"Effective Regulatory Design for the Pacific Context"

Commentary by Paul Barker
on Paper by:
Seini O'Connor, Castalia Strategic Advisers

- Thanks to the organisers, ANU's Crawford School, for organising this Pacific Telecommunications Conference and for inviting me to participate and to the National University of Samoa for hosting the event, particularly in this magnificent Fale.
- Following the 1930s Depression and WW2, in a post-war drive to address social concerns, there was a trend by many of the newly established and largely left of centre Governments to increase State oversight and participation in the economy and other aspects of public life – reflected in nationalisations (including of communications and public infrastructure), greater planning controls, public health and welfare schemes in some countries, and setting up State Marketing Boards (or 'compulsory' cooperatives)
- The developing countries and colonies didn't receive many of these schemes, but did acquire some state commodity boards taking over trade in agricultural product marketing from the private sector, supposedly to protect farmers from avaricious private operators, and State-owned post and telecommunications organisations and utilities were established;
- Trades Unions had been set up to counter the abuse of local monopoly power of some large local employers (during a less mobile era) in relation to their labour force
- Some countries chose heavier regulation and public ownership; perhaps this process went too far, and developed and some developing countries (like India) over-regulated and controlled, stifling entrepreneurship, innovation and competition
- Some of these State functions and enterprises performed well in this region for years, driven by a commitment to a wider public good, including in the idealistic period leading up to and just after Independence.
- In Papua New Guinea, for sample, its Post and Telegraph Department was at the technological forefront in telecommunication right up until the early 1980s, when it became increasingly subject to political cronyism and rising overheads, with relatively little new investment or even maintenance of existing infrastructure.
- Until the 1990s we've seen various State-owned Enterprises and marketing boards across the Pacific performing poorly, with high overheads, in some cases even going to the wall despite their monopolies, or barely surviving with State subsidies. Some utilities and services (including telecom) failed to service their loans, and even became significant burdens on the State, rather than net income providers
- In some Pacific countries, like PNG, the public sector, including SOEs, lost their motivation, and accountability; there were different responses aimed at remedying the problem, applied with greater or less drive and commitment.....such as

establishing new structures supposedly more accountable Boards, and privatisation.

- From the turn of this decade there was also a growing recognition of the major changes in ICT and other services worldwide, and that the Pacific and its economy was being left behind with high costs and poor performance.
- In some countries the reformist drive was sporadic, for example with Papua New Guinea's commitment to privatisation short-lived and inadequately marketed, or thwarted, as in the Solomons, by the tensions and a long term contractual commitment to its monopoly telecommunications provider
- The problem was partly State ownership and the loss of accountability and some loss of professional management, and partly the lack of access of the SOEs to capital markets and finance, but largely the problem is associated with lack of competition.....as well as the natural impediments in the region: notably small and dispersed markets, inaccessibility and difficult topography.
- The monopolies have largely been State-owned, but in some cases, as with Solomon Telecom, they are substantially privately owned already, in that case by Cable and Wireless. There is nothing like the fear of impending competition or privatisation to shake up an incumbent to improve performance and cut rates and costs ...except of course, competition itself
- Real telecom reform in this region started with some of the smaller countries, notably Tonga and Samoa. From Seini O'Connor's paper it's interesting to note that in 2007, Fiji will now theoretically be the most liberalised, in terms of allowing competition in all areas of telecom (although few new licenses yet issued), with Samoa and Tonga second and third (with competition in practice), followed by Vanuatu (where competition in mobiles commenced a couple of weeks back) and then PNG, where there's perhaps the most room for competition, but little occurred till the arrival of Digicel mid last year, but where there has long been retail (only) competition amongst ISP providers, and some back-up data transmission (I may add there has long been unauthorised or inconsistent approvals for VSAT operations for individual companies, usually under the incumbent's license). Solomons appears to be the furthest behind, which perhaps is valid in terms of ICT costs and services, although Solomons has fostered various innovations, such as PFNet's Hi-frequency radio-based email network, and latterly a VSAT network around the provinces, using the incumbent's license.
- in waking up to the potential from ICT, the question is whether governments are enthusiastically or reluctantly adopting reform.
- ICT is fast moving – not just communications itself, but data, information and increasingly finance, involving both commercial banks, but also new specialised bodies catering for the provision of low cost mobile banking services for the previously unbanked.
- So regulations needed for ICT are not simply those of telecommunications, but also banking, covering also money laundering and proceeds of crime.
- Some financial regulators, such as Kenya's Central Bank and perhaps Philippines, seem to have been proactive in fostering suitable regulatory environment for such new banking systems; others, including South Africa's, where mobile banking has

really taken off, the drive all seems to have come from innovative new businesses, often teamed up with ICT companies, with (higher cost) banks and regulators dragging along behind. In Kenya, mobile banking is already being used for social cash transfers, by the State, donors or NGOs to support vulnerable households.

- Mobile banking is a new revolution in itself and needs serious attention in this region. In many developing countries, notably in Africa, where mobile phone ownership is much greater than the number holding bank accounts, mobile banking is enabling a major expansion of bank users, including debit cards and mini-ATMs introduced into trade stores, no longer dependent upon costly telecom infrastructure.
- New technology enables developing countries to leapfrog old systems, notably based upon landlines, but only if the investment and regulatory environment is right
- Seini's paper seeks to establish mechanisms to enable Pacific Island nations (especially the smaller ones) to be proactive, rather than simply reactive to changing technology, by tapping into existing institutional arrangements and professional capacity, establishing some economies of scale, where possible between countries, particularly through sharing ideas, models and even perhaps having either a shared regional advisory body (another CROP agency – like the FFA is for fisheries), or even a shared regulatory authority or authorities (more like the West and Central Pacific Tuna Authority) only under control of the Forum or MSG or other groups of Pacific countries
    - I generally agree with Seini's recommendations:-
    - Larger countries, such as PNG can clearly better afford their own regulatory mechanisms...and in PNG's case there's the generalised independent competition regulator, the ICCC, (which to its credit it has shown firm independence, despite strong political pressure), plus the technical regulator (Pangtel) and of course banking regulator (BPNG).
    - Larger nations (perhaps only PNG and Fiji) may be disinclined, and not need to join a regional regulatory body, but it should not be assumed that the larger countries are the most innovatory.....like larger companies, they can prove the more intransigent and less nimble. The generalised system (across industries) may provide fewer economies than a system shared across nations, but the great advantage may be creating the necessary institutional principal of professionalism and independence from political or other interference;
    - The smaller countries especially need to have shared arrangements, perhaps borrowing and adapting suitable regulatory models from elsewhere (e.g the Caribbean), and establishing their own shared capacity. It must be recognised that adaptation still requires considerable local knowledge of National Constitutions and laws as crude adaptation by non-professional legal draftsmen can create major subsequent legal difficulties
    - The legislative framework needs to be simple and to some extent flexible or evolutionary....avoiding locking rules in rigid legislation, and applying more adaptable regulations, and minimising what is regulated to a practical minimum. ICT is fast changing, with growing convergence

between technologies (internet, broadband, cable, VSAT, mobile telephony etc) so it’s desirable to avoid tying rules to obsolete technology.

- To enable regulation to operate effectively, but also encourage economies of scale and potentially better and more affordable services from providers requires sharing knowledge of companies, particularly who’s reputable or less reputable, and standards systems of screening (particularly if mobile banking is to occur), standard fees, interconnection rules, licensing fees etc and conditions, also standardised internal rules (e.g with provinces etc), simple and standard arrangements for approvals, with clear obligations upon the State, which can be enforced in law;
- National governments need to step back from so-called nationalistic positions with respect to telecommunications infrastructure. Some have readily done this, but others, unfortunately, have seen ownership of assets, rather than the provision of affordable and reliable services as critical. Positively, as with the Caribbean, with its regional telecom regulator ECTEL, the Pacific has some positive experience with limited regional cooperation, notably with some CROP agencies, although too often (as with FFA) regional agreements have been sidestepped under industry or bilateral pressures, or for corrupt reasons..
- Critical questions are how far to allow competition... how many licenses to issue in a country or region? Restricting the number of licenses and extending for long periods encourages initial competition to obtain the license (by whatever means), may encourage long term investment and make it easier to impose wider community service obligations. Too many competitors may cherry-pick the most profitable opportunities, leaving the more marginal aside. - On the other hand limited competition and restrictive licensing increases the discretion of regulators with risks of corruption (unless very clear and transparent rules are applied); it locks in some businesses and technology, and may keep out newer technology and more vibrant operators, and it should be noted that in many countries it has been the (higher cost) incumbents – usually State-owned- which have opened up the newer and more marginal markets often using lower cost structure, as with Digicel serving more rural areas in PNG and elsewhere, and WIZZIT and other lower cost and innovative operators in mobile and micro-finance (in a similar way to the private and especially low cost air carriers).
- Ensuring application of license requirements (including community service obligations) is demanding and promptly filling vacancies by non-compliant or non-viable operators is crucial. Ensuring that competition is sustained and a monopoly is not created, either from cut-throat competition or market distortion, is a priority, but this should be through ensuring an even playing field and that licensees have the capacity to perform, not by restraining one operator to help out an ailing one;
- The proposed regulatory or advisory bodies certainly need to be independent of government and operate transparently, but I’d be concerned if the regional consultations to design the system, as proposed

    by Seini, were exclusively Govt to Govt and regulators, but need to be more transparent and also embrace wider private sector and civil society participation

- When are countries innovatory? Especially when there's a strong public awareness of deficient services, esp from monopolies and the State, and when, as in PNG, the economy has been against the wall and needed major adjustments (as at the end of the 1990s). ICT and globalisation have made it harder for governments to retain old habits and protect non-performing service arrangements. The arrival of mobile competition in the Pacific and associated reduced costs and great access to communications has helped feed demand and increase awareness of deficiencies. This is healthy, and woe-betide governments that continue to resist the tide.
    - But ensuring ICT meets local cultural and community needs is also important. It doesn't need to be simply a vehicle for globalisation and standardisation, but authorities and communities can explicitly use it as a vehicle for education and social and cultural awareness....but that requires expenditure, by users, the private sector and government. So, for example, a small levy to fund the production of educational or cultural material may be justified (along the lines that Lord Reith had when launching the BBC in the UK in the 1930s...that it's there not just to entertain, but also to educate and enrich).
    - The issues all need to be highlighted, openly and with public and business participation, together with the legal, financial and technical boffins, with regional regulatory arrangements hopefully ensuing from that, not simply copied from an Australian model, for example. As Ed Willet, a former ACCC Commissioner, highlighted in a conference on ICT in Port Moresby in January, Australia itself was pretty slow at adapting to technology and putting in place a constructive regulatory framework to encourage investment, innovation and extensive service provision (even to more remote areas). Australia's 2007 Election featured ICT as a major election issue, perhaps for the first time in a country.
    - Reform is rarely led by governments. The media and wider public awareness and pressure are crucial to reform and better services, but in the Pacific region there are latent but sometimes stronger pressures to restrain public information and reform
- At the end of the day it will be up to the governments of the region, probably under pressure from private sector and public, to determine the regulatory regime and whether ICT development continues to trail the rest of the world, or shifts to a higher gear. Outside bodies, including academic institutions in the developed countries, can help highlight the options, and research and perhaps showcase good models from around the world.
- Seini has provided a useful framework for potential regional progress, which could be usefully further developed, with best case and other examples from within and outside the region. Identifying suitable professionals from within (and if necessary outside the region) with the level of skills and integrity for such regulatory bodies should also start promptly.