

Review

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Review of *Telecommunications Regulation Handbook*,
Hank Intven, ed., *infoDev*, World Bank Group, Washington, 2000 -
www.infodev.org/projects/314regulationhandbook.

Abstract

This handbook is a well-structured and useful guide to telecoms regulation, summarising experience from the last 15-20 years of regulation in an environment changing towards competition. It provides a good reference source that deserves a place on the shelves of all regulators. But there are some serious questions that organisations like *infoDev* of the World Bank Group, sponsor of the Handbook, must address. A single set of policies and regulations are presented as ‘the only way’ and a ‘necessity’, although only based on a rather narrow basis in economics and law, the North American and European developed countries experiences, and a pure liberal paradigm. This gives the publication an apparent ‘purity’ and sharp edge. It cuts through the haze of unclear arguments and hidden interests of incumbents and new competitors. The problem is that reality is always ‘smudged’ and that the ‘pure’ politics may not reach their goals because there are many other societal factors that play important roles – even legitimate ones. The purity of the approach is both the strength and the weakness of the handbook. The major weaknesses of the book are matters of omission, not commission. The handbook accomplishes what it sets out to do extremely well and, within that limitation is a welcome addition to the literature in the field.

Review

In November 2000, the *infoDev* Program of the World Bank Group published a ‘Telecommunications Regulation Handbook’ edited by Hank Intven of McCarthy Tétrault, Telecommunications Lawyers and Consultants, Canada. The principal authors are Intven, Jeremy Oliver and Edgardo Sepúlveda of McCarthy Tétrault. Funding for the preparation of the handbook was provided by the *infoDev* Program with additional funding by McCarthy Tétrault. Support and assistance is given by the International Telecommunication Union (ITU). The handbook is electronically available free of charge on the Internet at www.infodev.org/projects/314regulationhandbook.

In the foreword of the handbook, representatives of the World Bank Group write that “the objective of *infoDev* in supporting this project was to provide regulators and others involved in the regulatory process with a practical reference source on the methods used to regulate the telecommunications sector around the world, focusing on best practices”. Furthermore, “the focus is on practices that promote the efficient supply of telecommunications services in a competitive marketplace”. These statements succinctly emphasise the purpose and main contents of the handbook.

Based on these principles, a thorough and useful handbook has been published. It contains a wide range of solid information. It is precise in the details and will be a valuable help for regulators around the world. It is primarily written for regulators in developing countries, extending experiences from the economically more developed countries to the developing world. However, it is also useful for regulators in developed countries, as it, in an informed and well-structured manner, summarises experience with and theory concerning telecoms regulation from the past 15-20 years. Although it does not contain many new and untested angles and points of view, this is not the purpose of a handbook.

It is also a well-written book – relatively easy to read and with good explanations. It has many informative boxes, tables and figures with examples, explanations and summaries of the main points in the book. It has detailed tables of contents for the different modules and can, therefore, function as a reference handbook where it is possible to look up specific issues for an overview of the questions involved. It can be read, one module after the other, as an introduction to telecoms regulation, but is probably best used as a reference handbook for looking up broader issues or specific questions.

The book fills a void in the market for information on telecoms regulation. There are, indeed, many books on telecom regulation – but none of them with the same profile as the handbook. Most often they concentrate on more specific issues, have theoretical perspectives, or report on experiences from individual countries. There are, however, a few books that cover similar ground:

- Former FCC Chairman W.E. Kennard's *Connecting the Globe - A Regulator's Guide to Building a Global Information Community*, FCC, 1999, www.fcc.gov/connectglobe.
- *Telecom Reform – Principles, Policies and Regulatory Practices*, edited by W.H. Melody, Technical University of Denmark, 1997, www.lirne.net/library/TelecomReform/pdf.
- The ITU's *Trends in Telecommunication Reform – Convergence and Regulation*, ITU, 1999, www.itu.int/.

However, the *infoDev Telecommunications Regulation Handbook* uses a broader experience base than the Kennard / FCC book that concentrates only on the US. Compared to the Melody book, which covers a much larger range of issues and has an analytical approach, the handbook is more focused on specific practical methods. This difference also applies in relation to the ITU report, which, however, is the publication that comes closest to the *infoDev* handbook. The handbook is written by telecoms consultants and has the practical profile of most consultancy work.

The handbook has six modules: Overview of Telecommunications Regulation, Licensing Telecommunications Operators, Interconnection, Price Regulation, Competition Policy, and Universal Service. Four appendices are entitled: WTO Regulation Reference Paper, The Economics of Telecommunications Prices and Costs, Glossary, and Selected Sources.

In the preface, Intven acknowledges some of the book's shortcomings. "Some significant areas of regulation, particularly spectrum regulation and numbering, have been largely omitted". The book, thus, concentrates on the creation of competition among operators, especially on the economic aspects of competition, and on universal service. The issue of scarce resources and their regulation is not specifically addressed. Intven furthermore acknowledges that it has not been possible to cover different approaches to regulation in all countries. Instead, the idea has been to focus on best practices.

Notwithstanding these limitations, the modules and appendices in the book are very instructive. It is not possible to give preference to one part of the book over others although they differ in perspective and level of detail. The first module on 'Licensing Telecommunications Operators' is based on a judicial tradition. The 'Interconnection', 'Price Regulation' and 'Competition Policy' modules are mainly based on an economics approach, and this also applies, to a large degree, to the 'Universal Service' module, which, however, is more analytical than the other modules.

These differences in approaches are quite sensible, given the issues involved. But they also reflect the dominant approaches to telecoms social science research for the last couple of decades – economics and law. For a number of years economics has provided the all-prevailing approach in telecoms social science research. Economic arguments have had the highest degree of legitimacy. However, lately a judicial approach has also been gaining ground, which probably reflects that the regulatory structure has begun to stabilise in North America and Western Europe after a decade of turmoil. Other branches of social science, not to mention the humanities, have been in the periphery of non-technical telecoms research. This applies, e.g., to sociology and political science, although it should be evident that they both have contributions to make in the current situation of change in the telecom sector.

Both sociology and political science are less formalised sciences than law and the dominating breeds of economics, and the law and economics basis in the handbook lends a certain 'purity' to the arguments – which clearly has some advantages. It is easier to make a point, which subsequently can be discussed in a broader setting. However, it may also be problematic, as the reality most often is quite 'smudged'. This applies not only to developing countries, but developed countries as well. The matter of establishing independent regulators is but one illustration. Independent regulators may have been set up on the recommendation of international agencies, consultants, etc., but the political reality remains that they are often extremely dependent on the whims and wishes of the people in power. With the change in political power in the US, Mr.

Kennard resigned both as FCC Chairman and as Commissioner even before Mr. Bush assumed the presidency.

The 'Overview' module contains, among many other things, a well-structured presentation of the main elements in the present telecoms sector reform. The 'Licensing' module explains, e.g., how licenses can be and should be different in degree of detail depending on the development of the general regulatory framework. Countries that have not yet established more comprehensive regulatory frameworks may wish to issue quite detailed licenses. The 'Interconnection' module provides a good overview of the different elements that should go into an interconnection agreement. The 'Price Regulation' module is the most detailed part of the book, especially with respect to price cap regulation. The module also has an instructive introduction to the general economic foundations for measures to be taken regarding price regulation. It also provides a basis for understanding the counter-intuitive observation that tariff increases as a result of rate rebalancing may lead to higher penetration figures in developing countries. The 'Competition Policy' module is, of course, central in the publication, as the creation of competition is considered as the pivot of all positive developments. The relationship between general competition regulation and specific telecoms regulation is discussed, and there is focus on the necessity of an asymmetric competition regulation in a period where the incumbent operators dominate. However, problems with collusion between operators are not forgotten.

Personally, I very much like the 'Universal Service' module. It is the most analytical module in the handbook and it extends an analysis that ITU popularised in its annual 'World Telecommunication Development Report' from 1998 on universal access. Here, it was substantiated that telecoms penetration levels could be substantially higher than the actual penetration rates in developing countries when comparing costs of services with income levels and distributions in developing countries. More people in developing countries can actually afford telephone service, and some of the main problems are on the supply side. The 'Telecommunications Regulation Handbook' refines this analysis and provides a line of thought that can inspire regulators in establishing a regulatory framework that will increase telecoms penetration.

The appendices include a reprint of the 'WTO Regulation Reference Paper', which is part of the Agreement on Basic Telecommunications, which came into effect in 1998. In the whole of the handbook, this reference paper is considered as the basic international telecommunications act. Indeed, it is a remarkable document that provides a common regulatory ground for telecoms development in all signatory countries and extends the policies and experiences of the economically developed countries to the developing world.

There is also an appendix on 'The Economics of Telecommunications Prices and Costs', which contains an introduction to the different cost calculation principles. For a regulatory framework where one of the fundamental pillars is cost-based pricing, this is very useful. Finally, there is a large 'Glossary' and 'Selected Sources' for the different

modules of the handbook, concentrating on policy documents from national and international organisations, but also including more academic approaches.

Apart from the discussion regarding the branches of social science research that constitutes the basis for the handbook, there are two questions of a more general character that attract attention. The first relates to the experience base for the recommended regulatory measures: How broad is the sample of countries on which the handbook is based? The second question concerns the unquestioned policy direction in the handbook. It seems as if there is only one way to go, and that is the liberalisation policy prescribed first by the US, later by the EU and more recently by the World Bank.

Compared with, for instance, the above-mentioned regulatory guide by W.E. Kennard of the FCC, the *infoDev* handbook is based on experience from a wider range of countries. There are, e.g., references to experiences in developing countries, and there is knowledge about the policies of the EU. Still, North America is the primary reference base of the book – which is understandable, as the US is the prime and most important example of ‘external’ regulation where policymaking, regulation, and operation are ‘separated’ and where explicit regulatory measures are implemented. The North American policy direction is clearly the point of departure and the frame of reference for the book.

The term ‘North America’ is deliberately chosen, as the authors are from a Canadian law and consultancy firm. And this, indeed, gives the book a special flavour. There are many examples from Canada, and Canada is in telecoms, as in many other areas, an interesting case because Canada combines a strong influence from the US with a more European approach. But still, the US influence is strongly felt and experiences from developing countries do not play a basic role in the book.

Whether the authors would agree that this is a significant issue is not quite certain. They try to circumvent the problem by concentrating on ‘best practice’ policies, i.e., the best policies from the whole world – which just happens to be the North American and (later) European policies. This search for a common best practice model is, e.g., expressed in the numerous references to the WTO telecoms reference paper. However, knowing the level of detail and the many interpretations that can be given to the wording of the document, one would hesitate to give it such a central role, unless one is really searching for or trying to establish a common best practice.

The whole idea in the handbook is to pass on such best practices, first and foremost, to developing countries. However, an important question is to what extent this is possible and even desirable. In the book, it is noticed that international organisations, and among them the World Bank Group, are putting pressure on developing countries to adopt the policies that have been elaborated in the developed regions. It is also noted that many developing countries have entered this course. But the two statements are not put together although this seems obvious. The fundamental claim or understanding behind the aim of establishing the same best practices in all countries is that the problems and structures are the same everywhere. And with the fact that telecoms systems have been

implemented in developing countries primarily by the former colonial powers and that the economy is increasingly international, there seems to be a good argument for this claim. The question is thus not whether elements of the same policies can be implemented in all countries, but to what extent and with what consequences for these countries. The answer of the handbook seems to be that differences among countries are minor, but this is a highly debatable premise.

On a deeper level, one also has to ask whether or to what extent the general policy line promoted in the book is correct. In the book, there is no doubt whatsoever that the dominant policy is the correct one for the developing countries. There is a strong belief in the market mechanism and the liberal paradigm. It is, more or less, taken for granted. When, in the very beginning of the book, the motivations for the liberalisation of the telecoms markets are listed, the expanding liberal ideology in the late 1970s and the early 1980s is not even mentioned. The importance of political ideology and its relative autonomy in relation to the technological and economic developments is not reflected. This may, of course, be quite justifiable, as it is not a book about policy debates or historical exposition. Still, it constitutes the basic understanding of the book. Yet, there are many people who disagree with this basic understanding including those representing a number of developing countries. It also applies to critics in the developed world and the growing sentiments and social movements against so-called globalisation.

If one compares the handbook, for instance, with a book like Dan Schiller's *Digital Capitalism* (MIT Press, 1999), there is a world of difference. The telecoms rate rebalancing, which in the handbook is seen as a necessity and a move that probably will extend penetration in developing countries, is in Schiller's book seen as the brutal interests of capital and an undermining of social cohesion. Even if such criticisms in many cases can be dismissed as a mere lack of understanding of the socio-economic mechanisms of telecoms, they cannot be dismissed in all cases. In the handbook, it is simply stated that the advantages of the dominant policy are greater than the disadvantages. However, the disadvantages are never discussed. The problem in such a point of view is that the dominant policy is simply seen as a necessity – not as something, which is up for debate.

The last point to be discussed here deals with the reasons for regulation. Although liberalism is the basic paradigm in the book, the need for regulating telecoms (state intervention) is also a fundamental premise. The reason is, as indicated several times in the book, that the markets for telecoms do not function optimally – that there are market failures. Competition is not functioning well because the old incumbent operators still have a dominant position. Therefore, asymmetric regulation is required. It is also stated that once such market failures have disappeared, specific telecoms competition regulation will also disappear. However, regulation of scarce resources (not dealt with in the book) and specific social aims (in relation to universal service) are not likely to disappear. But there is also a question whether or to what extent specific telecoms competition regulation is likely to vanish. After 30 years of competition practices, and a new Telecommunication Act in 1996 declaring all services and markets competitive, the

FCC and state regulatory agencies in the US continue to expand in order to implement the competition legislation.

The handbook is not quite certain on this question. It is, as mentioned, stated that the need for regulation will diminish with the advancement of actual competition in the marketplace. But it is also recognised that no markets will ever be perfect. However, apart from these bows to general economic theory, there is also another type of argument in the book regarding telecoms regulation. It is mentioned that, as in the US public utility commissions, telecoms can be regulated together with other utility infrastructures like rail, electricity, etc. This kind of argument points in another direction than the mere competition question, as it focuses on the infrastructure character of telecoms. In the handbook, this question is not further elaborated. But the question is raised.

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