

Effective Regulators: A Response to the International Telecommunication Union's Case Study on Singapore

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I. INTRODUCTION

According to the International Telecommunication Union's (ITU) report *Trends in Telecommunication Reform 2002: Effective Regulation* ("Trends 2002"), over the past decade there has been tremendous growth in the number of regulatory agencies in the telecommunications sector.¹ While in 1990 there were only thirteen independent regulatory

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¹ INTERNATIONAL TELECOMMUNICATION UNION, TRENDS IN TELECOMMUNICATION REFORM 2002: EFFECTIVE REGULATION 17 (2002) [hereinafter TRENDS 2002]. The ITU "was established last century as an impartial, international organization within which governments and the private sector could work together to coordinate the operation of telecommunications networks and services." ITU Overview-Purposes, at <http://www.itu.int/aboutitu/overview/purposes.html> (last updated Feb. 13, 2002). The organization also has the mission to advance the development of communication technologies and issues yearly reports on global trends in telecommunications reforms. *Id.* It also organizes regional and international conferences on issues related to telecommunications and information and communication technologies. For a list of workshops organized by the ITU, see Workshops and Symposia, at <http://www.itu.int/osg/spu/workshops/> (last updated Feb. 4, 2003). Finally, the ITU conducts case studies examining a variety of issues, such as Internet diffusion and regulatory practices. For a list of ITU's cases studies, see Country Case Studies, at <http://www.itu.int/osg/spu/casestudies/index.html#topic>

agencies worldwide, by 2001, 110 countries had created independent telecom regulatory authorities.² The ITU estimates that by 2005 there will be 140 countries with similar regulators.³

This trend in agency creation has stimulated a demand for recommendations and guidelines related to the establishment and operation of regulatory agencies.⁴ In response to requests from its member countries, the ITU published five case studies on effective regulatory practices in 2001. These five case studies focused on regulatory agencies in Botswana, Brazil, Morocco, Peru, and Singapore.⁵

This article reviews some of the key findings of the Singapore case study and discusses the extent to which the Infocomm Development Authority of Singapore (IDA) can serve as a model of regulatory effectiveness for other countries. This article also examines some of the factors the ITU used to evaluate the IDA's performance. The accuracy of the factors identified by the ITU as important in evaluating the effectiveness of the IDA is not in dispute. This article points out, however, that like any other country, Singapore is subject to internal and external "environmental" factors that may influence its approach toward reforms in its telecommunications or "information and communication technology" (ICT) sectors.⁶ The authors suggest that the ITU should carefully discuss these factors when evaluating a country's approach to regulating its telecommunications and ICT sectors. Evaluating the effectiveness of a regulatory agency requires more than a cursory mention of a country's internal "environmental" factors. A detailed analysis of factors such as its political system, its legal infrastructure and its economic conditions is necessary for a thorough evaluation. Only then can other countries have an accurate view of the overall infrastructure that supports the regulator and thereby benefit from the information.

Part II of this article examines the reasons behind the increase in regulatory agencies worldwide, while Part III discusses the guidelines for effective regulatory practices developed by the ITU. Part IV specifically considers the Singapore case study, including the process that led to the creation of the IDA, how the government reformed the telecom sector through the creation

(last updated Feb. 13, 2002).

² TRENDS 2002, *supra* note 1, at 17. The ITU defines independent regulatory agencies as bodies that have as their main charge the responsibility of regulating the telecommunications sector. While some countries may have had a telecommunications regulator prior to 1990, the trend prior to that year was to have a ministry (such as the Posts, Telecommunications and Telegraph) in charge of creating policy and regulating the telecommunications sector and also acting as the operator of the country's government-owned telecommunications operator. *See id.* at 21-23.

³ *Id.* at 17.

⁴ INTERNATIONAL TELECOMMUNICATION UNION, EFFECTIVE REGULATION CASE STUDY: SINGAPORE 1 (2001), available at http://www.itu.int/itudoc/gs/promo/bdt/cast_reg/79127.html (last updated at Feb. 13, 2003) [hereinafter SINGAPORE CASE STUDY].

⁵ The five case studies appear at International Telecommunications Union, Case Studies: Reglementation [sic], http://www.itu.int/itudoc/gs/promo/bdt/cast_reg/index.html (last updated Feb. 13, 2003).

⁶ TRENDS 2002, *supra* note 1, at 1. *See generally* Goh Seow Hiong, *Singapore's Policy Approach to Information Communication Technology*, in THE IMPACT OF THE REGULATORY FRAMEWORK ON E-COMMERCE IN SINGAPORE 1-38 (Daniel Seng ed., 2002) (Goh Seon Hiong, former IDA Deputy Director for Infocomm Development Policy, discusses some internal and external factors in a recent article. Goh's article centers on how those factors ought to be considered by the Singapore government as it creates ICT policy.)

of a Competition Code and a Reference Interconnection Offer, and how the IDA interacts with other regulatory bodies. Part IV highlights some of the ITU's findings regarding the IDA's regulatory transparency and fairness. Finally, Part V analyzes the issues raised by the ITU's Singapore case study.

II. INCREASED NEED FOR INDEPENDENT REGULATORS

The liberalization trend in the telecommunications sector began in the late 1980s and gathered momentum in the early 1990s.⁷ According to a recent report by the World Economic Forum, by the end of 2000, 55% of 236 countries and territories around the world had experienced significant reform in their telecommunications sectors.⁸ “Reform” and “liberalization” are terms often used interchangeably. Telecom reform, or liberalization, however, is a complex process that may involve full or partial privatization of the state-owned monopoly; introduction of competition; the opening of the market to foreign investment; the creation of a legal and regulatory framework that encourages or supports competition, and, if one does not exist, the creation of an independent regulator.⁹

Prior to the global telecommunications reform trend, the dominant regulatory model, known as PTT—Post, Telecommunications, and Telegraph—usually involved a ministry that handled several sectors.¹⁰ The typical PTT ministry had three responsibilities: it ran the government-owned telecommunications network, usually a monopoly, while it also was in charge of creating and enforcing the regulations that applied to that monopoly.¹¹

Although PTT had long been the dominant model around the world, when the reform process swept the globe in the 1990s, the PTT model quickly became outmoded in a newly liberalized environment because investors simply did not feel comfortable spending millions of dollars in countries where the regulator was also the operator of the dominant telecom network.¹² Moreover, the PTT model was not particularly effective in promoting the development of telecom services. According to the ITU, “with the exception of Australia, Austria and the Nordic countries, universal service was not achieved in any country under the old [PTT] model.”¹³

⁷ Roger G. Noll, *Telecommunications Reform in Developing Countries*, in *ECONOMIC POLICY REFORM: THE SECOND STAGE* 183 (Anne O. Krueger ed., 2000).

⁸ See WORLD ECONOMIC FORUM, *THE GLOBAL INFORMATION TECHNOLOGY REPORT: READINESS FOR THE NETWORKED WORLD* 122 (2002) [hereinafter *GLOBAL IT REPORT*].

⁹ See Carsten Fink et al., *Liberalizing Basic Telecommunications: The Asian Experience*, THE WORLD BANK, Working Paper 2718 at 2 (Nov. 2001), available at http://econ.worldbank.org/files/2726_wps2718.pdf (last visited Feb. 12, 2003) [hereinafter Fink et al., *Liberalizing Basic Telecommunications*].

¹⁰ See generally *TRENDS 2002*, *supra* note 1, at 21-23 (providing a brief introduction to the PTT system). In most countries the Ministry of Telecommunications also regulated, as the name PTT suggests, Post and Telegraph services. But the terms “PTT model” or “PTT regulator” are used in telecom policy circles even if the telecom ministry in question regulated other sectors. For example, in some countries the ministry regulating and operating the telecommunications network may regulate public works or transportation (e.g. Chile, Botswana).

¹¹ See *id.*

¹² See *id.* at 23-26.

¹³ *Id.* at 21.

As countries began to realize the impact that the ICT revolution could have on their economic development, they began to seek ways to improve their respective telecom infrastructures and connectivities. In addition, the trend toward globalization of the telecommunications industry¹⁴ culminated in a worldwide reform movement that resulted in the creation of many new regulators.¹⁵ This led to the emergence of the “independent regulator” model, which calls for a structural, financial, and political separation among the policy maker, the regulator implementing the policies, and the network operator.¹⁶

These new regulators became extremely important as telecom investors began to seek opportunities in countries with stable and independent regulatory environments.¹⁷ Thus, in this new era marked by greater private investment in an increasingly competitive environment, oversight by an independent regulator has become the norm rather than the exception.¹⁸ In fact, *independent* regulatory agencies became the hallmark of the telecommunications reform movement.

In their study of telecommunications reform in developing countries, Fink, Matoo, and Rathindran note that liberalization of the telecommunications industry involves four factors: (1) privatization of the state-owned monopoly; (2) the introduction of competition; (3) the opening of the market to foreign investors; and (4) the establishment of pro-competitive regulations.¹⁹ While Fink and his colleagues assert that there is growing consensus among economic policy scholars that each of these changes is desirable, very few countries have gone “all the way” on all fronts.²⁰ The reform trends indicate that, in fact, most governments have a “penchant for gradualism.”²¹ For instance, while competition has indeed been introduced in many countries, the number of telecom firms is often fixed by policy, the industry is rarely completely privatized,

¹⁴ This trend was marked particularly by the influence of the World Trade Organization and its 1997 Basic Telecommunications Service Agreement. See, e.g., Richard D. Taylor and Meheroo F. Jussawalla, *The WTO Basic Telecommunications Agreement: Does a Rising Tide Lift Those Without A Boat?*, Pacific Telecommunications Council (1998), at <http://www.ist.psu.edu/iip/Publication/Taylor/PTC98-5.pdf> (last visited Feb. 17, 2003).

¹⁵ TRENDS 2002, *supra* note 1, at 17.

¹⁶ *Id.* at 28.

¹⁷ *Id.* at 152. A discussion of the neoliberal policies that led to the global privatization trend or the impact of the WTO’s Basic Telecommunications Service Agreement of 1997, which committed countries to open their telecommunication sectors to competition, is beyond the scope of this article.

¹⁸ Of course, it is important to realize that countries have adopted privatization and liberalization with various degrees of aggressiveness. See, e.g., Scott J. Wallsten, *An Empirical Analysis of Competition, Privatization, and Regulation in Africa and Latin America*, THE WORLD BANK, Working Paper 2136 (1999), available at <http://econ.worldbank.org/docs/553.pdf> (last visited Feb. 10, 2003); Mary M. Shirley et al., *Telecommunications Reform in Uganda*, THE WORLD BANK, Working Paper 2864 (June 2002), available at http://econ.worldbank.org/files/15972_wps2864.pdf (last visited Feb. 13, 2003) [hereinafter Shirley et al., *Telecommunications Reform*]; and Fink et al., *Liberalizing Basic Telecommunications*, *supra* note 9.

¹⁹ Carsten Fink et al., *An Assessment of Telecommunications Reform in Developing Countries*, THE WORLD BANK, Working Paper 2909 at 2 (Oct. 2002), available at http://econ.worldbank.org/files/20745_wps2909.pdf (last visited Feb. 13, 2003).

²⁰ *Id.*

²¹ *Id.*

and many countries have placed limits on foreign investment.²² This “penchant for gradualism” is also apparent in Asia, where Singapore and Hong Kong have been highlighted as having the most successfully liberalized telecommunications sectors.²³

III. EFFECTIVE REGULATORY PRACTICES

As countries have created independent agencies, the ITU has tried to develop “best practices” guidelines to assist them. After all, as the ITU itself has pointed out, “[i]t is one thing for countries to make a policy decision to create an independent regulatory agency, and quite another to empower the agency to act independently and effectively.”²⁴ This statement rings particularly true when it comes to developing countries, as researchers have found that in most developing countries few autonomous regulators are truly independent.²⁵ The ITU also acknowledges some of liberalization’s inherent difficulties:

Where governments previously maintained PTT operating structures, they may still retain significant—even controlling—shares in the incumbent operator. Where this is the case, the government may feel obliged to exert pressure upon its regulatory authorities to favour the incumbent over other market entrants.²⁶

The ITU guidelines recognize that because the staff of new regulatory agencies in developing countries tends to be relatively inexperienced, the regulated industry is likely to challenge the legitimacy of the new agency if the following effective regulatory practices are not followed: accountability, adherence to legislative mandate, efficiency, fairness, independence, objectivity, and transparency.²⁷ Among these practices, transparency seems to be the most important because it promotes the legitimacy of a regulatory agency and helps it avoid regulatory capture.²⁸ Given the watch-dog effect of public scrutiny, an agency whose actions are transparent is more likely to be accountable, efficient, fair, objective, independent, and can more easily adhere to its legislative mandate.

²² See, e.g., TRENDS 2002, *supra* note 1, at 253-280. For example, according to the ITU, in 2001, 22 countries had fully privatized telecommunications operators (mostly in Latin America, the Caribbean and North America); 83 countries were partly privatized; 17 countries were in the process of privatizing and 14 had no plans to privatize. *Id.* at 253-65.

²³ See Fink et al., *Liberalizing Basic Telecommunications*, *supra* note 9, at 4.

²⁴ See SINGAPORE CASE STUDY, *supra* note 4, at 1.

²⁵ See Fink et al., *Liberalizing Basic Telecommunications*, *supra* note 9, at 4-5. According to regulatory theorist William H. Melody: “The term *independence* as used in the context of telecom reform . . . does not imply independence from government policy, or the power to make policy, but rather independence to implement policy without undue interference from politicians or industry lobbyists.” TRENDS 2002, *supra* note 1, at 29.

²⁶ TRENDS 2002, *supra* note 1, at 29.

²⁷ *Id.* at 28-29, 95.

²⁸ *Id.* at 30. “Regulatory capture” refers to an agency that becomes too dependent on the industry it regulates. This phenomenon can happen, for example, when the regulators rely too much on information from a particular company. Regulatory capture also occurs if there is too much personal contact between regulators and company executives. *Id.* at 95.

In addition to the ITU's "best practices" guidelines, policy scholars have also identified factors that are important in determining whether a regulator is effective. For instance, one group of commentators states that sector performance will improve if: regulatory discretion is limited; regulatory personnel are not subject to short-term political pressures; the regulator can require detailed information from operators; the regulatory process is open to public scrutiny; and regulatory decisions are subject to appeal by the judiciary.²⁹ Other scholars agree that to enhance the credibility of reform initiatives, it is important that: an independent judiciary can solve disputes between operators or between the government and service providers; the regulator is isolated from political discretion; and agency officials' terms are not tied to other political office terms. Furthermore, competition can help reduce the number of exclusive arrangements that governments negotiate with single operators and regional and multilateral agreements can help strengthen domestic telecommunications reforms.³⁰

According to the ITU, however, while competition is an important element of a comprehensive strategy for economic and social development, transparency in the area of competition promotion is the single most important issue to global regulatory regimes.³¹ The ITU directly links transparency to the success of telecommunication regulatory regimes: "[O]nly those governments that established and implemented sound regulatory frameworks could expect to attract long-term, stable private investments in their ICT sectors."³² The link between transparency and success ultimately revolves around the concept of fairness. The ITU emphasizes this point:

Without a reputation for fairness, a regulatory agency is indelibly tainted, its credibility is compromised, and its effectiveness is reduced. An ineffective regulatory agency, in turn, then comes under political pressure from the government, thereby irrevocably altering the nature of its independence. Transparency and fairness, then, are the foundations of regulatory accountability and underpin the very legitimacy of the regulatory agencies.³³

While it is not realistic to expect that developing countries with new regulatory agencies will be able to incorporate all the "effective regulation" or "effective performance" factors mentioned above into their nascent regulatory agencies, the desire to attract private investors will likely motivate countries seeking foreign investment to make legitimate efforts to provide a stable and equitable regulatory environment. In order to help guide developing countries down the road toward effective regulation, the ITU highlights Singapore's telecommunications and ICT regulatory regime as a model for developing countries to emulate.

²⁹ Shirley et al., *supra* note 18, at 5-6. See also Noll, *supra* note 7, at 223-226 (discussing political factors influencing regulation and advocating that agencies implement strategic and structural safeguards).

³⁰ See Fink et al., *Liberalizing Basic Telecommunications*, *supra* note 9, at 10.

³¹ TRENDS 2002, *supra* note 1, at 1.

³² *Id.* at 3.

³³ *Id.* at 95.

IV. SINGAPORE: AN EFFECTIVE REGULATOR

The Singapore case study is highly complimentary of both the government's reforms and the IDA's effectiveness and efficiency. Although the ITU's ultimate conclusion that the Infocomm Development Authority of Singapore (IDA) is an effective regulator is justified, the study failed to underscore important factors that may have aided Singapore's efforts to reform its telecommunications and ICT sectors and contributed to the agency's success.

Before discussing those factors, however, it may be helpful to briefly highlight how Singapore progressed through various IT plans until it ultimately recognized that regulation should follow the evolution of technology. With the creation of the IDA to implement the Infocomm 21 Plan, Singapore joined a handful of countries that have developed a converged regulator.³⁴

A. *The Creation of the Infocomm Development Authority of Singapore*

In 1980, the Singapore government created the National Computer Board (NCB) to execute a five-year National Computerization Plan.³⁵ The plan focused primarily on the computerization of major functions in every government ministry.³⁶ It also sought to facilitate the development and growth of the local IT industry, and develop a pool of IT manpower to meet future industry needs.³⁷

Following the extremely successful National Computerization Plan, executed from 1980 to 1985, Singapore formulated a second five-year plan from 1986 to 1991 called the National IT Plan.³⁸ The National IT plan's key objectives were to further exploit IT, improve productivity and competitiveness in every sector of the economy, and develop a strong export-oriented IT industry.³⁹

In 1992, the Singapore government launched IT2000, its third IT plan.⁴⁰ IT2000 sought to transform Singapore into an "intelligent island where IT is pervasive in every sector and sphere of economic and social activity."⁴¹ The plan also sought to make IT services "readily

³⁴ See SINGAPORE CASE STUDY, *supra* note 4, at 42-44 (discussing the advantages and disadvantages of converged regulators).

³⁵ William Hioe, *National Infocomm Strategy and Policy: Singapore's Experience*, 74 INTERNATIONAL COUNCIL FOR INFORMATION TECHNOLOGY IN GOVERNMENT ADMINISTRATION 2 (June 2001), available at <http://www.ica-it.org/docs/issue74/issue74-hioe.pdf> (last visited Feb. 13, 2003) [hereinafter Hioe, *National Infocomm Strategy*].

³⁶ *Id.*

³⁷ *Id.* at 3.

³⁸ *Id.*

³⁹ See Margaret Tan, *Plugging Into the Wired World: Perspectives from Singapore*, 1 INFORMATION, COMMUNICATION AND SOCIETY No. 3, 217-245 (1998).

⁴⁰ Singapore EGovernment, *Our Achievements*, at <http://www.egov.gov.sg/achievements/it2000.htm> (last visited Feb. 13, 2003).

⁴¹ *Id.*

accessible by every Singaporean at any time and at any place.”⁴² But rapid developments in the IT industry changed global, technological, economic, and social landscapes, rendering many aspects of the IT2000 plan outdated, eventually forcing the government to reassess its approach to ICT.⁴³

In December 2000, the government unveiled a fourth strategic plan called Infocomm 21, which became the “blueprint for harnessing information communication technologies for national competitiveness and improving [the] quality of life” of Singapore’s citizens.⁴⁴ The plan’s blueprint articulates the vision, goal, and strategies that will facilitate the development of Singapore’s infocomm industry over the next five years, and move the country into the ranks of “first world economies” of the Net age.

In addition to the changes in national IT plans, the government did some agency restructuring. Before the formation of the IDA, the role of regulating telecommunications rested with the Telecommunications Authority of Singapore (TAS), which, as a traditional PTT, both regulated and operated Singapore’s telecommunications network.⁴⁵ TAS also had the responsibility of introducing competition and licensing telecom providers.⁴⁶ In addition to regulating the industry, TAS was expected to promote the telecommunications industry in Singapore.⁴⁷

With increasing convergence of telecommunications and computers, the National Computer Board (NCB) regularly crossed paths with TAS. In response to the converging ICT environment, in 1999 the Singapore government created the Infocomm Development Authority (IDA) by merging the National Computer Board and the Telecommunications Authority of Singapore.⁴⁸ According to William Hioe, the IDA’s Senior Director overseeing both the strategic planning and the international division, “a single agency is required to provide the integrated focus on strategy and policy for [I]nform development in Singapore.”⁴⁹ The IDA’s primary goal is to execute and achieve the vision of the Infocomm 21 plan, which includes fostering competition in Singapore’s telecommunications service market, expanding IT training, and

⁴² *Id.*

⁴³ Singapore EGovernment, *Our Achievements*, at <http://www.egov.gov.sg/achievements/infocomm21.htm> (last visited Feb. 13, 2003). For example, as IT2000 was being implemented, “[t]he globalization of businesses, liberalization of markets, emergence of e-commerce, proliferation of the Internet, broadband and wireless technologies as well as the convergence of IT, telecommunications and broadcasting caused such paradigm shifts” that the government of Singapore had to review its strategies in order to stay ahead of the technology. *Id.*

⁴⁴ Infocomm Development Authority of Singapore, Infocomm 21, at <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm> (last visited Feb. 13, 2003).

⁴⁵ SINGAPORE CASE STUDY, *supra* note 4, at 8.

⁴⁶ *Id.*

⁴⁷ *Id.* While this dual role may be rare in most countries, it is not so in Singapore. In fact, the regulatory model of regulator and promoter began with TAS and continued with other ICT agencies, such as the Singapore Economic Development Board and the Infocomm Development Authority (IDA). *Id.*

⁴⁸ *Id.* Info-Communications Development Authority of Singapore Act of 1999, Act No. 41 of 1999, Dec. 3, 1999, <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm>.

⁴⁹ Hioe, *National Infocomm Strategy*, *supra* note 35, at 5.

integrating the Internet into the social and industrial fabric of the country.⁵⁰ Essentially, the agency was given the authority to act as a policy-maker, regulator, developer, and promoter of information and communication technology in Singapore.⁵¹

According to the ITU, the IDA has been largely successful at fulfilling its mission. The ITU highlights the fact that the IDA has been “lauded for developing a fair and impartial framework for competition . . . based on the principles of technological neutrality and asymmetric regulation between dominant and non-dominant licensees.”⁵² Specifically, the ITU case study praises the *Code of Practice for Competition in the Provision of Telecommunications Service* (the Code) and the *Reference Interconnection Offer* (RIO), which allows any telecommunications licensee to “establish fair terms and conditions for interconnection with the incumbent fixed-line operator.”⁵³ Although this article will not engage in a detailed analysis of either the Code or the RIO, the following brief discussion of the Code and the RIO highlights the IDA’s process of public consultation in these two important policy initiatives.

B. *The Code and the RIO*

Telecommunications reform in Singapore can be divided into three distinct phases. In phase one—from 1992 to 1993—the government separated the regulator and operator functions of the Telecommunications Authority of Singapore (TAS) and corporatized Singapore Telecommunications (SingTel), the country’s telecom operator.⁵⁴ In phase two—from 1995 to 1998—the government authorized a duopoly in cellular services, reduced the exclusive monopoly of SingTel from 2007 to 2000, and issued a second fixed license as well as a third mobile license.⁵⁵ During this stage, the government also liberalized the Internet access market.⁵⁶ Finally, in phase three—from 1999 to 2001—the government restructured the regulatory environment by merging the TAS and the National Computer Board (NCB) to create the IDA, lifted foreign investment limits, and allowed unlimited competition in all services.⁵⁷ As part of

⁵⁰ SINGAPORE CASE STUDY, *supra* note 4, at 5.

⁵¹ *Id.* at 17-18.

⁵² *Id.* at 1. The ITU case study is not the only study highlighting Singapore’s effective regulatory regime. For example, the World Economic Forum, along with the Center for International Development at Harvard University, issued the 2001-2002 Global Information Technology Report and ranked Singapore 8th, among 75 countries, in terms of network readiness. Countries with better ranking than Singapore include the United States, Iceland, Finland, Sweden, Norway, the Netherlands, and Denmark. The Network Readiness Index is calculated by evaluating, among other factors, a country’s ICT policies and its business and economic environment. *See* GLOBAL IT REPORT, *supra* note 8, at 11, 13.

⁵³ SINGAPORE CASE STUDY, *supra* note 4, at 1. Code of Practice for Competition in the Provision of Telecommunications Service and the Reference Interconnection Offer, Sept. 15, 2000 <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm>.

⁵⁴ SINGAPORE CASE STUDY, *supra* note 4, at 8.

⁵⁵ *Id.* at 9.

⁵⁶ *Id.* at 15.

⁵⁷ *Id.* at 9-11.

the acceleration of liberalization, the IDA created the Competition Code and approved SingTel's RIO.

According to the ITU study, the initial draft of the *Code of Practice for Competition in the Provision of Telecommunications Services* (the Code) was the result of the IDA's consultation with experts from the United States.⁵⁸ The IDA then held a public forum, where industry representatives had the opportunity to overview and give presentations about the proposed Code.⁵⁹ In addition, before it was finalized, the Code underwent two rounds of public consultation, where interested parties were able to comment and suggest improvements. After each round, the IDA incorporated relevant comments and suggestions into the proposed Code.⁶⁰ These consultations were particularly significant because such opportunities for public input in a government agency's regulatory actions, such as the IDA, are rare in Singapore.

The Code received high praise from the ITU because it introduced asymmetric regulation and a series of consumer protection provisions unprecedented in Singapore.⁶¹ The concept of asymmetric regulation means that dominant telecommunications service providers or operators will be regulated in an exacting manner to prevent monopolistic abuses.⁶² Non-dominant operators, however, are free from extensive oversight.⁶³ In addition, the Code is supposed to promote technological neutrality. This means that "[o]perators of networks are, at least in theory, subject to the same rules and obligations, regardless of what platform those operators use."⁶⁴ Since the Code was drafted to respond to the reality of convergence, it includes a triennial review mechanism that allows the IDA to modify or eliminate unnecessary provisions.⁶⁵ This allows the regulator a great deal of flexibility to respond to changing market conditions.⁶⁶

⁵⁸ *Id.* at 24.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 25, 27-30. Customer protection provisions imposed by the Code include a disclosure requirement of all price and terms of service by licensees to end users and a ban on switching end users from one service to another without prior consent of the end users. *Id.* at 27-28.

⁶² *Id.* at 25. Not all policy scholars view asymmetric regulation as positive. In 1999, the Aspen Institute held a roundtable discussion on the role of the government in international telecommunications regulation. The discussion involved twenty-three government officials, executives of global telecom and information companies, academics, and consumer representatives. See *New World, New Realities: The Remaining Roles of Government in International Telecommunications*, A REPORT OF THE FIFTH ANNUAL ASPEN INSTITUTE ROUNDTABLE ON INTERNATIONAL TELECOMMUNICATIONS at vi (2000), available at http://www.aspeninstitute.org/c&s/pdfs/new_world.pdf (last visited Feb. 13, 2003). The Roundtable discussion, which was summarized in a report, stated that asymmetric regulation can promote uncertainty and trigger companies' instincts to seek protracted litigation. The report also stated that asymmetric regulation could raise questions about the direction of the government's policies and perhaps even delay full competition. *Id.* at 23.

⁶³ SINGAPORE CASE STUDY, *supra* note 4, at 25.

⁶⁴ *Id.* at 25.

⁶⁵ *Id.* at 27.

⁶⁶ *See id.*

Under the Code, all facilities-based operators and service-based operators that use switching or routing equipment must interconnect with other licensees.⁶⁷ While the IDA does not intervene in the interconnection negotiations between non-dominant providers, all non-dominant interconnecting carriers must agree on the terms of compensation.⁶⁸ Once they reach an agreement, the parties must file it with the IDA.⁶⁹ Interconnecting carriers cannot discriminate in terms of quality of the technical interconnection and must not do anything that can harm each other's network.⁷⁰ According to the ITU study, however, some non-dominant operators would prefer that the IDA were more involved in their interconnection discussions in order to avoid negotiation stalemates.⁷¹

On the other hand, since SingTel is the dominant operator in Singapore, the Code establishes three options for interconnection.⁷² Non-dominant operators wishing to interconnect with SingTel can (1) negotiate an individualized interconnection agreement, (2) adopt an agreement that SingTel has already negotiated with a "similarly situated" licensee, or (3) interconnect by accepting SingTel's RIO.⁷³ The advantage of the RIO is that if a non-dominant operator accepts it, there is no need to negotiate with SingTel.⁷⁴

The IDA approved the RIO after a process of public consultation that allowed "licensees, potential entrants, other regulatory authorities, users and any other interested parties to submit written comments."⁷⁵ The public consultation process, similar to the one followed for the adoption of the Code, gave the industry at large the opportunity to participate and, according to the ITU study, created a sense among non-dominant operators that the IDA is a "fair, nonbiased, credible and effective" regulator.⁷⁶ It should be mentioned that the study indicated that telecom providers had difficulty reaching interconnection agreements with SingTel prior to the passage of RIO.⁷⁷ Therefore, having a basic interconnection agreement, albeit not perfect, that forced SingTel to make major concessions was an important step to promote the entry of competitors into the Singapore market.⁷⁸

⁶⁷ *Id.* at 30.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 33.

⁷² *Id.* at 30.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 27.

⁷⁷ *Id.* at 32-33.

⁷⁸ *Id.* Incidentally, while the ITU study refers to the Ministry of Communications and Information Technology (MCIT) as the body overseeing the IDA, this is incorrect. See, e.g., SINGAPORE CASE STUDY, *supra* note 4, at 21. MITA is the ministry overseeing the telecommunications, infocomm, and broadcasting industries in Singapore. See Ministry of Information Communication and the Arts, at <http://www.mita.gov.sg/>

C. *IDA and its Relationship with Other Regulatory Bodies*

The Infocomm Development Authority (IDA) is a statutory board under the Ministry of Information, Communications and the Arts (MITA).⁷⁹ Under MITA there are two statutory boards that regulate ICTs: the IDA and the Singapore Broadcasting Authority (SBA).⁸⁰ Technical regulation of ICT falls under the jurisdiction of the IDA; content regulation falls under SBA. The ITU study, however, indicates that in practical terms “the division of responsibility may be difficult to ascertain in some circumstances.”⁸¹

The Singapore government has created many statutory boards to provide services that in some countries would be provided by a government department. These boards are semi-autonomous entities that are a hybrid between a government department and a private corporation. Statutory boards resemble private corporations because the boards have their own budgets and their own boards of directors. The new statutory boards also try to emulate, to the extent possible, the better practices of private industry. The government, however, appoints key and senior personnel. In the case of the IDA, the board of directors consists of “high technology” company executives, trade groups and government officials.⁸² The statutory boards are also directly accountable to a Ministry, which for the IDA and SBA is MITA.

The SBA oversees and promotes the broadcasting industry and licenses both broadcasters and internet service providers (ISPs). It also regulates Internet and broadcasting content and video-on-demand services.⁸³ On the other hand, the IDA’s regulatory functions include licensing and rulemaking through codes of practice, standards of performance, and advisory guidelines. The IDA also protects consumers and oversees the industry’s quality of service. In addition, the IDA oversees interconnection among service providers, oversees competition, allocates the spectrum, and reviews mergers.⁸⁴

The IDA has various missions. First, the IDA is charged with creating *and* implementing policies for the infocomm sector.⁸⁵ The agency’s Policy and Regulation Group “is responsible for creating . . . [the] environment for Singapore’s development into a knowledge-based

abtmis.htm#history (last visited Feb. 13, 2003) (detailing the mission, vision, core values, and history of MITA) [hereinafter MITA].

⁷⁹ See MITA, *supra* note 78.

⁸⁰ As of January 1, 2003, the SBA was merged with the Films and Publications Department and the Singapore Film Commission into a new statutory board—the Media Development Authority (MDA), see Media Development Authority, <http://www.mda.gov.sg/aboutus/index.html> (last visited Feb. 19, 2003). All these agencies regulated content and their merger, according to the MDA, was in response to the convergence of different media. At the time this article went to press, it was not clear how the functions of SBA would be absorbed and carried out by the MDA; therefore, this article will continue to refer to the SBA as the statutory board regulating content since the ITU study discussed that agency’s relationship with the IDA.

⁸¹ SINGAPORE CASE STUDY, *supra* note 4, at 16.

⁸² *Id.* at 19-20.

⁸³ *Id.* at 15-17.

⁸⁴ *Id.* at 23, fig.6.1.

⁸⁵ *Id.* at 37-38.

economy. The focus is on policy formulation, economic and industry regulation, technical regulation and operations.”⁸⁶ Second, the IDA must promote and foster the development of infocomm industries and markets in Singapore. To that effect, the Industry Development Group “has put in place numerous programmes to help upgrade local enterprises as well as encourage investors to [come to] Singapore.”⁸⁷ Finally, the agency operates the computer systems and networks of the rest of the government’s agencies.⁸⁸

Conceptually, the mission of promoting the development of the infocomm sector is in direct conflict with the mandate to regulate it.⁸⁹ The government appears to have handled this conflict well with respect to the SBA, which has the mission of regulating and promoting the broadcasting and Internet industries.⁹⁰ In terms of the SBA, the government has stated that the rationale for mixing the two apparently contradictory roles is to have a “light-handed” regulator.⁹¹

As for the IDA’s similar conflict, its officials claim that “they foresee no serious conflicts of interest that would compromise either the regulatory or promotional capabilities of the IDA.”⁹² Nonetheless, the ITU study asks some interesting questions regarding the seemingly conflicting mandate that the IDA has received. For example, the study asks whether the IDA would be able to make hard regulatory decisions aimed at protecting consumers if those decisions were to have a negative impact on the industry the agency is trying to promote.⁹³ Ultimately, however, the study dismisses the IDA’s potential conflict and suggests that there is no reason for serious concerns in this area.⁹⁴

In practice, however, there may be significant operational problems in reconciling the conflicting mandates. In order to keep in tune with industry, the IDA invites industry players into its board of directors.⁹⁵ The fact that the IDA promulgates laws and policies that may affect the industry means that these chosen industry representatives are potentially privy to some very sensitive information. Thus, to be fair to the industry, the IDA keeps industry-sensitive information from some of its own board of directors’ members. Ironically, industry

⁸⁶ See Policy & Regulation Group, at <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm> (last visited Feb. 13, 2003). The IDA is not organized into departments or divisions *per se*. Instead, functions and responsibilities are assigned to “groups.” SINGAPORE CASE STUDY, *supra* note 4, at 37 fig.7.1.

⁸⁷ See Industry Development Group, at <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm> (last visited Feb. 13, 2003).

⁸⁸ SINGAPORE CASE STUDY, *supra* note 4, at 37.

⁸⁹ *Id.* at 42.

⁹⁰ *Id.* at 17.

⁹¹ *Id.* at 16.

⁹² *Id.* at 42.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ According to Goh Seow Hiong, the board has a restricted advisory role and its members come from a limited cross-section of the ICT industry. There is no representation from parties that are regulated by IDA. See, Goh, *supra* note 6, at 9, nn. 20-21.

representatives on the board of directors are therefore not always consulted on matters concerning the industry—the very reason they were appointed. This “catch-22” means that some IDA decisions may lack sufficient input from industry representatives.

Why then has the conflict between the promotion and regulatory missions not been so apparent with the SBA? One possible answer is that the issues that concern the SBA are less industry sensitive. In contrast, the liberalization or stricter regulation of a telecommunications operator, the IDA’s domain, may represent a potential gain or loss of millions of dollars. This difference highlights the need for caution in replicating the IDA’s regulatory structure in other countries.

D. *IDA’s Transparency and Fairness*

Another regulatory issue addressed in the study involves transparency. The ITU notes that “transparency is a means of ensuring fairness in the regulatory process”⁹⁶ and discusses it at considerable length.⁹⁷ The first paragraph evaluating Singapore’s regulatory transparency states:

The principle of transparency translates into the practice of making regulatory decisions in an open, objective manner that allows regulators to explain the reasoning behind their decisions and to be held accountable for their actions. Transparency not only helps the public and the regulated industry, it can help the regulators as well. Transparency allows regulators to gain information and consult all stakeholders, thus building some political consensus for their decisions. It also allows regulators to justify their actions by citing the facts provided to them and by making cogent arguments that those actions will serve the public interest. Transparency may inoculate regulators from charges that they have rendered arbitrary decisions, behind closed doors, for reasons of personal gain or to benefit a certain company.⁹⁸

After making these statements, the study recognizes that while Singapore’s political and cultural traditions are based on cooperative dispute resolution outside of the public eye, transparency is increasing in the regulation of the ICT industry, especially when it comes to public consultation.⁹⁹ But the study then points to challenges that the IDA still has to overcome. For example, while the IDA held public consultations for the drafting of the Code and the RIO, the ITU said that the agency

has not opened its decision-making meetings to the public and it is often difficult to tell where the real responsibility for decision-making lies. This may make it difficult for companies within the regulated industries to determine how to present their views, to whom their views should be presented, or, indeed, whether their views will be taken into account.¹⁰⁰

⁹⁶ SINGAPORE CASE STUDY, *supra* note 4, at 47.

⁹⁷ *See id.* at 47-51.

⁹⁸ *Id.* at 47.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

The ITU goes on to comment that the IDA's board meetings are closed to the public and "several operators indicated they have no information about what the Board does or how its decisions may affect them."¹⁰¹ In addition, the study indicates that the IDA generally takes actions without public meetings or public votes and that due to the close relationship between MITA (the ministry overseeing the IDA) and the IDA, market players often are not aware of which body ends up making the decisions.¹⁰² In addition, continues the study, "the role of [MITA] is not open to public scrutiny, nor does the Ministry "vote" on any decisions that it may make in conjunction with IDA."¹⁰³

The study also indicates that the IDA's decisions are not public once rendered by the agency. While a company involved in a case may receive a copy of a ruling or directive because it is directly affected, the study concedes that, "the industry has no systematic way to access records or decisions that, while directly affecting just a single operator, also would be instructive to other companies."¹⁰⁴ Despite these problems with lack of transparency, the ITU study praised the IDA's willingness to hold public consultations on major policy issues and recognized that the agency is acting on its own initiative since there is no legal requirement that it seek public comments on its policy proposals or use those comments in the development of its decisions.¹⁰⁵

E. *Appeal of IDA Decisions*

While the Telecommunications Act of 1999 clearly establishes the process for appeal of any licensee "aggrieved" by any IDA decision to modify its license,¹⁰⁶ the ITU study indicates that:

[O]perators note . . . that if they take their cases directly to the Ministry, they believe that IDA will already have been there to present its own case. Indeed, given the nature of the close relationship between the IDA and [MITA], it is not always clear to operators whether the Ministry did not have a crucial role in making the very decision they are appealing. Nevertheless, the Ministry will hear operators' viewpoints and will often work to bridge differences among operators or between operators and IDA. The Ministry often prefers to provide this informal guidance rather than officially receiving an appeal of an IDA decision.¹⁰⁷

Likewise, while operators can technically appeal their decisions to the courts, the study indicates that:

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 48.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 49. Telecommunications Act of 1999, Dec. 3, 1999, <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm>.

¹⁰⁷ SINGAPORE CASE STUDY, *supra* note 4, at 49.

[N]o operator has yet taken a case to court against the government. Operators explain that the reticence has three roots: (1) operators' unwillingness to endure the delays and time lags inherent in lengthy judicial proceedings; (2) a general, cultural and political tendency to avoid confrontation and opt for quiet resolution of disputes; and, to a lesser extent, (3) uncertainty about how willing and ready a court might be to break with government policy in favor of a single operator. In a small, consensus-based political culture, suing the government publicly in court would appear to be the last resort for operators seeking to retain a good working relationship with the government.¹⁰⁸

On the issue of how the Singapore court would rule on a case pitting the government against a telecom operator, while not a common occurrence, the 2002 IDA lawsuit against SingTel sets an important precedent, indicating that the court will treat controversies involving telecom operators and regulators in a fair manner.¹⁰⁹ The SingTel case will be discussed later.

V. ANALYSIS OF ITU CASE STUDY

Overall, the ITU study commends the regulatory effectiveness of the IDA and labels it a regulator that is not under the undue influence of the former state monopoly, SingTel, or any other operator.¹¹⁰ According to the ITU, the Code for competition helps make the IDA a "strong, independent, credible regulator, without any appearance of undue bias in its decision-making."¹¹¹ Even though this article does not contest the IDA's merits as an effective regulator, the ITU itself has said that effective regulation is shaped by several factors.¹¹² As mentioned earlier, the ITU has listed accountability, adherence to legislative mandate, efficiency, fairness, independence, objectivity, and transparency as "effective regulatory practices."¹¹³

Based on other ITU studies, including the *Trends 2002* report, transparency is an important component of effective regulation and is essential for fairness, independence and overall accountability.¹¹⁴ But in the Singapore Case Study, despite listing numerous instances of lack of transparency, the ITU highly praises the IDA as an effective regulator.¹¹⁵ Does this mean,

¹⁰⁸ *Id.*

¹⁰⁹ *See id.* at 59-50. *See* discussion *infra* Part V (discussing the IDA lawsuit against SingTel).

¹¹⁰ *Id.* at 53.

¹¹¹ *Id.* In fact, in 2000 the IDA was ranked the best telecommunications regulator in the Asia-Pacific region by Telecom Asia magazine, Asia's leading telecommunications magazine. Press Release, Corporate Communication Department, the IDA Ranked Asia-Pacific's Best Telecommunications Regulator (Dec. 1, 2000), at <http://www.ida.gov.sg/Website/IDAhome.nsf/Home?OpenForm> (last visited Feb. 13, 2003).

¹¹² TRENDS 2002, *supra* note 1, at 30.

¹¹³ *Id.* at 95.

¹¹⁴ *Id.* at 95-114. "Along with such principles as efficiency, objectivity, accountability and adherence to mandate, transparency is one of the most important hallmarks of effective regulation. In fact, all of these principles are inter-related and integral to the success of a regulatory body. . . . Transparency and fairness, then, are the foundations of regulatory accountability and underpin the very legitimacy of regulatory agencies." *Id.* at 95.

¹¹⁵ *See* discussion *supra* Part IV.A.

then, that the ITU's assessment of Singapore's IDA is in conflict with the ITU's expressed emphasis on the importance of transparency? If one bases the answer to this question on the criteria developed by the ITU, as well as the existing scholarly work on the subject,¹¹⁶ one should conclude that the IDA is not an effective regulator since it is seriously lacking both in terms of transparency and accountability.

Such an answer, however, would be simplistic and inaccurate. To effectively evaluate a regulator, it is important to have an understanding of the infrastructure within which that regulator operates. An analysis of that infrastructure should include a discussion of factors such as the country's political environment, its legal infrastructure, and its economic conditions.¹¹⁷ These "internal factors" are likely to affect the overall effectiveness of a regulator and should color the ITU's evaluation of effective regulatory practices. While the case study mentions Singapore's internal environmental factors and their interaction with the IDA, it fails to establish the important role that such factors have played in the IDA's effectiveness. The ITU study, therefore, lacks critical analysis of the impact of this relationship on Singapore's telecom reform. This kind of explicit connection is important if the study is to be useful to other countries.

For example, the study mentions on more than one occasion that Singapore has a cohesive government that is run by consensus, but it does not discuss in any detail how the political authority of the Prime Minister and his Cabinet affects policy. According to political scientist Ho Khai Leong,

In Singapore's centralized system of politics and administration, the Prime Minister stands out as being at the head of the pyramid of power and prestige. . . . As Singapore practices the Westminster system of government that adheres to the principle of collective responsibility, the Cabinet plays an extremely important role in policy-making. It is the power-house of government. . . . [Cabinet members] deliberate policy recommendations, develop administration positions, and help coordinate the implementation of key executive decisions. . . . With his cabinet behind him, and a solid parliamentary majority, the Prime Minister can implement almost any kind of policy he likes.¹¹⁸

Therefore, it can be argued that the success of Singapore's ICT policies may be due to the cohesive policy mandates that come from the upper echelons of the government—namely, the Prime Minister and his Cabinet. In Singapore, ICT policies do not have to undergo the grueling political debate that takes place in multi-party governments. That kind of debate tends to lead to compromises that can diminish the effectiveness of policy outputs. Thus, it is no wonder that the IDA has received not only a clear mandate to forge a competitive ICT environment, but has also been given the flexibility to seek changes in the law or existing policies should it find that the current legal regime is hindering the development of the ICT sector.

¹¹⁶ See Noll, *supra* note 7; Wallsten, *supra* note 18; Shirley et al., *Telecommunications Reform*, *supra* note 18; Fink et al., *Liberalizing Basic Telecommunications*, *supra* note 9; and Fink et al., *An Assessment of Telecommunications Reform in Developing Countries*, *supra* note 19.

¹¹⁷ The ITU itself has recognized that regulatory agencies "are the products of political, social, legal and economic conditions that exist at fixed points in time in each country." SINGAPORE CASE STUDY, *supra* note 4, at 1.

¹¹⁸ HO KHAI LEONG, THE POLITICS OF POLICY-MAKING IN SINGAPORE 34-35 (2000).

ITU case studies should also include information about the extent of public participation in policy matters and whether there is potential for corruption or undue political pressure. These are important factors for they affect regulatory certainty. In the case of Singapore, there is virtually no governmental corruption or undue political pressure, but direct public participation in policy issues has been, until now, rather limited. Viewed in this context, the IDA's efforts to promote public participation, while limited if evaluated by Western standards of transparency, are truly trendsetting not only in Singapore but also in Asia.

In addition, information about other socio-political factors would be helpful for countries seeking models to emulate. For instance, the ITU should discuss whether there is a culture of civil leadership—such as consumer advocacy groups—in future case studies. Consumer advocacy groups should be discussed because their existence, along with the existence of independent media, could serve as a check on governmental actions. In Singapore, for instance, the government tightly controls the country's media and has often viewed civil society groups with suspicion.

In terms of the legal framework, the ITU should include some information about the independence and fairness of the judiciary since in most instances the courts end up being final arbiters of conflicts between regulators and telecommunications operators. While legal battles traditionally involve the operator suing the government, in Singapore it was the IDA who took SingTel to court.¹¹⁹

The case involved the SGD\$1.5 billion settlement the Telecommunications Authority of Singapore (TAS), the IDA's predecessor, paid SingTel for early termination of the company's exclusive monopoly when the government decided to introduce competition early.¹²⁰ The IDA claimed that the payment TAS made to SingTel included about SGD\$388 million in tax liability.¹²¹ The tax authorities, however, later determined that SingTel did not have to pay taxes on the settlement. The IDA asked SingTel to refund the \$388 million and when the operator refused, the IDA took SingTel to court.¹²² In May 2002, the Singapore High Court issued its decision favoring SingTel.¹²³ As the ITU study states, while the SingTel case involved the issue of taxation, and not telecommunications policy *per se*, the case is rather important as the first legal battle before the Singapore courts involving a telecom operator and a government agency.

The court was critical of TAS' actions. For example, after determining that TAS did not mention its payment offer to SingTel any tax element, the court said that the compensation sum offered to SingTel had been grossed up for tax with "astonishing informality."¹²⁴ The court also criticized TAS for trying to recover some of the money it paid SingTel after it was TAS

¹¹⁹ SINGAPORE CASE STUDY, *supra* note 4, at 49.

¹²⁰ IDA v. SingTel, 2002-3 SLR 488, 2002 SLR LEXIS 100 at 12 (May 30, 2002) [hereinafter IDA v. SingTel].

¹²¹ *Id.* at 12-13.

¹²² *Id.*

¹²³ See also Farah Abdul Rahim, *SingTel Wins Case over S\$388m against IDA*, CHANNEL NEWS ASIA.COM, at <http://www.channelnews.asia.com/stories/corporatenews/view/9322/1.html> (last modified May 31, 2002); Catherine Ong, *IDA Won't Appeal Ruling in \$388m SingTel Case*, IT ASIA ONE, at http://it.asia1.com.sg/newsdaily/news003_20020702.html (last visited Feb. 13, 2002).

¹²⁴ IDA v. SingTel, *supra* note 120 at 488.

itself who had offered the settlement amount in exchange for the company's assurances that it would not appeal the agency's decision to introduce competition early or the amount of the settlement.¹²⁵ Ultimately, the court said that the desire for closure and elimination of the appeal process left both parties bearing the risk of failure.¹²⁶ Thus, to allow the IDA to reclaim the \$388 million on grounds that it made a mistake, said the court, would be "wholly unjust and contrary to fair play . . . The sanctity of a concluded contract and the integrity of a receipt under it must be upheld: as is the common parlance in the world of business 'a deal is a deal' and . . . it must be sealed and held to be inviolate."¹²⁷

Many local analysts have noted the significance of the case. For example, Professor Simon Tay said that "[t]his case will be noted for showing that the Government is not the same things [sic] as a government-linked company."¹²⁸ Likewise, SingTel's senior counsel, K. Shanmugum, said that "people who think there's some sort of conspiracy or that the Government can do anything in Singapore—they should be assured there's a rule of law and the government itself is bound to abide by this."¹²⁹

Finally, the ITU case study on Singapore fails to emphasize the relationship between Hong Kong and Singapore. By so doing, the study neglects this important relationship that has truly shaped the telecommunications environment in Singapore. The type of regional rivalry that exists between Singapore and Hong Kong,¹³⁰ an "external factor," can affect the way a country wishes to promote or position some of its economic sectors. For example, from the late 1980s Singapore has been in a race with Hong Kong to get more multinational companies to use the island as a telecommunications hub. This race motivated Singapore's liberalization of the telecom market, effectively helping it become more competitive. In addition, the Singapore-Hong Kong rivalry has forced regulators to promulgate market-friendly rules and has ensured that regulations stand up to the test of competition in the telecommunications sector. In other countries, however, there may not be a similar geographic rivalry and, therefore, no incentive for aggressive liberalization of the ICT sector.

VI. CONCLUSION

The ITU study intended to highlight best practices for emulation by other ICT regulators. In many respects, Singapore's IDA deserves the compliments lavished on it by the ITU. This article does not deny that the IDA deserves the study's compliments, rather it points

¹²⁵ *Id.* at 490, 510-511.

¹²⁶ *Id.* at 491, 527-528.

¹²⁷ *Id.* at 532.

¹²⁸ Rahim, *supra* note 123.

¹²⁹ *Id.*

¹³⁰ See, e.g., *Competition Keeps Hong Kong and Singapore Lean and Mean*, HONG KONG GENERAL CHAMBER OF COMMERCE (Mar. 7, 2001), at http://www.chamber.org.hk/info/daily_business_news/service/2001/service01030701.asp (last visited Feb. 13, 2003); Kenneth Tan, *Hong Kong and Singapore* (May 2002), at http://econc10.bu.edu/economic_systems/Country_comparisons/hong_kong_and_singapore.htm (last visited Feb. 13, 2003); National University of Singapore, *Asia Pacific Telecommunications Index 2001*, at <http://www.comp.nus.edu.sg/~tmedia/resultsforweb2001.htm> (last visited Feb. 13, 2003).

out some important factors that were not covered in the study. These factors, internal and external, highlight the fact that regulation in this area is extremely complex and that countries simply cannot import wholesale any one model, however excellent its practices.

Nonetheless, there are clearly aspects of the IDA that are worth emulating. The fact that Singapore's ICT sector is doing extremely well attests to the quality of the work done by both the IDA and its predecessors. However, there are also shortcomings—the IDA's lack of transparency is one example. But change may be on the way. The whole of the Singapore government's machinery is undergoing a review. A blue-ribbon Economic Review Committee was recently appointed to recommend improvements to governance and greater transparency has been one of the Committee's key recommendations. Given Singapore's political environment, this willingness to identify and correct its own shortcomings may be the best practice of the city-state that other countries can emulate.

In terms of the case study itself, the authors would like to recommend that in future studies the ITU draw a clearer connection between a country's internal and external environmental factors and its regulatory practices. While the authors understand that the ITU probably wishes to avoid being overly critical of a member country, failure to discuss in some depth the factors that the authors suggest in this article will hinder the potential benefit of future case studies.