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Improving the enabling environment for electronic communications and ICT development in Kosova: [Presentation given on November 17, 2010]

Agim Kukaj

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Improving the Enabling Environment for Electronic Communications and ICT Development in Kosova

Submitted as a Capstone Project Report Presentation in partial fulfillment of a Master of Science Degree in Professional Studies at the RIT Center for Multidisciplinary Studies

Agim Kukaj

Prishtina 17 November, 2010
Country Context

Description of the current state in Telecommunications Sector in Kosova
- Legal and Strategic documents
- Regional Initiatives
- Sector Governance
- Market penetration
- Data comparisons with regional countries and with the EU 27

Four Key Issues in Telecommunications sector in Kosova- Findings and Recommendations
1. Market access and authorizations
2. Convergence of broadcasting and telecommunications
3. Quality of Service and consumer protection
4. National Regulatory Authority

Challenges

Conclusions
Kosova profile

- Population ~2.2 million
  - Population density – 198 pop/sq km
  - The area of Kosovo – 10 888 km²
  - Complete statistical profile – http://www.sok-kosovo.org

- Ethnic groups – predominantly Albanian
  - Albanian – 92%
  - Serbian – 4%
  - Other – 4%

- Age distribution – very young
  - 0-14 years – 33%
  - 15-64 years – 61%

Maps per Municipality:
http://www.osce.org/kosovo/13985.html
Key Documents & Initiatives (1)


2. eSEE Agenda Plus- approved by Kosova’s Government on 2nd of May 2007
   (Strategic framework for the development of IS in SEE region during the period 2007-2012)
   - Participating countries now: Albania, Bosnia & Herzegovina, Croatia, Moldova, Macedonia, Serbia, Montenegro, and Kosovo


4. bSEE MoU - signed in SEE Ministerial Conference Thessaloniki, Greece, 30 June –1 July 2005
   - Action Plan of bSEE

5. European Partnership Action Plan - EPAP
• Kosova is actively participating in the European Commission’s project leaded by Cullen International
  - for monitoring the regulation of electronic communications and information society services in the EU enlargement countries
    Participating countries: Albania, Bosnia & Herzegovina, Croatia, Turkey, Macedonia, Serbia, Montenegro, and Kosova

• Kosova as a potential candidate country for EU membership have undertaken to:
  - align the telecommunications legislation with that of the EU;
  - achieve competitive electronic communication markets; and
  - strengthen the expertise of the Telecommunications Regulatory Authority.
Relevant legislation

- **Comprehensive telecom law- 2002 (amended- June 2008)**
  - Establishes an independent regulator for telecom-Telecommunications Regulatory Authority (TRA)

- **Information Society Services Law- May 2006**
  - eCommerce law (based on UNCITRAL Model Law)
  - eSignatures law (based on UNCITRAL Model Law)
  - Data Protection and Privacy in electronic communications

- **Intellectual Property Rights Law- 2004**
- **Law on prevention and fight of the cyber crime- June 2010**
- **Generic Law on data protection- April 2010**
Description of the current state in electronic communications sector in Kosova

Sector Governance- Key participants

**Assembly of Kosova**
- Parliamentary Commission for Telecomm
- Parliamentary Commission for Media

**Government**
- Ministry of Economy and Finance
  - Economic Management of PTK
  - POE Policy and Monitoring Unit
  - Leading Privatization Process of PTK j.s.c.

**Ministry of Transport and Communications**
- Policy and Planning
- Sectoral Strategies
- Legislation
- review compliance with European standards covering tariffs and fees

**Telecommunications Regulatory Authority**
- Implement Sectoral Policies in compliance with the Telecomm Law
- Regulation adoption
- Issuing licenses and authorizations
- Management of scarce resources (spectrum, numbering)

**Independent Media Commission**
- Reviews and prepares draft laws, amendments, draft resolutions, to the Assembly pertaining Telecomm Sector
- Request from the Minister reports or clarifications.
- It may also suggest measures that need to be taken by the Assembly or the government and the line Ministry.

- Regulates the range of broadcasting frequencies
- Issues licenses to public and private broadcasters
- Establishes and implements broadcasting policies
**Fixed Market**

- 3 Licenses issued by TRA, but 2 operators are active in the market
- PTK has completed digitalization (100%)
- Fixed penetration very low 4.81%
- Market share based on connections:
  - Telecom of Kosova~91.27% (still keeping high number of subscribers)
  - IPKO/Telecom Slovenije~8.73%
Fixed lines per 100 population is South East European Countries in percentage

<table>
<thead>
<tr>
<th>Year</th>
<th>Croatia-HR</th>
<th>Macedonia-MK</th>
<th>Turkey-TR</th>
<th>Albania-AL</th>
<th>Bosnia and Herzegovina-BA</th>
<th>Montenegro-ME</th>
<th>Serbia-RS</th>
<th>Kosova-XK</th>
<th>SEE 8</th>
<th>EU 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>37.8%</td>
<td>29.2%</td>
<td>29.2%</td>
<td>8.7%</td>
<td>24.7%</td>
<td>30.6%</td>
<td>33.8%</td>
<td>5.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>37.1%</td>
<td>26.5%</td>
<td>25.9%</td>
<td>8.9%</td>
<td>25.2%</td>
<td>28.7%</td>
<td>34.3%</td>
<td>5.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>37.1%</td>
<td>24.5%</td>
<td>25.8%</td>
<td>9.1%</td>
<td>25.3%</td>
<td>26.8%</td>
<td>36.3%</td>
<td>5.4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>37.5%</td>
<td>22.7%</td>
<td>25.1%</td>
<td>9.2%</td>
<td>26.7%</td>
<td>28.2%</td>
<td>38%</td>
<td>4.4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>38.5%</td>
<td>22%</td>
<td>25%</td>
<td>10.3%</td>
<td>25.5%</td>
<td>28.2%</td>
<td>41.1%</td>
<td>4.6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jul-09</td>
<td>38.5%</td>
<td>19.5%</td>
<td>24.5%</td>
<td>11.3%</td>
<td>26.1%</td>
<td>26.4%</td>
<td>41.8%</td>
<td>4.8%</td>
<td>26%</td>
<td>40%</td>
</tr>
</tbody>
</table>

The average penetration rate of the eight regional countries is 26%
EU countries have 40% average penetration rate

Source: Cullen International
Mobile penetration rates in Kosova 2003-2010 (1)

- After the introduction of competition in 2007 it is rapid increase of mobile penetration, from 29% (2007) to 54% (2008)
- Four mobile operators (2 MNO & 2 MVNO) are active in the market
- Mobile penetration has reached 73%
- Mobile termination rates are lowest in the region

Source MTC&TRA
Mobile Market (2)

### Market share (%)

<table>
<thead>
<tr>
<th>Market Players</th>
<th>Vala</th>
<th>Ipko</th>
<th>D3</th>
<th>Zmobile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market share (user - SIM)</td>
<td>66.35%</td>
<td>31.87%</td>
<td>0.81%</td>
<td>1%</td>
</tr>
<tr>
<td>Market share (revenue)</td>
<td>79.53%</td>
<td>20.37%</td>
<td>~</td>
<td>~</td>
</tr>
<tr>
<td>Prepaid subscribers</td>
<td></td>
<td></td>
<td>96.50%</td>
<td></td>
</tr>
<tr>
<td>Postpaid subscribers</td>
<td></td>
<td></td>
<td>3.50%</td>
<td></td>
</tr>
</tbody>
</table>

- Incumbents have great advantage in countries where the regulation is still not very developed
- They are keeping higher spending consumers (NP; CS/CPS- Competitive Safeguard; not implemented)

Source MTC&TRA
# Mobile Market (3)

![Graph of Mobile Market Growth](image)

<table>
<thead>
<tr>
<th>Year</th>
<th>Croatia</th>
<th>Macedonia</th>
<th>Turkey</th>
<th>Albania</th>
<th>Bosnia</th>
<th>Montenegro</th>
<th>Serbia</th>
<th>Kosova</th>
<th>SEE 8</th>
<th>EU 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>64%</td>
<td>49%</td>
<td>49%</td>
<td>39%</td>
<td>34%</td>
<td>78%</td>
<td>58%</td>
<td>16%</td>
<td>48%</td>
<td>85%</td>
</tr>
<tr>
<td>2006</td>
<td>82%</td>
<td>62%</td>
<td>61%</td>
<td>49%</td>
<td>42%</td>
<td>88%</td>
<td>74%</td>
<td>18%</td>
<td>60%</td>
<td>95%</td>
</tr>
<tr>
<td>2007</td>
<td>99%</td>
<td>70%</td>
<td>72%</td>
<td>61%</td>
<td>49%</td>
<td>103%</td>
<td>89%</td>
<td>30%</td>
<td>72%</td>
<td>103%</td>
</tr>
<tr>
<td>2008</td>
<td>113%</td>
<td>96%</td>
<td>89%</td>
<td>73%</td>
<td>64%</td>
<td>169%</td>
<td>113%</td>
<td>54%</td>
<td>96%</td>
<td>112%</td>
</tr>
<tr>
<td>2009</td>
<td>132%</td>
<td>124%</td>
<td>92%</td>
<td>92%</td>
<td>83%</td>
<td>186%</td>
<td>115%</td>
<td>59%</td>
<td>110%</td>
<td>119%</td>
</tr>
<tr>
<td>Jul-09</td>
<td>141%</td>
<td>92%</td>
<td>89%</td>
<td>110%</td>
<td>82%</td>
<td>226%</td>
<td>119%</td>
<td>71%</td>
<td>116%</td>
<td>121%</td>
</tr>
</tbody>
</table>

- Montenegro and Croatia have surpassed the EU-27

*Source: Cullen International*
The number of ISPs active in the market may appear impressive in Kosova -13
However, the majority of the retail market is controlled by three ISPs.
Broadband penetration has reached 6.8% per population and 38% per household
The majority of the broadband connections in Kosova are offered by alternative ISPs over wireless, and cable infrastructure
Broadband penetration rate is significantly below the EU-27 average rate that in May 2010 was 24.8%.
The average broadband penetration rate for the eight countries of SEE is 8.3%.
The highest broadband penetration level was observed in Croatia (14.5%), above the level of Romania (13.1%) and Bulgaria (13%) that joined the EU in 2007.

Source: Cullen International
Composition of electronic communications markets in SEE in 2009

- Mobile telephony over 50% in most countries, 80% in Kosova
- Fixed telephony around 20%, over 30% in Croatia and B&H

Source: Cullen International
Four Key Issues in Telecommunications

1. Market access and authorizations
2. Convergence of broadcasting and telecommunications
3. Quality of Service and consumer protection
1. Market access and authorizations - Licenses

- 46 licensed operators exist today
- but only four are significant market players

<table>
<thead>
<tr>
<th>License type</th>
<th>Number of licensed operators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile telecommunications license (MNO)</td>
<td>2</td>
</tr>
<tr>
<td>National fixed services license</td>
<td>3</td>
</tr>
<tr>
<td>Internet services license</td>
<td>13</td>
</tr>
<tr>
<td>International telecommunications services license</td>
<td>5</td>
</tr>
<tr>
<td>International facilities telecommunications license</td>
<td>5</td>
</tr>
<tr>
<td>Value added service license</td>
<td>16</td>
</tr>
<tr>
<td>Mobile virtual services license (MVNO)</td>
<td>2</td>
</tr>
</tbody>
</table>

Issued Licenses 2004-2010
1. Market access and authorizations - Findings & Recommendations

<table>
<thead>
<tr>
<th>Facts</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing system in Kosova is still largely based on outmoded services and technology classifications and categories:</td>
<td>- The licensing regime in Kosova shall be replaced by a regime based on notification and registration of electronic communications network operators and service providers</td>
</tr>
<tr>
<td>• there are individual and class licenses</td>
<td>• no prior permission for market entry</td>
</tr>
<tr>
<td>• application fee €50</td>
<td>• coherent approach to all communications networks - no specific rules for internet</td>
</tr>
<tr>
<td>• one-off fees ranging from:</td>
<td>• greater use of general authorisations</td>
</tr>
<tr>
<td>▪ €2,500 for Value Added Services</td>
<td>• specific authorisations reserved for assignment of spectrum and numbers</td>
</tr>
<tr>
<td>▪ €5,000 for the provision of Internet services</td>
<td>• restricted range of supplementary conditions that may be imposed</td>
</tr>
<tr>
<td>▪ to €87,000 for national fixed services</td>
<td>• fees to cover only justified and relevant administrative costs</td>
</tr>
<tr>
<td>this structure is not adequate for the licensing of networks and services in the converged telecommunications environment that is now envisaged</td>
<td></td>
</tr>
</tbody>
</table>
1. Market access and authorizations- Spectrum & RoW (Recommendations)

Frequency management:

- **technology neutrality**
  - License not restricted to a specific technology
    - The licensee chooses freely from the beginning which technology to use and may also decide later to change the technology in use

- **service neutrality**
  - No restrictions on what type of service which is allowed in the frequency band assigned

The technology and service neutral conditions for 900 MHz and 1800 MHz should be adopted by NRA asap

**Rights of Way (RoW)- remain dictated by local authorities**

- for the grant of authorizations for RoW one-stop shops should be available for operators

- charges for granting RoW should be less expensive

- availability of access to ducts and sewers should be regulated by NRA
2. Convergence of broadcasting and telecommunications

Different network platforms provide the same service

A single network platform provides different services

Phone, television, computer functionalities on the same terminal

Source: Ericsson
2. Convergence of broadcasting and telecommunications

Next Generation Access Networks (NGAN) are capable of delivering voice, video and data services

• NGAN deployment requires significant investments

• So, NGAN ultimately demands that the network operator provide a full range of services.

• In Kosova, deployment of an NGA would require full licenses from two different regulators, even though a single technology is used to deliver all of the services over one network.

The bifurcation of jurisdiction in Kosova will also make it more difficult for regulation to address facilities-based competition policy concerns given that the two regulators do not coordinate

The provision of service is being held back where market players are subject to a number of regulatory regimes or must deal with multiple regulatory bodies, for example, where a network is required to be licensed both as telecommunications infrastructure and as a broadcasting network.
2. Convergence of broadcasting and telecommunications - Regulation

**FACTS**

- **Bifurcated regime**
  - IMC issues licenses for broadcasting frequencies
  - TRA issues licenses for other frequencies
  - There is no coordination for spectrum assignment

- Cable TV (CATV) networks are subject to an individual license issued by the IMC
- But if the CATV operator wants to provide other electronic communications services then the TRA has the authority to issue the required licenses

- A firm that wishes to offer a so-called "triple play" of broadband services using a fiber and coaxial cable based network must obtain as many as five, expensive licenses from two different regulators in order to run its business.

**RECOMMENDATIONS**

- **Separate the transmission aspects from the content**
  - The electronic communications regulatory framework has to do with the transmission networks, technologies, and associated electronic communications services; while
  - The broadcasting regulatory framework regulating the content
  - The National Regulatory Agency for Electronic Communications and Postal Services should take over regulation for all electronic communications networks and associated services aspects together with the transmission and distribution aspects of broadcasting services; while
  - The Independent Media Commission will regulate the content aspects

- In fulfilling their respective obligations two agencies have to improve co-operation between each-other, and with the competition authority, in order to ensure that their decisions are compatible with general competition rules
3. Quality of Service and consumer protection

• Like all services, electronic communications services have:
  • a quality component, and
  • a price component.

• In theory, the price component should relate closely to the quality component.

• QoS is defined in ITU-T Recommendation E.800 as “the collective effect of service performance, which determines the degree of satisfaction of a user of the service”

• Grade of Service (GoS) is defined in ITU-T Recommendation E.600 as “a number of traffic engineering variables to provide a measure of adequacy of a group of resources under specified conditions”

• Due to difficulties in establishing GoS and QoS parameters, Service Level Agreements (SLA) have been adopted.
3. Quality of Service and consumer protection

**Facts**

- Quality of Service (QoS) obligations exists in Kosova
  - ETSI EG 201 769-1 standards are followed for the method of measurements
  - but the TRA does not monitor and ensure (e.g., with use of penalties) compliance of the services offered with the corresponding ETSI standards
  - Consumers do not have sufficient information from operators nor from Regulator about any restrictions to the use of the services and any traffic management technique that have impact on service quality
  - Internet is presently a ‘best effort’ network

**Recommendations**

- Regulator should be mandated to address problems of QoS and Consumer Protection.
  - and shall perform a range of activities from defining and setting QoS measurements, to monitoring and enforcing QoS for consumers
  - Improve transparency and publication of information for end-users
  - Net neutrality: ensuring that regulators can impose minimum quality of service requirements
  - Shall ensure access to emergency services without respect to the type of communication service involved for all
  - Improve caller location obligations related to emergency services
  - Consumers should have access to fair, easy-to-use, timely, effective and inexpensive dispute resolution and redress mechanisms
4. National Regulatory Agency for telecommunications- background

- The Ministry of Transport and Communications (MTC) has the responsibilities to develop policies and legislation for the provision of services and facilities in the sector of telecommunications and IT.

- The Telecommunications Regulatory Authority (TRA) was established under the Telecommunications Law of 2002 (amended on June 2008) as a self-funded and non-profit legal entity.

- The TRA is responsible for implementing:
  - sector policy; adopting regulations and instructions under the Telecommunications Law
  - issuing licenses and authorizations for the provision of telecommunications networks and services
  - management of the numbering and spectrum resources

  (clear split of responsibilities with regard to specific aspects of regulation)

- TRA is managed by the Board that consists of five Members who are appointed and relieved from office by the National Assembly, at the proposal of the Government with the recommendation from the Minister of Transport and Communications (executive and legislative branch participate).
  - Their term of office is five years with a possibility of a reappointment for one more consecutive term

  (predictability- respect for precedent and the principle of *stare decisis*)
4. NRA Independence (state ownership of incumbents)

- State ownership from 24% to 100% (Kosova)

- Golden shares: Macedonia, Turkey and Serbia

- When the state owns a controlling share in the incumbent operator, the regulator’s independence can be compromised by the state’s incentive to maximize the value of its share interest.

Source: Cullen International
4. Regulatory Concerns

- Independence
  • the TRA was required by the MEF to make all payments through the treasury, the same as all other budgeted agencies, and in practice was not able to manage its funds independently

- Capacity of the Regulator
  • under the treasury payment procedures, the salaries of TRA staff have been linked to civil servant pay scales, which made impossible for TRA to decide independently on its staff salaries and to be able to attract and retain professional staff

- Enforcement powers of the Regulator
  • the TRA has the power to impose fines directly. The maximum fine is €250,000. The TRA have the power to suspend the commercial offers as well

- Dispute resolution
  • Dispute resolution mechanism of TRA cover disputes between operators, between operators and end users

- Transparency and accountability
  • the TRA must organize public consultation on most decisions and publish them in the official web site. Official acts and decisions of TRA can be appealed in the court
4. Regulatory Concerns

- Market analysis and SMP designation

• “The European Commission defines Significant Market Power- SMP as the ability of a firm to act independently of competitors and customers”

• companies that are found to have SMP are subject to additional ex-ante regulatory obligations

•25% market share threshold is used as a basis for SMP designation in Kosova

•TRA did not carry out any market analysis yet

•However based on the provisions of the Telecommunications Law, the fixed incumbent operator PTK is deemed to have SMP in the market for public fixed telephone networks and services, while

•its mobile subsidiary, Vala, has SMP in public mobile services

- Competitive safeguards

<table>
<thead>
<tr>
<th>Service</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number Portability</td>
<td></td>
<td>No*</td>
</tr>
<tr>
<td>LLU and BSA offers</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>RIO</td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>
Based on the European Bank for Reconstruction and Development (EBRD) assessment regarding regulatory regime of Kosova’s regulator, TRA is deemed to have “Medium compliance” with current EU regulatory regime

Source: EBRD
4. Regulatory Concerns

Since 1990 the regulatory reform has been developed in 3 directions:

1. creation of independent and separate regulatory bodies in the countries
2. development of competitive market, and
3. privatization of incumbents

• Nr. of separate NRAs has increased from only 12 in 1990 to 153 at the end of 2009

• NRA focus has shifted toward creating:
  • an enabling environment for investment
  • fostering market growth, and
  • ensuring effective digital inclusion for all

Source: ITU World Telecommunication Regulatory Database
4. Why and what to regulate (1)

- In order to transition from state monopolies to an effective competitive environment in telecommunications sector, regulators must establish a regulatory framework that can:
  - resolve disputes
  - address anticompetitive behaviors
  - protect consumer’s rights, and
  - achieve national goals such as universal access/service

More regulation because private operator needs to know its rights and obligations and government needs regulatory framework for oversight over operator.

Greater need for regulation as regulator must implement tools to address new competitive market (e.g., rules regarding potential anticompetitive practices, licensing framework, universal service, tariffing).

More limited regulation as competitive market largely regulates itself if and thus there is a shift to more.

The introduction of competition does not mean regulation is unnecessary.

Source: Telecommunications Management Group, Inc
4. Why and what to regulate (2)

• The typical functions of an independent regulatory body include licensing, management of scarce resources, and rule-making and enforcement

• Regulators should perform these functions in a transparent manner encouraging public participation

• The regulatory body should be autonomous when making its legal decisions and independent from the operators and political influence

• Regulators must address some key issues such as provision of services, interconnection, universal access / service, tariffing policies, frequency allocation and assignment, quality of service, consumer protection, standardization/type approval, numbering, and competitive safeguards

Source: Telecommunications Management Group, Inc
4. Why and what to regulate (3)

Relationships between regulation and investments in OECD countries in 2007

- Potential investors consider regulatory environment as a crucial while deciding to invest in a particular country.
- Correlation between regulatory scores and investments levels shows that better regulation leads to increased sector investments.

Source: European Competitive Telecommunications Association (ECTA)
4. National Regulatory Agency- Recommendations (1)

**NRA independence** (Cornerstone of the new regulatory framework)

- Privatization process in PTK should continue as soon as possible
- But prior to that PTK should finish the current reorganization and restructuring processes
- Selling just mobile part of PTK (Vala) will be the best option, because telecommunications companies are not interested at all for postal sector
- Government should withdraw recommendation made to TRA to lock-in the current number of mobile licenses in Kosova for five years

- NRA must be structurally separated from the regulated companies
  - legally distinct from and functionally independent of all organizations providing electronic communications networks, equipment or services
  - structurally separated from activities associated with ownership or control of the incumbent
NRA independence

- Political influence over the National Agency should be eliminated
  - NRA shall not seek or take instructions from any other body in relation to the exercise of their tasks
- Agency should be able to have its own bank account, and to receive and keep revenues from its regulatory, licensing and authorization tasks
- In the appointment procedures of the Board Members of the NRA shall be included the Government, and Kosova’s Assembly
- Board Members of the NRA may be dismissed only if they no longer fulfill the conditions required for the performance of their duties
- The dismissed Board of the NRA shall receive a statement of reasons for dismissal and shall have the right to request its publication

Capacity of the Regulator

- NRA shall decide independently on its staff salaries and be able to attract and retain professional workers
4. National Regulatory Agency- Recommendations (3)

**Accountability and Transparency**

Independence needs to be balanced with measures to ensure that the NRA is accountable for its actions

- NRA must have annual working plan, and publish it in the official web site
- NRA must produce annual working and financial report and present it to the National Assembly
- NRA performance should be annually reviewed
- NRA must allow stakeholders to submit their views on matters under review- consultations
- NRA must publish on-line their decisions and the reasons behind decisions
- All NRA rules and agreements- and the principles guiding them should be a matter of public record
4. National Regulatory Agency- Recommendations

**NRA powers**

- **Ex ante market regulation**
  - Powers to collect information
  - Define and analyze relevant markets
  - Impose regulatory obligations on SMP operators (*access, transparency, non-discrimination, price control, cost accounting, accounting separation and/ or Functional Separation of Vertically Integrated Telecommunication companies*)

- **Enforcement powers and sanctions available** *(issue fines and penalties)*

**Dispute resolution mechanisms**

- between operators, and between operators and end users
- Binding decisions
- Shortest possible time frame – no longer than 4 months
4. National Regulatory Agency - Recommendations

**Appeal mechanisms**

- any party who is the subject of a decision by the NRA should have the right to appeal to a body independent of the parties involved
  
  - Independent appeal body
  
  - Appropriate expertise
  
  - Efficient proceedings
  
  - Powers to consider merits of the case
  
- No automatic suspension of the appealed decisions
Market definition and market analyses

• Under the Telecommunications Law, TRA has the discretion to define relevant markets applying competition law principles

• However, the undertakings with SMP are designated on the basis of the static 25% market share threshold, sometimes with an assessment of other criteria.

• Basic remedies for all operators with SMP are defined by the Law, including the obligations of network access and interconnection, transparency, cost orientation and requirement to publish all the necessary information related to the provision of access and interconnection

• So far, no comprehensive market analysis procedures have been carried out by TRA, but by virtue of the provision of the Telecommunications Law, the fixed incumbent operator, PTK, is deemed to have SMP in fixed networks and services, while its mobile subsidiary, Vala, has SMP in mobile networks and services.

(Albanian case: SMP designation)
Legislative Developments - EU Framework 2003

European Framework

- Framework Directive (Art. 95)
- Authorisation Directive
- Access & Interconnection Directive
- Universal Service Directive
- Data Protection Directive
- Liberalisation Directive (Art. 86)
- Spectrum Decision (Art. 95)

Guidelines on SMP
Recommendation on relevant markets
Recommendation on Article 7
Market Analysis and Remedy Process

Recommendation on Relevant markets
2003/311/EC

Guidelines on market analysis and assessment of significant market power

Definition of relevant market

Market analysis: Assessment of effective competition or significant market power

Cancellation, confirmation or imposition of obligations

Results can be vetoed

Remedies cannot be vetoed
Imposition of Remedies

• If an operator is found to be dominant (either individually or jointly), at least one specific obligation must be imposed

• obligation must be proportionate to remedy the problem, justified in the light of the Art. 8 FD objectives and based on the nature of the problem

• Remedies are to be chosen from the list in Access Directive and Universal Service Directive

• Remedies must be effective: solve the lack of competition

• Remedies on the retail level to be applied only in case wholesale obligations do not work

• Instead of the former automatism, NRAs are now given the flexibility to choose the appropriate remedy- increased role for NRAs
The review of New Framework

Directives: transposition in national law: by May 2011
BEREC Regulation: binding and directly applicable in MS
Establishment of BEREC

Regulation 1211/2009 establishing the Body of European Regulators for e-Communications (BEREC) and “The Office” OJ L 337, 18.12.2009, p.1

Main objective
Contribute to the development and better functioning of the internal market for electronic communications

How
developing and disseminating best practice among NRAs

- assisting Commission and NRAs in the correct application of the framework

- issuing reports and advising European institutions on electronic communications within its competence

Source: European Commission
Key Challenges

Legal and institutional issues

Alignment of the national legislation with EU regulatory framework
TRA: independence, credibility, necessary expertise
Independence: structural and political
Accountability, Transparency, Periodic review

Market access

Liberalization formally achieved but…
Authorization framework remain rather complex

Fixed telephony

Tariff rebalancing, Interconnection, cost-orientation, CS/CPS…

Mobile telephony

Number portability, cost oriented MTRs

Broadband

Infrastructure or service-based competition?

Plans

Privatize PTK, issue 3rd License and introduce 3G, 4G-LTE
Telecommunications market overview in SEE - by country

- Turkey, Croatia and Serbia account for 87% of the region’s market
- They also account for 88% of the region’s 96 million population
- Fastest growing in 2007 were Montenegro, Turkey and Albania
Mobile services are becoming more and more important in the sector of:

- Education
- Public Health
- Information Dissemination
- National Security
- Emergency Services - E112
- Value Added Services
- mPayments, mTicketing, mParking
- mGovernment
- Mobile Broadcast Television
Electronic communications Sector in South East Europe as a percentage of GDP [%]

![Bar chart showing electronic communications sector as a percentage of GDP for different countries in South East Europe over the years 2004 to 2008. The chart includes data for Croatia-HR, Macedonia-MK, Turkey-TR, Albania-AL, Bosnia and Herzegovina-BA, Montenegro-ME, Serbia-RS, Kosovo-XK, and EU-27. The data for each country is represented by a vertical bar with the percentage value on the chart.]

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Thank you for your attention!