NÚMERO 152

JAVIER CAMARENA

Criticising Regulatory Performance: The Mexican Case

AGOSTO 2004

www.cide.edu

Abstract

The issues, in this dissertation, were two fold. Regulatory autonomy and performance assessment. Firstly, it explains the concept of regulatory autonomy. And so, the different type of autonomy (commercial, political, operational and budgetary autonomy). Secondly, it provides a brief description over the institutional arrangements and the legal framework. Only then, it is feasible to talk about the regulatory performance.

On the one hand, there is view, from the regulator, that regulation is adequate to the market outcome. But, there is an alternative view with two different arguments. Those who assert that the regulator is biased for the Incumbent. And those who might reply that competition has been established, only because, the regulatory intervention.

As a summary, it can be given the following conclusions. Firstly, there is no single definition (or, concept) for what means regulatory autonomy. The regulator can have different institutional arrangements. Secondly, regulatory autonomy must be built from inside. This means rather, than seeking to extend the regulatory powers, it is more effective (and focused) to introduce better management techniques. For instance, rationale principles for regulation.

Resumen

Las cuestiones analizadas en este documento fueron dos: autonomía regulatoria y análisis del desempeño. En primer lugar, se intentó explicar el concepto de autonomía regulatoria, mencionando las diferentes categorías que existen (autonomía comercial, política, operativa y financiera). En segundo lugar, este documento proporciona algunos comentarios sobre el diseño institucional y el marco jurídico. Solamente entonces, será posible comentar acerca del desempeño regulatorio.

Sobre el desempeño regulatorio, la tesis del regulador ha sido que la regulación (actual) es adecuada a las condiciones actuales del mercado. Sin embargo, existen argumentos que se le oponen. Uno que sostiene que el regulador ha sido "capturado", y por tanto, su actuación ha sido influida por el Operador Dominante. Otro argumento que sostiene que la competencia ha sido posible, únicamente, por la intervención regulatoria. En otras palabras, que la regulación ha hecho al mercado.

Como resumen, pueden adelantarse las siguientes conclusiones. La primera es que la autonomía regulatoria es consecuencia de factores históricos e institucionales, no sólo del marco jurídico. El regulador se ve obligado, en ejercicio de esta autonomía regulatoria, a coordinarse con otras autoridades regulatorias. La segunda conclusión más importante, es

que la autonomía regulatoria debe construirse internamente, día a día. La consolidación de la autonomía regulatoria ocurre con la introducción de técnicas de administración, como la administración de proyectos y, por supuesto, con la publicación de principios regulatorios, desarrollados en la práctica institucional.

1.Introduction*

"There is no liberty if the power of judging is not separated from the legislative and executive. If it were joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control: for the judge would then be the legislator. If it were joined to the executive power, the judge might behave with violence and oppression."

Montesquieu

1.1 The Purpose

The objectives for this paper are as follows:

- To comment on the importance of regulatory autonomy;
- To evaluate regulatory performance; and
- To identify faulting points in regulatory performance.

As a specific-sector regulator is able to impose huge costs on Industry, and so on the wider economy, it is essential to appraise its performance.

Initially, the regulatory regime was viewed as an alternative to the traditional and centralised Public Administration. However, this model has been criticised since 1996 (when the "Comisión Federal de Telecomunicaciones", or Cofetel, was established).

Criticism is coming from different angles. There is customer dissatisfaction. There are complaints about anti-competitive behaviour. Telmex is still a dominant suppler. It holds strong influence over new Internet services. Analysts do not perceive an independent regulator. And worst, strategic targets have not been accomplished yet. This is because of the lack of coverage in certain regions. Consequently, within the government, there is discontent.

All the above provide the justification to find out what is wrong. On the one hand, the explanation can be given due to natural difficulties in getting a balance between different interests (consumers, industry, and the Incumbent).

As long as the telecom market grew, there was a natural rise in demand for better levels of service. The government's response, between 1989 and 1996, was pragmatic. If an issue arose, the authorities looked for an alternative. This was basically the enforcement of legislation. But, there was always a negotiation process between the authorities and those directly involved.

* Licenciado en Derecho (Universidad Iberoamericana, 1997), LLM in Information Technologies and Telecommunications Law (University of Strathclyde, 2000), Participación Profesional en la Oficina de Telecomunicaciones (UK - actualmente Ofcom) y en la Comisión Federal de Telecomunicaciones (Cofetel), Investigador Asociado en el CIDE. Becario Chevening - Consejo Británico.. Para el envío de comentarios a Javier Camarena: tzotzil2001@yahoo.com.mx

On the other hand, the explanation can be that Telmex is no-longer a public enterprise, and now the authorities have to learn how to manage a regime where there is open competition. Certainly in 1997 a scheme was drawn up which allowed a 'gradual' entry from long-distance operators, and co-operative behaviour from Telmex.

Trying to sum up the arguments against the regulator, these could be summarised as incompetence and partiality.

Firstly, the watchdog has been unable to fulfil a clear mandate (to promote an efficient performance of telecom business). However, this might be contradicted by the fact that the teledensity is still lower than acceptable levels (even if compared against other Latin-American countries). The reply given is that the regulator was not granted with the appropriate powers, in particular, with regulatory autonomy. Then, it was unable to exert full powers, if enforcement of the T Act 1995 was requested.

Secondly, there is a general view that the watchdog is biased for the Incumbent. Despite the complaints, there is no specific action from the watchdog. This obviously undermines the regulatory model.

The answer back (from the watchdog) was that the Industry had exerted an undue pressure, in particular, during the ruling-process where it seems to be an excessive lobbyist.

"The regulatory system … endow unelected, appointed, individuals with substantial powers over important private companies which will have major repercussions on the general public"[1].

In conclusion, this kind of analysis would be a departure point for setting accountability. Even, if this were an initial step, it would provide more transparency within government. The necessary objectives have to be clear and understandable.

1.2. The Scope

In a nutshell, this paper will cover the following points:

- Regulatory autonomy;
- Institutional arrangements;
- Legal framework for regulation;
- Policy management; and
- Policy alternatives.

The paper took into account the regulatory actions listed in the Cofetel's Annual Report 2000. None regulatory issues were considered in particular.

[1] See C. Graham, *Regulating Public Utilities*, Hart Publishing, 2000, p. 1

Therefore, the content for this dissertation is:

- Chapter 2 gives a brief narrative about the market development and telecom openness;
- Chapter 3 will be dealing with the concept of 'regulatory autonomy';
- Chapter 4 outlines institutional arrangements between the authorities involved in drawing the regulatory model;
- Chapter 5 will provide comments on the legal framework for regulating the telecom sector;
- Chapter 6 discusses how the watchdog has managed competition and regulation;
- Chapter 7 provide alternatives (from formal regulation, passing through co-regulation, to self-regulation and de-regulation proposals); and lastly,
- Chapter 8 will provide conclusions.

2. The Background

Before 1989, the provision of telecom services and service regulation was unified. Furthermore, there was a single authority, the Secretary of State for Communications and Transport[2] which simultaneously set up policy objectives for voice-telephony and then ordered building new lines. This implied a balance between the budget available and the willingness to receive support from certain constituencies.

In more detail, the Telecommunication Policy Directorate-General (or DG), within the Secretary of State, was responsible for policy implementation alongside the Public administration. It was able to roll out almost any proposal because it was simultaneously responsible for imposing fines.

However, as a result of self-assessment, the government agreed to changes to its policy. This was because consumer demand was far from being satisfied. Someone eager to hire a fixed line would find that it was almost impossible unless they resorted to bribery.

Then, the public administration worked out how to get it done quickly. It can be summarised with the privatisation of the major public corporation, Telmex.

In 1989, Telmex privatisation was carried out. This was in the middle of structural changes to the Mexican economy, in particular to competition policy.[3]

Although an obvious implication was the divestiture between public and commercial functions, this would not be formalised until 1996. In the

[2] See: *http://www.sct.gob.mx*

[3] See: "Process and impact of commercialisation / privatisation: Worldwide trends", Dr. Tim Kelly, ITU, presentation 17-21 May, 1999, *http://www.itu.int/ITU-D/ict/papers/1999/Malta/TK%20private%20May99.pdf*

meanwhile, the Secretary of State would be responsible not only for setting 'strategic' goals, but also for operative issues. There was confusion between long-term and day-to-day operations. Even worse, the Government retained share interests within the Incumbent (Condition 2.3, Telmex's Licence). In this way, the Secretary of State retained more effective powers to protect telecom users, if necessary.

Amongst explicit reasons, there was the need to boost teledensity[4] using large investments[5]. This could have reduced pressure on government for using fiscal budget and switching the role for collecting funds and installing new network. The government was not directly responsible for the network operation.

The strategy followed was a combination of monopoly in fixed telephony and duopoly in mobile[6]. This meant that Telmex would continue as a private monopoly in local service (as a result of universal service obligation) for a pre-established period of time. In less extent, it was with long-distance and public call boxes. In mobile, there would be a duopoly, among Telcel (a Telmex's company) and Iusacell. Indeed, there was set up a 'transitional' scheme for competition, but within restricted scope.

Over the years, a major review of the strategy would be necessary.

The benefits expected were costing of universal service and constant growth (and/or upgrade) of the "core" network, especially the Telmex's main network.

In carrying on the strategy, between 1989 and 1995, the Secretary of State restrained itself from exerting certain powers and relaxation of controls over Telmex.

In 1995 the Federal Congress passed the Telecommunications Act (also, known as T Act 1995). The statute took a renovate view on the provision of telecom services. It established competition in the telecom sector. Furthermore, it proposed an internal divestiture inside the government. This was an acknowledgement of the distinction between 'strategic' goals and operational objectives.

In this case, the proposal was to clarify between policy and regulation. In others words, 'broad' and 'specific' powers granted to the telecom authorities. In the past, those functions were traditionally (and simultaneously) exerted by

[4] This means the numbers of fixed lines per 100 inhabitants.

[5] "The Government was unable to fund an increase in the level of service. This was essentially to reduced investment. Thus, continuing as public monopoly was not the best alternative." *"El Gobierno Federal además de no contar con los recursos necesarios para llevar los distintos servicios de telecomunicaciones con buena calidad a más mexicanos, no se presentaba como la mejor opción para alcanzar las metas de teledensidad requeridas"* The Cofetel – Annual Report 2000, pág. 9. Also: Enrique Melrose's presentation at: *http://www.secodam.gob.mx/tidap/1998/melrose.doc* , Carmen Gomez-Mont, La liberalizacion de las telecomunicaciones, at: *http://www.cem.itesm.mx/dacs/buendia /rmc /rmc56/carmen.html*

[6] The first generation for mobile was also called 'cellular' service, because the deployment of cells in handling the traffic.

the Secretary of State. To this purpose, the T Act 1995 drew a boundary for those powers granted to the specific-sector regulator.

On the one hand, the Secretary of State was granted with a general jurisdiction over communication issues. On the other hand, the watchdog was constrained to specific issues in telecommunications or a limited jurisdiction. There was drawn a type of 'operational' autonomy[7] in order to promote effective competition.

As a result of passing the T Act 1995, the Cofetel was formally established in early August 1996. This was the prelude to new entries, in particular AT&T (Alestra) and MCI/WorldCom (Avantel).

In 1997 competition began in long-distance and public telephony. This was a consequence of the rolling out of government strategy. There were necessary operators arrangements to allow network interconnection. Tariff levels proved to be a sensitive issue from the beginning. Formal intervention from both the watchdog and the Secretary of State was necessary.

Once the first stage was completed, and competition was apparently under way, this was far from being without troubles. There were complaints from new operators. For instance, Telmex's refusal for granting access to 800 numbers from public boxes. Also, there were consumer complaints during the switching process from the Incumbent database to others operators (in long-distance service).

Indeed, the performance of the regulator was put under question. There were allegations of self-indulgence from the regulator or the wrong approach in rolling out competition. This paper will show that out-backs in regulatory performance can be explained from the Secretary of State's inactivity and/or interference.

As telecom openness continues, in 2000 competition was extended to local services. There seem to be competition issues still unsolved. Most of them are directly related with Telmex. New operators began to provide wireless[8] and fixed telephony. This increased alternatives within local services.

In brief, the landscape in the telecom sector has become complex. This is not only because further services are going to be provided. This means also that different technologies and networks have to work efficiently.

Since 2001, the Federal Congress has been drafting a new Communications Legislation. This proposal is targeted at flawed points from the T Act 1995, in particular institutional autonomy, universal service and market power.

There is a view inside the Review Committee for granting 'more autonomy' from the Executive, but more accountability to the Congress itself.

[7] In most of cases, 'operational' autonomy is understood as 'regulatory' autonomy from the Federal government.

[8] Currently, in the Mexican framework, there is a distinction between mobile, traditionally called 'cellular' services, and wireless local telephony. The first means that the user has absolutely movility. The second means the installment of wireless equipment within a specific location.

Government strategy is now moving towards 'Information Society' services.[9] These services need an adequate infrastructure. Consequently, it seems to be urgently setting up the institutional framework for the boost of the telecom sector.

3. Regulatory autonomy

The objective for this chapter is to provide an insight into regulatory autonomy.

Briefly, the concept means self-government. The ability to develop a specific approach without pressure from external bodies. This is why, in a very short period of time, it had developed different meanings.

The following are different types of autonomy:

- Commercial autonomy;
- Political autonomy;
- Operational autonomy; and
- Budgetary autonomy.

The above were defined from different perspectives. Most of them are types defined in parallel with the powers (and attributions) granted to the telecom watchdog. Consequently, there are several combinations and natural difficulties in defining the model. There is a balance between powers granted and the results expected.

Autonomy can usually be directly drawn from the legislative framework. But, also, it might be drawn from the day-to-day relationship amongst public offices and private undertakings. Notwithstanding the request for an increase in regulatory powers, it must be setting up the appropriate accountability.

The structure for this chapter is:

- Meaning of regulatory autonomy;
- Categories;
- Levels of regulatory autonomy; and
- Implications for an adequate autonomy.

3.1. What is Meant by 'Regulatory Autonomy'?

Firstly, regulatory autonomy can be understood as the ability to perform activities without pressure from external bodies. These bodies can be identified as governmental offices and private undertakings.

[9] The President, Vicente Fox, has strongly supportted the initiative of e-Mexico (*http://www.e-mexico.gob.mx).*

In other words, it is related to the kind of operations (and activities) that a regulatory body would be able to carry out and so relevant when regulatory assessment is under way.

Secondly, 'regulatory autonomy' can be understood as self-government. The regulator is able to define, without restraint, its management plan. The management plan includes programmes and projects which are specifically set up to address market issues. This implies that it is able to mark out the extension of regulatory action without external input. It is possible also to exert judgment and, consequently, be fully responsible.

Thirdly, 'regulatory autonomy' also means the ability to perform, exclusively, activities described within the legislation. The regulator might be fully responsible. This is particularly useful when implementing legislation. There would not be external obstruction. It would be able to select the methods to obtain compliance.

Finally, it means the ability to develop a specific approach. This point is related with real practice ie the day-to-day practice. The regulator, because it has developed a list of principles, is able to perform its activities without pressure.

Decision-making for policy is very difficult. There is always a trade-off. Consequently, there is strong pressure from those that might be particularly affected, for instance Industry and other government offices. It is complicated because of the several objectives described within the legislation. There is a long description in article 7 of the T Act 1995 (competition, value for money, universal service).

Regulatory autonomy allows for choice, which if any of these objectives must be pursued. From a certain perspective, the situation changed a lot, if compared with the previous legislation (the GCW Act, see also chapter 5). In the past, the regulator applied the law 'mechanically'. At present, the circumstances are different. The watchdog can deal with alternative courses of actions provided within the T Act 1995.

Despite the autonomy granted, this does not mean the public body should not be accountable. In any case, the legislation is targeted to protect those less protected. In our view, it would be residential users and small businesses. If a broader interpretation is applied, it might include citizens, as the government is politically responsible. However, this is more difficult as regulatory officers are not elected. They are appointed from more senior officers.

Whilst regulatory autonomy provides freedom, it is important to reinforce accountability from those involved in decision-making. In particular, if the regulator would be continuously confronted with alternative course of actions.

Balancing autonomy and accountability can provide benefits. The most important is to develop institutional experience, and improve competence in tackling market issues. This would be as a result of better allocation of budget

and human resources. The second benefit is that decision-making will be more straightforward. There will be elements for setting a long-term strategy.

In contrast, an inappropriate autonomy might lead to criticism amongst users and Industry. The regulator would be unable to deliver any proposal. Even if delivering, it will be slow and complex. There would likely to be a conflict of interest. This will be against the legitimacy needed for rolling out any proposal.

Also, it would perpetuate the status quo, i.e. market power. There might be an increase in litigation as an alternative to compliance.

> "It is absolutely essential that the 'Competition' among the major industry players be moved from the arena of politics and bureaucracy to the marketplace, and to achieving the industry performance objectives of government policy."[10]
>
> "Regulators have the power to generate and redistribute rents across various interest groups, for instance, by creating or preserving monopoly positions or by maintaining cross-subsidies in the tariff structure. Therefore, regulated firms or the beneficiaries of regulation (such as user groups) have a strong incentive to attempt to "capture" the regulator so that the industry is regulated in their own interests."[11]
>
> "There is also a risk that an excessive use of discretionary power by regulator may distort investment incentives in the industry by introducing too much uncertainty about the regulatory provisions firms will have to face in the future."[12]

3.2. Categories of regulator autonomy

Essentially, international practice has developed two different categories: *1)* commercial autonomy; and *2)* political autonomy. Nonetheless, Mexican practice has introduced further categories: *3)* operational autonomy; and *4)* budgetary autonomy.

All reflect the need to avoid undue influence in decision-making. Each separately,] reveals] from whom it is important to prevent undue pressure. In the first case, from Industry and the other three, from public offices.

3.2.1. Commercial autonomy

In essence, commercial autonomy implies a separation from commercial interests.

[10] Melody, William H., *Policy Objectives and Models of Regulation*, p. 21.

[11] OECD Economic Outlook, 2000, IV. *Regulatory Reform in network industries: Past Experience and Current Issues*, pg. 166.

[12] OECD Economic Outlook, pg. 166.

The separation from commercial interests takes into account that the regulator will be directly involved in imposing burdens to business, the demand for preventing conflict of interest when imposing controls to business, and, foremost, ensuring that market mechanism works properly where those undertakings perform economic activities.

In citing Melody, the term 'independence' implies "independence to acquire specialised skills, to manage without interference and to be accountable for results according to specific performance criteria."[13]

In the first part, there is implicit a responsibility for developing institutional experience. In the rest, it is naturally linked the accountability within the regulatory performance.

"The possibility of 'regulatory capture' by regulated firms or other interest groups and the effects of regulatory uncertainties on the investment behaviour of regulated firms need to be taken into account in designing regulatory mechanisms and institutions."[14]

In past, the Government was a shareholder of the Incumbent. Even after Telmex's privatisation, the Secretary of State kept the power to appoint a director under condition 2.3. This condition was in force until 1993.

At present, the Mexican government does not hold shares within Telmex, neither the Secretary of State nor the regulator. Consequently, as Telmex is fully privatised, this should not be a major issue (the legal separation between government and the Incumbent).

However, there is a new challenge to be addressed. Inside Government there is a view to ensure financial performance of the Incumbent. This is because of implications in the Mexican economy. This strategy has mainly been addressed from the Finance Ministry.

The regulator's role is rather different as it has had to target anti-competitive behaviour. To provide incentives to further investment, either these came from the Incumbent or other operators. Otherwise, the regulator would be, by itself, undermining its role.

3.2.2. Political Autonomy

In general terms, political autonomy means protection against interference from public offices. In the day-to-day activities there is always a risk for excessive exposure political affairs. Without question, this would render it impossible to accomplish regulatory function with success.

[13] Melody ... *Op cit.* p. 19

[14] Gonenc, Rauf; Maher, Maria & Nicoletti, Giuseppe, *The Implementation and the effects of regulatory reform: Past Experience and Current Issues*, OECD, 22-Jun-2000, ECO/WKP(2000)24, pg. 8.

> "Structuring the relation between the government and the independent regulator is more difficult that with the PTO because the regulator remains a part of the government."[15]

This can be explained because of the need to develop a 'solid' strategy. If it avoided excessive exposure or undue pressure, the regulator would be able to pursue long-term goals. Then, if institutional memory were developed, decision-making would be more straightforward, and so avoid delays. In fact, the regulator's officers might have a better perception of risks involved in policy implementation.

If we reformulate the previous statement, it means that the regulator has to draw the limits from its own action. In day-to-day operations it means developing a set of principles to be used internally. In the long-term it means identifying the most urgent priorities within the sector.

This is not related to judiciary review, nor public accountability. The former is concerned with illegality and irrationality. The latter concerned with the appointment of the Commissioners.

3.2.3. Operational Autonomy

Operational autonomy has been driven out from the Mexican practice. It was a result of the need to deal with inter-departmental issues. There is always pre-emption against the subordinated body. In this case, it is between the Secretary of State and the Cofetel (see also chapter IV).

The same provision has been included in the legislation which established non-ministerial departments, for instance, the Competition Commission and Consumer Commission. The objective has been to establish an 'exclusive jurisdiction'. Nonetheless, there is always an over-lapping between specialised agencies.

Regulatory autonomy might also be considered as a sub-category of political autonomy. The regulator is granted the power to define its own plan of action, and so better define priorities in sector-specific projects.

It also has to accomplish strategic objectives, predefined by the Minister. The regulator would be able to select short -term goals. In the long run, with more expertise, it would be able to read telecom sector trends.

This aspect of regulatory autonomy will be functional. There is a clear distinction between those objectives allocated between the specific-sector regulator and the Ministry in charge. Otherwise, if the legislative goals were vaguely described, setting accountability would be difficult.

[15] Melody ... *Op cit.* p. 21.

3.2.4. Budgetary Autonomy

On the one hand, budgetary autonomy implies freedom for setting regulatory fees (for covering direct-costs running). On the other hand, it involves independence, in setting its own schedule for financial budget.

This is very simple. The regulator, in one way or another, has to fund its operations. If there is a shortage in financial resources, then there may be fall-out in terms of human resources.

This type of autonomy was drawn from the Mexican practice, alongside public offices. It acknowledged that the Ministry of Finance's own schedule might interfere with the fulfilment of regulatory function.

The amount of financial sources has to be according to the priority given to the telecom sector.

The issue of how to fund the regulatory body is sensible. The need for one source or another (private or public) will have different implications. When more importance is give to private funding, then the risks for 'regulatory capture' might increase. In contrast, when public appropriations are predominantly used, the lobby from public offices (and even within the Parliament) will become more intense.

3.3. Samples of 'Regulatory Autonomy'

Annex A comprises a summary of different levels in regulatory autonomy. It includes also a brief description of the scope and interpretation of objectives to be fulfilled.

3.3.1. The WTO

The Reference Paper[16] to the WTO Agreement on Basic Telecommunications Services (hereinafter, the Reference Paper) contains many regulatory principles which refer to the nature of the regulatory body:

> "The regulatory body is 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 respect to all participants."

At the international level, this obligation can be understood as the general obligation to administer justice. In particular, if telecom business are fully privatised.

[16] Group on Basic Telecommunications – Communication from Mexico – Draft Schedule on Basic Telecommunications Services – Revision, S/GBT/W/1/Add.16/Rev.2, 14/02/1997, *http://docsonline.wto.org/DDF Documents/t/S/GBT/W1A16R2.WPF*

Perhaps, the rationale behind this provision was to ensure a 'minimum' level of protection to all stakeholders. Currently, enforceability of this principle is under test.[17]

3.3.2. The European Union

The Framework Directive[18] states the following:

> "3.2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. …"

Unsurprisingly, this provision reflects a different approach. This is because, in the case of a complaint against any Member State, the European Commission would be able to take action if regulatory authorities are not in fact functionally independent from all commercial organisations.

Also, it is more precisely drafted.The provision is targeted to ensure the implementation of regulatory model where competition and regulation co-exist. This is a safeguard against 'broad' interference from public administrations.

3.3.3. Mexican Law

The Telecommunications Act 1995[19] states the following:

> "Article 11 (transitional provisions). With the August 10, 1996, the President has to establish a body, independent from the Secretary of State / SCT, with autonomy in financial and operative matters. This entity will have the structure and the powers due to regulate and to promote the telecom sector, in accordance with the Presidential's decree."[20]

From all three samples, this provision is poorly drafted. There is no reference to accountability, or to autonomy from Industry.

Certainty, the provision reflects the experience within the Mexican Government. National law conferred some attributions to the regulator, but it

[17] See: Dispute US vs. Mexico (WTO)

[18] Adopted text – Directive 2002/21/EC, Official Journal, OJ L 108, 24.4.2002, p. 39

[19] Official Journal, DOF 07/06/95 (an English version available at: *http://www.cft.gob.mx/html/9_publica/nwlaw/lawch10.html).*

[20] **DÉCIMO PRIMERO.** A más tardar el 10 de agosto de 1996, el Ejecutivo Federal constituirá un órgano desconcentrado de la Secretaría de Comunicaciones y Transportes, con autonomía técnica y operativa, el cual tendrá la organización y facultades necesarias para regular y promover el desarrollo eficiente de las telecomunicaciones en el país, de acuerdo a lo que establezca su decreto de creación.

does not clarify the relationship with the Secretary of State. Nonetheless, it draws a division between 'broad' and 'specific' functions.
Even so, the provision established a restriction over interference from the Ministry of Finance (financial autonomy).

3.4. Implications for an Adequate Autonomy

In this chapter, the following conclusions can be drawn:

- Clearly drafted legislation can reinforce 'regulatory' autonomy;
- If there is an increase in regulatory powers, then there is an increase for appropriate accountability;
- There is a balance between those powers granted and the duties assigned. In particular, when there is statutory supervision from the Secretary of State.

Amongst Industry and customers there is a general perception that regulatory autonomy must be reinforced. In particular, against the Incumbent influence but also the interference from other public offices.

In my view, 'regulatory autonomy', also known as statutory, must be improved in the drafting. Nonetheless, regular reporting (from the regulator) can provide the real dimension of its activities, and the regulatory autonomy in its day-to-day operations. This can also clarify what the watchdog's inputs have been and, foremost, the outcome (successful or not). These reports will provide guidance about the regulatory performance.

Additionally, it will show whether or not, the best course of action was taken, and also, whether it was consistent with the evidence available. Undoubtedly, further explanation would reduce deviation risks from legitimate decisions. No matter, there will be a growth in litigation.

The different levels of regulatory autonomy imply that there is always legal (and rational) basis for regulatory function. This shall ensure that any person would receive the same treatment if similar circumstances arose. Rather than being limited to protect legitimate expectations. Otherwise, the watchdog will not be accountable. Judiciary review provides the balance for accountability. Then, the regulator will be capable to advance arguments to protect the less-protected party, and simultaneously, fulfilling rational principles.

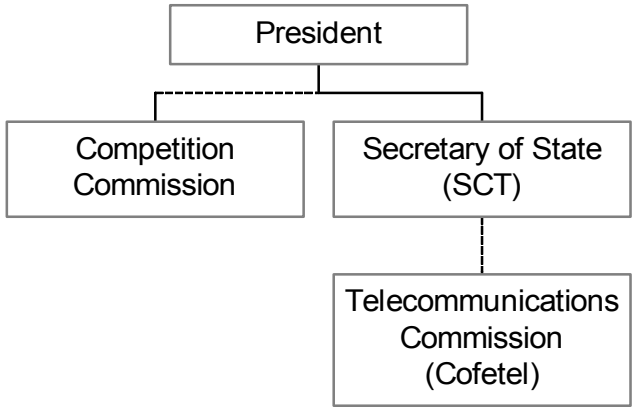
4. Institutional Arrangements

The objective for this chapter is to describe institutional arrangements for regulating (and developing) the telecom sector.

Institutional arrangement are the relationships, formal or informal, established between the specific-sector regulator and others public offices. In first place, there are offices empowered to direct certain course of action. There are also include public offices, such as Competition Commission, with holds a concurrent jurisdiction.

Bearing this in mind, the following are offices involved with regulating the telecom business:

- President's Office;
- Ministry for Communications and Transport (also, Secretary of State, or SoS);
- Telecommunications Commission (also, known as Cofetel); and
- Competition Commission.



The description of institutional relationships is essential to identify effective autonomy and whether or not there is a deviation from statutory autonomy.

This exercise also helps to understand the extent which the regulator should be made responsible for unfilled targets. Rather than only given explanations for failing, it is targeted to clarify the consequences for external interference both from the Secretary of State and / or from the Incumbent operator.

Annex B provides a comparison between the Cofetel and Secretary of State's roles. It shows the possible issues that might arise.

4.1. The Federal Government

The President is the most senior officer within the Federal Government. He is liable for the appointment of all administrative-departments and non-

departmental agencies' officers. In particular, the selection of the Secretary of State for Communications and Transport. It is equally the same for the Cofetel's Board of Commissioners.

The above is natural, when the President is the ultimate responsible for delivering the appropriate incentives within the Mexican economy. In broad sense, he is also accountable for delivering specific targets, such as effective regulation.

There is implicit liability for telecom policy. The whole structure, topped by the President, has to provide consistency between public policy and competition policy. In this way only, it would cover every aspect of telecom and communications business.

4.2. The Secretary of State for Communications and Transport

4.2.1. The Functions of the Secretary of State

The President is head of the Public Administration.

The Secretary of State (also, SoS) is directly involved in communications and transportation matters.

The SoS covers a broad range of issues. These are from industrial policy to social policy. Industrial policy means regulating new market entries. Conversely, social policy implies consumer protection and topics that are not generally covered by competition.

Between 1940 and 1995, the Secretary of State had been in charge of enforcing communications' relevant statutes. There was a uniform legislation for services and networks. All these occurred under the GCW Act 1940 (see Chapter V).

However, with the enactment of the T Act 1995, some functions were transferred to the watchdog. The most important, the power to enact regulation.

In contrast, the SoS was left with the power to define general objectives. This meant policy without regulation. Nonetheless, it retained other core functions such as licensing and enforcement ie fines. This 'grey' line is more obvious if compared with the Cofetel's Presidential Decree and the SCT Internal Regulation (see Chapter V).

4.2.2. Relationship with the Telecommunications Commission

Under the current regime, the T Act 1995, the SoS is directly responsible for the appointment of Cofetel's Commissioners. Jointly, it requests the Presidential assent.

The SoS retained 'broad' powers for intervention, whilst the regulator retained 'narrow' powers. In practice, this has proven to be conflictive.

Firstly, the SoS has been reluctant to give up jurisdiction over regulation issues.

For instance, the SoS still enjoys control over spectrum management. Also, it claims to retain the State representation with international bodies, as happened with the disputes in the WTO. The key point is in possession of the necessary expertise.

Secondly, the SoS has been abusive from using direction powers. Rather than dictate clear and written instructions, it has used informal suggestion and pressure during working meetings. Without question, the SoS is able to reverse and vacate regulatory decisions when legally challenged. This situation would have serious consequences over the decision-making process. If there is disagreement, there is always the explicit menace that the SoS will render invalid the Cofetel's activities. This can be explained from the 'personality' theory, when different officers hold a different approach over the same issue.

Regulatory performance will be undermined if the disagreement is internal.

For instance, focus on supporting the Incumbent's financial performance. It was the view taken from the SoS. The regulator has had a different approach, in particular, if implementing the dominance regulation.

Thirdly, the SoS has maintained a 'proxy' relationship. This means to encourage (or to reinforce) the addiction from central offices. The SoS published its own management plan but it does not contribute to the regulator to draft its own strategic plan.

The relationship has to do more with auditing results, rather than seeking a more pro-active initiative in the regulator. This includes setting up new rules for developing the telecom sector, under the specific-sector regulator. Lack of guidance has proven to undercut the regulatory autonomy.

For instance, rather than agree with sanction's proposals, the SoS has delayed imposing sanctions, mainly to the Incumbent operator.

Conversely, the SoS does not have improved transparency within promoting telecom business. Neither is he putting enough attention in the collateral effects for using a restrictive approach with regulation.

4.2.3. Negative Effects from Non-Cooperative Relationship

The relationship between the SoS and the Telecom Commission has developed into non-cooperative actions.

Unfortunately, this situation undermines the effectiveness of rolling-out initiatives to tackle market issues. If the Cofetel is needed to pursue a certain course of action (as it might be with enforcing economic fines), the SoS delays action.

Consequently, there is a perception that inefficiency shall be attributed to the regulator, rather than identifying that the failure has been on the side of the SoS.

Even worse, the SoS has been advocating against the regulator's proposals.

4.3. The Telecommunications Commission

The Telecommunications Commission (also, the Cofetel) was established in 1996.

It was created from a divestiture from the Ministry of Communications and Transport. The then current Under-Secretariat for Communications was appointed as Chairman and Commissioners of the new public entity. Other minor civil servants were transferred.

The main processes, alongside the Cofetel, are as follows:

- Setting (and drawing) regulation;
- Solving interconnection disputes;
- Management of scarce resources; and
- Ensuring universal service (those services provided under deficit).

The top-level structure was initially as follows:

- The Board of Commissioners, where most of decisions have to be taken;
- The Chairman, one of four Commissioners, who will be in charge of implementation of the Board's decision; and
- The other Commissioners, each of the three were in charge of different functions alongside the organisation (Strategy and Financial affairs, Legal affairs, and Technical affairs).

The above structure provided some incentives for segmentation of processes. In 2002 the structure of the Board (and functions of three Commissioners) was modified[21] to be target oriented. This is also in line with the National Plan for Development (2001-2006).

The activities, within the Cofetel, were re-oriented toward:

- Improvement of quality service;
- Diversification of services; and
- Infrastructure expansion.

[21] Official Journal, DOF 31/01/02

However, the Cofetel does not hold full control on setting the appropriate remedies for market failures. In most of cases, the SoS is the only one with mandatory powers.

The Commissioners can be dismissed at any time by the SoS, whom is not forced to provide explanations for the dismissal from office. There is no precise term for the appointment within the Board. In conclusion, the Cofetel has to follow dictates from the Secretary of State, whether these are explicit or implicit mandated.

This situation has serious implications for assessment of policy implementation. On the one hand the Cofetel is apparently responsible for developing the telecom sector, but it is short of powers to compel. On the other hand, the Secretary of State will not be responsible for the whole policy. Nonetheless, it is ultimately responsible, as long it holds enforcement powers (including power to revoke licences).

The Cofetel is unable to exert regulatory autonomy to the full extent. This comprises financial and operational autonomy. Although private investment has steadily increased within the telecom sector, it does not seem to be reflected in the budget granted to the regulator.

For instance, in 1999 the public investment within the SoS was reduced 4% but the regulator increased 173%. The following year, the same inconsistency can be perceived, the SoS increased its budget 129%, but the regulator's budget was reduced 53%. These figures can provide evidence that the regulator's budget has been in the control of the SoS and reduced scope was left to the regulator itself.

PUBLIC INVESTMENT (1998/02)

	SCT		COFETEL		OTHERS		TOTAL	
1998	125.4	-	4.4	-	1056.8	-	1186.6	-
1999	120.7	-4%	12	173%	140.7	-87%	273.4	-77%
2000	276.7	129%	5.7	-53%	185.7	32%	468.1	71%
2001*	334.3	21%	4.5	-22%	91.25	-51%	430	-8%
2002	391.9	17%	3.2	-28%	-3.2	-102%	391.9	-16%

Source: SCT (*) – author's own estimates

Although competition complaints have increased over the years (see Annex C), there had not been a response from the SoS, which effectively dealt with those complaints.

The response, from the SoS, has been to assert 'nominally' that regulation has successfully promoted development of the telecom sector. Unsurprisingly, the expectations for further investments in Mexico had severely reduced in recent years.

In contrast, the Competition Commission has taken action several times, fining the Incumbent operator. However, the CC is able to decide on its own, whether or not take action.

These are few implications:

- Ineffective target to market issues;
- Reduced scope for choosing different options in policy; and
- Abusive use of guidance in regulatory decisions.

Even the approach taken by the SoS might be inconsistent with some legislative objectives.

The regulator has not only been restrained to take action in many occasions; it has also been unable to deal with more the complex landscape due to the successive entries of network providers.

4.4. The Competition Commission

The Competition Commission is, like the Cofetel, a non-departmental agency. The President appoints the Board's Commissioners. The CC is in charge of enforcing anti-trust (or, competition) legislation. This body is responsible for tackling anti-competitive behaviour. As usual, there had been resistance in abandoning former practices and collusion between Industry and government.

The CC was established, under the Competition Act 1992, in force since mid 1993. However, the CC's mandate was extended under the T Act 1995 with different attributions. The most important, the market power's determination. All these draw and impose specific obligations to the declared 'dominant' undertaking. The new role was a more procedural one.

In our view, the CC has played a safeguard role in drawing regulation, but still ensuring that competition principles are valid. In other words, making sure there is a balance between competition and regulation.

Sadly, the Competition Commission's role has been misunderstood by the SoS. It was considered as an antagonist body. The one, which has to challenge every administrative action. Even so, the complicated relationship extended to a similar, and regulated activity, air transport (also, under the Secretary of State's control).

4.5. Drawing the New Structure

The institutional arrangements provide incentives for conflicts between the regulator and others public offices. And even worse, this undermines

consistency alongside institutional action. Under the current configuration, institutional arrangements cannot contribute to changes in the telecom sector.

Although difficult, the CC has provided a sort of balance between regulation and competition. It has been highlighting key points to be addressed during drafting regulation. The CC's review might even provide accountability over regulatory activities.

In this case, the CC, with solid arguments, can test whether or not the action taken (by the SoS or the Cofetel) was the best action possible. At the same time that the Cofetel's powers can be extended then the CC's powers might be worth reviewing also.

Finally, there is an important distinction between decisive actions, those which impose a real burden on the undertakings and those, which are only supplement for other public functions.

5. The Legal Framework

The objective for this chapter is to introduce the legal framework.

The legal framework is the frontier for exerting 'regulatory' powers. By understanding the legal dimension for regulatory autonomy it would be able to draw a new approach.

Although the regime based on the GCW Act 1940 is arcane, the new regime (under the T Act 1995) has not been fully implemented.

In my view, the meaning of 'regulatory' autonomy is misleading. The regulator is unable to communicate effectively an institutional strategy. This would explain, even with telecom openness, why there is a slow down on further investment in telecom services.

The content of this chapter is as follows:

- Constitutional approach;
- Statutory legislation; and
- Secondary rules.

5.1. The Mexican Constitution: Article 28

The Constitution states the foundations of government. It draws the legal limits about what might be allowed or restricted.

Article 28 of the Constitution comprised two different principles:

- Monopoly control; and
- Provision of services.

Article 28 (1) proscribes monopolies[22], yet it makes certain anti-competitive behaviour illegal, if certain conditions are met. In general terms, market players would be fined if there is a restrictive agreement of competition (alongside competitors), or if there is a breach of merger rules. Only until recently, the scope of this provision was extended to cover the abuse of market power.

Also, it provided the basis for enacting the Competition Act 1992[23], and later, partially supported the T Act 1995. In particular, article 63 of the T Act 1995[24].

Article 28 (10) imposes an obligation on the Government[25]to ensure the provision of services and goods. However, this obligation would only be valid if there is public interest in either ensuring provision or providing them directly. This also provides the foundation of the licensing regime.

This provision entitles the regulator, if demand is unsatisfied and there is public interest in getting services, to impose certain conditions. The Government, either the Secretary of State or the regulator has to ensure the provision of telecom services.

In the past, the regulatory and commercial functions were linked together. Government, mainly the Secretary of State, set up policy targets and the Incumbent was only concerned with the fulfilment of demand. This was made under licensing schemes, where only a public corporation provided service. Now, the government has delegated one of its functions, the provision of services. The function was delegated to private business. This explains, in part, why it still maintains a licensing regime.

Instead, it may be more worried about finding a balance between competition and regulation.

The above provisions allow Government to enact different regulations to tackle issues related with the demand and supply side. Undoubtedly, these provisions allow freedom in evaluating the method for tackling market failures.

However, the regulator would use article 28 (10) for avoiding implementation of competition principles. In fact, the SoS has set up a protective policy for voice-telephony services.

[22] Artículo 28, párrafo 1. En los Estados Unidos Mexicanos quedan prohibido los monopolios, las practicas monopólicas, … en los términos y condiciones que fijan las leyes…

[23] See below.

[24] Article 63 – establishment of SMP conditions

[25] Artículo 28, párrafo 10. El Estado, sujetándose a las leyes, podrá en casos de interés general, concesionar la prestación de servicios públicos, … salvo las excepciones que las mismas prevengan. …

TELECOMM FRAMEWORK

LEGISLATION	APPROACH	PROVIDERS	SERVICE	TARIFFS
GCW ACT 1940	SUPPORTS MONOPOLY, ENSURING LONG-TERM VIABILITY	TELMEX, STATE-OWNED AND SINGLE PROVIDER	VOICE TELEPHONY, ESSENTIALLY BASED IN SWITCHES	STRONG CONTROL
C ACT 1992	TARGET ANTI-COMPETITIVE BEHAVIOUR	ANY, EXCEPT PUBLIC CORPORATIONS	ANY, EXCEPT CONSTITUTIONAL MONOPOLIES	MARKET-DRIVEN
T ACT 1995	SUPPORTS COMPETITION, BUT CONSISTENT WITH SOCIAL POLICY	SEVERAL PROVIDERS, SERVICES AND NETWORKS	MOBILE AND NETWORK SERVICES	PRICE CONTROL RELAXED; NOW, MARKET DRIVEN.
THE NEW BILL (EXPECTED END/02)	TARGET MARKET POWER AND USO	CROSS-BORDER SUPPLIERS	ELECTRONIC SERVICES	INFRASTRUCTURE CONTROL / UNBUNDLING

Source: Author's own table

5.2. Primary Legislation: The Telecom Relevant Statutes

Primary legislation has to lay down constitutional principles. Otherwise, the statute might be declared unconstitutional.

The main issue, which arises from the fact of co-existence of several statutes, is the consistency of the whole. This is because there is no consolidation. There was only general repeal of some provisions, but others are still valid.

Currently, the following statutes are relevant in the telecom sector:

- The General Communication Ways Act 1940, or the GCW Act 1940;
- The Competition Act 1992, or also the C Act 1992; and
- The Telecommunications Act 1995, or also the T Act 1995.

5.2.1. Ensuring the Long-Term Viability – The GCW Act

The GCW Act has been in force since 1940.

It was enacted as 'omnibus' legislation to regulate the provision of communications and transport services. The legislation includes control of network and provision of services.

The statute was built on the concept of 'public service'. This was because there would be a single provider of voice telephony services. It put in place a restrictive framework for the supply of new services. The provision of services

(and operation of networks) without the appropriate authorisation is illegal, and consequently, severe penalties applied. This is explainable as long as the Government was fully liable for provision of voice-telephony at national scale.

Whilst there would be a single provider, there was no need for setting a regulatory model. It seems to be with disciplinary actions. This was possible from the Secretary of State, but also within the public corporation.

5.2.2. A Procedural Legislation: The C Act

The C Act has been in force since mid 1993.

The statute is essentially a 'substantive' law. It tackles anti-competitive conducts. There are two categories: absolute and relative. The first category involves collusive conduct amongst competitors such as fixing prices or no-competition agreements. The second category involves situations where there is a single provider, which is taking undue advantage of its position within certain market(s).

After 1995, with the enactment of the T Act, this legislation took an additional spin. It developed into 'procedural' legislation for regulating public utilities. The regulation set up the procedure for market assessment. Only then, the Secretary of State would be able to set up additional obligations to the dominant player.

The C Act is neutral with respect any sector in the economy. Nonetheless, there are few exceptions, such as constitutional monopolies. The legislation can be applied to any providers of telecom networks, services or devices. Also, it accomplished the regulatory functions, as long as it is used for tackling abuse of market power.

5.2.3. Supporting Competition, But Also Public Policy: The T Act 1995

The T Act has been in force since 1995. If compared against previous legislation, it is more precise, as long as the general categories are networks and services. This means that it is consistent with convergence in electronic communications.

On the one hand the T Act 1995 meant an extension from the Competition Act 1992, authorising competition alongside services and networks. Nonetheless, it does support social policies, such as a universal service fund. However, it reduces consumer protection.

On the other hand, it intends to change the approach taken in the GCW Act 1940, reducing scope for price control. There is a removal of prior authorisation in tariffs. This becomes a notification. Whilst there is removal of tariff controls, competition is being encouraged through market prices. Nevertheless, there is

still the possibility to impose regulation, but essentially in case of market power.

The regulator would be able to take action in a context where there are different networks competing one against others. This is the case for fixed and mobile, where mobile could be a substitute for fixed telephony and the opposite. However, the challenge is to find a balance within a complex landscape, completely different to the one considered for the GCW Act 1940.

5.3. Secondary Regulation

The following regulation was enacted for setting up the regulator:

- The Presidential Decree; and
- The SCT Internal Regulation

The secondary legislation actually defined the boundaries for regulatory function. This was a consequence of a defective provision in the T Act 1995.

5.3.1. The Presidential Decree

In May 1996, the President issued a decree. The decree defined extensively the Cofetel's functions. These can be categorised as judgement, advice, operational functions and others non-relevant in terms of regulatory autonomy.

The main categories are those functions which imply use of judgement. The most representative are enactment of regulation (including technical standards), solving interconnection disputes and also determination of SMP obligations. Each function implies an internal process to be carried out alongside the Cofetel, whom is fully responsible for the outcome.

The next level is those functions which might be defined jointly with the Secretary of State, namely advice and operational functions. For instance, giving advice on licence conditions or management of scarce resources (numbering or radio spectrum). In these cases, the Secretary of State is directly responsible, as long as it takes the final decision, and/or provides specific instructions. The Cofetel will be responsible, essentially, in those cases where there was negligence. This means in very limited circumstances.

Finally, there are also other functions which are not particularly relevant in terms of regulatory performance, such as research and promotion of human resources in the telecom sector.

CATEGORY	DESCRIPTION
JUDGEMENT	ENACTMENT OF ADMINISTRATIVE REGULATION AND TECHNICAL STANDARDS (AND REVOKING)
	INTERCONNECTION DISPUTES
	IMPOSING SMP OBLIGATIONS
	MONITORING COMPLIANCE
	MANAGING RADIO SPECTRUM
ADVICE	DRAFTING FUTURE STATUTORY PROPOSALS
	ADVICE ON LICENSES AND PERMITS (AND MODIFICATIONS)
	ADVICE IN SANCTION PROCEDURES
OPERATIONAL	SCARCE RESOURCES MGMT, NUMBERING AND SPECTRUM
	TELECOM REGISTER
	EQUIPMENT APPROVALS PROCEEDINGS
	INTERNATIONAL AFFAIRS
	RECIPIENT OF PAYMENT, TELECOM FEES AND SPECTRUM AUCTION
	RADIO SPECTRUM AUCTION PROCEEDINGS (INCL. SATELLITES SLOTS AND FREQUENCIES)
OTHERS	TELECOM RESEARCH
	PROMOTING HR AND INNOVATION IN TELECOM

Source: Author's own table

5.3.2. The SCT Internal Regulation

In October 1996, the Secretary of State modified its internal regulation. Essentially, there was a delegation of powers from the Secretary of State to the Cofetel.

In doing so, this broke the balance drawn in the T Act 1995 - the operational and budgetary autonomy and worse, the delegation of powers made unclear the liability attributable to both, the SoS and the Cofetel.

The regulations obscured the interpretation alongside regulatory functions. There the Cofetel was considered with the Secretary of State and consequently, it was able to review decision-making within the regulator.

Indeed, this regulation overlapped functions between the Secretary of State and the Cofetel. For instance, the regulator was due to monitor compliance, but not to impose sanctions. This situation was made confusing (and complicated) by the assertion of effective jurisdiction over competition alongside the telecom sector.

5.4. The Way Forward

5.4.1. Implementation of a New Scheme

Unsurprisingly, after the enactment of the T Act 1995, one of the focal points has been implementation of legislation. This implies to find consistency between the previous and new regime, before drawing incentives for the development of the telecom sector. All these aim to avoid conflicts, or at least to solve them in an equitable and consistent manner.

The previous legislation is based on the expectation that government would ensure investment recovery (costs and revenues). All this changed after 1995. The T Act states four objectives, development of telecom network, national control, effective competition and universal service. The government is constrained to provide consistency alongside public policy.

The new regime is based on a completely different expectation, competition. Consequently, public intervention can only be possible if there is an assessment of market power. Cost recovery is, by far, more restricted. However, financial viability, as a principle, has to be re-written if there are to be further incentives for investment.

Delaying enforcement is having the effect that non-incumbent operators perceive the regulator as non-independent from Telmex. These operators are asking for similar privileges to those granted to Telmex. But, if we assume that the regulator would be only responsible for ensuring a fair competition, this position cannot be sustainable in the long-term.

The T Act 1995 comprised several objectives (developing telecom network, national control, effective competition and universal service) and characterised a new challenge. There is no guidance about how to pursue these objectives, yet different criteria can be used within each objective.

5.4.2. Drawing a New Approach

Since 1997, the House of Representatives introduced a bill to formalise the regulatory autonomy of the Cofetel. The bill considered a similar structure to the Competition Commission. The Board's Commissioners would have had a specific term, without external review from the Secretary of State.

The bill also granted legislative jurisdiction to the Telecommunications Commission. This means clear attributions to be exerted by the regulator. This diminished the risks of ambiguous interpretation about the role of the regulator, improving decision-making.

In 2001, the Federal Congress began consultations for drafting a new Communications Bill.

One of the main objectives is to address flawed points from the T Act 1995. For instance, institutional autonomy, universal service mechanism and market power control.

The new bill will also have to address competition across borders, and is very likely to include some provisions as regards privacy and content regulation. It is also in the context of developing 'Information Society' services.[26]

6. Policy Management

The objective for this chapter is to explain the Cofetel's approach.

Inside the Cofetel, the view is that it has acted in an effective and efficient manner. This view would contribute towards regulatory autonomy.

However, this position could arguably be inaccurate and definitely worth to critical analysis. Instead, the watchdog has favoured the Incumbent. For instance, delaying action in interconnection disputes. Without question, all these have favoured the Incumbent operator.

The regulatory model, rather than being based on institutional policies, such as regulatory autonomy, has tended to be a disaster. Increasingly, there is a need for regulatory intervention. There is however doubts about the regulatory autonomy.

The content of this chapter is as follows:

- The regulatory perspective;
- Implementation of legislative mandate; and
- Defective policy.

6.1. The Regulator Perspective

The Cofetel's view is that it has acted in an effective and efficient manner, particularly in giving top priority to the development of telecom sector and setting a balance between legislative objectives comprised in the T Act 1995.

The Cofetel's Report, in 2000, stated that "openness has been linked with regulation, and so, the outcome would be effective competition, plus consumer benefits".[27] There is a constant pressure for addressing competition issues. These are market failures, for instance, dominance.

In this context, the watchdog admitted that industry trends had led to a 'permanent review' of regulatory policy. If authorities shall be entirely responsible for policy implication they have to understand and visualize market

[26] Vicente Fox, The Mexican President, has strongly supportted the programme of e-Mexico *(http://www.e-mexico.gob.mx).*

[27] "El proceso de apertura descrito … se encuentra sujeto a nuevas medidas regulatorias necesarias para dar cabida a una sana competencia en beneficio del usuario."

changes. Only then would the regulator be able to provide incentives and ensure fair and effective competition and foster further investment for network growth and services' diversification. All these will be part of Mexican strategy for developing the backbone for communication services.

Since 1996, the Cofetel strategy had been based on the following principles:

- Regulation for opening competition;
- Competition management; and
- Universal service, if competition is unsatisfactory.

New services and products will demand further regulation. This is because regulation is strictly enforced. There is small room for innovation. The Cofetel will be the watchdog amongst the telecom players; but also, it will provide additional incentives if the market does not fulfil the expectations.

As regards dominance, the watchdog has said that "dominance rules encourage effective competition alongside different service providers. Also, those rules will promote better services in terms of price, quality and choice".[28] Dominance rules were considered, as a universal solution.

Furthermore, it was said that interconnection is "essential for ensuring competition, and foremost, to avoid duplication of infrastructure".[29] The same approach was also taken for international settlement tariffs and proportional returns that are targeted to encourage effective competition amongst operators. The strategy followed was providing elements for long-term development of telecom networks.

Finally, local codes adjustments (as a result of regions re-drawn) are targeted to generate consumer savings. During almost three years this program has taken into account geographic regions, in the context of implementing numbering-conventions and enlarging numbers available, in particular, for local operators whom already entered into the voice-telephony market.

There are set out below a few indicators used for supporting Cofetel's views concerning telecom development:

- Telecom has grown 4.2 times (in 10-years period) than the whole economy;
- Between 96/99, decrease (40.6%) in national calls and growth (60%) in minutes of traffic;

[28] "Esta resolución [obligaciones específicas al operador con poder sustancial de mercado] favorece una sana competencia entre los diferentes prestadores de servicios de telecomunicaciones y contribuye a que dichos servicios se presten con mejores precios, diversidad y calidad, en beneficio de los usuarios". Pág. 27.

[29] "La interconexión … es una condición indispensable para el funcionamiento de un sector abierto a la competencia, debido a lo ineficiente que resultaría que cada operador entrante contara con una infraestructura completa para cursar todo el tráfico que se genere en su propia red". Pág. 28.

- Steady decrease in Telmex share (in LD), its network was carrying 72.3% of LD minutes;
- Reduction costs for fixed line instalments, residential (70%) and business (42.8%).

6.1.1. Reporting Policy Actions

In general terms, it might be said that the regulatory agenda is dominated by market control issues. Nonetheless, competition alone could drive market openness. The regulator is vigilant, if further regulation is requested.

The following table shows the regulatory topics reported during 2000.

THE COFETEL REPORT 2000

REGULATORY TOPICS	ACTION TAKEN
4.1. Dominance	Enactment of dominance rules
4.2. Interconnection	Settlement of interconnection disputes, ie tariffs
4.3. Universal service	Working-group for cost model, and indicators
4.4. Proportional return and uniform tariff systems	Extended proportional return (+4 years) and gradual reduction on int'l settlement tariffs
4.5. Reshape local areas	Carrying over of modification
4.6. Number expansion	Implementation of numbering conventions

Source: Author's own table

In detail, regulatory topics were as follows:

- Dominance;
- Interconnection;
- Universal service;
- Proportional return and uniform tariff systems;
- Reshape of local areas; and
- Numbering expansion.

In one way or another, most of the topics are related with the Incumbent control. This is obvious bearing in mind the vertical integration of the incumbent. With such power, the Cofetel's response has been more reactive rather than proactive. It was focused only in the production of the dominance rules, but with less emphasis on implementing it. This would also explain why the rules have been, at present time, ineffective.

Regulatory agenda is apparently driven out with long-term issues. For instance, dominance, interconnection and universal service. But, if one looked

in detail at policy, then it would be observed that the regulatory actions were uncompleted. Further action is necessary, if agreed, for full implementation of competition policy. Policy actions seem instead to be a response for short-term issues.

Taking into account the previous elements there is an urgent requirement for better definition. It could be fulfilled through planning and long-term management. It oriented toward legislative objectives. If successfully implemented, regulatory assessment would be more objective and so receive less criticism.

This proposal can help to improve the criteria used in policy, in most cases ensuring financial viability, but undermining other criteria comprised in the T Act 1995. Instead, effective competition could be taken as a more balanced criteria.

In my view, the watchdog would be more skilled for understanding market trends and anticipating reactions from undertakings.

As policy actions were reported there were no details about the rationale behind them. Consequently, there were requests for more details, which in practical terms would make more predictable regulatory activities. Also, stakeholders themselves would be in a position for better scheduling or capable to challenge policy decisions on a more specific basis, according with previous expectations.

6.1.2. Managing Competition on Voice-Telephony Services

Overall, the Cofetel's view has been competition management. This means, fostering competition in certain services, but also avoiding fiery competition if this undermines market benefits. The watchdog's action has provided incentives, if necessary, through licences and permits obligations.

Nonetheless, although the authorities relaxed requirements for entry (and more licences and permits have been granted), there is still a hurdle to overcome. This explains why licences are strictly interpreted and that there aren't implicit permissions for the provision of new products or services. There is always a requirement for requesting changes in licence's conditions.

The following table is a sample about how does the Cofetel have managed the openness in telecom services (domestic and international long-distance, fixed, mobile and public voice-telephony).

VOICE-TELEPHONY SERVICES (ONLY)

SERVICE	THE COFETEL'S ACTION
5.1. Domestic LD	Price reduction
5.2. Int'l LD	Growth on int'l traffic
5.3. Local fixed	Differentiation between those operators with USO
5.4. Mobile	Monitoring quality
5.5. Public telephony	Fostering of teledensity

Source: Author's own table

In most cases, the Secretary of State explains that the relaxation of policy in telecom was necessary to boost investment in telephony. This is only partially true because another important motivation was consumer dissatisfaction. After Telmex privatisation there was agreed a scheduled agenda ie there would be a gradual de-monopolisation.

The table shows a gradual de-monopolisation. Nonetheless, there are some sensitive points, such as consumer protection. This has been the case with monitoring quality in mobiles, and perhaps with the increase of teledensity. Other cases (domestic and international long-distance) have not been successful.

Firstly, there have been price reductions in domestic LD. Further decreases have slowed down because the levels for interconnection tariffs settled with the Cofetel.

Secondly, the Cofetel established different ranges for interconnection tariffs. It made a distinction between 'fixed-local' operators with and without 'universal service' obligations. The higher level was imposed to those whom did not have to make a specific request.

Thirdly, in this context, it is worth mentioning that the mobile network is over-saturated. It is seems to be as a consequence of a still unattended demand in local services, rather than bad planning. Instead of implementing proposals to boost teledensity in fixed lines the response (from the regulator) has been to monitor the quality of mobile calls (essentially, call losses and coverage). This could also be related to public telephony costs. The cost of a single call in a public telephone is higher than a similar mobile call.

Taking into account that there is unsatisfied demand and saturation in mobile networks, this leads to the preliminary conclusion that there is a distortion in the supply side. More important however is the fact that the regulatory response has been defective. Customers are paying higher prices, and worst, they are not the recipients of regulatory model's benefits.

Furthermore, the enactment of dominance rules in telecom markets (local, interconnection, domestic LD, int'l LD and inter-urban transport) have failed to

supplement other governmental controls and incentives, such as licences and subsidies.

A constant policy based on explicit incentives implies some risks. This is because Industry would only be reactive if it receives additional privileges from the watchdog. For instance, there would only be further investment if cost recovery were unconditionally agreed. The watchdog would have no choice other than allowing industry to recoup significant costs. Otherwise, network operators would be driven out soon.

However, regulatory autonomy can only be established if there is a balance amongst stakeholders involved in the competition process. This is only possible when there is no undue pressure from getting further incentives.

6.2. Implementation of Legislative Mandate

The basis for claiming that the watchdog has ensured the development of the telecom sector is given in article 7 of the T Act 1995. Here are comprised the objectives that the authorities have to follow within policy management. Furthermore, there is a brief reference about criteria to be followed.

The table shows the relation between objectives and criteria within article 7 of the T Act 1995.

LEGISLATION GOALS

OBJECTIVES	CRITERIA
Network development	Financial viability
	Economic efficiency
	Geographic Coverage
National control	Sovereignty
Effective competition	Range of choices
	Superior quality
	Value for money
Universal service	General demand
	'Low income' group

Source: Author's own table

The objectives for the T Act 1995 are as follows:

- Development of telecom network;
- National control;

- Effective competition; and
- Universal service.

Obviously, implementation of each objective involves legal, technical, and financial aspects. This would explain emphasis or divergence on the criteria involved. As usual, this also would rely on the officer responsible for the implementation.

Network development had been understood as financial viability, within the GCW Act 1940. Nonetheless, the T Act 1995 enlarged the concept to include economic efficiency, and perhaps, geographic coverage. In particular, it has been considered in ensuring cost recovery for interconnection services. Tariffs settlements were enacted as result of interconnection disputes.

National control, although the notion is clear and so the objective, is not relevant for policy management. In most of cases, this topic is related to the Secretary of State and the Foreign Investment Commission. The watchdog's role is limited. It could give general advice on imposing further limitations to foreign investment. For instance, telephony-over-IP.

Effective competition would mean alternative suppliers. Encouraging entry of potential competitors if market conditions are outstanding. Moreover, the guarantee that the providers are competing in a wide range of choice, quality and value for money. Lastly, universal service can be split into two different criteria. General demand and low-income groups (also know as 'special-needs' users).

It worth saying that in a preliminary conclusion because the T Act 1995 does not provide guidance about implementation of legislative mandate and the regulator has been able to interpret them freely. It is clear that the T Act 1995 does not establish a distinction between primary or secondary objectives. In ensuring financial viability, as its primary objective, the watchdog has overridden the rest of its legislative objectives. For instance, setting different tariffs for interconnection between local operators. Unfortunately, this approach has already prevented that new legislation takes full effect, and therefore, there is strong disagreement alongside industry.

The above leads to the next conclusion that the regulator has exerted its attributions and powers without the appropriate assessment. This contrasts with the statement that it has acted effectively and efficiently. The regulator has failed in setting a balance between legislative goals. Rather than being a complex task, this seems to be that it took a very limited perspective.

6.3. Defective Policy

Nonetheless the optimistic view from the Cofetel is that there is a strong disagreement alongside industry about the success of policy. Even worse, some

of them would say that the rolling out of competition has been a completely disaster.

The following are the arguments used against the Cofetel's view:

- Reduced transparency within regulatory processes;
- Excessive negotiation with the Incumbent operator;
- Restricted view, ensuring financial viability;
- Derailment of competition; and
- Ignoring competition complaints.

This situation has obviously undermined public policies. There is no confidence for further investment, unless there are promises of certain tariff levels. In practical terms, this meant accepting influence from industry. This meant also a departure from consumer protection, and so from competition strategy. This explains clashes with the Competition Commission.

As technologies and markets moved on, common issues are being relegated. Even undertakings are discovering that technology is moving faster than initially expected.

There is still however no clear answer how to boost the expansion of fixed network. Currently, this situation is producing deep consequences in mobile networks (higher levels of traffic and reduced performance). Both will have implications within 'Information-Society' services. If there is not a robust core network, the rolling out of communications services will be under-estimated.

Whilst continuing uncertainty in international markets (affected essentially with the roll out of 3G services) the landscape for Mexico will continue to be complex. Obviously, most of the investors would be reluctant to do make further investments unless the expected revenues are adequate to the risk level.

6.3.1. Reduced Transparency Within Regulatory Processes

It is not clear from the Cofetel's Annual Report for 2000 the relation with legislative objectives.

> "The regulator and Telmex defended the transparency processes stating that all decision were made with input from all companies. They cited as proof of the effectiveness of the system, the fact that Telmex's competitors had taken in four years almost 30% of its market share since the introduction and implementation of liberalization measures".[30] This was significantly faster than what it took AT&T in the U.S. to loose the same share.

[30] Ojeda de Koning, Rodrigo, *Transparency in Mexican Telecommunications: Mechanisms to facilitate the regulation of telecommunications services*, pg. 1

"…the information should enable Cofetel to assess the effectiveness of its regulatory framework, and the progress it makes in the resolution of problems or disputes, and enable it to commit the industry and market participants to its goals and regulatory framework."[31]

"As a guarantor of economic (investment) interests, Cofetel has a legitimate interest in obtaining all available information from the market to perform its duties in a diligent and efficient manner."[32]

"Transparency doesn't entail, by itself, that the best policy / regulatory outcome will happen, but it would give legal certainty to the development and liberalization of Mexico's telecommunications industry, market and regulatory framework."[33]

6.3.2. Excessive Negotiation With The Incumbent

The regulator has taken a pre-emptive view for avoiding conflicts with the Incumbent operator. However, market failures are due to a great extent to the dominant position of Telmex.

"It is necessary that the Law grants regulatory authorities (i) independence of decision-making including, particularly, independence from operators they are responsible of regulating; (ii) clear non-contradictory objectives; (iii) a well specified and strict mandate of accountability and of transparency in procedures, decision-making and information; and (iv) the mandate to establish open-public consultations of significant decisions."[34]

"In fact, as there is a fundamental power disparity between the authority and the incumbent, such authority would usually be on the loosing side. To avoid outright defeat, high ranking officials of such authority would try to prevent and diminish the conflicts with the incumbent at the expense of non accomplishing their responsibilities." [35]

"Institutional reform must take into consideration the incentives authorities face for doing an adequate job and complying with the mandate of the Law. There seem to be two complementary reforms to achieve this. One is to establish a multi-sectorial interconnection and access authority which would also be in charge of enforcing the regulations on operators with substantial market power. … The other complementary reform which minimizes the long-run involvement and necessary regulation is to establish a set of structural measures (divesture of local network and restrictions to joint ownership of mobile and fixed networks)."[36]

[31] Ojeda de Koning, … *Op cit.* pg. 72
[32] Ojeda de Koning, … *Op cit.* pg. 73
[33] Ojeda de Koning, … *Op cit.* pg. 73
[34] Casanueva, Cristina & Del Villar, Rafael, *Analysis of the Reform in the Basic Telecommunications Industry in México (1990 – 2000)*, pg. 21
[35] Casanueva, … *Op cit.* pg. 21
[36] Casanueva, … *Op cit.* pg. 22

The above policies would "reduce the regulatory load on the bottleneck operator and simplify the role of authorities".[37]

6.3.3. Unbalanced view, as a result of ensuring financial viability

Even if the Cofetel balance is optimistic as regards ensuring financial viability (long-term revenues) to core operators (currently, there is a sole operator, Telmex, which is also the incumbent operator), there are additional points worth mentioning.

Firstly, there is no consumer policy. For instance, consumers are not effectively protected during the telecom services provision. In basic-telephony, as long as the Incumbent is the major provider, it is safer to sign up with Telmex. Nonetheless, there are alternative providers (cable and wireless).

However, minor customers are not strong enough to get better conditions. Even if there is evidence to prove that there is serious impact within customers, protective schemes are not put in place.

The table highlights gaps from regulatory actions for 2000.

THE COFETEL REPORT 2000

REGULATORY TOPICS	COMMENTS
4.1. Dominance	Flawed, because does not prevent further abuses from market power
4.2. Interconnection	Reinforce discrimination along-side networks, ie cost recovery to local networks
4.3. Universal service	Although WG was established the outcome has not yet published
4.4. Proportional return and tariff uniform system	Although ensure revenues from int'l traffic, also provides incentives for bypassing
4.5. Reshape local areas	Saving in long-distance, but on case-by-case basis
4.6. Number expansion	Wrongful dialling during implementation phase II

Source: Author's own table

Secondly, dominance has been reduced to a matter of market share. Whilst on one hand, there is a decrease on the Incumbent-operator's share; then, on the other hand, the incumbent is able to participate in anti-competitive practices.

Although the watchdog had reported decreases on the incumbent's market share, this does not provided evidence about dynamic competition (or competition process). See Annex C for competition cases reported.

[37] Casanueva, … *Op cit.* pg. 22

Furthermore, this would provide more elements for the rebalancing of market conditions. In this context, to ensure fair conditions to all those service providers. Briefly, any operator would have a guarantee about a fair treatment given by the authorities.

Thirdly, interconnection disputes are growing. Although it has finally secured an agreement, the outcome has been far from appropriate. This is the case with tariff settlement. Year after year, there is scope for disagreement.

Alongside industry, the view is that the watchdog has solely reinforced the Incumbent operator's strength, setting different levels for interconnection tariffs. Whilst, new entrants suggested significantly lower interconnection tariffs, the Incumbent maintained practically the same levels. In this context, the watchdog itself has promoted discrimination alongside networks. It avoided fostering efficient networks with a reduced cost structure.

Furthermore, within interconnection issues, the other important topic is timely and opportune action when there is a conflict amongst different operators.

In conclusion, both problems could be substantially reduced if only the watchdog developed standard terms to be published, and so to be enforced within dominant operators.

Fourthly, the watchdog has been focused on the relation between teledensity and low income. This is to attend a general demand, also understood as universal service.

But, this does not take into account 'specific' demand, for instance, pensioners with reduced levels of consumption. Also, unprofitable area where there would be more valuable provision of telecom services.

Settlement schemes (ITU proposals) have become obsolete. This in the context of communications services, in particular Internet services. Erecting the same barriers to the new services could be a costly mistake.

Whilst the regulator has always showed a preference for ensuring cost recovery, there is no clear method how to fund universal service. There is no satisfaction alongside this idea. It is hard to believe that in the past interconnection tariffs included an element to fund universal service, but an appropriate explanation about usage of these resources was never given.

Finally, scarce-resources are the next step within regulatory models.

Number expansion for instance has been poorly managed, the Incumbent still holding a large control over the numbering database.

This situation has lead to criticism amongst non-incumbent operators, which are needed for efficient allocation of numbering resources.

There is no doubt that this issue is the prospective for regulation. The watchdog seems however to be largely restrained from more intrusive (and effective) action. It has chosen to administer 'third-parties' solutions. Also, the Secretary of State exerts strong control over radio spectrum, which excludes the regulator's participation.

6.3.4. Derailment of Competition in Telecom Sector

Even if the authorities are slightly biased toward the Incumbent, it is enough for putting in risk the public policy based on effective competition. It was the case with ensuring financial viability (or long-term revenues). Government policy has risked competition benefits.

The general view is that the watchdog has provided 'disincentives'. As a result, Industry has become uncooperative and the atmosphere highly contentious, even when the outcome could imply large benefits for those involved in the process.

If competition were linked to consumer benefits, it would be defective. There are incentives for 'collusive' actions rather than creative and innovative positions.

VOICE-TELEPHONY SERVICES (ONLY)

SERVICE	COMMENTS
5.1. Domestic LD	Still above int'l references
5.2. Int'l LD	The same as above, plus by-passing
5.3. Local fixed	Lower coverage, but feasible through mobile
5.4. Mobile	Network over saturated
5.5. Public telephony	Over-capacity in PCBs installed

Source: Author's own table

The above table shows that policy review can improve regulatory autonomy. The analysis would help to identify relevant factors and, foremost, the development of 'real management' of competition. And then, reduced efforts in setting specific-sector policy.

This could also make the Industry more co-operative. On the one hand, working together to build proposals targeted to consumer welfare. On the other hand, creating the incentives for a more competitive industry in the context of international carriers.

6.3.5. Ignoring Competition Complaints

The Cofetel has taken the view that, if regulating, it is opening up the markets. However, the assertion has a limited scope, within long-distance and local rules. Instead, it has missed a relevant point, how to tackle future abuses.

This has been the case with dominance rules. Although, in 2000, dominance rules were enacted, there was no attention given to the cases reported. These cases provide valuable information on whether or not further regulation might be needed.

Certainty, competitors can overcome short-term market failures. But, structural failures are different, alternative competitors can be rid out of telecom markets. The costs, if this happen, can be substantial and deter future entries.

Even worse, the market strength that the Incumbent operator holds in voice-telephony would benefit other related markets. This has been the case in recently times with value-added services.

CASES REPORTED BETWEEN 2000/02

YEAR	MARKET (S)	ISSUE
2002	Mobile	Merger
2001	Voice-telephony	Boycott
	Fixed wireless telephony	Margin squeeze
	LD	Undue preference
	Interconnection	Refusal to grant access
	Calls for Internet access	Price-fixing
2000	Local telephony	Undue preference (2)
	Long-distance	Cross-subsidy / undue discrimination (3)
	Interconnection	Cross-subsidy, refusal to supply / margin squeeze

Source: Competition Commission's website

The table also shows a clash between competition policy and specific-sector policy. Whilst, on the one hand there is a competitive approach (efficient entries), on the other hand there is a restrictive framework for getting the appropriate permission for voice-telephony.

At present time, IP telephony is forbidden (or restricted), but this does not prevent cross-border competition (demonstrated with bypassing). It seems to be an ostrich's response. Development of the telecom sector has driven the delivery of non-tangible goods. The watchdog is now simply ignoring competition across-borders. In other words, its policies are confronting additional pressure. A preliminary conclusion could be that the regulator has adopted a wrong approach for implementing the T Act 1995.

7. Building a Solution

The objective for this chapter is to outline alternatives for improving the Cofetel's performance.

The chapter will describe regulatory tools used for improving institutional performance.[38] These tools are simple, but useful. *1)* Rationale criteria when enacting regulation. *2)* Drawing policy alternatives.

The first tool means a real understanding of market failures, whether or not the current market issues are due to former monopolist or governmental interference.

If there is an honest view for effective competition then the public administration will have to begin an auto-assessment, identifying real issues

[38] For instance, The Federal Communications Commission, Oftel, and others European Regulators.

(market power, interconnection disputes, low teledensity, scarce resource struggling).

Improving regulatory performance means identification of the extent in which public offices are effectively contributing toward the development of telecom business, rather than thinking of imposing new constraints.

Using rational criteria leads to a more predictive and consistent regulatory activity. Consequently, this improves legal certainty to private investors.

The structure of this chapter is as follows:

- Better understanding of market failures;
- Improvement of institutional strategy; and
- Using rational criteria when drawing regulation.

7.1. Better Understanding of Market Failures

If we take an honest view, market failures are also due to governmental involvement.

Whilst within one part of the government there is willingness to promote new entrants, on the other side, there is a view for restricting new entries. This explains why licensing procedures are complex. Processes are slower. These would take many months to get permission to provide telecom services. So, efficient entry take longer time than necessary to act in response to market changes.

The following table shows failure factors within regulatory action.

FAILURE FACTORS

ISSUE	PROBLEM
MARKET POWER	UNDER-ESTIMATED
INTERCONNECTION	RECURRENT ISSUE
LOW TELEDENSITY	UNCOVERED AREAS
NATIONAL CONTROL CIRCUMVENTED	WRONGLY ADDRESSED
SCARCE RESOURCE MANAGEMENT	INDUSTRY DISSATISFACTION

Source: Author's own table

7.1.1. Reinforcement of incumbent has proven to be counterproductive

Initially, the reinforcement of Telmex, as national provider, seems to be the best alternative to improve telephony density. There was given tariff protection. Also, absolute control over local network. Today, this strategy has

proven to be counterproductive. As long as the Incumbent still holds control over a large proportion of local infrastructure, competitors would be reluctant to compromise further investment.

Recently, dominance rules were reversed. Consequently, competition seems to be seriously threatened. This does not only imply a delay within implementation process. It would mean also the disappearance of small and medium business.

Ironically, the strategy for attracting private investors in 1989 is now deterring new investors. Currently, there is inertia to avoid, at any cost, and shares are plunging. This is against regulatory autonomy, or impartiality guarantee. Telmex shall not be allowed to continue as an 'irresponsible' monopoly. In the long-term, this inactivity has seriously undermined the watchdog's credibility.

7.1.2. Interconnection has Meant Habitual Regulatory Intervention

If the Incumbent maintains control over the physical infrastructure it would be able to manage technological innovation.

Innovation would be limited by the Incumbent's strategy. Competition is no-longer an issue of market share. It is also a matter of quality in network services. Non-incumbents are restricted to the main network capabilities.

This challenges the regulator's approach, which has been concerned with nominal competition. Nonetheless, there have been alternative operators since 1997. This does not ensure however that there is effective competition.

A more realistic approach should be a reflection that there is a continual request for interconnection (if the main network controls 50% of traffic).

7.1.3. Low Income Does Not Justify Low Coverage

Certainly, low income had discouraged operators from providing service in rural communities. But, the fact that there is still an unsatisfied demand provides the justification for public intervention.

If telecom operators are going to compete efficiently they need freedom to choose technology. Even more, they need to be capable to migrate to more sophisticated services without burdensome procedure. Providing services alongside a wide range of users implies a more sophisticated analysis of consumers.

Using low income as an argument for lack of coverage, the regulator has been looking for relief in certain responsibilities. Instead, the regulator has to identify whether or not a more flexible regulatory framework is needed to allow further entry.

7.1.4. Moving From Public Service Toward Scarce Resource Management

Technology has changed business models within telecommunications.

In the past, the 'public service' regime meant strong intervention. Even the Government was a service provider itself. Instead, scarce resource management implies a retreat from certain functions. There is a general acknowledgement that the Government is no-longer responsible for services.

Regulation is a pragmatic response from the Government. It must be a reflection of what is happening within market.

The sample of policy update is scarce resource management. There is a general recognition that public intervention would provide a timely response, with better coordinated action between the parties involved.

7.1.5. Setting up Protection to National Consumers

Even if it requested vigorous competition alongside telecom providers, there is still a role to play. The role is to protect national consumers. This is in the context of using telecom networks.

The above would imply a move from the traditional 'national' control. The control is based on sovereignty principles. From a certain perspective, it is an arcane subject and a diffuse idea.

There is a view for retaining control over fixed telephony and banning voice-over-IP. This is reminiscent from the previous regime (the GCW Act 1940).

But now, where there are many external suppliers, even those without a physical presence, there are more risks involved to consumers rather than competition itself.

Something similar is happening with spectrum usage, where national consumers are be able to use distinctly different technologies.

However, market development needs to be linked to consumer protection and facilitating consumer comparison. For instance, alongside a wide range of choices to establish which option represents value for money.

7.2. Improvement of Institutional Strategy

Without doubt, an improvement of regulatory autonomy would make it easier to draft policy proposals.

No matter which relationship is established between the Secretary of State and the Cofetel Board, there will always be an imperative to coordinate efforts. In particular, if policy meant obligations had to be enforced.

PROBLEMS ASSOCIATED WITH REGULATORY AUTONOMY

PROBLEM	PROPOSAL	COMMENTS
DELAYS IN DRAFTING MARKET CONDITIONS	CLARIFICATION OF INSTITUTIONAL ROLES	OVERLAPPING BETWEEN SECRETARY OF STATE AND THE SPECIFIC-SECTOR REGULATOR
IMPLEMENTATION	INCREASING SCOPE	DEVELOPMENT OF ALTERNATIVE METHODS FOR ACCOMPLISHMENT OF LEGISLATIVE OBJECTIVES
ABUSE OF LITIGATION	LIMITED JUDICIARY REVIEW	ENHANCEMENT OF REVIEW OF POLICY ACTIONS
LACK OF TRANSPARENCY	PERIODICAL REPORT	INCREASED ACCOUNTABILITY

Source: Author's own table

7.2.1. Overlapping of Functions

There is a misunderstanding between policy and regulation or, at least, differences are not simple to distinguish. In the context of Mexican law, policy means general statements about objectives to be followed. Regulation implies something more specific, where it can be enforced.

However, policy implementation overlaps with market regulation. It is general practice to set up a proposal without careful reflection about market implications. Also, without thinking about alternatives which could be less of a burden.

There is a wrong perception that the regulator is fully responsible for market outcome. This is only partially true, if referred to consumer protection. But, also it is important to take into account that licensing obligations were drafted and enacted by the Secretary of State.

The Secretary of State and the regulator have different incentives. The former has an interest in social policy. The latter has an objective for ensuring effective competition. This situation implies a clash and makes the delegation of powers, and even internal accountability, more difficult

7.2.2. Clarification of Role

The current framework does not establish clearly the objectives for the Secretary of State, or the regulator's institutional objectives.

The above circumstances explain the clash between both authorities. In particular, the conflict arises at the time to exert delegated powers. For

instance, setting telecom priorities and pursuing those objectives. There is scope for deviation on investment targets.

Whilst the Secretary of State has to pursue 'social justice' principles, the regulator has to set up a balance between demand and supply. Obviously, regulatory decisions can be challenged easier if there is no legal basis to uphold.

Balancing interests such as cost recovery, consumer benefits and entry-barriers implies the ability to interpret what means regulatory autonomy. The watchdog needs scope for setting its own goals and priorities if it has to move toward the accomplishment of a legislative mandate (accordingly with the T Act 1995).

Now, as the landscape has changed, there is a requirement for a more predictable (and consistent) approach from the regulator.

At the time that increasing of regulatory autonomy seems to be relevant as a solution for tackling market distortion, it is also important to work on consistency alongside regulatory activities.

Rather than asking for more powers to be granted to the watchdog, it would be better to improve the drafting of current responsibilities. This will only be possible after a major appraisal. Even, if it reduced attribution, this would be used to re-assign regulatory functions to the Secretary of State. The general framework for powers shall be accordingly with the issues identified in the assessment.

If there is an evolution in the concept of 'regulatory autonomy', a change within the model to be followed by the regulator would be necessary. Increased competition balanced with consumer protection.

7.2.3. Obstruction and Delay of Enforcement Actions

At any time, there is demand for an effective and efficient policy. But, there is nothing more harmful than delaying enforcement. This can be happen with litigation, and internal delays (from the Secretary of State).

On the one hand, litigation can be seen as the natural exercise of a right, fair trial, if decision-making affects legitimate expectations. On the other hand, abuse of litigation seems to be a tactic to delay policy enforcement. In the context of market actions, delaying policy would imply success or failure.

The Incumbent has extensively used litigation as a means to prevent enforcement of legislation. Now, each time that a regulatory action will be implemented, there is an implicit threat for judiciary review.

Unfortunately, institutional issues are associated, in most of cases, with the inability of the Cofetel Board to deliver effective competition. In practical terms, the watchdog has been made responsible for failure in policy, rather than competition regulation.

The Secretary of State, rather than being cooperative, has obstructed enforcement actions. Moreover, delaying decisions could have contributed toward inefficiency inside the regulatory model.

For instance the numbering convention upgrade. In 2001 the regulator had meetings with mobile operators regarding the numbering conventions. The day when the changes were due to be, the Incumbent used a different convention. After this failure, the regulator recommended to that a fine should be imposed, but there was no official response from the Secretary of State.

Regulatory autonomy is one of the multiple aspects of institutional framework. But, it should be accomplished with accountability, even if there is social policy or legal binding decisions. Certainty, the criteria would be different even if there is a judiciary review. In any case, policy and regulation reviews will provide assurance to members of the general constituency that the regulatory model is working properly.

7.3. Using a Rationale Criteria for Drawing Regulation

During the assessment of a specific regulatory action, the cost – benefit analysis would help to identify:

- Profitability;
- Efficiency; and
- Effectiveness.

In this context, policy review would be targeted to improve institutional strategy. The regulator is using a clear method for management of regulatory actions.

The regulator sets up a balance between potential benefits and costs, even it is possible to detect if further action might be requested.

ASSESSMENT OF THE COFETEL ACTIONS (FROM THE REPORT 2000)

REGULATORY ACTION	PROFITABILITY	CRITERIA EFFICIENCY	EFFECTIVENESS
SMP obligations: • Cost model in LD • Publication of quality reports • Data base to facilitate interoperability among operators	Direct cost to Cofetel of ensuring compliance Potential benefit to competition if improvements in service, both retail and wholesale	In dec/97, the Competition Commission issued SMP determination. After this, the Cofetel began the procedure to impose specific conditions to Telmex. It lasts 6 months.	There will be a review of costs in 2002.
Setting proportional return on incoming international traffic	Costs involved in auditing traffic Potential benefits in costing universal service	USTR representation behind the WTO, after unsuccessful consultations	Ensuring revenues from international traffic (in particular from the US) Supporting market-share from the Local operator incumbent
Setting interconnection tariffs	Costs from ensuring income revenues to the Incumbent Benefits only if local service operator	It is almost certainty that the Cofetel will have to intervene No reference of interconnection services	Non-transparency in Telmex costs. This is evident in different levels of tariffs – discrimination of services
Numbering increase	Benefit from ensuring network growth	Timetable still dependent on incumbent	Problems during Phase II (mobile networks)
Setting costing model	Potential benefits if funding services provided under deficit	Workshop meetings with Industry, but presumptively no agreement	Under question if nothing to report, and even worst, no implementation.

Source: Author's own table

7.3.1. Prevalence of Benefits Over Regulation Costs

Benefits have to be greater than the costs involved.

Apparently, the above is an obvious conclusion, but sometimes is not.

There are costs involved if compliance is ensured and audits requested.

Definitively, those costs shall be balanced against the benefits expected to consumers and/or industry. Otherwise, regulatory intervention would not make too much sense, even if the public consultations raise costs for the watchdog.

Regulatory policy can also be intrusive and disrupts business operations.

7.3.2. Ensuring Best Course of Action

When establishing initial planning, it can also help to identify if regulatory action can be easily compared against legislative objectives.

The regular practice in using the three different criteria (profitability, efficiency and effectiveness) would help to improve the regulator's credibility.

The assurance given is that the watchdog is, in every case, taking the best course of action possible. There is no space for theoretical response.

7.3.3. Regulatory Action Must Have a Positive Effect

Regular review of policy can provide the certainty that it is still adequate to market environment. Otherwise, the regulation and/or policy must be changed to the existing circumstances. It might be unfair for new business, or it may impose a burdensome obligation on established suppliers.

Regulation has to anticipative market changes. But, it does not have become a barrier for innovation. The regulator has to give careful consideration to market implications.

Regulatory action has a direct effect on network development.

7.4. Drawing Policy Alternatives

If we agree that regulation implies the provision of incentives, then it has to be flexible. Otherwise, it could be too rigid. This means that the scheme adopted shall be according with the circumstances and the Industry's spirit.

Usually, legislation has been drafted to provide a limited range of solutions. Even, a sole solution for certain problem.

This shall not be the case for economic regulation. As market conditions change swiftly, the regulation has to provide the scope to react to those modifications.

In the regulator's statements, regulatory actions have been considered an instrument for delivering. This is not accurate. Perhaps, it has been more a manager of industrial policy, but not in terms of consumer protection. It has been a referee worried about the fitness of the market 'players', but it lacks of clear policies oriented toward consumers and users.

Jointly, with a rational criteria (profitability, efficiency and effectiveness), using different alternatives can provide the appropriate balance between investment and consumer protection.

It is important to remember that the justification for public intervention is given in terms of those who are less protected. Not to reduce the risks if some decisions are taken by investors and businesses. Ineludibly, this is a very simple rule in a market model.

DRAWING ALTERNATIVES (AS ACTIONS REPORTED IN 2000)

REGULATORY ACTION	FORMAL REGULATION	CO-REGULATION	SELF-REGULATION	DE-REGULATION
SMP OBLIGATIONS	ACCOUNTABILITY REPORT	MAJOR REVIEW OF LICENSING SYSTEM AND ENTRY BARRIERS	-	CLARIFICATION OF SCOPE OF PTOS OBLIGATIONS VIS-À-VIS USO
ENSURING INCOME FROM INTERNATIONAL TRAFFIC	SOCIAL OBLIGATIONS ONLY IF VOICE-TELEPHONY IS PROVIDED	-	INTERNATIONAL SIMPLE VOICE RESALE	REMOVAL OF ITU SCHEMES (PROPORTIONAL RETURN AND SURPLUS CHARGES)
SETTING INTERCONNECTION TARIFFS	MOVING DOWN INTERCONNECTION TARIFFS	UNBUNDLING NETWORK ELEMENTS	-	-
NUMBERING INCREASE	OUTSOURCING NUMBERING MANAGEMENT	NUMBERING CONVENTIONS AND THIRD PARTY MGMT	PUBLICATION OF INDUSTRY POLICIES IN ALLOCATING NUMBERS	RELAXATION OF RULES – GRANTING NUMBERS FOR VOIP TELEPHONY
SETTING COSTING MODEL	EMPHASIS IN RETAIL PRICES, BUT ONLY IF CONSUMER BENEFITS	PUBLIC CONSULTATION ON COSTING MODEL, PLUS PUBLIC SUBSIDIES AUDIT	RELAXING RULES IN WHOLESALE PRICES	'PLAY OR PAY' SCHEME

Source: Author's own table

7.4.1. Formal Action: Less Scope for Circumvent, but more Rigid

Formal action is identified with the enactment of primary legislation. There is no scope for negotiation. The burden of implementation is left to the watchdog. Then it has to set up very rigid rules. There are no incentives left to the market players to improve their performance.

Formal action is considered a substitute for competition, but in the long term it may be inappropriate as the market model is artificial.

Also, market failures are more difficult to identify. This is because there is restricted scope for competition. There is no competition at all within certain services.

7.4.2. Co-Regulation, Working Alongside Stakeholders

Co-regulation implies cooperation between the watchdog and Industry, plus an element of enforcement. There are still some stakeholders to move forward and implement certain proposals. Then it is necessary to use coactive instruments.

It can be identified as 'third party' proposals. The watchdog is only a supervisory body. But, if necessary, it could use stronger measures to get compliance.

With reduced scope, there is negotiation between the watchdog and the stakeholders. If adequately managed, this would consider customers during the formulation of proposals.

7.4.3. Self-Regulation, Less Intrusive with Increased Flexibility

Self-regulation implies a voluntary agreement to adopt a certain course of action. If adopted, the market value would increase itself.

The market model can only work if there are incentives for the stakeholders to act individually and avoid collusion.

Wrongly, the regulatory model has been identified as a liberalisation process. It is not competition management. It is an instrument to address market failures instead.

7.4.4. Removal of Inoperative Schemes

Removal of inoperative schemes is the most sensitive issue within regulatory actions. On the one hand, the watchdog has to identify if the market mechanism is working, then it is time for a relaxation within the rules. Otherwise, those rules could be stifling economic activity.

Market players shall always face consequences for wrong decisions. Otherwise, there would not be incentives for taking the best course of action.

Only then, the watchdog (and the Secretary of State) would be released from drawing industrial policy, and they would be able to concentrate on drafting social policy.

8. Conclusions

The central issue in this dissertation has been the regulatory performance.

The reason for writing about this topic is simple; costs imposed on Industry.

The first conclusion for this study is that rather than saying that the Cofetel is liable for the current landscape on telecom regulation, it is only responsible for inappropriate and inaccurate management.

Regulatory autonomy has been wrongly considered as a sort of self-government (under the current legislation, the T Act 1995). Perhaps, regulatory autonomy is more a matter of setting the appropriate balance between all public offices involved in the development and regulation of telecom sector.

Also, in this context, regulatory autonomy would be meant regulatory accountability. In particular, when the Cofetel's officers were not elected. Then, the system of balances will be set on place and surely the regulatory function will become more accountable.

The second conclusion is regarding protection from illegitimate pressure (both from the Government and/or the Incumbent operator). Again, the issue is not how to protect the regulator from undue interference. The issue is how to report regulatory actions. This would make the regulatory outcome more distinguishable.

The next conclusion is the meaning for establishing a clear connection between regulatory actions and strategic goals.

When there is clear identification between actions and goals the regulator would be less exposed to irrational criticism.

Finally, regulatory autonomy has to be built from management planning. If the Cofetel agrees that it has overridden many of the legislative objectives, it would take the first step to establish a better management system, setting long-term objectives and a daily review.

This reinforces rational principles and consistency between legislation and policy implementation. Also, institutional experience would be a better protection against interference from external bodies. Furthermore, this would increase cooperation within government.

Only then would it be feasible to talk about updating legislation. But only if the Government has conceded that it is unable to provide all answers for market issues. The regulator would be a market builder, but restrained to constitutional boundaries.

Bibliography

Avantel (2001), "Canastas de Servicios de Telecomunicaciones".

BBVA Securities (2001), "Mexico Telco Competition at Bay in 2001".

Better Regulation Task Force (2001), "Economic Regulators". Available at: < *http://www.cabinet-office.gov.uk/regulation/taskforce/2001/BRTF%20 Economic%20Regulation.pdf*>.

Cabinet Office (2000), "Good Policy Making: a Guide to Regulatory Impact Assessment". Available at: < http://www.cabinet-office.gov.uk/regulation/2000/riaguide/contents.htm >.

Senado de la República (2001), "Comisión de Comunicaciones y Transportes. Revisión Integral de la Ley Federal de Telecomunicaciones". Available at: <*http://206.67.62.166/index.html*>.

Conferencia Internacional "El Reto de las Telecomunicaciones en el marco de la reforma del Estado en Mexico", available at: <http://www. senadorcorral. org.mx/medios/temporal/ivconferencia/ivconferencia.htm >.

Comisión Federal de Competencia, "III. Sectores sujetos a medidas específicas en materia de competencia.", available at:<http://cfc.gob.mx/cfc99e/ informes/informe97/capiii.htm>.

IV Conferencia Internacional "El Reto de las Telecomunicaciones en el marco de la reforma del Estado", Dr. Fernando Sánchez Ugarte. <http://cfc.gob.mx /cfc99e/difusion/discursos/telecomunicaciones%5Farchivos/v3_document.htm>

Cofetel (2000), *Annual Report (Spanish)*. Available at: <http://www.cft.gob.mx/html/1_cft/informe/index.html >.

Annual Report 1997-1999, available at: < http://www.cft.gob.mx/html/1_cft/informe/index.html >.

"Las Telecomunicaciones en México y su Impacto Global". Available at: <http://www.cft.gob.mx/html/1_cft/informe/index.html >.

"Evolución del Sector Telecomunicaciones". Available at: <http://www.cft.gob.mx/html/1_cft/informe/index.html>.

Organigrama, available at: < http://www.cft.gob.mx/html/1_cft/orgcft.html >.

"Marco Jurídico". Available at: < http://www.cft.gob.mx/marc_juridico.html >.

"Sobre cargos de acceso; tarifas de Interconexion, liquidacion y ponderadas", available at: http://www.cft.gob.mx/html/la_era/art/cargos.html.

"Sobre Bypass y su experiencia en otros paises" (Roberto Martinez Ilescas), available at: http://www.cft.gob.mx/html/la_era/art/ficbypas.html

European Commission (2001), "New Regulatory Framework for electronic communications infrastructure and associated services", available at: <http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm >.

Finamex (2001), "Telecom Sector – Mexico Equity Research", México.

Graham, Cosmo (2000), *Regulating Public Utilities*, Hart Publishing. Oxford – Portland, Oregon.

La decisión acertada, S.C. (2001), "Hoy en Telecomunicaciones", 23 de octubre de 2001. "Hoy en Telecomunicaciones", 26 de octubre de 2001.

National Audit Office (2000), "Measuring the performance of government departments". Available at: <http://www.nao.gov.uk/publications/nao_reports/00-01/0001301.pdf >

OECD (2001), "OECD Communications Outlook – Information Society", Paris. (2000), "Telecommunications Regulations: Institutional Structures and Responsibilities", Paris - DSTI/ICCP/TISP(99)15/FINAL. Available at: < >.

Oftel (2000), "Proposals for implementing Oftel's strategy: 2000/01 Management Plan Statement". Available at: <http://www.oftel.gov.uk/publications/about_oftel/mapl0400.htm >.

Oftel (2000), "Achieving the best deal for telecoms consumers, Statement", Available at: <http://www.oftel.gov.uk/publications/about_oftel/strat100.htm>.

Oftel (2000), "The role of regulatory accounts in regulated industries", Available at: < http://www.ofgem.gov.uk/docs/regacc.pdf >.

Oftel (2000), "Service Delivery Agreement, Oftel statement of accountability", Available at: <http://www.oftel.gov.uk/publications/about_oftel/sda1100.htm >.

Ovum (2001), "Competitive Communications @ OVUM Mexico".

Pisciotta, Aileen A. (1997), "Telecommunications in Mexico: A Market in Transition", available at: <http://www.kelleydrye.com/tc111397.htm>.

Towers Perrin (2001), *Ofcom Scoping Project – Towers Perrin Report to Regulators' Steering Group*. Available at: <http://www.oftel.gov.uk/publications/about_oftel/2001/towe1001.pdf >.

WS Atkins Management Consultants (2001), *External Efficiency Review of Utility Regulators*, HM Treasury, Surrey. Available at: <http://www.hm-treasury.gov.uk/pdf/2001/regulators_1902.pdf>.

Avantel – http://www.avantel.com.mx

Alestra - http://www.att.com.mx/laempresa

Telmex - http://www.telmex.com.mx

Pegaso - http://www.pegasopcs.com.mx/index2.html

Annex A

REGULATORY AUTONOMY

LEVEL	CONCEPT	SCOPE	OBJECTIVE
WTO	SEPARATION FROM INDUSTRY AND NON-ACCOUNTABLE TO ANY SUPPLIER PLUS REQUIREMENT OF IMPARTIALITY, DECISION AND PROCEDURE	STATE'S COMPROMISE, BUT LIMITED TO BASIC TELECOMMUNICATIONS SERVICES	MINIMUM LEVEL INDUSTRY LOBBYING
EUROPEAN UNION	LEGALLY DISTINCT; AND FUNCTIONALLY INDEPENDENT	STATE'S OBLIGATION, EXTENDED OVER ELECTRONIC COMMUNICATIONS (NETWORKS, EQUIPMENT AND SERVICES)	EFFECTIVENESS INDUSTRY LOBBYING STATES INTERFERENCE
MEXICO	INDEPENDENT FROM THE SECRETARY OF STATE (SCT), BUT REDUCED IN CONTENTIOUS ISSUES (IF LITIGATION) OPERATIONAL AND BUDGETARY AUTONOMY	PRESIDENT'S OBLIGATION TO ENACT SUBORDINATE LEGISLATION	FLEXIBILITY PUBLIC OFFICES INTERFERENCE

Source: author's own table

Annex B

The Cofetel functions (according with the Presidential Decree 1996)

Category	Description	The Secretary of State role	Issues
Judgement	Enactment of administrative regulation and technical standards (and revoking)	Overall review, if legal challenge	Expected delays if legal challenge
	Interconnection disputes		
	Imposing SMP obligations		
	Monitoring compliance	Impose fines if infringement of legislation and/or licence conditions	Undermine effectiveness of compliance
	Managing radio spectrum	Allocation of spectrum	Consistency alongside public spectrum
Advice	Drafting future statutory proposals	Co-ordination	Non-relevant in terms of regulation
	Advice on licenses and permits (and modif)	Liable for drafting of obligations	Impact on the enforcement of future regulation
	Advice in sanction procedures	Final determination	Conflict of interest, if previous monitoring
Operational	Scarce resources mgmt, numbering and spectrum	Co-ordination (scope and timing)	Expected delays if Secretary of State interventionist
	Telecom register	Notification, if licence granted and/or determinations issued	
	Equipment approvals proceedings	Overall review, if legal challenge	
	International affairs	Legal representation on int'l bodies (WTO, ITU)	
	Recipient of payment, telecom fees and spectrum auction	General supervision	
	Radio spectrum auction proceedings (incl. Satellites slots and frequencies)	Further intervention, if granted licence	
Others	Telecom research	Only a matter of co-ordination	Non-relevant in terms of regulation
	Promoting HR and innovation in telecom		

Source: author's own table

Annex C

COMPETITION CASES

CASE REFERENCE	ISSUE	MARKET	OUTCOME
DE-08-2002	INFRINGEMENT OF COMPETITION RULES	MOBILE	N/A
DE-26-2001	BOYCOTT	VOICE-TELEPHONY	N/A
DE-28-2001	MARGIN SQUEEZE	FIXED WIRELESS TELEPHONY	N/A
DE-58-2001	UNDUE PREFERENCE	LD	N/A
IO-01-2001	REFUSAL TO GRANT ACCESS	INTERCONNECTION	N/A
IO-12-2001	PRICE-FIXING	CALLS FOR INTERNET ACCESS	N/A
DE-12-2000	CROSS-SUBSIDY	INTERCONNECTION	N/A
DE-17-2000	UNDUE PREFERENCE	LOCAL TELEPHONY	N/A
DE-25-2000	CROSS-SUBSIDY / UNDUE DISCRIMINATION	LD	N/A
DE-27-2000	CROSS-SUBSIDY / UNDUE DISCRIMINATION	LD	N/A
DE-28-2000	CROSS-SUBSIDY / UNDUE DISCRIMINATION	LD	N/A
DE-45-2000	REFUSAL TO SUPPLY / MARGIN SQUEEZE	INTERCONNECTION	N/A
DE-60-2000	UNDUE PREFERENCE	LOCAL TELEPHONY	N/A
DE-03-99	REFUSAL TO SUPPLY / MARGIN SQUEEZE	INTERCONNECTION	SANCTION
DE-21-99	MARGIN SQUEEZE	LD	N/A-
DE-07-98	REFUSAL TO SUPPLY	LD	SANCTION
AD-41-97	DOMINANCE	SEVERAL MARKETS	CONDITIONS IMPOSED

Source: Competition Commission / author's own table