

3.1

Overview of ICT Authorization

This section is an introduction to the module and provides information and guidance on licensing issues faced by regulators and regulated service providers in the ICT sector.

3.1.1 INTRODUCTION TO LICENSING & AUTHORIZATION

Traditionally, in many parts of the world, a licence was issued to authorize a person to provide telecommunications services or to operate telecommunications facilities. Such licences generally described key rights and obligations of licensees and often defined conditions relating to the provision of services. These licences also tended to be service-specific and technology-specific. A licensee was authorized to provide a particular type of service over a specific type of network. Alternatively, a licensee was authorized to operate specifically defined types of telecommunications facilities. A wide range of different licensing approaches has been adopted around the world.

Today the practice of issuing detailed individual licences to specific telecommunications, or ICT (to use the current terminology), service providers is gradually being replaced by general authorization regimes. However, the issuance of detailed individual licences remains common in developing economies. Moreover, issuing detailed individual authorizations remains the norm for authorizing the use of radio spectrum where the demand for the use of a particular frequency band exceeds availability.

In general authorization regimes in developed economies, few, if any, conditions are included in a licence document issued to a specific service provider. Instead, regulatory conditions are generally established in rules or regulations that apply equally to all service providers of the same class (e.g. cellular mobile providers) or across the whole ICT industry. While general authorization regimes are most prevalent in developed economies, these regimes have also been adopted in a number of developing and transitional economies. In developing or transitional economies, where the regulatory framework governing the ICT sector is still maturing, it is common for general authorizations to contain a fairly detailed set of terms and conditions. There are thus different variants of general authorization regimes.

With increased liberalization, some regulators are removing all authorization requirements for some ICT services. These service markets are then open to entry by any new service providers, without restriction. Open entry regimes are generally found only in countries with a highly developed, competitive ICT sector and a robust set of institutions that can safeguard consumer interests and protect against anti-competitive conduct.

There has also been a movement away from the issuance of service and technology-specific authorizations. In light of rapid technological development and service innovations, countries are increasingly moving towards the adoption of multi-service and neutral or “unified” authorization frameworks. These frameworks feature authorizations that are service and/or technology neutral, allowing licensees to offer a range of services under the umbrella of a single authorization, using any type of communications infrastructure and technology capable of delivering the desired services. There are a range of different approaches to multi-service and unified licensing around the world.

There are significant differences in the authorization practices in force in different countries. At one end of the spectrum are wide-open authorization regimes, where no form of governmental approval is required to start an ICT service business or to operate network facilities. At the other end are individual licensing regimes with lengthy authorization documents customized to the circumstances of a specific service provider. In between are many forms of general authorization or “class licences” that authorize and provide generally applicable regulatory conditions for classes of ICT service providers.

This module uses the term ‘authorization’ to refer to all forms of licensing, permission or approval required from telecommunication or ICT regulatory authorities to carry on business as an ICT service provider. In light of technological advances and the wide range of services now available, this module also uses the term “info-communications technology” or “ICT” rather than “telecommunications” in most cases.

This module discusses authorization issues faced by regulators and regulated service providers. The module focuses on recent trends in authorization. Many of the trends and practices described in this module illustrate reforms and innovations that improve the efficiency of the authorization process and enhance the economic and social benefits of authorizing the provision of new and existing ICT services.

Issues related to authorizing the use of radio spectrum are discussed in Module 5, Radio Spectrum Management. Matters related to the authorization of rural and universal access services will be dealt with in Module 4, Universal Access.

RELATED INFORMATION

Authorization Trends

Advantages of General Authorizations

3.1.1.1 AUTHORIZATION TERMINOLOGY

In some countries, authorization to provide ICT services is established in laws or regulations. In other countries, it is provided in documents variously referred to as licences, authorizations, permits, concessions, franchises, or simply regulatory decisions.

The terms “authorization”, “concession”, “franchise” and “permit” may be defined in different ways in the laws of different countries. For example, some countries maintain an older approach of entering into mutually binding concession or franchise agreements that specify the rights and obligations of the government authority as well as the ICT service provider. However, all these terms relate to the same basic concept of “authorizing” ICT service providers or networks. In the context of ICT regulation, these terms generally refer to a legal document issued by a regulator or other government authority that determines the rights and obligations of an ICT service provider. For the sake of simplicity, in this module, we generally only use the term “authorization”. In most cases, what is said about authorizations applies equally to concessions, franchises, permits, licences, and other forms of authorization.

The process of authorization is sometimes handled by independent ICT regulators and sometimes directly by governments, Ministers or other authorization authorities. In this module, we generally refer to the authorization authority as the “regulator”. This term is usually intended to include other government authorities that grant licences or other forms of ICT authorizations.

RELATED INFORMATION

Public-Private Partnerships, Concessions and Similar Arrangements

3.1.1.2 ITU TRENDS IN TELECOMMUNICATION REFORM

As indicated on this Toolkit web site, the Telecommunications Development Bureau (BDT) of the International Telecommunication Union (ITU) is a partner in the development of the ICT Toolkit. The ITU, headquartered in Geneva, Switzerland, is an international organization within the United Nations System where governments and the private sector coordinate global telecommunications/ICT networks and services. The ITU is also the leading publisher of information about telecommunication/ICT technology, regulation, and standards. Many publications can be purchased through the Electronic Bookshop or the ITU Publications Online subscription service.

This Toolkit module on Authorization of ICT Services was developed in collaboration with the ITU as it prepared its annual publication “Trends in Telecommunications Reform – 2004/05: Licensing in an Era of Convergence”. The issues canvassed in this Trends Report on licensing are very closely related to those dealt with in this module. Accordingly, many of the Reference Documents and Practice Notes in this module are based on that Trends Report. Citations to this Trends Report are indicated in the relevant documents.

The Licensing Trends Report would be very useful to those interested in developing a broader understanding of ICT authorization practices around the world. The report includes the following chapters:

1. Developments in the ICT Sector
2. Why Licence?
3. Options for Telecommunications Licensing
4. Licence Fees Practices: Historical Perspectives and New Trends
5. Licensing Approaches in an Era of Convergence
6. Convergence and Spectrum Licensing
7. Transitioning Regulation from Old to New
8. A New Era in Licensing.

The Report also contains appendices and tables summarizing the ITU’s annual regulatory survey of regulators around the world, a Glossary of Terms, and links to licensing resources and examples.

A full copy of the Report can be obtained at <http://www.itu.int/ITU-D/treg/> under the link “Publications”.

3.1.2 AUTHORIZATION TRENDS

3.1.2.1 MORE ON AUTHORIZATION TRENDS

This section provides further information on a subject introduced earlier in the module, namely trends in authorization of ICT services.

The concept of licensing telecommunications services is relatively new. In the 1970s and early 1980s, there were relatively few private sector telecommunications service providers outside of North America. A number of other countries had private sector service providers during the early years of the telephone era, but subsequently nationalized them, sometimes during the period following independence from colonial rule. Consequently, there is little history of licensing telecommunications in most countries until the last two decades of the 20th century.

Prior to the 1980s, telecommunications services in most of the world were provided by government departments or agencies, often referred to as PTTs (Post, Telephone and Telegraph Administrations). PTTs generally did not require 'authorizations' to operate. Instead, they were run as branches of government ministries, as autonomous state-owned commercial corporations, or somewhere in between.

By contrast, in North America, telecommunications services have been provided by private sector companies rather than PTTs, since Alexander Graham Bell invented the telephone at the close of the 19th Century, and caused the Bell telephone companies to be incorporated. In North America, however, authorizations were generally not important instruments of regulatory control.

When many North American telecommunications service providers became monopolies early in the 20th Century, government regulators were established to protect the public interest. The main objectives of early North American regulation focused on preventing perceived abuses of the service providers' monopoly position, such as charging excessive tariffs or engaging in practices that were considered to be unjustly discriminatory. Other objectives were aimed at enhancing the public interest in other ways, such as improving the quality of their service or establishing consumer-protection measures. Governments and regulators in North America gradually developed a detailed regulatory framework to achieve these objectives. However, since the service providers were already in business, this framework did not rely much on authorizations to create new rules. Instead, service providers were regulated through laws, regulations, regulatory and judicial decisions, orders and other legal instruments.

The processes of liberalization and privatization that began in the mid-1980s significantly increased the importance of authorization in telecommunications regulation. New entrants in telecommunications markets were usually granted an 'authorization', licence, concession, permit or other form of documentary authorization. In many cases, authorizations were also prepared for incumbent service providers, often as part of their privatization process. By specifying the rights and obligations of such service providers, investors were provided with greater certainty relating to the business in which they were investing. Well drafted authorizations provided all stakeholders, including consumers, competitors, governments and regulators with a clear understanding of the service provider's rights and obligations. Armed with an authorization, the investors of the new entrants could go to their banks or other financial backers, with business plans that provided reasonable projections of revenues, expenses and profitability. Thus, clear authorizations became an essential tool for the financing of new telecommunications services and of privatizations in many telecommunications markets.

When regulators first began to issue authorizations to new private sector entrants and to PTTs, it became the practice in most countries to issue detailed individual authorizations. In many cases, the telecommunications regulatory framework had not yet been fully adapted to the conditions of a privatized or competitive market. Regulators therefore developed authorizations that set out the regulatory terms and conditions governing the conduct of the licensees in order to fill the regulatory gap.

A good example of this approach can be found in the British Telecom (BT) authorization, which was issued at the time of BT's privatization in 1984. At that time, the concept of telecommunications regulation was relatively new in the UK. Unlike North America, there was no existing telecommunications regulatory framework in the UK. Therefore, the BT authorization was prepared as a largely self-contained regulatory code. It was a lengthy document, and it governed most aspects of the regulation and operations of BT. It granted a variety of exclusivity rights, such as a limited monopoly for basic voice services and limitations on simple resale, and dealt with a plethora of other rights, obligations and regulatory conditions. Similarly, the authorization for Mercury, the first fixed-line competitor in the UK, also contained a fairly comprehensive regulatory code.

A similar model was adopted in other European countries and elsewhere as incumbent service providers were privatized and new service providers were authorized. Many other countries issued detailed individual authorizations to both privatized PTT operators and to new private sector entrants. Today, detailed individual authorizations remain in place for service providers in many countries around the world.

Given the different regulatory tradition in North America, Canada and the USA never developed comprehensive authorizations that included detailed regulatory regimes. Instead, regulatory conditions typically continue to be contained

in regulations, decisions, orders or tariffs made or approved by the regulator. It is interesting to note that when Canada belatedly implemented its first telecommunications licensing regime in 1998, to license international service providers, the regulator issued very short (2 page) authorizations that did not set out detailed individual conditions. Instead, most of the rules governing these authorizations are set out in regulatory decisions and other documents that apply generally to all service providers of the same type.

The liberalization of telecommunications markets (now commonly referred to as ICT markets) and the growth in competition in the sector have resulted in a move away from the issuance of detailed individual authorizations in developed economies. A new type of licensing framework has emerged: the general authorization regime. Moreover, technological innovation and fixed-mobile convergence have highlighted the need for flexibility and neutrality in licensing approaches. Several regulators have thus moved towards service- and technology-neutral forms of authorizations. To learn more about these more recent trends in authorization, please see section 1.2.2, "More on Authorization Trends: Recent Developments". A link to this section is set out below.

RELATED INFORMATION

[General Authorizations](#)

[Advantages of General Authorizations](#)

[Services Often Subject to General Authorizations or Open Entry](#)

Practice Notes

- [Summary of EU Authorisation Directive](#)
- [Summary of the EU Framework Directive](#)

3.1.2.2 MORE ON AUTHORIZATION TRENDS: RECENT DEVELOPMENTS

Liberalization of the ICT sector and increased competition have led to new trends in authorization practices. In developed economies, as ICT markets were liberalized and as market participants proliferated, the appropriateness of individual authorizations was increasingly called into question. Policy makers and regulators started to move towards sector-wide regulatory tools to replace the customized regulatory provisions of individual authorizations.

Again, the British, who had perfected the art of drafting comprehensive 'individual authorizations,' took the lead. The British popularized the concept of a 'class licence' (or general authorization) which would apply to more than one service provider – in fact to all who provided the same type or 'class' of services.

The move away from the individual authorization approach and toward sector-wide regulation accelerated when the European Union established its new electronic communications regulatory framework, through the series of Directives and other documents that came into force 25 July 2003. This framework generally requires member countries (now 27) to discontinue individual authorization in favour of general authorizations. (See links below to the EU Framework Directive and the EU Authorization Directive).

Under the EU's regulatory framework, regulators no longer grant individual authorizations. Instead, regulators issue general authorizations that permit anyone to run 'electronic communications' networks and to offer 'electronic communications' services, subject only to general conditions that are applicable to all similar service providers. More onerous conditions may only be imposed on service providers designated as having significant market power (SMP). In addition, the EU framework only permits regulators to limit the number of service providers in a market due to the limited availability of scarce resources, notably radio spectrum or telecommunications numbers.

The EU framework brings the EU closer in line with the traditional North American approach. As a result, there is a move towards less reliance on individual authorizations in the EU. Indeed, a number of EU member countries no longer require that service providers obtain any form of authorization to provide electronic communications services or to operate networks. Service providers are required only to provide the regulator with notification of the start and termination of the provision of services or the operation of a network. Exceptions to these open entry approaches to authorization exist, however, where service provider use the radio spectrum or numbering resources. All service providers are subject to similar regulatory conditions prescribed in sector-wide regulations (such as those required by the package of Directives and regulations that comprise the new EU framework).

A summary of how EU member countries are performing in implementing the electronic communications regulatory framework, including the Authorization Directive, and other information on EU members' regulatory performance and key market indicators can be found at:

http://ec.europa.eu/information_society/policy/ecom/implementation_enforcement/index_en.htm

A similar trend to sector-wide regulation is evident in other developed countries outside the EU and in some developing and transitional economies. There are a number of good reasons for the move to general authorizations and away from individual authorizations (see the link below to Advantages of General Authorizations). However, in countries where the ICT regulatory framework is still maturing and where competition in the sector is still developing, there is often good reason to continue to issue detailed individual authorizations or to attach detailed terms and conditions to general authorizations. Many regulators and policy makers in developing and transitional economies thus continue to employ individual authorizations or, where a general authorization regime has been adopted, to impose detailed terms and conditions on licensees.

Detailed individual authorizations also continue to be issued in many countries where the use of scarce resources is necessary to provide the licensed services (e.g. cellular telecommunications services). Individual authorizations remain quite common for major facilities-based service providers, particularly incumbent service providers that provide basic voice telecommunications services. Finally, individual authorizations remain the norm for authorizations to use the radio spectrum where the demand for the use of a particular radio frequency band exceeds availability.

Another recent trend that has shaped the nature of authorizations in the ICT sector relates to the range of new services available to consumers. Twenty years ago, consumers in developed economies were beginning to enjoy cellular mobile services. Today, services extend far beyond basic mobile and fixed voice telephony. The range of services available to consumers now includes or will soon include mobile data services, Internet services, mobile Internet services, and even IPTV. The emergence of “triple play” (voice, Internet access, and video) and “quadruple play” (voice, Internet access, and video services available over broadband mobile networks) service packages illustrates the breadth of new services available to consumers, as well as the erosion of traditional distinctions between carriage and content service providers.

A need for greater flexibility and neutrality in licensing has arisen in light of the speed of technological innovation, consumer demand, the blurring of content and carriage services, and fixed-mobile convergence. The emergence of Next Generation Networks (NGNs) has underlined the importance of flexibility and neutrality in licensing. These trends have led to an important new development in licensing: the adoption of multi-service and unified authorization regimes.

Traditionally, authorizations permitted the provision of specific types of services, using a specific type of network and technological infrastructure. For example, until recently, regulators typically issued separate authorizations for data services, public fixed voice services, public mobile voice services, and private line services. A service provider active in all of these markets was required to obtain a separate authorization for each type of service. However, in light of the aforementioned recent trends and the need for flexibility and neutrality in licensing, regulators have increasingly begun to revisit service-specific and technology-specific approaches to licensing. Multi-service and unified authorization regimes have arisen as a result.

Multi-service and unified authorization regimes feature authorizations that are service and/or technology neutral, allowing licensees to offer a range of services under the umbrella of a single authorization, using any type of communications infrastructure and technology capable of delivering the desired services. Multi-service and unified authorizations offer licensees significant flexibility to develop the most efficient and valuable forms of service offerings. Multi-service and unified authorization regimes are currently in place or are being implemented in a range of developed, developing, and transitional economies. There are a range of different approaches to multi-service and unified authorizations around the world. These approaches are discussed in greater detail in Part 8 of this Module.

In countries that have liberalized their ICT market and adopted a unified licensing approach, administrative procedures to enter the market have also been simplified and made more flexible. Unified and multi-service licensing regimes often feature general authorizations and do not require applicants to go through a competitive selection process in order to obtain an authorization. In many cases, applicants may obtain an authorization if they demonstrate that they meet certain criteria for licensing. These criteria frequently resemble criteria used in competitive selection processes (e.g., financial stability; viable business plan; and technical competence), however. Thus, the review of applications for unified and multi-service authorizations often involves close regulatory scrutiny, particularly in developing and transitional economies. Moreover, unified and multi-service authorizations sometimes include a detailed set of terms and conditions, even when they are issued within a general authorization framework. This is especially true in developing and transitional economies, where competition is still growing and where the regulatory regime may still be maturing.

3.1.3 AUTHORIZATION OBJECTIVES AND POLICIES

The development and implementation of authorization policies is one of the most important steps in reforming the ICT sector. Authorization policies determine the structure and level of competition in ICT markets and, ultimately, the efficiency of the supply of ICT services to the public.

Historically, many countries developed authorization policies on an *ad hoc* basis. Frequently, policies were only developed when specific decisions were made to authorize additional service providers. However, as the global regulatory experience evolved, an increasing number of countries adopted explicit authorization policies. Many countries developed policies based on the experience of regulatory reform and telecom market liberalization in other countries. In developing and transitional markets, authorization policies often provide for (1) immediate opening of peripheral telecom markets to competition, and (2) phased opening of voice telephony and related 'core' markets.

Clearly stated telecom policies remove uncertainty and regulatory risk for service providers and their investors. However, regulation is an art, not a mathematical science, and it is neither possible nor desirable to attempt to prescribe detailed policies for all situations that may arise. ICT markets and technologies are too dynamic to permit that. An ideal ICT policy should establish the main objectives and approaches of government policy and deal with major issues of national concern to service providers and investors. However, the more detailed provisions are better left to subsidiary legislation or regulatory rules which can be amended to meet evolving market conditions.

Practice Notes

- **Authorization Policies**

Reference Documents

- **Pakistan- Authorization Policy**

3.1.3.1 COMMON AUTHORIZATION OBJECTIVES

This section provides further information on authorization objectives, a subject that was introduced earlier in the module. Governments and regulators have normally had a range of reasons or objectives for authorizing ICT service providers. Some common authorization objectives are set out below:

(i) Privatization or Commercialization – An authorization is usually necessary where a state-owned incumbent (a PTT) is privatized. It is a key document in the privatization process. The authorization specifies the rights and obligations of the service provider. It also specifies what the investor is buying and what the government expects from the service provider and the investor.

(ii) Expansion of Networks and Services and Other Universal Service Objectives – Authorizations are an important tool for expanding infrastructure investment and promoting universal service and universal access objectives in developing countries. Network roll-out and service coverage obligations are often included in authorizations. This is particularly the case where a PTT is privatized, or where some degree of exclusivity is granted (e.g. to a duopoly cellular licensee, with a right to use scarce spectrum). Universal service objectives are discussed in detail in Module 4, "Universal Access" in this Toolkit and in Module 6 (Universal Service) of the Telecommunications Regulation Handbook.

(iii) Regulating Provision of an Essential Public Service – Basic telephony is viewed as an essential public service in most countries. While there has been an irreversible trend toward privatization and reliance on market forces, most governments continue to impose some controls to ensure that basic voice services are provided in the public interest. Authorizations are an important tool for exercising such control in many countries.

(iv) Regulating Market Structure – A key element of authorization policy is the determination of the market structure of the ICT sector, and in particular, the number of service providers authorized to provide ICT services. In many countries a prime reason for authorizing new ICT service providers is to increase competition. Authorization of new service providers has made competition the dominant mode of supply in most ICT markets (e.g., cellular, ISP), though competition has not yet fully matured in some market segments, such as fixed voice telephone services. A major objective of the authorization process in many markets is to ensure the viability and benefits of new competitive entries. On the other hand, authorization requirements are also used to limit market access. This is the objective of authorization authorities in some countries where monopoly, duopoly or other exclusive rights have been granted for political or financial reasons. For example, governments in many countries have increased privatization proceeds to the government treasury by granting a newly privatized service provider monopoly rights for a fixed term of years. Monopoly supply arrangements generally reduce efficiency in ICT markets, and dampen economic growth in services that are dependent on ICT. However, many governments traditionally accepted these disadvantages in order to generate cash for purposes like national debt reduction. Today, however, it is becoming less common to grant monopoly rights, even to newly privatized service providers.

(v) Establishing a Competition Framework – In countries that do not have a well developed regulatory framework, authorizations may include conditions to establish a "level playing field" for competition, and to limit the prospect that

incumbent service providers will abuse their dominant position in ICT markets. Such conditions are generally referred to in authorizations as “anti-competitive safeguards” or “fair trading conditions”. (Examples of such conditions are discussed in greater detail in Module 2, Competition and Price Regulation of this Toolkit.

(vi) Allocation of Scarce Resources – Finite resources required in the operation of an ICT service (such as radio spectrum, numbers and rights of way) should be allocated between service providers fairly, efficiently and in the public interest. This allocation often requires a balancing of competing interests and priorities. Radio spectrum, for instance, may be auctioned to the highest bidder or allocated at low cost to reduce prices or to encourage the rollout of new services. Issues related to the authorization of spectrum are dealt with in greater detail in Module 5, Radio Spectrum Management of this Toolkit.

(vii) Generating Government Revenues – In many countries, the authorization of ICT service providers and of radio spectrum has provided significant revenues to governments. An auction for new authorizations can generate high one-time revenues. In addition, annual authorization fees often provide a continuing source of revenue to fund the operations of the regulator, or for other purposes. Issues related to authorization fees are dealt with later in this module. In addition, authorization of new service providers can increase the size of ICT markets and generate higher tax revenues for governments.

(viii) Consumer Protection – In some countries, conditions relating to consumer protection are included in ICT authorizations. This is particularly true in countries that did not have a well-developed regulatory framework to deal with such issues. However, the better practice is to have consumer protection provisions included in rules of general application to the industry or to certain classes of service providers.

(ix) Regulatory Certainty – Regulatory certainty is a critical element of the authorization processes where the aim is to attract new service providers and investment. This is particularly true in cases where foreign investment is sought in developing or transitional economies struggling with political and/or financial instability. By clearly defining the rights and obligations of the service provider and the regulator, an authorization can significantly increase confidence in the regulatory regime.

(x) Facilitating the Development of Next Generation Networks – Facilitating the emergence of Next Generation Networks (NGNs) has become an increasingly important authorization objective. In order to reap the full economic and social benefits of technological innovations, regulators and policy makers have become highly attuned to structuring a regulatory environment conducive to the development of NGNs. Measures taken in regards to this objective include, for example, the adoption of technology-neutral and service-neutral authorizations, permitting infrastructure sharing, and allocating spectrum to service providers without restricting the services for which such allocations may be used. Thus, this objective has required regulators and policy makers to reconsider the very nature of authorizations and their terms and conditions. NGNs and authorization practices and trends related to the emergence of NGNs are discussed in greater detail in section 8 of this Module.

Practice Notes

- [Authorization Policies](#)

Reference Documents

- [Pakistan- Authorization Policy](#)

3.1.4 INTERNATIONAL TRADE RULES

In recent years, ICT services have played a larger role in international trade agreements, both at the multilateral and regional level. The World Trade Organization (WTO) and its predecessors have promoted liberalization of trade in ICT services. The General Agreement on Trade in Services (GATS) and the 1997 WTO Agreement on Basic Telecommunications (ABT) both include specific rules that apply to telecommunication and ICT regulation and authorization. As a result, new signatories to the ABT, as well as countries wishing to join the WTO, must bring their regulatory and authorization practices into compliance with WTO trade rules.

The trade rules most relevant to the authorization process are summarized in sections 1.4.1, 1.4.2, and 1.4.3. Links to these sections are set out below. Other WTO rules relating to telecommunications services are dealt with in other modules of this Toolkit. See, for example, Module 2, Competition and Price Regulation and Module 4, Universal Access. Links to these modules are set out below. The central theme of these rules is the evolution towards more open competitive markets and transparent authorization processes.

Reference Documents

- [World Trade Organization - Reference Paper](#)

3.1.4.1 KEY GATS AUTHORIZATION OBLIGATIONS

This section provides further information on a subject introduced earlier in the module, namely the WTO approach to authorization of telecommunications services. All WTO member states are bound by the “general obligations and disciplines” of the *General Agreement on Trade in Services* (GATS). There are three Articles of the GATS that are directly applicable to the authorization process:

- **Most Favoured Nation (MFN) Treatment** (*GATS Article II*) – An authorization regime must grant market access to service providers from a WTO member country on terms “no less favourable” than the terms applicable to service providers from “any other country”.
- **Transparency** (*GATS Article III*) – All laws and rules affecting trade in services must be published. The Telecommunications Annex to the GATS specifically requires publication of, among other things, all notification, registration or authorization requirements, if any, as well as any other forms of recognition and approval (e.g. type approval of terminal equipment) needed before foreign service suppliers can lawfully do business in a member country.
- **Barriers to Trade** (*GATS Article VI*) – Authorization requirements must not “constitute unnecessary barriers to trade”.

RELATED INFORMATION

[Specific WTO Telecom Sector Commitments](#)

[Reference Documents](#)

- [World Trade Organization - Reference Paper](#)

3.1.4.2 SPECIFIC WTO TELECOM SECTOR COMMITMENTS

This section provides further information about the WTO rules applicable to the authorization of telecommunication services, a subject introduced earlier in this module.

In addition to the general Articles of the *General Agreement on Trade in Services* (GATS), the schedules to the GATS contain additional trade commitments by individual member countries concerning specific services, including basic telecommunications services. As part of the 1997 *Agreement on Basic Telecommunications*, 69 developed and developing countries, representing more than 90 percent of the global telecommunications markets, filed national schedules of commitments to liberalize or maintain open telecommunications markets. As part of their schedules of commitments, most of these countries agreed to adhere to certain telecommunications regulatory practices set out in the *WTO Regulation Reference Paper* (the “Reference Paper”). Since then, other WTO signatories have filed schedules of commitments governing trade in the telecommunications sector, which generally included a commitment to adhere to the Reference Paper. As of February 2008, 107 WTO members have made commitments to open some or all segments of their telecommunications markets to foreign suppliers, and 80 members have committed themselves to the Reference Paper. The Reference Paper has had a major impact on the reform of telecommunications regulation, including authorization practice reform, in many countries.

RELATED INFORMATION

[WTO Regulation Reference Paper: Key Authorization Rules](#)

[Reference Documents](#)

- [World Trade Organization - Reference Paper](#)

3.1.4.3 WTO REGULATION REFERENCE PAPER: KEY AUTHORIZATION RULES

This section provides further information on a subject introduced earlier in this module, namely the WTO approach to the authorization of telecommunications services. The *WTO Regulation Reference Paper* contains two rules that specifically relate to the authorization process:

- **Article 4** sets out commitments relating to the public availability of authorization criteria. It provides that where an authorization is required, the following must be made publicly available: all of the authorization criteria and the

period of time normally required to reach a decision concerning an application for authorization, and the terms and conditions of individual authorizations. The article also provides that the reasons for the denial of an authorization must be made known to the applicant upon request.

- **Article 6** outlines the requirements governing the allocation and use of scarce resources. It provides that “[a]ny procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner.” The article further provides that the current state of allocated frequency bands must be made publicly available, although detailed identification of frequencies allocated for specific government uses is not required.

3.1.5 WHO AUTHORIZES TELECOMMUNICATIONS SERVICES?

Today, authorizations are usually issued and administered by telecommunication or ICT regulatory authorities. However, until recently, Ministers or Ministries responsible for the ICT sector played a much more prominent role in licensing. They continue to do so in quite a few countries. However, the trend is clearly toward separation of licensing from the political process. ICT authorization responsibilities are increasingly carried out by independent professional regulators, who are expected to use objective criteria and transparent processes for the authorization of ICT services.

As part of the ITU’s 2007 regulatory survey, information was gathered on the allocation of authorization responsibility in 140 countries. In over three-quarters of those countries (110), it was reported that the national telecommunications regulatory authority (NRA) was responsible in whole or in part for licensing. In 25 countries, the NRA shared authorization responsibility with the Ministry. This occurs, for example, in countries like St. Lucia, where the NRA reviews applications and advises the Minister, who then issues authorizations. Another example is Canada where the few authorization functions are split between the NRA (international authorizations) and the Minister (radio spectrum authorizations).

According to the 2007 ITU survey, the Ministry alone was responsible for authorization in 23 countries of the 140 countries. A total of 31 other agencies from various countries also had responsibility, in whole or in part, for issuing authorizations. These entities included the President (Suriname), the Congress (Costa Rica) and multi-sector authorization authorities (Seychelles).

3.1.5.1 WHO AUTHORIZES TELECOM SERVICES?

Notes:

1. There is some duplication due to overlapping responsibilities.
2. Includes general authorization agencies, President, Congress, etc.
3. "NRA & Minister" implies that both the NRA and the Minister have some responsibilities for ICT authorizations, but does not exclude the possibility that another agency may share this responsibility.
4. Data are based on responses to the ITU's 2007 Telecommunication Regulatory Survey.

Region	Countries Reporting	NRA Alone or Shared	NRA & Ministry	Ministry Alone	Other Authority
Africa	34	29	9	4	4
Americas	26	19	7	5	11
Asia Pacific	24	16	4	6	2
Arab States	15	11	2	4	2
Europe & CIS	41	35	3	4	12
Total World	140	110	25	23	31

◀ **Table Who Authorizes ICT Services? / Who is Responsible for ICT Authorization?**

Source: ITU World Telecommunication Regulatory Database, 2007

3.1.6 TYPES OF AUTHORIZATION REGIMES

Just as there are different types of authorization authorities in different countries, different types of authorization regimes have been adopted. Again, with the sharing of global experience, there has been a convergence in the types of authorization regimes adopted in various countries. Today, the approaches to authorizing ICT service providers and services can be divided into three main categories:

1. Individual authorizations;
2. General authorizations; and
3. Open entry – i.e. no authorization requirement.

As discussed throughout this module, there is a clear trend toward the use of general authorizations and open entry regimes in developed economies, consistent with the general liberalization and convergence of ICT markets. However, individual authorizations continue to be in place in a large number of countries, particularly in developing and transitional economies. Moreover, individual authorizations are used to license the use of radio spectrum when the demand for use of a particular band of radio frequency exceeds availability. Accordingly, issues related to individual licences are also discussed in detail in this module.

RELATED INFORMATION

[General Authorizations](#)

[Individual Licences](#)

3.1.6.1 MAIN TYPES OF AUTHORIZATION REGIMES

Types of Authorization Requirement	Main Features	Examples
		Frequently used for:
Individual Authorizations	issued to a single named service provider	basic PSTN services
	usually a customized authorization document	in a monopoly market
	often contains detailed conditions	in countries where the regulatory regime is still maturing
	frequently granted through some form of competitive selection process	mobile wireless services
	Useful where:	services using scarce spectrum resources
	a scarce resource or exclusive right is to be authorized (e.g. spectrum), and/or	
	the regulator has a significant interest in ensuring that the service is provided in a particular manner (e.g. where the service provider has significant market power)	
		Have been used for:
General Authorizations	useful where individual authorizations are not justified, and where significant regulatory objectives can be achieved by establishing general conditions	data transmission services
(Class Licenses)	normally set out basic rights and obligations, and regulatory provisions of general application to the class of services authorized	resale services
	normally issued without a competitive selection process; all qualified entities are usually authorized to provide service or operate facilities	international services
		VSATs
		private networks
		All data and voice services in markets with robust competition, except services requiring the use of scarce resources such as radio spectrum and numbering resources
		Have been used for:
Open Entry	no authorization process or qualification	Internet service providers (ISPs)
(Services may be provided without an authorization)	no requirements, beyond rules generally applicable to the ICT sector	Value-added services
	registration requirements or other rules of general application are sometimes imposed by regulation	All data and voice services in markets with robust competition, except services requiring the use of scarce resources such as radio spectrum and numbering resources

◀ **Table 3.1** Main Types of Authorization Regimes
Source: ITU

These three types of authorization regimes provide a useful reference point for considering different authorization requirements around the world. However, national authorization approaches do vary considerably. For example, as previously noted, the North American situation is quite different from the rest of the world. There have generally been no authorization requirements for ICT service providers or services in

North America. The exceptions to this rule are spectrum authorizations, FCC Section 214 facilities certifications, CRTC basic international telecommunications service authorizations, and public convenience and necessity certificates which were required to construct ICT facilities in some US states and Canadian provinces.

Examples of various types of authorization regimes are discussed in this module. The practice notes linked below provide a good range of examples of different approaches. The reference documents attached to these practice notes are also useful resources in reviewing different types of authorization regimes. .

RELATED INFORMATION

[General Authorizations](#)

[Individual Licences](#)

[Practice Notes](#)

- [Greece: The General Authorization Licensing Process](#)
- [Japan- Registration or Notification](#)
- [The Australian Licensing Process](#)
- [The Botswana Licensing Process](#)
- [The Jamaican Licensing Process](#)
- [The New UK Licensing Process](#)

3.1.7 THE LEGAL FRAMEWORK FOR AUTHORIZATION

The form of an authorization depends on the national legal regime. In most countries, authorizations comprise only one element of the regulatory framework. Other rules that govern service providers are included in ICT sector policies, laws, regulations, decrees, orders, decisions, guidelines, directions and other regulatory documents. The authorization trends section of this module described the trend in developed economies away from detailed individual authorizations and towards the development of regulations of general application to the ICT sector.

Two factors generally determine whether a service provider's rights and obligations are set out in an authorization or in other regulatory documents: requirements of local law and the level of development of the local regulatory framework. Due to differences in these requirements, the same rights and obligations that are dealt with in authorizations in some countries are addressed through general regulations in others.

[Reference Documents](#)

- [Canada -- Telecom Circular 2003-1](#)
- [Canada -- Telecom Circular CRTC 2005-8](#)
- [Canada- Telecom Decision CRTC 98-17 "Regulatory Regime for the Provision of International Telecommunications Services"](#)
- [Canada- Telecommunications Act , 1993](#)
- [Singapore- Telecom \(Class Licences\) Regulations](#)
- [South Africa -- Electronic Communications Act Regulations](#)
- [South Africa -- Electronic Communications Act Regulations](#)
- [South Africa -- Electronic Communications Act Regulations on Processes and Procedures](#)
- [South Africa -- Electronic Communications Act, 2006](#)
- [Sri Lanka- Licensing Policy](#)
- [Tanzania -- The Communications \(Licensing\) Regulations, 2005](#)

3.1.7.1 ADMINISTRATIVE AUTHORIZATIONS, AGREEMENTS AND CONCESSIONS

This section provides further information on a subject introduced earlier in this module, namely the legal framework for authorization.

The act of granting an authorization is treated in some countries as a unilateral administrative act of a government authority and in other countries as a form of mutually-negotiated agreement, concession or public-private partnership.

In most countries today, the grant of an ICT authorization is a unilateral act of the regulatory authority. The authorization is issued to one or more authorized service providers subject to the terms and conditions specified in the authorization or in the general ICT regulatory framework. In such a case, the grant of the authorization is a purely administrative act.

In other countries, an authorization can be included in a contract between the regulator and the service provider or network operator. This approach has been used where authorizations form part of a concession agreement or part of a public-private partnership (PPP) between a government organization and a private investor. Authorizations in this form generally set out the rights and obligations of both the government authority granting the authorization and the service provider. In the ICT sector, this “contractual” form of authorization is most common and useful in countries where the legal and regulatory framework is less developed. It is particularly useful in cases where there is a perception of high regulatory risk or political country risk which may, in the absence of a contract, deter ICT investment.

Whether authorizations are issued as a unilateral act of the regulator or as part of a contract or PPP, it is essential that the regulator or other governmental organization involved have the authority to issue the authorization or to enter into the related contract. In some countries, this authority is established in the legislation that created and empowered the regulator. In other countries, the legislation that governs the ICT sector may impose an obligation on the regulator to administer the authorization regime or, alternatively, may give the regulator the discretionary power to issue authorizations.

RELATED INFORMATION

[Concessions and Licence Agreements](#)[Public-Private Partnerships](#)

3.1.8 DEVELOPING MARKET ENTRY POLICIES

This section considers different approaches used to open markets through the authorization of new ICT services and networks. The authorization approach and process adopted by a country depends on national and regional sector policies, laws and market structure. Increasingly, the approach taken to licensing also depends on international trade rules, such as those established by the WTO.

Depending on the level of development of general ICT policies, the typical steps in designing a new authorization process might include:

- a review of market performance, including: measuring performance of existing service providers, considering existing legal exclusivity rights, studying demand for new services, benchmarking local market performance with similar economies and considering international authorization experience and trade commitments;
- development of a policy for authorization of new service providers, with options such as:
 - public-private partnerships (generally not advisable unless there are important policy, constitutional or legal restrictions on authorization of private sector service providers)
 - open market policies, with unrestricted market entry for all networks and services
 - phased market opening policies, which limit entry to some key markets (e.g. fixed voice, international gateways, etc.) in the early years, to increase authorization fees or network rollout obligations; and
 - open entry for other services to maximize economic benefits;
- development of a process for licensing new service providers (e.g. competitive auction, comparative evaluation, general authorization process);
- a public consultation on proposed new authorization policy and process, setting out considerations for existing service providers, new entrants, consumers and the national economy;
- development and approval of any necessary legal and regulatory amendments to implement a new authorization policy; and
- commencement of the authorization process (see sections in this module on general authorization regimes and competitive authorization processes, in addition to Module 5, Radio Spectrum Management).

This module includes authorization policies and other authorization documents that illustrate a range of approaches to implementing market entry policies. Some good examples are accessible through the links set out below.

Public -Private Partnerships

Practice Notes

- [Hong Kong, China- Liberalization of Fixed Networks Consultation Document- 2001](#)

Reference Documents

- [Bahamas -- Electronic Communications Sector Policy, 2009](#)
- [Pakistan General Telecommunications Policy](#)
- [Pakistan- Authorization Policy](#)

3.1.8.1 DEFINING SERVICE AREAS

One important issue that is normally considered in designing a market entry policy relates to the definition of geographic service areas to be covered by new authorizations.

A variety of approaches have been taken to defining the service area for a new authorization. In some cases, national authorizations are issued. In others, separate authorizations are issued in different regions or for rural and urban markets. In some cases, national authorizations have been issued in parallel with competing regional authorizations for the same service. This is the case, for example, in Tanzania's Converged Licensing Framework, where authorizations are issued for the International, National, Regional, and District market segments.

There is no one right approach to designating service areas. However, some approaches are likely to be less successful than others. One approach that has experienced limited success in a number of countries is to preserve the profitable urban markets for a state-owned PTT, and to invite private sector service providers to serve only rural areas that are financially less viable. In some cases, the failure of the private sector service providers to perform well in such areas has been used as evidence to argue against further sector liberalization.

The following points are relevant in defining the geographic service area of a new authorization:

- Financial viability must be a key factor. If financially non-viable rural or high cost areas are authorized, a universality fund, or similar mechanism should be established. A preferred approach in such cases is to select a licensee from among competing applicants, based on the lowest requested subsidy. Universality funding mechanisms and approaches for measuring financial viability are discussed in Module 4, Universal Access in this Toolkit.
- Experience shows that regional licensees often merge with, or are acquired by, other regional licensees to serve larger regions or form national service providers. Examples range from the Colombian cellular service providers to the U.S. Regional Bell Operating Companies. These moves are often driven by economies of scale. Regulators may want to keep this trend in mind, and authorize several competing national service providers at the outset, rather than numerous financially weaker regional service providers. The result will be lower transaction costs for the sector, and less disruption due to integration of different operating systems.
- Licensing service providers to serve larger areas will permit them to cross subsidize from more profitable areas to less profitable ones. This approach can be used to extend service to less profitable areas. However, it can lead to anti-competitive conduct where an incumbent service provider retains exclusive rights to serve profitable urban markets as well as less profitable rural ones, while new entrants can serve only the rural markets. Problems of anti-competitive cross-subsidy are discussed in detail in Module 2, Competition and Price Regulation in this Toolkit.
- National authorizations and large service areas are consistent with the consumer interests in obtaining seamless "one stop shopping" service from a single service provider. This is particularly true where technical or other barriers to efficient interconnection or roaming are present.
- Finally, it is good practice to hold public consultations during the design and implementation of an authorization process. Such consultations may be initiated in a number of ways, from issuance of a detailed public consultation paper (sometimes called a green or white paper) to publication of a simple invitation for public comments on a proposed authorization action. Any input from members of the public, including existing industry stakeholders, can provide valuable input in designing an approach for new market opening and other authorization initiatives.

■ **India- Regional Authorization**

Next: 3.2 General Authorizations and Open Entry Policies ➔

The ICT Regulation Toolkit is a joint production of infoDev and the International Telecommunications Union (ITU).



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