

Green paper on Iraq Draft Telecommunications Laws

Stakeholders, with vested interest in the growth, development and advancement of the Iraqi Telecommunications industry, convened at a multi-stakeholder international workshop, organised under the auspices of the Iraq Communications and Media Commission (“CMC”), by the GSMA, an international industry association representing 800 mobile operators globally. The event, held in Dubai, UAE from 29th January 2018 until 1st February 2018, brought together thought-leaders, expert panellists and lawmakers to discuss critical issues on the draft telecommunications laws and the liberalisation of telecom markets in Iraq. Speakers and participants in the workshop included the CMC, the Ministry of Communications (“MoC”), over 25 Iraqi Members of Parliament, the GSMA, the World Bank, the International Finance Corporation (“IFC”), the Telecommunications Regulatory Authority of Oman, SAMENA Council, Arthur D Little (“ADL”) and Albany Associates as well as the mobile network operators. Altogether 71 attendees engaged in active dialogue on matters critical to the development of the telecommunications industry in Iraq.

The event provided a platform to arrive at very important positions for the telecommunications industry in Iraq. Firstly, the consensus amongst all participants at the workshop was that the three sets of draft telecommunications laws, as presented to Parliament, require significant amendments for these laws to align with international best practice and to ensure the positive development of the sector for the benefit of the country and its people. Secondly, the urgent requirement for liberalisation of the international gateway and fibre optics networks and the consequential impacts on the growth of the digital economy in Iraq was hailed as a critical step in the development of the telecommunications sector.

Objectives of this Green Paper

The Iraqi Parliament, the CMC and the MOC all have a very strong interest in ensuring that the telecommunications law facilitates greater levels of sustainable investment in the communications sector, that it creates the basis for meaningful competition and that it ensures improved outcomes for the users of communications services in Iraq.

The achievement of these fundamental objectives is critically dependent on whether the regulatory arrangements that are included within the Law(s), or which are facilitated through the operation of the Law(s), are capable of being implemented in a transparent, accountable and proportionate manner in line with international best practice. If the new Law is not drafted in accordance with international best practice regulatory principles in every material respect, it has the potential to create detrimental effects on investment, competition and ultimately the interests of end-users.

As one of the key conclusions of the workshop, it was agreed that all parties will develop a consolidated position paper (“Green Paper”) which summarizes the recommendations and observations of the experts. Furthermore, it was intended that the Green Paper will be presented to all attendees as well as members of Parliament, MOC, CMC and the Prime Minister’s office.

This Green Paper highlights best regional and international telecommunications principles that Iraq should consider in its Telecommunications and Media regulatory framework and which should guide the development of the draft Law(s).

Most importantly, the Green Paper also proposes an execution approach to the development of the telecommunications law. This can be embarked upon and developed by experts and thought-leaders to ensure that a fit-for-purpose law is available within a six-month period and is completed for first, second and third readings in Parliament by Q3 2018.

Annex A also details the broad principles that are the basis for international best practice principles for the development of the Telecommunications legislative and regulatory framework.

Annex B provides succinct information on presentations and submissions by each thought-leader and expert, supporting the conclusions.

Specific policy matters that must be given due consideration

The Liberalization of the Telecom Sector: To encourage investment in telecommunications technology and networks, to deliver superior quality and encourage efficient delivery of services, best international practices have been encouraging governments to liberalize their telecommunications sector. Most MENA countries started the liberalization of their telecommunications sector in the 1990's. Iraq is one of the very few countries in the region that has not yet liberalized its telecom sector.

The current three draft laws emphasize the MOC monopoly over the fixed services, telecom fixed infrastructure including fibre, broadband internet services and the international gateway. The private sector under the current proposals would only be allowed to invest in mobile services. Lawmakers should embark on regulatory reform to push for the liberalization of the telecom sector in Iraq for the benefit of the country.

Competition in International Gateway Services (IGW) should be encouraged, as it leads to reduced consumer costs, more international bandwidth and improved quality of service to operators. IGW liberalisation delivers macroeconomic benefits by lowering the cost of business, ensuring diversity of supply and international competitiveness, attracting investment and increasing connectedness in the global economy and would allow Iraq to fully realize the potential of its strategic location in providing regional and global connectivity for Eastern Europe, Central Asia, South Asia, and the Middle East. Deployment and sharing of Optical Fibre connectivity should also be given consideration, as this is increasingly seen as the bedrock for a digital economy and for delivering next generation mobile connectivity (e.g. 4G and 5G).

One Comprehensive and Coherent Regulation: It is important to have one comprehensive and coherent telecommunications law which states the fundamental principles governing the telecom sector and which clearly divides the respective powers and authorities between the Ministry (MOC) and the regulatory authority (CMC). The Law must also clearly define the fundamental rights and obligations of other stakeholders, especially telecom companies to encourage investment certainty.

The current Iraqi approach whereby three separate draft laws (Telecommunications and IT Law, CMC Law and MOC Law) are proposed is unlikely to lead to an optimum outcome. The proposed laws as drafted include different governing principles that may lead to unnecessary and overlapping contradictions between the intuitional entities and complicate the management and administration of the telecommunications sector, which may hinder investment and development of the sector.

The three draft laws contain repetitions and contradictory principles. For example, the draft CMC Law includes many fundamental principles that are contrary to those included in the draft Telecommunications Law (i.e. definitions, licensing, spectrum, obligations). The three draft laws also omit many important elements that would be expected to be contained in such laws and which would provide clarity and direction to the sector and its stewardship. Important matters such as competition principles, technology and service agnostic licensing framework, license classifications and telecommunications service scope (how OTTs would be licensed), wholesale access regulation, rights of way, consumer protection including data confidentiality and security, lawful interception etc., need to be elaborated within the draft Law. Iraq should have one comprehensive and coherent telecommunications law. If the legislator insists on issuing the three separate laws, it is highly recommended that the telecommunications law include all the fundamental principles, while the draft CMC and MOC laws only include the institutional and administrative aspects of applicable for these institutions.

Specific legislative matters that must be given consideration

Independent CMC: Best international practices encourage governments to adopt and create an independent regulatory authority that is neutral, effective and subject to a fair system of appeals and parliamentary oversight. The independence of the Regulator is an essential safeguard for investors.

Although the draft CMC Law states that, the CMC should follow the Legislative Council, the current draft laws fall short of introducing an independent and neutral telecommunications regulatory authority. As currently drafted, the CMC Law provides the Council of Ministers and the MTIT significant power over the CMC by recommending its Board of Directors, determining their salaries and other CMC employees and making its accounts subject to the Government Auditor. Moreover, the CMC has not been granted appropriate mandate for oversight that can guarantee its accountability and neutrality. Therefore, Legislators should make sure that the Telecommunications Law introduces a truly independent regulatory (CMC) that can drive the Iraqi telecom sector to the digital age without interference, bias or unnecessary constraint.

Clear Separation of Powers between the CMC and MOC: One of the most important elements to guarantee an effective telecom sector is clear division of responsibility and jurisdiction of the MOC, as the policy maker, and the CMC, as the regulator. The role of government should be confined to development of the general policy for the telecommunications sector, while the telecommunications regulatory authority should be responsible for the regulation and management of the telecom sector – to achieve the policy aims as set out by government.

The current draft laws have serious jurisdictional deficiencies. The draft Telecommunications Law gives the MTIT primary regulatory powers over the Iraqi telecommunications sector (fixed telephony, VOIP, fixed and mobile infrastructure, international gateway, broadband internet, and voice over IP). The CMC's role is confined to regulation of spectrum licences. Given that the MOC is today providing many telecom services (fixed, broadband internet, international gateway, and infrastructure), this approach is as far as possible from best regional and international practices.

A Clear Licensing Framework: The telecommunications regulatory framework should include a clear licensing regime, including license categories (individual and class licenses), providing measures for issuing, modifying, and terminating licenses, as well as specifying the licensee rights, obligations, and fees, including references to obligations that may be prescribed in complementary regulations. Furthermore, the license framework should also reference the use of spectrum (particularly where the spectrum licence is separate from the network/service license), and address potential further obligations relating to specific rules on competition, interconnection, access, market definition and dominance, numbering and/or universal service.

Increasingly, best international practice is moving towards licenses that are technology and service agnostic, meaning that the providers of same or similar services are treated alike, rather than regulated differently simply because they may use different technologies to deliver services.

The current draft Laws adopt a confusing and conflicting licensing framework for Iraq. For example:

1. It does not classify the licensing categories and their obligations.
2. It does not include clear rules for issuing, amending or revoking licences.
3. It gives the Ministry the authority to licence telecom services and infrastructure and issue any instructions for that purpose. The CMC authority is confined to licensing spectrum.
4. Rules related to managing and allocating national spectrum is confusing and gives CMC unusual authorities (i.e. the Ministry is usually responsible for preparing and holding the national spectrum schedule (civil and military), while the CMC jurisdiction is confined to the assignment and allocation of telecom frequencies).
5. It does not set up the main principles for the regulation of important telecom elements such as competition, interconnection, numbering, and universal services.

The Iraqi legislator should push for a clear licensing framework in the draft Telecommunications Law that aims to protect and promote investments in the Iraqi telecom sector and guarantee a fair regulatory framework. This process must however be cognisant of the acquired rights of the current existing licensees and must seek to ensure their rights are not degraded in the process with clear transition procedures enshrined in Law.

Clear Penalties and Dispute Settlement Process: The telecommunication regulatory framework should include clear procedures and penalties' that may apply in case of any breach of obligations, with a clear dispute settlement process that would allow telecommunications operators to review and challenge the regulator's decisions or sanctions that may be imposed for alleged breach. International best practice suggests that in principle, regulators are not allowed to penalize telecommunications operators without a written notice, and without the telecommunications operators being given the opportunity to defend or rectify such alleged breaches within reasonable timeframes. Procedures for alleged breaches and subsequent penalties must also contain opportunities to defend such assertions and rights to appeal any regulatory decision to the judicial system.

The Iraqi draft laws do not include a clear and transparent dispute settlement process, especially between the CMC and telecommunications operators, and in fact, the rules are contradictory. For example, the CMC Law states that disputes should be resolved by an Appeal Panel, for which two out of three members are appointed by the CMC itself, and the decisions of the appeal panel are final, while the draft Telecommunications Law gives telecommunications operators the right to use and appeal decisions to the Courts. Moreover, the CMC Law gives the CMC's CEO the authority to shut down a telecommunications operator for up to 30 days in case of a reasonable reason related to public security, public order or morals. No such provision would be seen internationally in the context of a telecommunications network or services. The current dispute settlement process enshrined in the Telecommunications Law is not fair or neutral. The Iraqi legislators should promote the establishment of a specialized judicial committee, whose members are appointed by the High Judicial Council, and be responsible for resolving telecom disputes and its decisions, whilst still being subject to review by the Cassation Court.

Confirm Role of Public Consultations: Many regulatory bodies have developed detailed processes for developing and implementing public consultations regarding their regulatory instruments. These processes make decision-making by the regulatory body transparent to all parties and include specific management processes to ensure a party does not unfairly influence such decisions. Public consultations are an essential part of open, transparent, and inclusive decision-making processes, especially regarding the adoption of new or amended regulations. The Law should provide interested stakeholders a right to be consulted on any decision that would affect them. Interested parties should be given the right to review any proposed regulation and be provided the chance to share their opinions with CMC before the issuance of any regulations or significant decisions. The Iraqi draft Telecommunications Law does not adopt the principle of "public consultations".

Development of a New Draft Law

The preparation of a new draft law, reflective of the positions discussed in the workshop, to embrace competition and to embody the aspirations of the government in developing a strong digital economy, will require the engagement of the relevant expertise and coordination effort to ensure completion in a timely fashion. The Parties recommend the following:

1. That the GSMA should establish and lead a joint-working party (“JWP”) made up of delegates from all organisations represented at the workshop as well as other standards bodies such as the International Telecommunications Union (“ITU”).
2. Where necessary, additional international and Iraqi legal expertise will be engaged to support the actual drafting work.
3. That the JWP should be mandated to develop a charter, project plan and engagement model for interim workshops with stakeholders such as a parliamentary communications committee, other lawmakers and the executive branch of Government as well as workshops involving the telecommunications industry.
4. That the contemplated draft law should be shared with stakeholders for comment.
5. Interim workshops will provide stakeholders with an opportunity to view relevant provisions in the draft law and to ensure that these are reflective of the aims articulated in this Green Paper.
6. That the over-arching objective should be to have the revised law in place by September 2018, and to that end, the JWP will present a final recommended law to CMC and MOC towards the end of May 2018, which shall be presented to Parliament.
7. Funding for the project will be jointly agreed upon amongst CMC, GSMA and members of the telecommunications industry in Iraq.

ANNEX A: Principles of high-quality legal and regulatory framework

This Annex A summarizes the high-level principals that are the fundamental basis for the development of a policy and regulatory framework that is conducive to the development of a telecommunications sector that delivers increased levels of investment, economic growth to the country, and quality telecommunications services at efficient market prices for its residential and business population. These principals are commonly seen in action in developed telecommunications markets such as the UK, the EU, USA and Australia.

- 1. Sector legislation must provide certainty, predictability, transparency and accountability:** The development of the sector can only thrive where sector participants can invest with confidence, where there are clear unambiguous rules of the game. Private investment is a major driver for the development of the telecommunication sector and can only be encouraged when investors have confidence that their investment is made in the context of a predictable regulatory environment and when there is scope for genuine, fair and sustainable competition without intrusive government interference. Investment decisions are made based on assumptions about the market and regulatory environment. Any changes to the market or regulatory environment must be made in a fully transparent manner, where those affected have a genuine opportunity to be heard and their concerns taken into consideration, and where decisions makers are held to account, through opportunities for their decisions to be challenged and tested.
- 2. Regulation must be tailored to promote investment certainty:** The communications sector is highly dynamic and highly capital-intensive, with high levels of sunk costs and long pay back periods. Ongoing investment to meet the ever-changing demands of consumers is also constant and critical to ensuring that industry participants can deliver high quality and high-value communications services to consumers. The regulatory framework has a key role to play in encouraging and protecting these investments. Investors need to know that the regulatory environment in which they operate will remain predictable and subject to checks and balances that limit the ability for regulators to change regulatory settings and industry structures without reasonable cause. Where regulations are introduced or changed, the underlying regulatory decision must be grounded in a meaningful policy rationale and must be subject to strong transparency and accountability requirements. Uncertainty over the source, timing and impact of regulatory decisions increases the risk of investing, which in turn influences incentives to invest, ultimately resulting in detriment to end users in the form of less value and quality.
- 3. Regulation must be proportionate and adapted to legitimate policy goals:** Another key requirement for promoting investment is a regulatory framework that is proportionate and carefully targeted to achieve a legitimate policy objective, such as addressing genuine market failures. Market-based mechanisms should be preferred over regulation to the extent possible, since market-based mechanisms are best at facilitating quality economic decision making and in stimulating competition, both of which are needed to promote investment and guarantee high-quality communications services to consumers. Conversely, regulation often imposes costs and creates distortions in the market, which can hinder the development of the communications sector. To this end, the draft Law(s) must ensure that regulation is used where competitive forces alone cannot achieve desirable economic and policy outcomes and, in any event, should be applied in the least intrusive manner possible. Government should only seek to invest and/or participate in areas where private sector investment is not economically feasible and where the externalities of connectivity for social and economic development are demonstrably important.
- 4. International experience demonstrates the value of regulatory forbearance and pro-investment regulatory settings:** The value of a proportionate, light-touch regulatory framework that prioritizes investment in delivering pro-competitive outcomes for consumers is demonstrated by comparing recent

development of mobile and fixed communications markets in the United States (US) and the European Union (EU). Regulators in the US have focused on infrastructure-based competition and regulatory forbearance, while the EU has emphasized service-based competition through more extensive wholesale access obligations on incumbents. The observable outcomes for consumers have been very different. The US approach has delivered significantly higher levels of investment, more innovation and better-quality services compared to the EU approach. While prices of services are, on average, modestly more expensive in the US, consumption of communications services (measured by bandwidth usage) is higher in the US than in the EU, ultimately highlighting that end-users in the US are deriving greater value from communications services than their EU counterparts, and sooner than their EU counterparts.

ANNEX B: Minutes of meeting: Experts' feedback on the Draft Laws for ICT in the Republic of Iraq and best practice principals

The GSMA convened a dedicated workshop in Dubai on 29, 30 and 31 January 2018, to discuss with Iraqi MPs and stakeholders the three draft Laws under discussion at the Iraqi Parliament, namely:

- Draft Telecom Law
- Draft CMC Law
- Draft Law of the Ministry of Telecommunication and Information Technology

The workshop also discussed best practice policy and regulatory frameworks and the critical principals that must be given consideration for the development of a healthy telecommunications sector, which brings benefits to the country and its people, and which form the underlying basis for the development of the legislative instruments.

Experts from GSMA, World Bank, IFC, ADL, Albany Associates, and Oman's TRA, presented and interacted at the workshop to discuss and agree the high-level principals and changes that would be necessary to the Draft laws in order for them to reflect best practice.

This Annex B summarizes the main points raised by the experts at the workshop.

I. Draft Telecom, CMC Law and Ministry Law

I.I. GSMA observations and remarks on the draft laws

1. It would be preferable to adopt a general and comprehensive telecommunications law in line with the international best practices. However, if three separate laws are to be adopted, the GSMA suggests that the rules and principles of the telecom sector are included in one coherent law, and that the CMC law and Ministry law should only include the administrative aspects of these institutions. The fact that the CMC Law includes some telecom's rules and principles such as definitions, licensing, spectrum, obligations that are contrary to the Telecom Law, is not a good regulatory practice.
2. The current laws as drafted fail to introduce an independent and neutral telecommunication regulatory authority. The Council of Ministers is responsible for appointing the CMC Board of Directors, determining the salaries of the Board and other employees and CMC budget is mainly coming from the general State's budget. GSMA suggests that, in line with best international practices, parliament introduce an independent and neutral telecom regulatory authority.
3. GSMA suggests adopting the principle of "technology neutrality"; this will allow the operators to choose the best technologies to provide the most advanced telecommunications services in the spectrum allocated to them.
4. The articles related to the objectives of the laws and their implementation tools reveals that the Ministry is the primary regulator over the Iraqi telecom sector (fixed telephony, VOIP, telecom infrastructure even those related to mobile infrastructure, international gateway, broadband internet, voice over IP). The CMC's rule is confined to the regulation of spectrum licences. This is not in line with the international best practices. The GSMA recommends that CMC should have the primary responsibility for the regulation of the telecommunications sector, while the Ministry should be responsible for driving the overall sector policy.
5. The separation between the Ministry and CMC with separate and sometimes overlapping authorities and jurisdictions is not in line with the international best practices and could lead to the misaligned and confusing regulations to the detriment of the telecommunications sector. This will indeed constitute a major obstacle in the development of the telecommunications sector in Iraq.

6. The Telecom Law introduces the term of “Authorized Body” to refer to the Ministry and CMC. This vague term could lead to a conflict of authorities between the Ministry and CMC.
7. The proposed regulatory regime does not include the principle of “public consultations”, which is not in line with the international best practice.
8. The draft laws do not include a clear dispute settlement process especially between the CMC/Ministry and operators. The Articles that are dealing with this subject are contradictory. The CMC Law states that the Appeal Panel decisions are final, while the Telecom Law gives operators the right to appeal all decisions to the Courts. The proposed regulatory regime does not include a clear and transparent dispute settlement process and the GSMA recommends that this to be remedied. The GSMA suggests the establishment of a specialized judicial committee, its members appointed by the High Judicial Council, to be responsible for resolving telecom disputes and its decisions being subject to review by the Cassation Court.
9. The draft laws do not regulate important elements in the telecom sector such as competition, licences and their classifications, rights of way, data confidentiality and security, lawful interception and so on.
10. There is a clear overlap between the terms of the two laws. It would be better if the Telecom Law enclosed all the terms of the telecommunications sector and the CMC Law enclosed the administrative aspects of establishing the Regulator, such as structure, mandate of each department, decision-making process etc.

I.II. Dr. Hisham Tahat –observations and remarks on the draft laws

1. There is no clear general policy for the telecom sector in Iraq.
2. There is no clear separation of powers between the Ministry and the Regulator.
3. The structure of the Act is not in line with the comparative laws.
4. The Licensing framework is not clear enough to liberalize the market.
5. There is no separate chapter for competition framework.

And recommended that:

6. The Draft Act should translate what are the objectives of the government’s policy. (Separation of powers between the Ministry and the Regulator is a best international practice).
7. The Licensing Framework should achieve the aim of the government to liberalize the market and attract the investment to the country in this sector.
8. The following chapters should be separated: Competition, Security Requirement, Dispute Settlement, Consumer Protection.

I.III. ALBANY ASSOCIATES observations and remarks on the draft laws

1. The expert recommended having clear separation of functions between the MoC and the CMC:

Ministry of Communication:

- Creates laws.
- Issues and addresses policy concerning investors and operators.
- Ensures that the communications sector is working in line with national interest.

Regulatory Authority:

- Acts as the overarching watchdog for the sector.
- Implements and enforces national policy.
- Establishes regulation codes.
- Monitors compliance with its rules.
- Reports on sector growth.
- Mediates disputes between competitors.
- Addresses complaints from the public.

I.IV. WORLD BANK observations and remarks on the draft laws

1. The World Bank expert recommended the following roles for the MoC and the CMC:

Role of MoC

- Strategic responsibility in developing telecom sector.
- Responsibility to Parliament.
- Sets the overall telecommunications policy direction in consultation with various stakeholders.
- Other areas of responsibility include: Spectrum Policy, Cyber Security Policy.
- Incentivizes investment.
- Invests in areas where private sector investment is not attractive and where the externalities of connectivity for social and economic development are important.

Role of Independent Regulator

- Promotes fair competition, and transparent and predictable regulatory actions.
- Ensures availability of affordable and high quality telecommunications services to citizens.
- Legally, institutionally and financially independent.
- Responsibility to Parliament.
- Parties affected by regulatory decisions should have a right to seek review by a specialist body.

2. The World Bank recommends the following general principles for the Telecom Law:

Fundamental principles for sector legislation

- Certainty.
- Predictability.
- Transparency.
- Accountability.

General provisions of the Legal framework

- Roles and responsibilities.
- Institutional arrangements.
- Competition rules.
- Consumer protection (including tariff regulation).
- Access to scarce resources.
- Universal service framework.
- Enforcement & dispute resolution.

I.V. IFC observations and remarks on the draft laws

1. The IFC recommended the regulatory framework seeks to achieve the following in Iraq:
 - Creating fair rules of the game.
 - Removing the government off the playing field as an operator.
 - Securing and enhancing competition amongst the private sector operators.

II. Liberalizing the International Gateway (IGW):

II.I. GSMA observations and remarks

1. Competition in international gateway services should be encouraged, as it leads to reduced consumer costs, more international bandwidth and improved quality of service to operators. IGW liberalisation delivers macroeconomic benefits by lowering the cost of business, ensuring diversity of supply and international competitiveness, attracting investment and increasing connectedness in the global economy.

II.II. ALBANY ASSOCIATES observations and remarks

1. The most effective and transparent approaches to licence IGW, is direct award. Incumbent operators may need to be regulated to ensure reasonable access for the IGW operators to “bottlenecks” under incumbent control.
2. The move to liberalisation for fixed/IGW is the most plausible option as other markets move towards authorization/notification-based regime.
3. Regulatory intervention are required to:
 - Liberalize the wireline sector/IGW.
 - Ensure prompt licensing or even shift from licensing to authorization regime.

II.III WORLD BANK observations and remarks

1. Strong competition in IGW is a must to fully realize the potential of Iraq’s strategic location in providing regional and global connectivity for Eastern Europe, Central Asia, South Asia, and the Middle East.
2. The Lack of competition in IGW restricts the capability of private sector to offer affordable and good quality telecom services to Iraqi citizens.
3. Price of access to IGW is very high.
4. The CMC should initiate a consultative process to finalize their IGW competition recommendations for the government to consider.
5. Security of telecom network is very important for all stakeholders but this does not depend on the ownership of telecom infrastructure.

II.IV. Dr. Hisham Tahat –observations and remarks

1. There should be no limitation on issuing licenses for IGW.

II.V. Arthur D. Little (in the person of Mr. Andrea Faggiano) observations and remarks

1. Iraqi telecom market remains relatively unexplored and characterized by very low penetration levels.
2. International gateway liberalisation became prominent in the late 1990s and 2000s as countries began to move away from monopolies, towards full competition for provision of IGWs. It is surprising to find that the International Gateway is still a monopoly in Iraq.
3. Incumbent operators may need to be regulated to ensure reasonable access for the IGW operators to “bottlenecks” under incumbent control.
4. The move to liberalisation for IGW is the most plausible option as other markets move towards authorization/notification-based regime.

5. Specific regulatory intervention that should be given consideration and will surely help:
 - Enable infrastructure sharing.
 - Ensure prompt licensing or even shift from licensing to authorization regime.
 - Liberalize the wireline sector/IGW.
6. We list below, the approaches to licencing IGW from the less to the most effective and transparent, Direct Award being the best option.

“Beauty contest”

- The regulator makes a discretionary judgment about which applicants will deliver the most benefits.
- However, regulators are not necessarily effective at choosing the best option (transparency may lack).

Price based allocation

- IGW licenses could be awarded to the highest bidders.
- The price based auction relies on creating an artificial scarcity by limiting the IGW operators number.

“Class” licensing

- Licenses are granted to all those that meet a certain set of criteria, such as a low application fee and minimum criteria to ensure financial soundness.
- This encourages illegal bypass operators to become legitimate (or exit the market).

Direct awards

- Issue of licenses to operators already building alternative infrastructure in the country (usually, but not always, mobile operators).

III. Sharing of Infrastructure (Fibre Optic Cable - ‘OFC’):

III.I GSMA observations and remarks

1. Governments should have a regulatory framework that allows voluntary sharing of infrastructure among mobile operators.
2. While it may at times be advantageous for mobile operators to share infrastructure, network deployment remains an important element of competitive advantage in mobile markets. Any sharing should therefore be the result of commercial negotiation, not mandated or subject to additional regulatory constraints or fees.
3. GSMA recommends to liberalize the telecom fixed services in Iraq, and allow for the sharing of infrastructure.

III.II. ALBANY ASSOCIATES observations and remarks

1. Recommends to enable infrastructure sharing.

III.III. WORLD BANK observations and remarks

1. Strong competition in OFC is a must to fully realize the potential of Iraq’s strategic location in providing regional and global connectivity for Eastern Europe, Central Asia, South Asia, and the Middle East. Duplication of optical fibre on the existing route will lead to inefficient utilization of Iraq’s resources.
2. Reasons of not linking OFC Ownership in Telecom Law:
 - This should be dealt as Policy and regulatory Issue

- This gives flexibility to Policy makers
 - Telecom market is very dynamic and Law may not be amended to keep pace with the market dynamics and technology
3. Policy and Regulatory Decision Making Process:
 - All policy and regulatory decisions must be taken in a transparent and non-discriminatory manner
 - A consultation process with all stakeholders should be followed to take all policy and regulatory decisions
 - Various steps for this type of consultancy process may be discussed in a separate presentational
 4. Security and OFC:
 - Whether Security is a subject to be addressed in an access network or in backbone?
 - Does Ownership Matter for Security?
 - Network and Data Security is the concern of the government irrespective of ownership
 - Network security is cross-sectoral issue with cascading effect. For example, Ukraine power grid cyber-attack of 2015; Bowman Dam SCADA cyber-attack 2013
 - Most of security concerns like data breach, hacking, call interception, encryption are to be managed at access network level
 5. Private Sector Concerns:
 - Lack of competition in OFC restricts their capability to offer affordable and good quality telecom services to Iraqi citizens
 - Price of access to OFC is very high.
 6. A Possible Way Forward:
 - CMC should initiate a consultative process to finalize their OFC competition recommendations for the government to consider
 - Security of telecom network is very important for all stakeholders but this does not depend on the ownership of telecom infrastructure.

IV. Competition:

IV.I. GSMA observations and remarks

- The mobile industry supports competition as the best way to deliver economic growth, investment and innovation for the benefit of consumers.

IV.II. Dr. Hisham Tahat –observations and remarks

1. Liberalization of the market
 - No restrictions on market entry.
 - Evacuation and make available different bands of Spectrum.
 - No exclusivity to any operator.
2. Create certainty, transparency to the stakeholders
 - Clear road map for the sector.
 - Engage with the stakeholders (mainly the licensees) with the government roadmap of the sector.
 - Public consultation with the stakeholders on the new regulations.
 - Allow review mechanism of the regulator's decisions.
3. Removing barriers to entry (Licensing Framework)
 - Licensing framework should be in line with the general policy of the sector.
 - Individual licenses vs class licenses (unified licensing framework).

- The license document should govern rights and obligations of operators.
 - No modification, amendment without engagement with the licensee.
 - Create a framework for modification, cancellation and renewal of the licenses.
4. Ensure competition in the market
- Legal framework for competition in the sector.
 - Ex ante competition regulation (regulate abuse of dominance and impose efficient remedies).
 - Proper action from the regulator in cases anti-competitive behaviour from one of the licensees in the market.
 - Intervention to remove any anti-competitive behaviour and to remedy the situation in a timely basis.

V. Dispute settlement mechanism

V.I. GSMA observations and remarks

1. Article 14 states that operators can dispute and appeal Ministry/ CMC decisions in front of courts. The GSMA suggests to adopt this approach instead of the one in CMC Law which states that Appeal Panel decisions are final. This should not change the fact that the current law does not include a proper dispute settlement process and that such system should be introduced to the law.

V.II. Dr. Hisham Tahat –observations and remarks

1. Create an efficient dispute settlement mechanism.
2. Disputes between operators. Ex. Interconnection, access disputes, co-location and anti-competitive behaviours disputes.
3. Disputes (complaints) between the operator and the beneficiary (quality, billing errors, unfair terms and conditions ...etc.).
4. Disputes between operators and the regulator.

VI. Consumer protection rules

VI.I. Dr. Hisham Tahat –observations and remarks

1. Beneficiaries should have a clear complaints mechanism regarding the disputes (complaints) between the operator and the beneficiary.
2. The regulator should impose conditions in the licensees to allow consumers to complain against their rights in accordance with service contracts (quality, billing errors, unfair terms and conditions ...etc.).
3. In addition, the regulator should allow consumers to submit their complaints to decide on the consumers' complaints against their operators.

VII. Taxation

VII.I. GSMA observations and remarks

1. Governments should reduce or remove mobile-specific taxes because the resulting social impact and long-term positive impact on gross domestic product, and hence tax revenues, will outweigh any short-term reduction in contributions to governments' budgets.
2. Taxes should align with internationally recognised principles of effective tax systems. In particular:
 - Taxes should be broad-based — different taxes have different economic properties and, in general, broad-based consumption taxes are less distortionary than taxation on income or profits.

- Taxes should account for sector and product externalities.
- The tax and regulatory system should be simple, easily understandable and enforceable.
- Dynamic incentives for the operators should be unaffected — taxation should not dis-incentivise efficient investment or competition in the information and communication technology (ICT) sector.
- Taxes should be equitable and the burden of taxation should not fall disproportionately on the lower income members of society.

VIII. Spectrum

VIII.I. GSMA observations and remarks

1. We support a licensing approach that allows any compatible, non-interfering technology to be used in mobile frequency bands.
2. Adopting harmonised, regional band plans for mobile ensures that interference between services can be managed. Governments should allow operators to deploy any mobile technology that can technically coexist within the international band plan.
3. Technology neutrality encourages innovation and promotes competition, allowing markets to determine which technologies succeed, to the benefit of consumers and society.
4. Governments should amend technology specific licences to allow new technologies to be deployed, enabling operators to serve more subscribers and provide each subscriber with better, more innovative services per unit of bandwidth.