Building a strong regulatory framework

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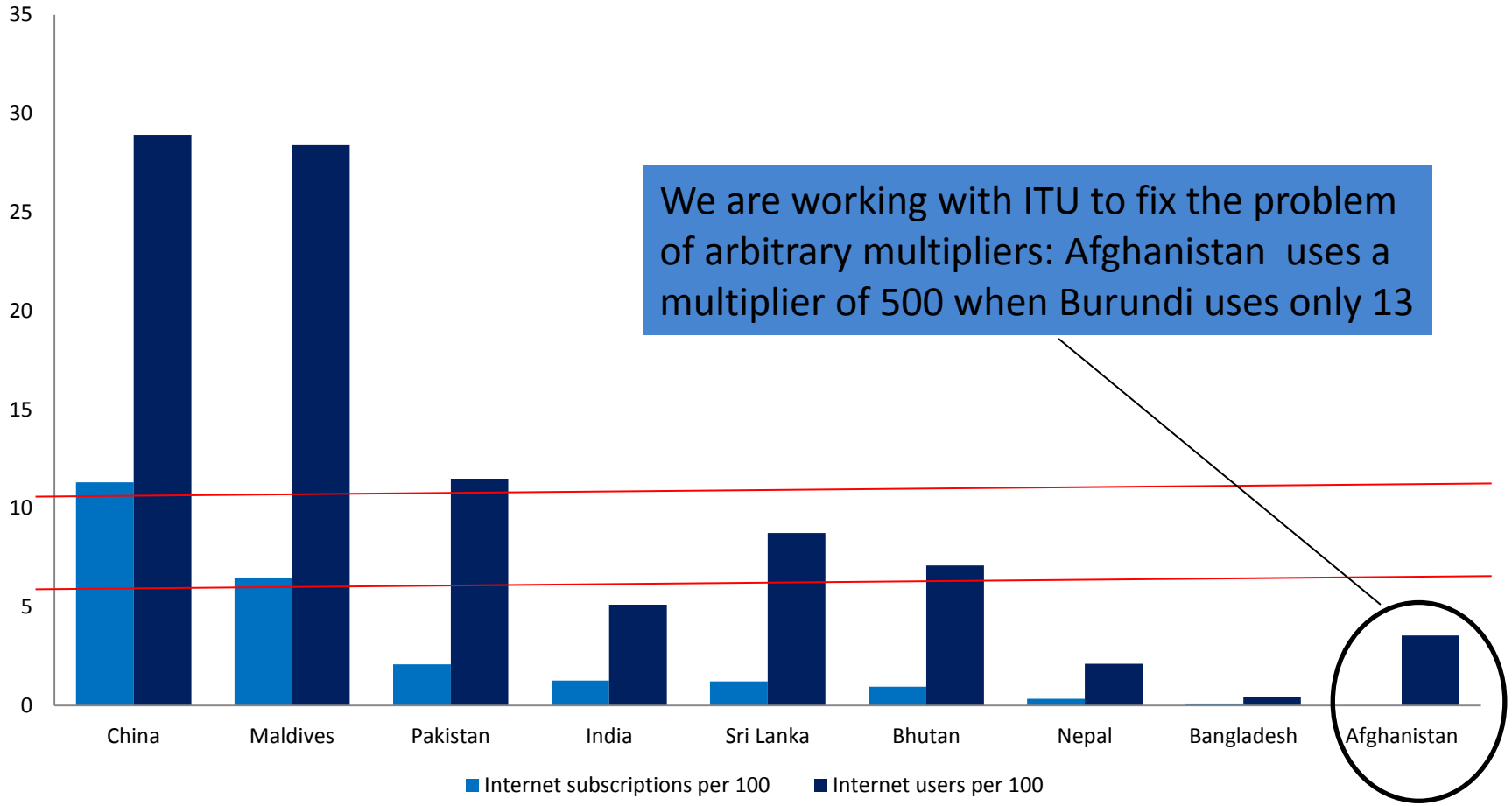
Agenda

- The success of voice and the challenge of Digital Bangladesh
- What can regulation contribute?
  - Not a comprehensive discussion
- How to do good regulation
  - Bracketing the need for new law and policy

Voice: A success in difficult circumstances

- ~100% of national territory covered by signals
- High uptake
  - 90% + say they have used a phone in last 3 months
  - More phones than radios in BOP households
- Prices among lowest in the world
  - Result of **Budget Telecom Network** (BTN) business model
- Voice has become a commodity; profits a problem ➔ mobilizing capital more difficult

The challenge for Digital Bangladesh



Source: ITU, 2009

A challenge that can only be met . .

- By extending the **Budget Telecom Network** model to broadband
  - Low prices must be offered
  - Costs must be kept down to make low prices sustainable
- By enabling the build out of wireless access networks capable of handling data cost-effectively
  - Backed up by non-discriminatory, cost-oriented access to backhaul, including redundant capacity
- By offering applications that are of value to consumers, giving them reason to use broadband

Regulatory contributions to Digital Bangladesh

- Understand that what amount to overlay networks will have to be built; Also understand that creating platforms for applications will require investment
  - Major investments, with relatively long gestation periods, required
    - **Regulatory risk** must be reduced, especially re licenses, renewals & spectrum
- Develop, in consultation with stakeholders, a roadmap on when and what spectrum will be made available
  - And adhere to it
- Leverage the BTN model to achieve policy objectives, rather than work at cross purposes to it

Reduce regulatory risk for Digital Bangladesh networks

- Market entry
  - Current discussion on license renewal should not be limited to these licenses or to renewal only
  - Model: Pakistan licensing policies of 2003
    - Emphasized transparency and predictability
    - Resulted in all operators being brought to a level playing field
    - Renewal handled in exemplary manner
  - But market-entry policies incomplete without market-exit rules

Reduce regulatory risk . . . (market exit)

- Who can best decide number of suppliers?
  - Not Minister; not regulator; but the market
    - Transparently assign as many licenses as resources (spectrum) permit in blocks adequate for data and voice; no point in fragmenting ➔ increasing costs
      - Allow secondary trading so operators can find the optimum distribution of spectrum
    - Create orderly exit mechanisms (ideally, known at time of entry), so that market can settle at optimum level
      - Includes rules on spectrum, secondary trading is a solution
      - Also safeguards for consumers

Reduce regulatory risk . . . (scarce resources)

- Spectrum is the most critical input in providing wireless broadband access
  - Spectrum refarming is central
    - All users of spectrum must understand that assignments are not for ever; that countries that are technology-takers must realign their spectrum assignments periodically
    - Difficult process; I did it in 2002-04 (900 and 1800 bands)
      - Requires extensive consultation with all affected stakeholders
      - Lots of listening and talk
      - Need to use proceeds of auctions to compensate "losers"
  - Operators must be able to plan and to mobilize resources
    - Not just a question of auctions versus administrative allocation
      - Auctions are best, but unless embedded within a **roadmap**, they will distort bidder's incentives

Reduce regulatory risk . . . (road map)

- Best way to improve spectrum regulation is to set out **principles** and a schedule for refarming actions (known as roadmap)
  - Build on 2009 consultation, but make principles explicit and include time (when specific blocks will be refarmed/made available)
  - To the extent possible, reduce technology bias in spectrum assignments: e.g., why should 900 band be limited to specific technology?
  - Change and certainty
    - All should recognize that nothing is permanent in spectrum assignments
    - But change should be predictable and the path decided through extensive consultation based on principles

Reduce regulatory risk . . . (other scarce resources)

- Costs (time and money) of obtaining rights of way are escalating
  - Multiple levels of government involved
    - Not necessary to rewrite laws/Constitution
    - Simply enact amendments that provide for compulsory arbitration and time limits
- Numbers are a finite resources that is running out because all (regulators and operators) are treating it as infinite
  - Consider pricing and incentives to reuse
  - Start work on numbers/addresses for a converged world

Focus on high priority tasks and pull back from others

- As retail prices come down, greater attention must be paid to vertical price squeeze
- Government may find it useful to consider separation of BTCL's backhaul operations (including international)
- Pull back from tariff regulation
  - A form of banded forbearance exists in Bangladesh
    - Why not make it formal, allowing reallocation of regulatory resources and reducing regulatory risk

How to regulate well

- Focus on **legitimacy** = acceptance in the eyes of others
- Sources of legitimacy
  - Expertise
  - Transparency
    - Fair procedure, including consultation
    - Willingness to explain reasons for actions
  - Openness to review and appeal

Expertise ➔ legitimacy

- Requires good hiring procedures
  - Focus on those willing to learn; continual need for new knowledge
- Ability to hold and motivate good people
- Consistent focus on training
- Now, both Ministry and BTRC require expertise
- Without expertise, little basis for ex-ante, sector-specific regulation
  - But state of markets and technology are such that individual expertise alone is not enough

Procedural legitimacy

- When things are done the right way, more likely that outcomes will be seen as right
- In addition, serves to appeal-proof decisions
- Also permits regulatory authorities and staff to draw from a range of information sources and to assess the veracity and value of information

Explain, explain

- Regulators should behave like idealized bureaucrats, not as quasi-judges
  - Reasons for decisions must be given to
    - Stakeholders
    - General public via the media

Appeal and review

- Appeal and review should not be seen solely as causes of delay
- To the extent appeals and reviews can be done expeditiously, they relieve the pressure on the regulatory agency

For more . . .

- Samarajiva, R. (2010). Leveraging the budget telecom network business model to bring broadband to the people, *Information Technology and International Development*, 6, special edition: 93-97. http://itidjournal.org/itid/article/view/630/270
- Samarajiva, R. & T. Iqbal (2009). Banded forbearance: A new approach to price regulation in partially liberalized telecom markets, *International Journal of Regulation and Governance*, 9(1): 19-40.
- Samarajiva, R. (2006). Preconditions for effective deployment of wireless technologies for development in the Asia-Pacific, *Information Technology and International Development*, 3(2): 57-71. http://itidjournal.org/itid/article/view/224/94
- Samarajiva, R. (2004). Getting from dysfunctional government to e(ffective) government: Mapping a path in Sri Lanka, *International Journal of Regulation & Governance*, 4(2): 171-85.
  - A discussion of designing a Digital Bangladesh like initiative with regulatory reforms and details on spectrum refarming
- Samarajiva, R. (2002) Why regulate?, chapter 2 of *Effective regulation: Trends in Telecommunication Reform 2002*. Geneva: International Telecommunication Union.
- Samarajiva, R. (2001). Regulating in an imperfect world: Building independence through legitimacy. *Info*, 3(5), 363-68.