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## BEST PRACTICES IN ICT POLICY

# FREE-MARKET COMPETITION AND LICENSING: METHODS TO IMPROVE ICT ACCESS

### COMPETITION INCREASES ACCESS TO ICTS BY:

- Lowering access prices
- Increasing the quality of services
- Increasing the variety of services and packages
- Increasing investment in infrastructure and new technology; and
- Increasing the market penetration so that underserved communities (such as rural areas or the poor) now have access.

### HOW TO PROMOTE COMPETITION ?

As countries move from state-owned monopolies to competitive systems, there is a need for independent oversight, usually performed by regulatory bodies, to protect consumers, investors, and the public good.

#### Free-Market Approaches Increase ICT Access!

- Allows for a variety of business models and network technologies used for providing Internet access.
- Some carriers create numerous direct traffic exchange relationships; others deal only with a small number of other backbone networks.
- Commercial negotiations provide the flexibility for market-driven traffic exchange relationships to continue to develop.
- Imposing a unified settlement rate system distorts normal traffic flows in competitive markets. It also fundamentally alters the incentives for commercial solutions to the high cost of Internet access.

**One powerful tool is open and transparent licensing of ICT operators and providers.**



dot-GOV, funded by U.S Agency for International Development (USAID) and implemented by Internews Network, Inc. works with USAID Missions and Bureaus to promote competitive policy and regulatory reforms in telecommunications and e-commerce to enhance economic and social development, and to attain universal access to information and communications technologies (ICTs).

## WHY DO LICENSES MATTER?

- **For entrepreneurial operations and private investment**, businesses need clear and transparent commercial operations and regulatory conditions (especially for those with investments from other countries). They need to know that the facilities and services they are providing are legal, what rights and obligations they have relative to those services, and what the competition can and cannot do. Licensing requires defined application processes and codified rights and responsibilities of the licensee.
- **Governments and regulatory bodies** need to know who are providing services in order to ensure the public good is being served and that regulations and legal obligations are being complied with. Regulators oversee the market to ensure consumers are protected, competitors are playing fairly, and identified social and economic benefits (such as public safety and consumer protection) are being achieved. Licensing of the players in the market makes regulating the market clearer and more consistent.
- **The private citizen** needs to know who is providing services and under what terms, that there is open and fair competition, and that they have legal recourse in case of poor service or disagreement.
- **International community**, such as the World Trade Organization, supports open and effective competition as part of world trade agreement obligations. The WTO may allow protective practices for a short period of time (five years is generally allowed) but afterward substantially liberalized market entry is expected. Licensing helps governments provide WTO and other countries with that evidence.

### SUPPORTING A HIGH LEVEL OF PRIVATE SECTOR INVOLVEMENT

USAID, through dot-GOV, has promoted public-private partnerships throughout the world with workshops, conferences, and direct capacity building initiatives. These activities, which include both for-profit businesses, and civil society groups, help inform ICT regulators about the needs of the private sector and the impacts of licensing.

## WHO AND WHAT ARE USUALLY LICENSED IN TELECOMMUNICATIONS?

- Internet Service Providers (varies among countries)
- Landline and cellular telephone service companies
- Voice over Internet Protocols (VoIP) service providers (varies among countries)
- Most users of radio spectrum (e.g. radio stations, satellite uplinks, wiMax, etc.)

## GOOD LICENSING:

- **Outlines the obligations, rights, and responsibilities of the licensee.** The license should define the facilities a licensee is permitted to operate or the services the licensee may provide and under what conditions.
- **Serves as explicit grant of authority to a given licensee to conduct business under specified terms.** Licenses establish the legal relationships between government, licensees and consumers and offers recourse for violations of the license terms.
- **Clearly defines who is allowed to do business and who is not** – which helps regulate the market to avoid confusion, fraud, and rights infringement. Licenses should describe the activities or equipment to be licensed and any applicable standards. Businesses can invest money in an enterprise confident they have a legal license to provide services.
- **Has easily available information on application procedures to obtain, renew or retain licenses.** Licensing procedures should be clear, timely, and efficiently processed. Fees should not constitute an impediment to performance of the licensed activities or an unacceptable constraint on market entry. Reasons for rejection of application shall be disclosed upon request of applicant and subject to judicial review.
- **Has requirements not more trade-restrictive than is necessary** to fulfill a legitimate objective. Once granted, a license should enter into effect immediately in accordance with specified terms and conditions contained in the license.
- **Is recorded and terms made available to the public.** By being publically registered or recorded, the license serves as a notice to the public and competitors of the nature and terms of business that licensee is entitled to conduct, which increases transparency.

### PROMOTING STRONG, INDEPENDENT REGULATORY BODIES

USAID, through dot-GOV has supported the Telecommunications Regulators of Southern Africa through both direct capacity development and through increased access to academic data and analysis. dot-GOV has also given direct technical assistance on licensing to regulatory bodies in countries around the world.

Strong, independent regulatory bodies can create open and transparent licensing systems, which allow them to monitor the market and social good.

## WHY IS TRANSPARENCY IN LICENSING IMPORTANT?

Because licensing is so important for doing business, transparency in licensing is key to ensuring open and honest competition. Disclosure of license obligations allows consumers to learn the terms of services a licensee may legally provide. A lack of transparency in licensing can support fraud, unfair competition, retention of monopoly, or corruption.

## SUGGESTED READING

**Licensing in a Regulatory Framework**, William B. Garrison, Workshop on Licensing and Regulatory Bodies, Hanoi, Vietnam November 2002

**Telecommunications Regulation Handbook**, The World Bank, 2000; Module 2 – Licensing Telecommunications Services

<http://www.infodev.org/projects/314regulationhandbook/module2.pdf>

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