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Benchmarking Regulators

Making Telecom Regulators More Effective in the Middle East

Like telecommunications reformers elsewhere, Arab countries have set up independent regulatory authorities to make objective, consistent, and nonarbitrary regulatory decisions. This is a major step forward and is already delivering positive results for consumers in the form of new and better telecommunications services. Still, some governments seem reluctant to hand over the regulatory role, limiting the effectiveness of sector regulation and the agencies formed to implement it. One way forward is through benchmarking—to help policymakers and potential investors assess regulatory performance and prioritize efforts to strengthen it.

The Arab countries implementing reforms in telecommunications have taken steps to restructure (and often privatize) the incumbent operators, introduce competition in some market segments, and update regulatory frameworks (table 1). The leaders—Algeria, the Arab Republic of Egypt, Jordan, Mauritania, Morocco, Saudi Arabia, and Sudan—have set up independent regulatory authorities. Oman and Tunisia have decided to establish such authorities, and Bahrain and Lebanon are considering doing so. But despite relatively strong legal foundations, the new authorities face big challenges as they struggle to establish their credibility and exert their authority:

- Lack of adequate autonomy and a clear mandate to make and enforce key decisions, free of political interference. In Morocco the

National Telecommunication Regulatory Agency lacks a mandate for providing clear safeguards against anticompetitive behavior, making its job much more difficult. The strong government representation on the boards of the regulatory agencies in most countries increases the chances of political interference.

- Scarcity of professional and financial resources and limited tenure security for commissioners. In some Arab states regulators have faced high turnover of key staff due to poor compensation and job security. And regulators have limited control over their funding and spending.
- Limited capacity to actively regulate (rather than administer) the sector and to enforce decisions. Most regulators have yet to master all the regulatory levers, such as industry structure, licensing, pricing, and universal

Telecommunications reforms in selected Arab countries as of June 2002

Table		● Partially completed	⊕ Completed	Jordan	Morocco	Saudi Arabia	Egypt
1	Initiative						
	Updating regulatory framework						
	Adopting new telecommunications act			⊕	⊕	⊕	⊕
	Creating independent regulatory authority			⊕	⊕	⊕	⊕
	Reorganizing public operator						
	Corporatizing operator			⊕	⊕	⊕	⊕
	Privatizing operator			⊕	⊕	●	●
	Liberalizing sector						
	Licensing new operators			●	●	●	●
	Undertaking commitment to telecom reform under World Trade Organization agreements			⊕	⊕	●	●

Source: Author's compilation.

Benchmarking telecommunications regulatory authorities in selected Arab countries, June 2002

Table		✓ Yes	✗ No	Jordan	Morocco	Saudi Arabia	Egypt
2	Benchmark						
	How were the regulatory authority and its mandate established?						
	By detailed legislation?			✓	✗ Brief sector law and detailed regulation decrees.	✗ Brief sector law and ordinance.	✓
	Does legislation specify regulator's responsibilities in detail?			✓	✓	✓	✓
	Does it balance discretionary powers with predictability?			✓	✓	✓	✓
	Does it clearly define roles of different institutions?			✓	✓	✓	✓
	What kind of governing body is the regulatory authority?						
	Sector specific?			✓	✓	✓	✓
	Collegial board?			✓ With 5 full-time members.	✓ With 15 members (none full time), 10 from government.	✓ With 9 members (only governor is full time).	✓ With 15 members (only executive director is full time).
	Separated from political and business interests?			✓ Including complete separation from sector ministry.	✗ Prime minister chairs board. Some board members also sit on incumbent operator's board.	✗ Sector minister chairs both the regulatory and the incumbent operator's boards.	✗ Sector minister chairs both the regulatory and the incumbent operator's boards.
How autonomous is the regulatory authority's decisionmaking?							
Can decisions be appealed?			✓ To courts.	✓ To administrative courts.	✓ To sector minister or Board of Grievances.	—	

service obligations. In Jordan the inability to build a strong, proactive regulatory authority has meant that issues tend to drag on unresolved.

- Limited adoption of transparent regulatory processes and consultation that can help increase public support and enhance investor confidence. The recent disputes arising from the termination of two mobile phone contracts in Lebanon are a clear example of the adverse effect of lack of trans-

parent regulation. But new regulatory authorities have made good progress in Jordan (in public consultation) and in Algeria, Mauritania, and Morocco (in the transparent award of licenses).

Benchmarking institutional profiles

Developing credible, effective regulation takes time and many iterations. Egypt, Jordan, and Morocco have already moved to update or revise their telecommunications legislation for

Table **Continued**

2 Benchmark	Jordan	Morocco	Saudi Arabia	Egypt
Does the regulatory authority have enforcement powers?				
Does it have clearly defined powers?	✓	✓ Especially on interconnection.	✓ Especially on interconnection.	✓ Especially on interconnection.
To gather information?	✓	✓	✓	✓
To institute safeguards (fines and sanctions)?	✓	✗	✓	✓
To implement rules for arbitration and dispute resolution?	✓	✓ Interconnection disputes.	✓	✓
To award, enforce, and revoke licenses?	✓	✗ Makes recommendations to government.	✗ Sector minister approves fixed and mobile licenses.	✓
How much job security do commissioners and key staff have?				
Who appoints commissioners?	Council of Ministers.	Prime minister (board) and king (director general).	Council of Ministers.	Prime minister.
How long is their term?	4 years (renewable).	5 years for nongovernment board members. No defined term for others.	4 years (renewable).	2 years (renewable) for all members except executive director.
Do clear rules exist on what can lead to dismissal?	✗	✗	✗	✗
Does authority have its own staff recruitment and compensation rules?	✓ Subject to approval by Ministry of Finance.	✓ Subject to approval by Ministry of Finance.	✓	✓
Does the regulatory authority have financial autonomy?				
What are its funding sources?	Government budget.	License and spectrum fees and Treasury.	Administrative license, spectrum, and other fees.	Government budget, administrative license fees, and part of license acquisition fees.
Does it have full control of its own funding?	✗ Limited control, subject to Ministry of Finance controls.	✗ Limited control, subject to Ministry of Finance controls.	✓	✓
Are its accounts subject to external auditing?	—	—	✓	—
Does the regulatory authority use transparent decisionmaking processes?				
Publish draft decisions for comment?	✗	Only for licensed operators.	Not yet clear.	✗
Publish decisions and justifications?	Decisions but not justifications.	✓	Not yet clear.	Decisions but not justifications.
Issue annual reports?	✓	✓ Though none has been issued yet.	✓	✓
Hold public consultations?	✓	✓	Not yet clear.	✓

— Not available.

Source: Author's compilation based on published sector laws and regulations.

a second time and to refine the structures and functions of their regulatory authorities. As policymakers in these countries and others attempt to improve the performance of regulators, they can turn to international best practice to benchmark the institutional profiles of regulatory authorities and their ability to undertake effective regulation (table 2). Most critical:

How were the regulatory authority and its mandate established? Establishing a regulatory authority under a sector law legitimizes its regulatory

processes and decisions and reduces opportunity for political interference—while embedding decrees and regulations in licenses or concession contracts is a weaker alternative. Defining a clear mandate for the regulator relative to other institutions leads to a predictable environment, preventing conflicts among stakeholders. While flexibility is needed in a rapidly evolving environment, lack of details on the regulator's roles, powers, and responsibilities opens the door to broad interpretation and dis-

cretionary decisions and actions, creating an uncertain environment for industry players.

What kind of governing body is the regulatory authority? A sector-specific authority, independent of all political and business interests, is optimal. Recent international experience shows that the most effective regulatory authorities are collegial bodies with full-time commissioners appointed on the basis of professional competence rather than political allegiance. Staggering the commissioners' terms can help ensure continuity and reduce regulatory capture by a government or party.

How autonomous is the regulatory authority's decisionmaking? Regulators are most credible when they can make decisions and enforce them without political interference or the chance of decisions being overturned. But effective regulation also requires the ability to appeal the regulator's decisions, preferably to the courts (assuming judicial competence). This provides a check on regulatory discretion and overregulation without weakening the independence of the regulator by exposing it to political pressure.

Does the regulatory authority have enforcement powers? The regulatory authority must have teeth. That requires not only a clear, formal delineation of its enforcement powers but also the ability and willingness to exercise its authority and enforce its decisions. Regulators need the power to gather information and thus reduce their information disadvantage relative to regulated companies, to institute safeguards against anticompetitive behavior, to implement rules for arbitration and dispute resolution, and to award, enforce, and revoke licenses.

How much job security do commissioners and key staff have? Regulation often comes down to people. To attract and retain a competent staff able to make sound, objective judgments on complex and often politically sensitive issues, a regulatory agency needs to ensure job security. Commissioners should be appointed for fixed terms, ideally by the head of state, and be removable only for cause, such as wrongdoing or incompetence. Making the appointment of commissioners subject to change with the government reduces continuity and makes regulatory decisions more susceptible to political influence. And subjecting staff recruitment and remuneration

to civil service rules makes it difficult to attract and retain highly skilled regulatory staff.

Does the regulatory authority have financial autonomy? Financial independence can go a long way toward ensuring regulatory independence. An optimal funding arrangement can be self-financing through license, spectrum, and other fees charged to regulated companies. Dependence on uncertain budgetary allocations, especially during periods of fiscal austerity, can weaken regulatory capacity and increase the potential for political influence.

Does the regulatory authority use transparent decisionmaking processes? Transparency can be as much a boon for the regulators as for the public and the regulated companies. Circulating draft decisions for comment, publishing decisions and justifications, and holding public consultations and hearings can help regulators build consensus around their decisions and inoculate themselves against charges that they have rendered arbitrary decisions behind closed doors.

Conclusion

Enactment of laws to set up regulatory agencies should be followed up with consistent enforcement, legitimization, and, where necessary, fine-tuning. Policymakers in Arab states who have already established independent, sector-specific regulators can use benchmarking to create an institutional profile of regulatory agencies and identify actions that could improve their performance and effectiveness. Policymakers who have not yet modernized the telecommunications sector can apply the technique in getting started. And potential investors can use the technique in appraising political and regulatory conditions that affect their investment strategies.

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