# The Art of Regulating Telecommunications and Media

Point of View

# OECD: integrity crucial for regulators

- OECD definition of regulators [1]):

  *"Regulators are entities authorised by statute to use legal tools to achieve policy objectives, imposing obligations or burdens through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement.*

  *Often they will use other complementary tools, such as information campaigns, to achieve the policy objectives, but **it is the exercise of control through legal powers that makes the integrity of their decision-making processes, and thus their governance, very important**."* *(accentuation by CoCoCo)*
- 'Integrity' is a rather abstract concept and the challenge is to give it a practical meaning
- Furthermore, regulators should have a clear role, be accountable and contribute to national welfare [2])

[1]) "The Governance of Regulators", OECD Best Practice Principles for Regulatory Policy, OECD Publishing, 2014

[2]) "Being an Independent Regulator", The Governance of Regulators, OECD Publishing, 2016

# Economic theories on regulation

- ***Public Interest theories*** assume regulators
    - Have sufficient *information & enforcement powers*
    - Pursue the public interest:
    - Rectify market failures

- ***Private interest theories*** assume
    - Regulators have insufficient knowledge of markets & businesses
    - All economic agents pursue their own interests
    - All individuals, including public servants, are driven by self-interests
    - Regulators cannot really pursue the public interest
    - Economic agents may succeed in pursuing their own interest at the expense of the public interest

# Areas of regulation

1. ***Economic regulation:***
   - *Structural – market characteristics*:
     - Market design, e.g. number of players, split between core infrastructure and service providers
     - Market access: qualifications, licences, authorisations
   - *Conduct - behaviour of producers and consumers, e.g.:*
     - Prices: both consumers and competitors (e.g. site sharing costs)
     - Interference/ compliance with technical standards
     - Consumer protection, including:
       - Roaming and interconnection
       - Switching
       - (Universal) service obligations
       - Protection against criminal, fraudulent activities

2. ***Social regulation – protection of workers, consumers and society at large:***
   - Health, safety and environment
   - Consumer rights
   - Protection against harmful and illegal content

3. ***International agreements, including:***
   - WRC-agreements/ Radio Regulations
   - Compliance with international obligations, such as international number plans and the Budapest Convention on Cybercrime

# Fundamental issues in regulation

— Public interest: hard to define & to measure

— Social issues: politically sensitive $\Rightarrow$ possible pressure on regulator

— 'Market failure': difficult to quantify

— Information on demand, investments and costs (e.g. operational expenses, financing costs) is hard to get for regulators

— Internationalisation complicates enforcement:

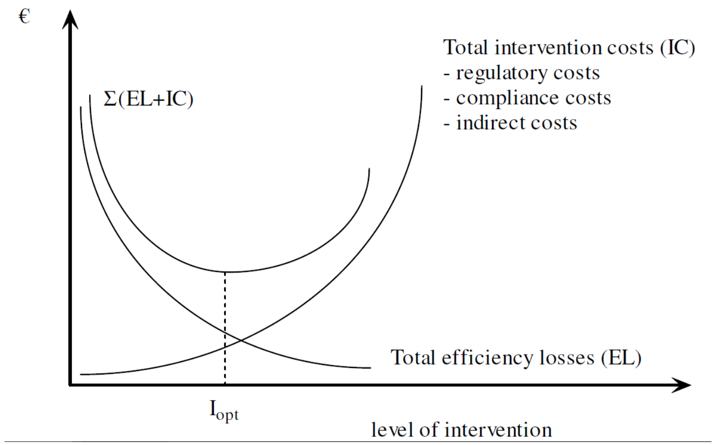
- Foreign companies (e.g. OTT phone & messaging service providers) may dominate the national market
- Local parties (e.g. telco's) should not be disadvantaged

— Intervention costs should stay below the (anticipated) gain in welfare

— Pressure by interest groups/politicians, e.g. through *media campaigns,* could result in sub-optimal decisions

— In the absence of sufficient countervailing power regulators could follow their own agenda, resulting in economic inefficiency

— The remit of a regulatory agency should be very clear to avoid 'regulator shopping' by market parties and conflicts between agencies




*(Source: "Pros and cons of sector specific regulation", Johan den Hertog, 2010)*

# Finding the proper level of regulation

1. Pros and cons of a sector specific ***regulatory authority***:
   - ***Pros***:
     - Independence
     - Sector understanding results in more effective rules
     - Ability to respond to sector-specific inefficiencies
     - Dedication
     - Flexibility
   - ***Cons:***
     - Introduction of costs both for the regulator and for companies, such as information gathering, monitoring, compliance costs
     - Risk of 'competition' between regulators in overlapping areas, such as broadcasting. Telecommunications and data protection
2. Finding the optimal level of *regulation* is difficult *ex ante:*
   - Missing information leads to (too) many assumptions
   - Impact of  new rule on welfare can often only be defined qualitatively
   - Strategic response of market players can be unexpected
   - Risks can be reduced by conducted market consultations

# Typical areas of regulation

- Monopolistic markets:
  - Monopolists choose prices that maximize profits
  - Regulator corrects situation, e.g. with price or profit rules
- Competitive markets:
  - Social regulation
  - Correcting undesirable ‘externalities’ like health, safety and environmental issues and risk of exclusion of certain groups
  - Promoting innovation
  - Retaining a level-playing field, e.g. by rejecting fusions or acquisitions
- Controversial or sensitive products/services:
  - Information provisioning, especially related to media:
    - Plurality
    - Diversity
  - Social stability
  - State security
- International co-ordination:
  - Supporting or conducting negotiations
  - Implementing international agreements in local market(s)

# Regulation in Telecoms and Broadcasting

- Managing scarce resources:
  - Spectrum
  - Numbers
  - Rights of Way
- Market structuring:
  - Number of licences
  - Nature of licences: vertically integrated operators or split between (parts of) networks and services
  - Licence conditions (rights and obligations)
  - Business conduct, e.g. rules on sharing facilities and information exchange
- Consumer protection
- Selecting international standards to be used and/or defining national standards
- In case of content services:
  - Endorsing media plurality and diversity
  - Blocking or complicating the dissemination of illegal or harmful content (but should not conflict with human right of freedom of opinion and expression)
- International co-ordination
- Enabling technologies for non-commercial services, including emergency services, military and science

# Conclusions for ICT-Regulation

- An ICT regulator should have a clear profile and remit:
  - The scope of an ICT regulator often overlaps with other regulatory authorities, for instance a Competition Authority or a Data Protection Authority
  - It should be clear which agency has the last word in case of overlapping issues. Delays and ‘regulator shopping’ by market players are undesirable
- Regulators introduce costs to market players. It is vital that a regulatory agency produces benefits that outweigh the costs. The regulator should aim to minimise costs and market distortions
- A regulator should protect its independence, for instance by adopting the OECD seven principles for the governance or regulators
- Typical areas for an ICT Regulatory Authority are:
  1. Spectrum management
  2. Number management
  3. Infrastructure management
  4. Market structuring (in cooperation with the Competition Authority)
- In case of media a regulator may also have a responsibility for content-related issues, e.g. in connection with blocking illegal/ harmful content