

3.3

Individual Licences

While many developed countries have adopted general authorization regimes or open entry policies, individual licences continue to have relevance in many emerging and transitional economies. Individual licences are also typically used to authorize the use of spectrum where the demand for access to radio frequency bands exceeds availability. Individual authorizations have been standard for 3G spectrum licences, for example.

This section reviews common licensing practices related to individual licences. The next section addresses the competitive licensing processes that are used to issue individual licences.

3.3.1 INDIVIDUAL LICENCES AND REGULATORY CERTAINTY

Detailed individual licences have particular importance in emerging and transitional economies that have not yet developed a comprehensive or stable regulatory framework. In such a context, licences provide certainty for investors and lenders. This certainty is often required before investors will provide the millions or billions of dollars required to install or upgrade telecommunications infrastructure.

RELATED INFORMATION

[Contents of a Detailed Individual Licence](#)

[Sample Contents of a Detailed PSTN Licence](#)

3.3.1.1 LICENSING CERTAINTY IN DEVELOPING MARKETS

It is often difficult to attract investment in ICT markets in developing and transitional economies. Different circumstances prevail in these economies, due to a perception of high country risk and economic, national security or governance problems. Most countries with such economies do not have clear or consistent policies or frameworks for the regulation of the ICT sector. Where it is not possible to develop a stable and credible regulatory framework quickly, it is important to develop authorizations that are clear and detailed in order to facilitate privatization and liberalization initiatives. Such authorizations may be subject to replacement by a more comprehensive regulatory framework once it is developed. However, in such circumstances, the basic economic rights of ICT investors should be protected.

There are two key objectives in preparing such individual licences:

Regulatory Certainty-Where privatization and licensing transactions are implemented before a clear regulatory framework has been developed, the rights and obligations of service providers should be clearly defined in authorizations. Regulatory certainty on key business issues, such as interconnection, price regulation and competitive safeguards, promotes the success of privatization and market liberalization initiatives. Uncertainty reduces investor confidence. As a result, it usually also reduces the potential proceeds to governments from privatization sales or licence fees.

Defining Exclusivity Rights-Sector policy may call for the authorization of multiple service providers. It may also grant exclusive monopoly (or duopoly) rights for specified periods of time. The granting of exclusivity rights generally increases government revenues from privatization and licensing transactions. However, as noted in Modules 1 (Overview of Telecommunications Regulation), 4 (Price Regulation) and 6 (Universal Service) of the Telecommunications Regulation Handbook, maintaining monopolies will generally limit sector and economic growth, and reduce service provider efficiency to the detriment of consumers. Whatever policy is adopted on exclusivity, it should be clearly reflected in the authorizations of new service providers in order to provide certainty to them, their investors and lenders.

To implement these objectives, regulators that intend to authorize new service providers or attract investment in incumbents, but that do not yet have a comprehensive regulatory framework, often develop fairly detailed individual authorizations.

Countries that have initiated privatization and liberalization without clear and detailed authorizations or a detailed regulatory framework have experienced serious problems related to regulatory uncertainty. In other more successful

cases, countries without a clear regulatory framework have achieved certainty in their early authorization initiatives through the use of detailed individual authorizations. Examples include Hungary, Uganda, Morocco, and Jordan. The provision of such detailed authorizations removed ambiguity on important matters such as exclusivity rights, authorization fees, network roll-out obligations, tariffs, and interconnection requirements. The success of privatization and new competitive entry in these countries was based, in part, on authorizations that provided a degree of certainty regarding the rights and obligations of investors and service providers.

RELATED INFORMATION

Sample Contents of a Detailed PSTN Licence

3.3.2 CONTENTS OF A DETAILED INDIVIDUAL LICENCE

Section 3.2.1 describes an example of the contents of a detailed PSTN (Public Switched Telephone Network) service provider's licence in an emerging economy without a well-developed regulatory framework. This type of licence has been chosen as an example since it is fairly comprehensive. It covers many of the conditions often dealt with in authorizations for non-PSTN services, such as mobile services. Some additional and different conditions will be required in authorizations for particular services.

Not all of the matters included in the authorization example set out in section 3.2.1 will be necessary in all authorizations for PSTN services. In many countries, some matters in the list are already covered in laws, regulations or other documents that form part of the regulatory framework. Examples include general regulations on universal service or authorization fees, a competition law or general rules of practice and procedure governing authorized service providers, information reporting or authorization termination and renewal. It generally does not matter which type of legal document is used to deal with these issues, as long as the regulatory framework is stated clearly and is enforceable under local law.

3.3.2.1 SAMPLE CONTENTS OF A DETAILED PSTN LICENCE

Sample Contents of a Detailed PSTN Licence

Notes

Part 1 – Background and Identification of Parties

- Provides background, governing law, authorization circumstances, etc.
- Important for posterity, and for courts and governments interpreting the authorization
- Ensure authorized entity has legal and financial substance
- Key to clarity of authorization conditions
- May repeat relevant definitions from laws, regulations, etc., and deal with what happens if these definitions change

Part 2 – Grant of Authorization

- Approaches may differ (e.g. authorization of services common today; however, some authorizations authorize operation of facilities)
- Radio Spectrum usually authorized separately – refer to separate authorization – ensure that there are not excessive 'double authorization' delays or charges.
- For precision, it is sometimes useful to define exceptions – i.e. list what licensee is not entitled to do, and/or list specify services licensee is not authorized to provide (e.g. to implement competition policy)
- It is a good practice to issue separate authorizations for each major type of services provided, e.g. an incumbent operator may obtain a PSTN authorization and separate mobile cellular and ISP authorizations. This assists in ensuring that existing and future authorizations for the same services (e.g. mobile cellular) contain similar conditions.
- The general presumption today should be against granting any monopoly or exclusivity rights. Where such rights are granted, they should be strictly limited.
- Define scope (i.e. services covered) and timing of any exclusivity rights precisely, including time limits, possible extensions and any pre-conditions for extensions
- Establish effective date of authorization. Note that an authorization may be issued several months (or even

years) before the service provider is entitled to commence services. This approach may be useful when an authorization is granted in advance of the expiry of exclusive rights granted to a previous licensee.

- Specify duration of authorization term, and conditions and duration of any renewal terms

Part 3 – Authorization Fees

- Usually based on competitive bid process (auction) or fixed in advance
- Any one-time fee should be clearly differentiated from other fees (e.g. royalties, taxes, annual authorization fees, etc.)
- May be payable in installments, with revocation penalty
- Annual fee (may be paid quarterly or on another periodic basis)
- Best practice is to recover administrative costs of regulation only (see Module 1 of the Telecommunications Regulation Handbook and the section of this module on authorization fees for a calculation of authorization fees). Administrative costs should be based on a transparent and duly approved regulatory budget process
- Should be a competitively-neutral assessment of fees across the industry
- Usually provided for separately in spectrum authorization
- Best practice: Limit fees to cost recovery for spectrum management
- Higher fees may be warranted to auction scarce spectrum and generate government revenues (should not duplicate authorization acquisition fees)

Part 4 – General Conditions of Authorization

- Cite requirements to retain eligibility to hold authorization (if any)
- Cite any restrictions on ownership and control of licensee (e.g. cross-ownership with major competitors, foreign ownership restrictions, etc.)
- Rules on equipment that may be used (e.g. type approval rules, or compliance with mutual recognition agreements 'MRAs')
- Any applicable rules (e.g. to verify price cap regulation regime or service quality rules)
- Specify reporting requirements and rules on provision of information to the regulator
- Specific obligations to provide access by regulator to information or premises, and to co-operate with regulator for specific regulatory purposes
- Specify obligations to co-operate with other authorities (e.g. police and national security forces regarding interception of communications, environmental protection, health and safety rules if not covered by law of general application)
- Rights of service provider to access streets, sidewalks, road allowances and other public property and rights of way for the purpose of constructing, operating and maintaining facilities
- Cite legal authority for any such rights
- Include rules for access, if not stated elsewhere (e.g. payment, if any, public safety and convenience, aesthetics, compliance with applicable law)
- Any rights of service provider to access private property (e.g. rights of way for cable or microwave routes) including expropriation rights, if applicable
- Cite legal authority for any such rights

Part 5 – Specific Conditions of Authorization

- Normally dealt with in separate spectrum authorization – may be referenced in spectrum authorization
- Should be subject to national and ITU spectrum management rules, including rules for efficient spectrum use
- Assignment of numbers, if applicable
- Refer to national numbering plan, if applicable
- Rights and obligations regarding implementation of number portability arrangements

- Obligations to provide such services, and co-operate with other service providers in providing them jointly
- See Module 6 of the Telecommunications Regulation Handbook
- Specific obligations (usually set out in Appendix, including maps, number of access lines, etc.)
- See Module 6 of the Telecommunications Regulation Handbook
- Specific obligations (usually set out in Appendix, including specific indicators, standards to be met by specified dates, reporting procedures, etc.)
- May be covered or supplemented in other regulatory documents
- Reference details of performance bond or other method used to secure performance of authorization obligations
- Bond or security document(s) may be annexed to authorization

Part 6 – Relations with Customers

- Terms and conditions usually set out in other regulatory documents, but may initially be included in authorization
- May include mandatory contents of customer contracts
- May include consumer “code of rights”
- Rules on handling and recording complaints
- Usually set out in other regulatory documents
- Provisions may be set out in regulatory documents or approved customer contracts (to provide notice to customers)
- Include protection of privacy
- Rules often published in telephone directories
- Price regulation (tariff) regime usually specified (e.g. price caps)
- Specify services to which price regulation regime applies
- Review period and rules for review often specified
- Key to financial viability of authorization
- Details in appendices or referenced regulatory documents
- See Module 4 of the Telecommunications Regulation Handbook
- Method to resolve disputes over application of authorization conditions

Part 7 – Relations with Other Service providers

- See Module 3 of the Telecommunications Regulation Handbook
- May include rights and obligations to interconnect, if these are not yet set out in the general regulatory framework. May include collocation obligations.
- See Module 5 of the Telecommunications Regulation Handbook
- Include remedies and sanctions, if not specified elsewhere
- Rights and obligations regarding collocation and access to poles, towers, conduit, etc.
- See Module 3 of the Telecommunications Regulation Handbook
- Rights and obligations regarding resale by licensee and by other service providers (e.g. for payphones, Internet services, value added and simple resale)
- Method to resolve disputes with other service providers and network operators, e.g. regarding interconnection
- See Module 3 of the Telecommunications Regulation Handbook

Part 8 – Amendment, Renewal and Termination

- Unilateral modifications should only apply to certain regulatory matters, not key commercial terms of authorization
- Procedural safeguards
- Competitive neutrality should be maintained
- Provides certainty, where needed
- To provide investor certainty, key commercial terms may only be subject to amendment by agreement between licensee and regulator
- Competitive neutrality should be maintained
- Specify sanctions and penalties for failure to comply with various terms of authorization (e.g. fines, forfeiture of performance bonds, revocation)
- Include renewal rights (e.g. if certain performance targets met)
- Termination, revocation and/or suspension may be included
- Grounds (usually certain major, unresolved breaches only)
- Procedure (include due process)
- Include lesser penalties (e.g. fines) which will not disrupt service
- Clarify surviving rights of licensee, property rights, treatment of as-sets, and other effects of non-renewal

Part 9 – General

- Excuses performance in case of specified events beyond control of licensee
- Assignment may require consent of regulator, particularly in early days of PSTN authorization. Later, restrictions on assignment are generally removed or made subject to general regulatory framework.
- Cite any rules and restrictions on assignment of authorization
- Rules and timetable for coming into full compliance with authorization (important in authorization of PTT or other incumbent service provider)

The actual terms and conditions of telecommunications licences vary considerably, from country to country, depending on the local legal, regulatory and industry environment, among other things. For specific examples of licence conditions in a range of different telecommunications licences please follow the link, below:

RELATED INFORMATION

Sample Licences and Related Documents

[Next: 3.4 The Competitive Licensing Process →](#)

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



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