expertise
 - Procedural legitimacy
 - Showing results
 - Communication
- Legitimacy building=dike maintenance



What is legitimacy?

- Acceptance of the existence and the power of an entity by those who can affect it or are affected by it
- Distinguished from powers and duties set out in formal legal documents
- A subjective category that resides in the eyes of others
 - Possibly captured by Telecom Regulatory Environment survey (results presented on Friday)



Legitimacy in whose eyes?

Government

- “Line” Ministry
- President’s/PM’s office
- Finance/Industry
- Legislature/Judiciary

Private

- Incumbent/new entrants
- Public/“opinion leaders”



Expertise

- Important, but inadequate by itself
 - Because application of expertise under conditions of imperfect knowledge always involves judgement
 - No justification for sector regulation without expertise



Procedural legitimacy

- Essential ingredient of legitimacy
 - Reinforces expertise-based claims
 - Generates new information; improves information quality
 - Creates conditions for “buy-in” by stakeholders, reducing appeals
 - “Appeal-proofs” regulatory decisions, increasing likelihood of winning if appealed



Procedural legitimacy

- Legal requirement in many countries
 - India: requirement for consultation papers and open houses in TRAI legislation
 - USA: Administrative Procedures Act
 - Sri Lanka: Commission may hold public hearings and conduct public-notice proceedings
 - In most countries judiciary will ask whether natural justice/due process principles have been followed in review/appeal/writ proceedings



Achieve results

- Apply limited resources to
 - High-yield (e.g., interconnection), and/or
 - Winnable (e.g., where incumbent is obviously at fault), and/or
 - Easily explainable problems (e.g., not interconnection)
- Win your battles
 - Winning can be defined in various ways!
- Tell the world about them



Communication

- “How do they know you’re expert/ procedurally legitimate/ doing good if you don’t tell them?”
- Source of informal power
 - “Sweet talking,” “jawboning” and “framing”
 - Affect the symbolic environment of government--the media
 - Key to public support



Using sector performance for legitimacy?

- Regulatory agency has to take unpopular decisions
- Many of its decisions are difficult to understand for lay people
- Need to build a goodwill bank and keep replenishing it
- What better than sector performance?
 - Over time
 - Comparative



What if sector performance is not good? (1)

- Performance is many-faceted
 - If absolute numbers are not good, go for growth
 - If growth is not good, shift to different aspect
 - One year is bad use CAGR or vice versa
 - If nothing looks good,
 - Highlight the constraints
 - Change the peer group
 - Question the methodology . . .



What if sector performance is not good? (2)

- The right answer
 - Make it good

- Or find something else to do with your life



Example: Sri Lanka-Pakistan

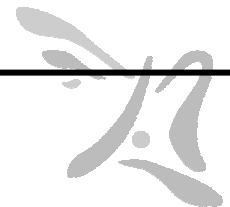
- Sri Lanka has a much higher per capita GNI, but lower mobile/100 and lower overall telecom growth rate

	PK	LK
Per capita GNI, Atlas, USD	690	1,160
Per capita GNI, PPP, USD	2,350	4,520
Mobile/100	31.07	27.10
Fixed/100	4.33	9.5
M+F/100	Samarajiva LIRNE.NET 35.40	36.70

PK-LK in 2001, prior to Pakistan reforms of 2002-03

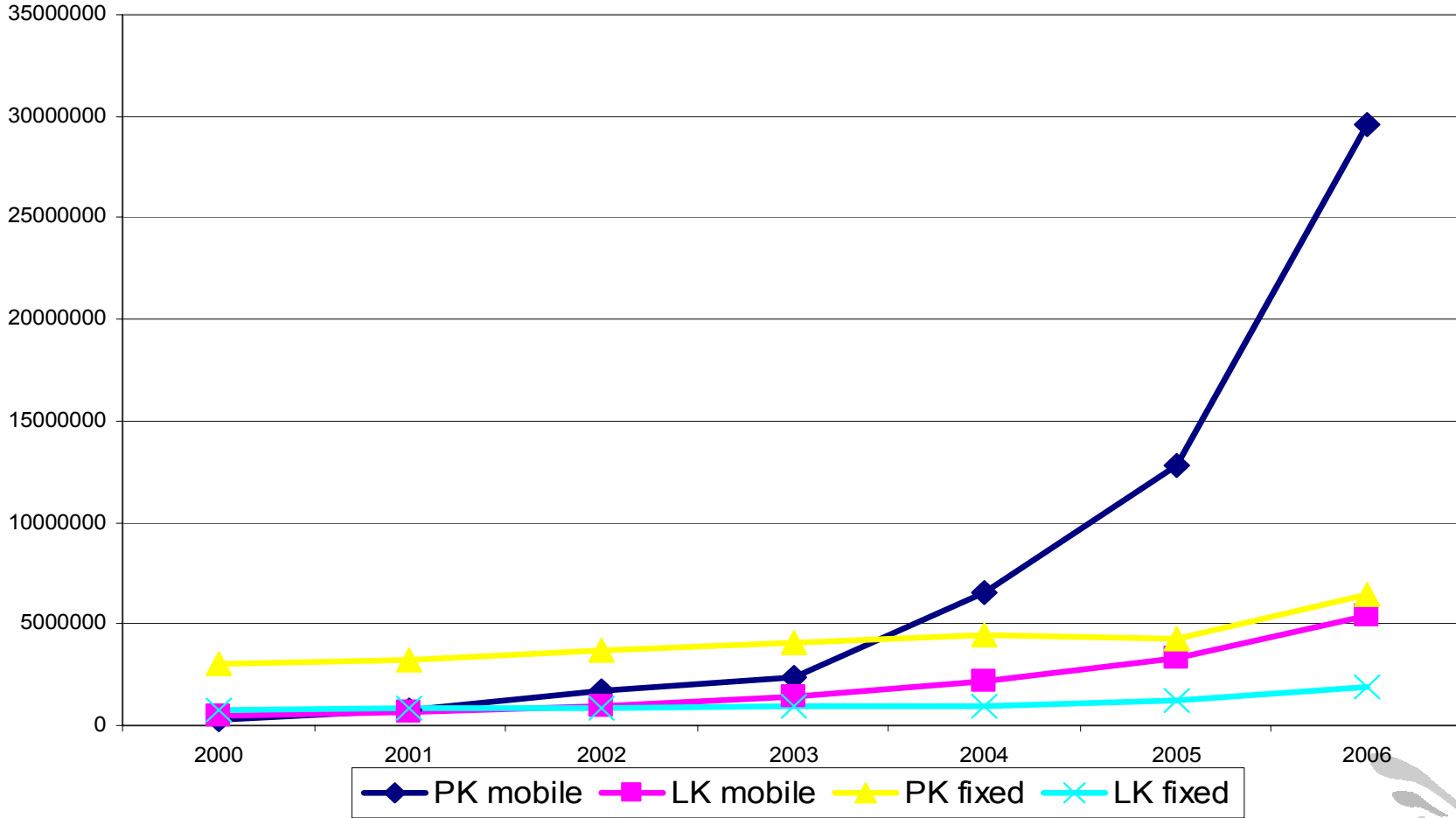
- ❑ Sri Lanka (and India) significantly ahead of Pakistan
- ❑ Lead in mobile was bigger than in fixed

	PK	LK
Fixed/100	2.33	4.43
Mobile/100	0.56	3.56



Which chart to use?

Fixed & mobile connections, 2000-06, or . . .



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Alternatives?

- Fixed/100 and mobile/100
- F+M/100
- Different time periods
- Growth rates
 - Year-on-year
 - CAGR
- Price comparisons
- Urban-rural comparisons



What is the correct communication strategy?

- “The total tele-density of Sri Lanka and Pakistan are 36.6 and 35.4 at the end of year 2006 and it is observed that Sri Lanka is leading Pakistan.”

-Director General of Telecom
Sri Lanka

in *Montage*, February 2007, p. 34



What is the correct communication strategy?

- “We are impressed by the spectacular growth achieved by Pakistan. I am forming a study team from the Ministry, the TRC and the ICT Agency to visit Pakistan and make immediate recommendations on the changes we need to make.”



What is the correct communication strategy?

- “We are impressed by the tremendous gains made by Pakistan. I am convening a study group of operators and others to recommend immediate actions on barrier such as the non-disbursement of universal service funds and the continuation of receiving party pays. Of course, you have to understand that as a democracy, we have to deal with the courts and appeals, unlike some other countries”

