



Asia-Pacific  
Economic Cooperation

***APECTEL REGULATORY TRAINING  
PROGRAM***

*Program Resource*

**MODULE TWO**

**THE INDEPENDENT REGULATOR &**

**PUBLIC COMMUNICATIONS**

**APEC Telecommunications & Information Working Group**

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## MODULE SPECIFICATIONS

### MODULE CODE AND TITLE

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02 Public Communications, Consultation and Inquiry

### Module Description

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This module will provide the participants with the knowledge and skills required to contribute to the public communication, consultation and inquiry program and processes of an independent telecommunications regulator.

### Module Objectives

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For participants to be able to:

Objective 1 – Describe the main features and characteristics of an independent telecommunications regulator

Objective 2 – Recall the principles, range and options of public communication, consultation and inquiry programs and processes

Objective 3 – Recognise and explain the uses and applications of public communication, consultation and inquiry programs and processes by an independent regulator.

### PRE-REQUISITES

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01 Introduction Module

### SUGGESTED REFERENCES

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The Sixth APEC Ministerial Meeting on the Telecommunications and Information Industry (TELMIN 6) 1-3 June 2005 Lima, Peru, LIMA DECLARATION, Annex C.

APEC TEL Compliance and Enforcement Principles; *APEC Telecommunications and Information Working Group*, 30th Meeting 19-24 September 2004 Singapore

Effective Compliance and Enforcement Guidelines And Practices; *APEC Telecommunications and Information Working Group*, 31st Meeting 3-8 April 2005 Bangkok, Thailand

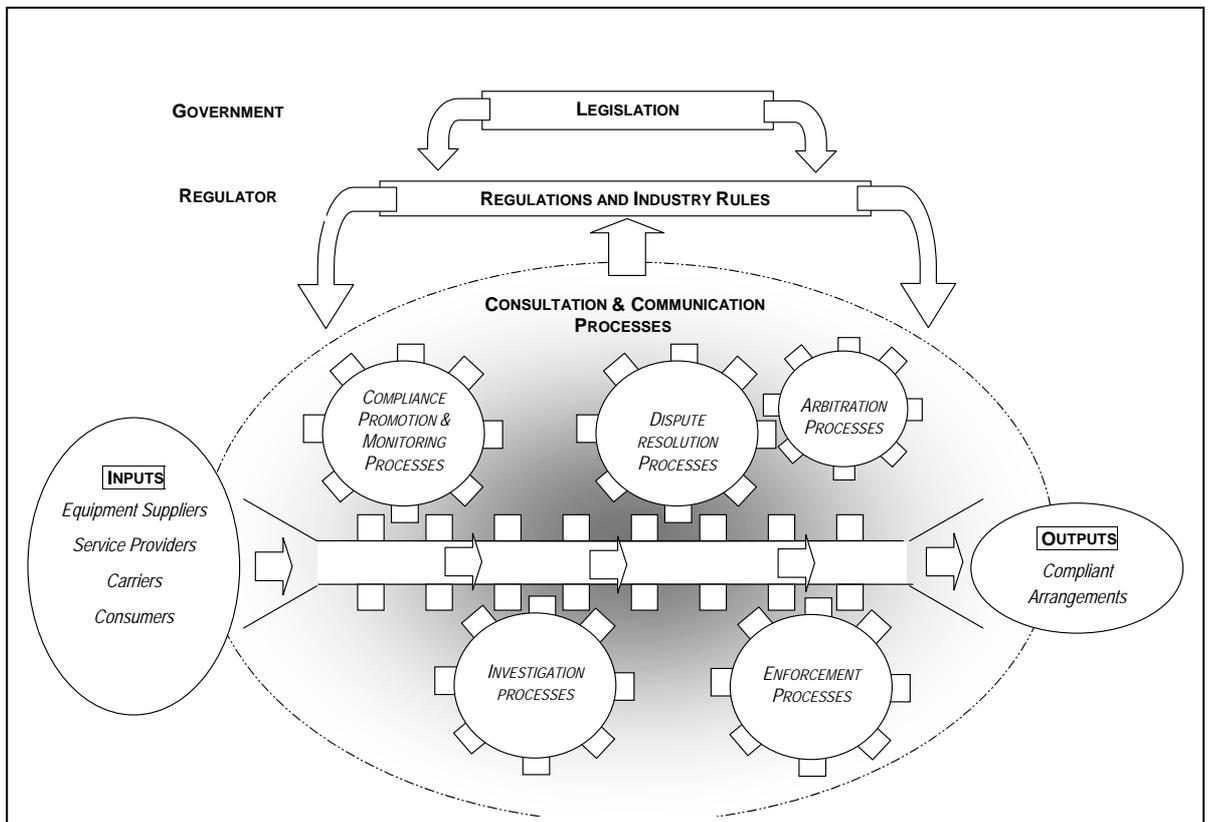
APEC TEL Best Practices for Implementing the WTO Telecoms Reference Paper, *APEC Telecommunications and Information Working Group*, 31st Meeting 3-8 April 2005 Bangkok, Thailand

## Using this Guide

The presenters, facilitator or workshop coordinator will present and discuss the content in this module. They will also advise you on the learning activities to undertake.

You will have this guide as a reference over the duration of the workshop and when you have completed the workshop.

There are some built in guidelines to help you use this resource after the completion of the workshop.



## **MODULE OVERVIEW**

### **Introduction**

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This module is made up of five topics:

#### **TOPIC 1 – THE INDEPENDENT REGULATOR**

This topic will review the roles and significance of the independent regulator in a deregulated telecommunications environment. This will examine how the impartial and independent behaviour of the Regulator is essential to create a transparent and supportive environment for all parties in the industry and positively contribute to fair and reasonable industry growth.

#### **TOPIC 2 – UNDERPINNING PRINCIPLES**

This topic briefly looks at some underpinning principles and assumptions on which public communication, consultation and inquiry processes and procedures should be based.

#### **TOPIC 3 – PUBLIC PROCESSES**

This topic looks at a range of processes that are available to regulators to ensure transparency and objectivity in communicating with interested parties.

#### **TOPIC 4 – PROCEDURAL MODELS**

This topic deals with some of the many that regulators can develop public communication procedures that are consistent with the legislative and cultural norms of their economies.

#### **TOPIC 5 - APPLICATION**

This topic looks at a number of examples from different economies with the aim of contrasting these with the principles, procedures and practices in economies the participants are familiar with. There is also an opportunity to review and plan for considering improvements.

This module will require 3 to 5 hours to complete.

## **TOPIC 1 – THE INDEPENDENT REGULATOR**

### **Introduction**

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An effective competitive telecommunications market depends on an independent regulatory body capable of:

- establishing and enforcing,
- transparent and impartial,
- regulatory rules and decisions, and
- promoting fair and reasonable competition.

To achieve these outcomes for the market place there are a number of aspects where there needs to be clarity and understanding of what the regulator is attempting to achieve within the directions of government policies and the laws under which the regulator operates. More specifically the market place is likely to be affected by the following:

- The need for the roles of the government policy makers and the regulator to be clear and in harmony;
- The independence of the Regulator and sufficient human and financial resources to be effective;
- The need for an appreciation of the benefits and value of effective interconnection by policy makers and recognition of the importance of pre-competition cooperation;
- The way in which a regulator deals with an incumbent operator;
- The challenges for the regulator to ensure that fair and reasonable interconnection occurs; and
- The need for the regulator to contribute to an environment of willingness for industry parties to effectively negotiate.

### **INDEPENDENT REGULATORS**

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The regulatory body must be separate from and not accountable to any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respects to all market participants, whether these are publicly or privately owned.

## Key features of an independent regulator

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### 1. The regulator must be functionally and legally separate from all market participants.

- With explicit legal authority and necessary powers to carry out its regulatory and enforcement functions effectively and unambiguously.
- With a legal framework that makes distinct, the roles of, and relationships between, different government entities involved in telecommunications policy-making and regulation. And Provides for
  - The establishment of the *telecommunications regulatory body*;
  - *General powers and duties of the telecommunications regulatory body to regulate* in a manner consistent with national policy objectives and for the benefit of consumers
  - *Authority to issue telecommunications directives, rules and regulations* and revise these regulation as appropriate;
  - *Authority to obtain full and complete information*, including confidential business data, from telecommunications service suppliers necessary to enable the regulatory body to perform its duties and carry out its mandate;
  - *Authority to adjudicate disputes*, including interconnection disputes between suppliers; and
  - *Authority to enforce telecommunications laws and regulations*, and to seek or impose fines and penalties applicable to such enforcement.

### DICUSSION POINT

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*Compare and contrast these critical features of independence of a telecommunications regulator with an economy you are familiar with and tick those which you think are present there.*

**COMMON MODEL FOR THE SEPARATION OF POWER**

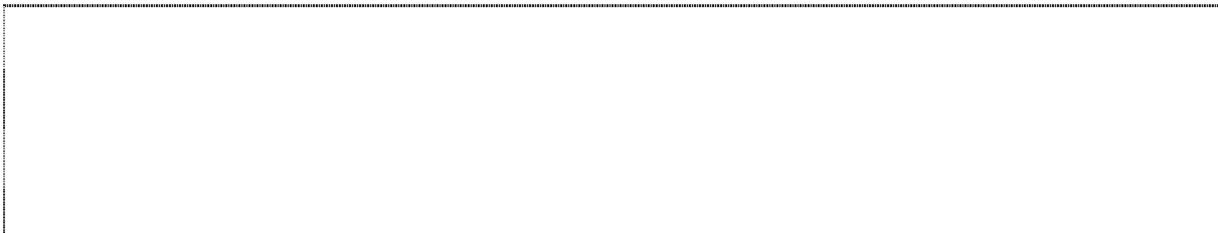
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In the past, the government generally performed the roles of telecommunications policy maker, owner and operator of the public telecommunications network. However, privatization and market liberalization has led to a necessary reorganization. A common model used in the world today is illustrated below:

<b>Function</b>	<b>Responsible Organization</b>
Policy Development	Government Ministry or Executive Branch
Regulation and Rules	Separate Regulatory Authority or Government Ministry
Network Operations/Service Provision	Public Telecommunications Operators (Private or commercially operated)

**2. The financial interests of the regulatory body (and its employees) should be clearly independent from all market participants.**

- Policymakers should *address both obvious and subtle conflicts* of interest that occur when economic interests overlap.
- The regulatory body should *ensure that any financial interests that its government may hold in a supplier of telecommunications services does not influence the decisions* of, and procedures used by, the telecommunications regulatory body.
- Employees of the regulatory body should
  - *Not hold stock/interest* in any telecommunications services suppliers that they regulate.
  - *Not participate officially* (i.e., as regulatory body employees) in matters in which they have a financial interest or where participation would raise reasonable concerns about impartiality.
  - *Not serve on the board of directors* of any telecommunications services supplier.



**3. The regulatory body must demonstrate credibility by having the structure, funding, and human resources adequate to enable it to implement its regulatory mandate.**

- By establishing an *organizational structure that is flexible and adaptable* as appropriate for an evolving telecommunications sector.
- With *staff that are highly skilled and multi-disciplinary*, with expertise in areas such as law, engineering, technology, economics, and administrative functions.
- By ensuring *adequate funding* from reliable and predictable revenue sources such as fees and/or government appropriations.

**4. Policies should be adopted to govern the conduct of employees to ensure independence and impartiality.**

- Regulatory agencies should adopt policies that address:
  - the work assignments of *employees with prior industry experience* to avoid conflict of interest,
  - the *acceptance of gifts from industry members*,
  - the *post-government employment restrictions* after the cease work with the regulator,
  - the provision of *competitive salaries for regulatory officials* to ensure highly qualified and non-corruptible staffs are not easily lost to the private sector.

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## Effective Regulators

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An independent regulator has within its power the ability to influence and set the industry environment in which fair and reasonable competition can flourish, the industry can grow and users gain substantial benefits.

To some degree this depends on how the regulator publicly interacts with interested parties in the market place and with government policy makers.

Effective regulators often take the **LEAD**. This can be turned into an acronym that is helpful to describe effective behaviours of regulators. The letters stand for:

**L – Listen.** A regulator must be open to finding out and hearing what is happening in the industry and market place. This means leaving the office and regularly meeting with interested industry parties as much as is possible to find out what the issues are for the different parties.

**E – Evaluate.** This means that the regulator weighs up what information and data has been heard or told to them and considers whether it is worth following up. Most industry parties will present their views and needs and not present a complete picture of a given situation. Regulators will need to use their judgment before taking issues on board

**A – Analyse.** Where, after evaluation, the regulator believes that an issue needs to be examined further, detailed work is likely to be required for the regulator to gain a full understanding of an issue. This is an analysis of the situation against the regulations and rules in place and also considers the implication on the market place.

**D – Decide.** After evaluation and analysis the Regulator should act swiftly and decisively. There is nothing worse for the market place and industry to leave them uncertain as to how a regulator will decide to act. Uncertainties caused through undue delays tend to destabilize the industry.

A proactive regulator that LEADs is likely to be effective in carrying out its mandate and respected by government, industry and consumers.

**DISCUSSION POINT**

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*Compare and contrast the role of the Independent Regulator in an economy you know with that of the above features.*

*In your group share and discuss the current power and authority of the Independent regulator in your economy list two factors which support the regulator undertaking the current role and two factors which inhibit the role.*

<b>TWO SUPPORTING FACTORS</b>	<b>TWO INHIBITING FACTORS</b>
1.	1.
2.	2.

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## EXAMPLES OF PRACTICE BY APEC ECONOMIES

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Following are some examples of practice in a number of APEC economies. Read through each example and comment on the following,

- 1. The independence of the regulator in each economy.*
  - 2. The impartiality of the regulator in each economy*
- 

### **Example 1: Australia**

*The Australian Communications Authority (ACA) was established as a statutory authority under the Australian Communications Authority Act 1997. The Authority is overseen by a group of Members who are appointed for fixed terms by the Governor General under the Australian Communications Authority Act 1997. The Australian Competition and Consumer Commission (ACCC) was formed on 6 November 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority. It is an independent statutory authority.*

*Certain decisions of the ACCC are appealable to the Australian Competition Tribunal (ACT). The ACT is able to affirm or vary the ACCC's decision or set it aside. Appeals against ACCC or ACT decisions may also be made to the Federal Court of Australia.*

*Further appeal rights on procedural issues are available under the Administrative Decisions (Judicial Review) Act 1977.*

*A wide range of decisions of the ACA are subject to review by the ACA or by the Administrative Appeals Tribunal (AAT) if the person is dissatisfied with the reconsidered decision. The ACA has 90 days in which to reconsider its original decision. If the ACA affirms or varies its original decision, an application may be made to the AAT for review of the decision.*

### **Example 2: Canada**

*The Canadian Radio-Television Commission (CRTC) is comprised of up to 13 full-time Commissioners and six part-time Commissioners appointed by the Governor in Council for a fixed term. A person is not eligible to be appointed or to continue as a member of the Commission if the person is not a Canadian citizen*

*ordinarily resident in Canada or if, directly or indirectly, is engaged in a telecommunications undertaking or has an pecuniary or proprietary interest in a telecommunications undertaking or the manufacture or distribution of telecommunications apparatus.*

**Example 3: Philippines**

*The National Telecommunications Commission (NTC) is a distinct agency that exercises regulatory functions in the context of the policies formulated by the Department or the agency to which it is attached. The Department shall have administrative supervision over the NTC, but cannot intervene in the quasi-judicial functions of the NTC. The NTC is accountable to the Department for fulfilling the policies prescribed for telecommunications. The NTC is not a supplier of basic telecommunications services.*

*Prior to all regulatory rulings and/or issuances, the NTC conducts public hearings for the purpose of transparency. Based on the evidence, testimonies and existing jurisprudence, Commissioners of the NTC act as a collegial body who vote upon any new ruling or regulations.*

**Example 4: United States**

*The Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC was established by the Communications Act of 1934, as amended, which states: “It is the mission of the Federal Communications Commission to ensure that the American people have available – at reasonable costs and without discrimination – rapid, efficient, nation- and world-wide communication services; whether by radio, television, wire, satellite, or cable.” (47 U.S.C. §151)*

*The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term. The President designates one of the Commissioners to serve as Chairperson. Only three Commissioners may be members of the same political party. None of them can have a financial interest in any Commission-related business. This allows the FCC to put the public interest first.*

**DISCUSSION POINT**

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*From these practice examples of APEC economies comment on the following:*

*1. The impartiality of the regulator in each economy*

*2. The independence of the regulator in each economy.*

<b>ECONOMY</b>	<b>INDEPENDENCE OF REGULATOR</b>	<b>IMPARIALITY OF REGULATOR</b>
<b>AUSTRALIA</b>		
<b>CANADA</b>		
<b>THE PHILLIPINES</b>		
<b>USA</b>		

## TOPIC 2 – PRINCIPLES

### Introduction

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The principles for good regulatory decision making practices are the foundations for the modules that follow.

This topic is independent of economy specific legal systems and procedural rules for regulatory decision making as these vary from economy to economy. In economies where common law is part of the legal system procedural fairness is usually applied. This may not necessarily lead to legally binding decisions by regulators but is nevertheless highly respected by interested parties in these economies.

This commonly means that any interested parties have opportunities to make their views known, make their case or provide comments on issues that may effect them, and which are to be decided by a regulator. Such opportunities allow the perspectives of all parties to be taken into account by the regulator. The regulator receives these perspectives and acts on these within the context of their legal authority and prevailing government policies. This tends to ensure that there are likely to be fewer if any legal challenges to regulatory decisions.

An often quoted good example of principles for regulatory decision making is the Australian example from the Australian Communications Authority (ACA).

*Principles of Proper Decision Making*

1. *Decisions must be within legal authority of regulator*
2. *The regulator must consider all relevant matters and disregard irrelevant ones*
3. *Decisions must be made in good faith and for proper purposes*
4. *Factual underpinnings of decisions must be based on evidence*
5. *Decisions must be reasonable, documented and publicized*
6. *Those affected by a decision must be accorded procedural fairness (including the right to respond to prejudicial agreements and evidence that may be taken into account).*
7. *Government policy must be properly applied*
8. *Independent regulators must not act on the direction of other persons*

*NB: Adopted from ACA principles*

For the purposes of this module and topic the focus will be on **transparency** in regulatory decision making which are principles 2, 5 and 6 above.

## TOPIC 3 – PUBLIC PROCESSES

There are a variety of processes and procedures available to assist regulators to ensure **transparency** and to make better decisions.

Wherever possible regulators must base or link public communications processes with applicable legislation and rules and identify what timeframe applies.

Regulators are also advised to consider the intended outcomes of going public and where this could potentially lead to.

### Where possible, use Public Processes

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When there is adequate time regulators have the opportunity to use public processes to engage interested parties in the decision making processes. This can be achieved by issuing public notices inviting inputs on rules or approaches that a regulator is considering to regulate the industry or other decisions that may emanate from government policies.

This usually means that the regulator lets the industry and public know through newspaper advertising, their website and other media including direct mail outs to interested parties.

Regulators are advised to ensure that all interested parties have access to or are informed about any relevant consultations or inquiry that may effect them.

### Regulator websites

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Regulators can make valuable and extensive use of internet technologies by developing user friendly websites that contain the kind of information that suppliers, carriers, consumers and other interested parties may be seeking.

Not only can a website disseminate information, it can also be used to provide background information on issues under consideration by the regulator. The site can solicit and invite comments on regulatory decisions that may be pending or on broader subjects where the regulator

is interested in obtaining the views of parties before considering any draft regulations or rules.

Once decisions have been made these should be published and so be readily accessible to all concerned. The sites can also provide useful links to other websites that may have relevance to parties on regulatory matters.

Most regulators already have websites and these do vary greatly in what information is available on these. Some websites are more effective than others for user friendliness, being user centred, layers of navigation, multilingual and basic interface appeal.

A number of websites are mentioned below that participants may wish to have a look at to see the different styles and approaches that are taken by economy regulators, a sample of these are shown in the table below.:

<b>ECONOMY</b>	<b>WEBSITE</b>
Australia	<a href="http://www.acma.gov.au">www.acma.gov.au</a>
Chinese Taipei	<a href="http://www.dgt.gov.tw">www.dgt.gov.tw</a>
Canada	<a href="http://www.ic.go.ca">www.ic.go.ca</a>
Indonesia	<a href="http://www.brti.or.id">www.brti.or.id</a>
Hong Kong China	<a href="http://www.ofta.goc.hk">www.ofta.goc.hk</a>
Korea	<a href="http://www.kcc.gov.kr">www.kcc.gov.kr</a>
Singapore	<a href="http://www.ida.gov.sg">www.ida.gov.sg</a>
Thailand	<a href="http://www.ntc.go.th">www.ntc.go.th</a>

**DISCUSSION POINT**

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*What are the features of regulator websites that you are familiar with that enhance or inhibit public communications?*

## Public communications processes

These processes should ideally explain in the language appropriate to the audience the reasons for the activity, the applicable laws and rules, the timeframe and intended outcomes.

Regulators are encouraged to consider designing public communication processes appropriate to their economies that are able to improve the quality of exchanging information and public inputs.

This may be to provide background information and options, in notices or consultation papers, which are under consideration by a regulator.

This enables respondents to focus their comments on the specific issues of concern to the regulator and so help to provide useful inputs for the regulator to consider.

Economies often use different terminology for papers that are circulated for comment. Some examples for seeking inputs are:

	<b>ACA</b>	<b>OFTA</b>	<b>IDA</b>
Consultation papers	<b>X</b>	<b>X</b>	<b>X</b>
Discussion papers		<b>X</b>	
Information papers		<b>X</b>	<b>X</b>
Legislative Council papers		<b>X</b>	
Issues papers	<b>X</b>		
Inquiries	<b>X</b>		
Proposal papers	<b>X</b>		
Reports	<b>X</b>	<b>X</b>	<b>X</b>

Economies also have a range of methodologies to distribute and make information available. Some examples of this are:

- Brochures,
- Reports – Annual and Specific reports e.g. Strategic/future plans,
- Regular newsletters

- Media releases and articles,
- Fact sheets,
- Speeches & presentations, and
- Information resources, e.g. for schools.

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## **Direct requests for inputs**

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In some highly complex matters the regulator may approach major operators, for example, and request written submissions. These usually relate to highly technical, financial or economic information necessary for the regulator to be able to make an informed decision.

Written responses should include detailed position statements with clear facts and supported evidence for the regulator to consider

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## **Electronic lodgement of inputs**

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Regulators may wish to consider to encouraging interested parties to communicate electronically by forwarding submissions, responses, comments, and all other materials to be filed this way. This will reduce paperwork and promote accessibility, transparency and openness to the industry, consumers and other interested parties.

This may require some specialized security features to ensure confidentiality and privacy to protect sensitive information.

## **Inputs from public seminars, fora, meetings or workshops**

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In many instances face to face interactions between the regulator and interested parties is able to provide information that can be clarified for those present and allow for immediate feedback of facts, views and feelings to the regulator.

A good deal of preparation is necessary for such events and regulators need to be sure and clear what their intent is and what they want to achieve.

For some issues a regulator may hold a series of meetings in the places where interested parties are, this could be in different cities, provinces or regions, rural areas or for specific target groups such as indigenous groups. In one instance the regulator held a public forum where 1,000 people attended which is effective for providing information but extremely difficult to receive feedback and inputs which can only be limited to a few. Unless followed up by the opportunity for attendees to forward written submissions that are taken seriously, such an event could be regarded as ineffective as a public consultation.

Alternatively, small public discussion groups, particularly with consumers, can make the task of providing input to the regulator much less difficult for groups of people with limited resources.

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## **Summary of transparent practices**

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- Publishing all laws, regulations, rules and guidelines relating to telecommunications;
- Providing interested parties with advanced notice of and an opportunity to comment on rules, policies and decisions proposed by the regulator;
- Publishing and archiving including on the Internet, decisions and reasons behind decisions; and
- Providing an avenue to appeal decisions
- Promoting the concept of equal access to information

Some of the above practices that have not been covered here will be raised in subsequent modules.

## TOPIC 4 – PROCEDURAL MODELS

This topic deals with some of the many ways that regulators can develop public communication procedures that are suitable for the legislative and cultural norms of their economies.

Some simple step procedural models are covered that may be helpful for regulators to devise their own appropriate procedures.

In the two models that follow a distinction is made for situations where:

- A government directs a regulator to conduct public inquiries to develop or review telecommunication laws and regulations and report back to government; and
- Where the regulator has the legal authority to conduct and inquiry, make and enforce regulations and rules.

The procedures are similar but have different starting and end points in the step models presented here.

### Step Model One – Government Initiative

STEPS	ACTIONS	COMMENTS
1	Government directs regulator to initiate or review laws or regulations and sets the Terms of Reference	This could include Government directed policy changes, industry & technology, technology, trade issues, etc.
2	Regulator mobilises resources and thoroughly researches the issue, prepares a draft consultation or discussion paper, usually with options, to seek inputs from interested parties	Before providing advice back to government or going public with any proposed changes the regulator needs to be thoroughly familiar with the issue, range of options possible and potential outcomes
3	Regulator publicises public enquiry, details of hearings and methods for submitting written, or electronic, submissions.	This is to ensure that the widest possible audience with an interest in the issue have opportunities to make inputs into the regulator’s decision making process.

4	Interested parties provide inputs for the regulator’s consideration by attending hearings, public events and/or filing inputs electronically.	Interested parties are given every opportunity to have their input into the issue under consideration.
5	In light of the inputs received from parties the regulator revises the consultations or discussion paper and may if necessary consult government with the revisions and revised options	The revisions and options are likely to more closely reflect the interested parties’ perspectives. The regulator will still operate within the government’s directives even if interested parties disagree.
	Steps 3,4 and 5 can be repeated a number of times before a final position is reached that the government is prepared to accept	Complex issues and major legislative reviews are likely to require a number of cycles before acceptance.
6 (a)	Where the regulator has no authority over the decision the regulator finalises the recommendations to government which are enacted into law or regulation by the government of the day, following due process.	All the work by the regulator is completed and is then passed to the responsible government authorities to act upon.
7 (a)	Government enacts the appropriate legislation, law, acts or regulations which refines or extends the authority of the regulator to act and these are publicised.	This can often take considerable time to pass through the processes of the executive arm of government. The regulator must wait until the new authority can be granted before action
6 (b)	Where the regulator does already have the legal authority to act, appropriate regulations or rules are enacted according to the administrative procedures in place	This certainly speeds up the process of finalising new regulations or rules for the benefit of government and the parties concerned
7 (b)	The regulator publicises the outcomes of the decision made and prepares to monitor the new regulations or rules.	All interested parties need to be made aware of the new regulations, rules or requirements

## DISCUSSION POINT

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*Contrast this step model with the procedures you may be familiar with. How do these differ? Are there other steps that you are aware of that apply in other economies?*

*How would you refine this step model to suit the circumstances in such economies?*

## Step Model Two – Regulator Initiative

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The regulator usually has responsibility for ensuring that all laws, regulations, rules and guidelines relating to telecommunications are published. No comments or responses are generally expected to this information that is provided to ensure all interested parties have ready access to relevant information.

Regulators may circulate general information paper on issues that do not currently require any regulatory action but could do so in the future, for example for new products, technologies or networks that are likely to emerge. In such instances regulators may wish to receive the views of local and international parties as well as doing their own research. Such research and responses from parties may lead to the preparation of consultation or discussion papers that could result in new regulations, rules or guidelines.

The step model where regulators have the authority to make regulations, rules or guidelines is similar to the step model where government has the legal authority. A regulator may take action on its own initiative in considering an issue or complaint after judging that it clearly falls within the jurisdiction of the regulator.

However, compared to where the government has the legal authority, the starting point and conclusion are somewhat different.

<b>STEPS</b>	<b>ACTIONS</b>	<b>COMMENTS</b>
1	Regulator may act on research, complaints, issues it has identified itself or matters that have been drawn to its attention by interested parties, all of which it has legal authority over	Issues could come from carriers, suppliers, consumers or interest groups. policy changes, industry & technology, technology, trade issues, etc.
2	Regulator thoroughly researches the issue and prepares a draft consultation or discussion paper, usually with options, to seek inputs from interested parties	Before going public with any proposed changes the regulator needs to be familiar with the issue and range of options possible. Government may also be consulted at this stage
3	Regulator publicises public enquiry, details of hearings and methods for submitting written, or electronic, submissions.	This is to ensure that the widest possible audience with an interest in the issue have opportunities to make inputs into the regulator’s decision making process.
4	Interested parties attend hearings, public events and/or provide inputs for the regulator’s consideration	Interested parties are given every opportunity to have their input into the issue under consideration.
5	In light of the inputs received from parties the regulator revises the consultations or discussion paper and may if necessary consult government with the revisions and revised options	The revisions and options are likely to more closely reflect the interested parties’ perspectives. The regulator will still operate within the government’s directives even if interested parties disagree.
	Steps 3,4 and 5 can be repeated a number of times before a final position is reached that the government is prepared to accept	Complex issues and major legislative reviews are likely to require a number of cycles before acceptance.

6	As the regulator already has the legal authority to act, appropriate regulations, guidelines or rules are enacted according to the administrative procedures in place	This certainly speeds up the process of finalising new regulations or rules for the benefit of government and the parties concerned
7	The regulator publicises the outcomes of the decision made and prepares to monitor the new regulations or rules.	All interested parties need to be made aware of the new regulations, rules or requirements

In subsequent modules the steps in the two models can be readily seen as they are applied in various regulatory situations.

**DISCUSSION POINT**

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*Contrast this step model with the procedures in use in an economy you may be aware of. How do these differ? Are there other steps that you are aware of in such economies?*

*How would you refine this step model to suit the circumstances in such economies?*

Note: This and the previous discussion points may be done together in small groups and reported back to a plenary if appropriate for participants to share their views and experiences.

## **TOPIC 5 – APPLICATION**

This application activity is included to help address some of the practical aspects of considering a successful public communications program in an economy. You may work with others in a small group reviewing public communication procedures and methods, share ideas with other people from other economies and, finally, consider how the results could be put into practice.

### **Application Activity**

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#### **TASK 1.**

In small groups, review the following two actual cases and discuss how the principles and models described in this module have been applied.

#### **CASE STUDY ONE – From the Info-communications Development Authority of Singapore**

##### **PROPOSED ADVISORY GUIDELINES GOVERNING**

##### **(I) PETITIONS FOR RECLASSIFICATION AND REQUESTS FOR EXEMPTION AND**

##### **(II) ABUSE OF DOMINANT POSITION, UNFAIR METHODS OF COMPETITION AND**

##### **AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT COMPETITION**

**11 MARCH 2005**

#### **1. INTRODUCTION**

- 1.1 On 18 February 2005, IDA issued the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“Code”). Prior to this, IDA conducted two rounds of public consultation in October 2003 and May 2004 respectively on the then proposed Code.
- 1.2 In the second public consultation held on 11 May 2004, IDA proposed to issue Advisory Guidelines on (i) IDA’s assessment framework for Dominant and Nondominant Licensee reclassification, and Dominant Licensees seeking exemptions from special obligations imposed under the Code; and (ii) IDA’s assessment criteria for anti-competitive behaviour and agreements that IDA deems

to unreasonably restrict competition. This was in response to commenters' call for greater transparency in IDA's review criteria in these areas during the first public consultation. Commenters also expressed the view that better clarity in IDA's decision-making process would provide greater business certainty.

- 1.3 In accordance with IDA's commitment to seek public comments on the Advisory Guidelines prior to their finalisation, IDA is releasing, for public consultation, the proposed Advisory Guidelines governing (i) "Petitions for Reclassification and Requests for Exemption" under Sub-sections 2.3 and 2.5 of the Code; and (ii) "Abuse of Dominant Position, Unfair Methods of Competition and Agreements involving Licensees that Unreasonably Restrict Competition" under Sections 8 and 9 of the Code.

## **2. ISSUANCE OF PROPOSED ADVISORY GUIDELINES**

### Reclassifications and Exemptions

- 2.1 Section 2 of the Code contains procedures for the classification and reclassification of Licensees as Dominant or Non-dominant. The Code adopts a "licensed entity" approach. Under this approach, if a Licensee is classified as Dominant, it must comply with the special requirements applicable to Dominant Licensees when providing any telecommunication service under its licence. IDA will classify a Licensee as Dominant if it either: (i) exercises operational control over facilities used for the provision of telecommunication services that are sufficiently costly or difficult to replicate in that market; or (ii) has the ability to exercise Significant Market Power in any market in which it provides telecommunication services under its licence.
- 2.2 Section 2 also contains a procedure by which a Dominant Licensee may obtain exemption from the application of the requirements applicable to Dominant Licensees to any service if the Dominant Licensee can demonstrate that competition has developed to the point that such regulation is no longer necessary. The Dominant Licensee bears the burden of satisfying IDA that the requirements for an exemption are met.
- 2.3 The proposed Advisory Guidelines provide further explanation on the procedures by which a Licensee or any other interested party may petition IDA to reclassify a Licensee as well as the procedures by which a Dominant Licensee may obtain exemption from the application of the requirements applicable to Dominant Licensees. The proposed Advisory Guidelines also provide the analytical framework that IDA will adopt in considering a petition for reclassification or a request for exemption.

### Anti-Competitive Conduct and Agreements that Unreasonably Restrict Competition

- 2.4 Section 8 contains provisions, based on general competition law principles that prohibit Licensees from engaging unilaterally in certain anti-competitive acts or unfair methods of competition. A Dominant Licensee may not engage in conduct

that constitutes an abuse of its dominant position in the Singapore telecommunication market. An abuse of dominant position occurs when the Dominant Licensee engages in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition.

- 2.5 Section 8 also addresses conduct by a Licensee that is affiliated with an entity that has Significant Market Power, such as a Licensee whose parent has a monopoly in its home market.
- 2.6 Section 8 prohibits certain “unfair methods of competition” by which a Licensee attempts to obtain a competitive advantage for itself or an Affiliate for reasons unrelated to the availability, price or quality of the service that the Licensee or its Affiliate offers.
- 2.7 Section 8 contains non-exhaustive lists of practices that would constitute abuse of dominant position and unfair methods of competition.
- 2.8 Section 9 contains provisions, based on general competition law principles that prohibit Licensees from entering into anti-competitive agreements. Agreements may be express, implied or tacit. However, an arrangement between a Licensee and an Affiliate over which it can exercise Effective Control (i.e., the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Licensee) does not constitute an agreement for the purposes of this Section.
- 2.9 Section 9 contains a general prohibition against Licensees entering into agreements with Competing Licensees (horizontal agreements) that unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore. Section 9 then specifies certain types of agreements that are conclusively presumed to be anti-competitive, and are therefore prohibited, even in the absence of evidence of anti-competitive effect. 2.10 Section 9 also addresses agreements between a Licensee and another entity that is not a direct competitor, such as a supplier or reseller (non-horizontal agreements). Such agreements typically raise fewer competitive concerns than horizontal agreements. Such agreements are only impermissible if they restrict, or are likely to restrict, competition.
- 2.11 The proposed Advisory Guidelines provide further explanation on the standards IDA will use to assess abuse of dominant position, unfair methods of competition and agreements that unreasonably restrict competition.

### **3. PROCEDURES AND TIMEFRAME FOR SUBMITTING COMMENTS**

- 3.1 IDA invites interested parties to submit comments on the two sets of proposed Advisory Guidelines. Commenters should clearly identify the provisions of the specific proposed Advisory Guideline on which they are commenting. Where appropriate, respondents are encouraged to suggest changes to the proposed Advisory Guidelines. The proposals should be accompanied by reasons for the changes.

- 3.2 All comments should be submitted in writing, in both hard and soft copy (preferably in Microsoft Word format). The submissions must reach IDA by **12 noon, 6 May 2005**. Commenters are required to include their personal/company particulars as well as the correspondence address in their submissions to this Consultation Document. Submissions should be addressed to:

**Mr Andrew Haire**

**Senior Director (Policy & Competition Development)**

**Infocomm Development Authority of Singapore**

**8 Temasek Boulevard**

**#14-00 Suntec Tower Three**

**Singapore 038988**

**Fax: (65) 6211-2116**

- 3.3 IDA reserves the right to make public all or parts of any written submissions made in response to this Consultation Document and to disclose the identity of the source. Any part of the submission, which is considered commercially confidential, should be clearly marked and placed as a separate annex. IDA will take this into consideration when disclosing the information submitted.



**CASE STUDY TWO – From The Office of the Telecommunications Authority, Hong Kong China.**

**REGULATION OF LOCAL ACCESS CHARGE (“LAC”)**

**CONSULTATION PAPER**

**20 May 2005**

**BACKGROUND**

1. LAC is an interconnection charge payable to local fixed telecommunications service operators by providers of external telecommunications services (“ETS”). Its purpose is to compensate the local fixed operators for the use of their facilities in the delivery of ETS traffic to/from end-users via the local fixed networks.

2. Since 1999, the only fixed network with an LAC specifically determined by the Telecommunications Authority (“TA”) is the network operated by PCCW-HKT Telephone Limited (“PCCW”). This is because PCCW has always been the operator carrying the largest volume of local traffic, and a determination for this network therefore acts as the industry benchmark for other local fixed operators agreeing access charges with the ETS operators without reference to the TA.

3. To ensure that the LAC determination for PCCW remains appropriate, the TA has from time to time reviewed the level of PCCW’s LAC having regard to the relevant costs. A revision to PCCW’s LAC was last made in 2001.

4. In February 2004, the TA completed a review of the principles and costing methodology of the LAC (1). After the review, the TA issued a determination on 4 May 2004 purporting to revise the LAC for PCCW. The revision was intended to be effective from 1 June 2004.

5. Subsequently, PCCW applied to the High Court for a judicial review of the TA’s determination of 4 May 2004, objecting to the principle that its access charge alone should be determined by the TA. The Court ruled on 30 March 2005 that PCCW’s application for judicial review should be allowed.

**ISSUE FOR CONSULTATION**

6. As a result of the High Court judgment, the determination made by the TA in respect of PCCW’s LAC on 4 May 2004 cannot be implemented. The TA also recognises that market circumstances have also been changing. Accordingly, the TA would like to consult affected parties (especially ETS operators and local fixed operators) on whether further action in respect of LAC is appropriate for the foreseeable future.

7. It appears there are at least three options concerning the way forward:

- (a) to initiate steps to make an LAC determination for all fixed operators;

- (b) to make a fresh LAC determination for PCCW (or any other local fixed operator) on an individual basis if there are legitimate grounds to justify such an action; or,
- (c) to make no intervention and let the parties to the interconnection (i.e. ETS operators and local fixed operators) negotiate and agree on the applicable LAC.

8. If any parties consider that there are other options, they are welcome to submit them to the TA for consideration.

9. Before deciding on the way forward, the TA would like to consider any relevant developments in relation to the provision of ETS services, the trends of retail prices for ETS on various routes, the significance of LAC on the business of facilities-based operators and services-based operators, the impact of LAC on the competition in the market as well as consumer welfare and the consequences of no regulatory intervention to determine charges. In submitting their views on the way forward, interested parties are requested to provide the TA with detailed data and analysis on the above aspects.

10. At this stage, the TA has no preference as to whether or not to intervene to make any determination. As any decision of the TA on LAC could have a significant impact on operators, market competition and consumers, it is important for the TA to have the views of interested parties before deciding on the way forward.

## **INVITATION OF VIEWS**

11. The TA will allow a period of 4 weeks for consultation. Views and comments on this consultation paper should reach the Office of the Telecommunications Authority on or before 17 June 2005. Any person who submits views and comments should be aware that the TA may publish all or any part of the views and comments received and disclose the identity of the source in such manner as the TA sees fit. Any part of the submission which is considered commercially confidential should be marked, together with the reasons for such claims. The TA will take such markings into account in decisions on whether or not to disclose such information. Submissions should be addressed to:

Office of the Telecommunications Authority  
29/F Wu Chung House, 213 Queen's Road East  
Wanchai, Hong Kong  
Attention: Mr. Danny Wong  
Senior Controller of Telecommunication, (Competition) 4

Submissions should be sent by e-mail to the following address: [info@ofta.gov.hk](mailto:info@ofta.gov.hk)

Office of the Telecommunications Authority, 20 May 2005

- (1) TA Statement, "Review of the Principles and Costing Methodology of the Local Access Charge", 27 February 2004.



**TASK 2.**

In small groups, compare the outcomes of Task 1. with actual practice in specific economies you know. What is the same, what is different, what do you consider could be improved?

**TASK 3.**

In small groups, consolidate your ideas on economy specific public communication and discuss the opportunities for incorporating these ideas into the current operations in an economy you know.

Create a list of action points that can be used by individuals or can be reported back to an economy's regulatory authority.

**DISCUSSION POINT**

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*To finish this activity block discuss the questions:*

*What do you consider to be the needs in an economy you are aware of for implementing effective public communication, consultation and inquiry processes and procedures?*

*Are there any major barriers?*

*What are the potential solutions?*



## Asia-Pacific Economic Cooperation

### Telecommunications & Information Working Group

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