Reinventing public interest policy & regulation in the digital age

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ZICTA public seminar Lusaka, 8 June 2016
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What is the public interest?

- Universal Declaration of Human Rights
- Rule of law
- National constitution
- Off line/online rights
- Democracy/citizenry/rights
- universality (access)
- equality (to receive and produce information)
- freedom (of expression)
- quality (bandwidth/content)
Rights/Rule of Law

Individual rights
• Freedom of expression/assembly/association
• Right to information

Economic and social rights
• Right to housing, employment, health care
• Internet? Enables other rights

Offline and online rights
• Freedom of expression (anonymity)
• Privacy, data protection (consent)
• Surveillance
• IPR
From POTS...

To PANS..
Increase growth, reduce inequality

Major barriers to sector/economic growth:
- Lack of investment/competitive or affordable backbone
- Size/quality of infrastructure/bandwidth
- High costs/price of access to communications
- Effective policy, regulation/weak institutional arrangements
- Beyond access: Human development
- Income
- Education
- Skills
- Content, apps, local language -demand drivers
- Treated as sectoral not intrinsic to national development
Broadband options?

- How it is funded and operated depends on needs and resources
- Big single builds as in Australia, not possible in most Africa
- In Tanzania single national broadband backbone/carrier, effective in opening access, enable competition in services, stimulating demand
- In SA extensive public and private fibre networks, duplicating network pointless, national broadband network best understood as network of networks
- State fill gaps /uneconomic areas/
  access network through smart procurement
- Public WiFi new public aggregation/
  access
Core policy issue - affordable access

- universal service models generally stuck in old paradigm of aggregated demand, PC, fixed line
- (generally not innovatively) funding operators to extend networks to 'uneconomic areas'
- no distributions of funds
- 'uneconomic' - poor, dispersed, underutilised investment
Alternative policies strategies

- New paradigm for enabling state (unbound by debt/ideology to deliver/enhanced public provisioning)
- Leverage private sector resource to deliver public/social goods
- Exploit aggregated public sector demand to create viability
- Induce investment with "anchor tenancy"
- If public investments, then open access to encourage service based competition
- Network extension to public buildings (schools)
• Cannot be understood as supply side issue alone
• Cannot be understood as national issue only
• Cannot be understood as a sectoral issue
• Cannot uncritically apply 'best practice' models of North
  • assumptions of effectively regulated competitive markets
  • assumptions of human rights and rule of law
Demand stimulation (beyond access constraints)

- Affordability (low cost business model challenges ‘uneconomic’)
- Barriers e-skills, education, income
- Public sector demand stimulation - Network extension to public buildings (schools)
- Citizen network - public private models to provide (limited free) public wifi models
- Natural experiment in public private interplay - Tswane Isizwe (public funded) and Western Cape/City of Cape Town, public/private

Policies

- Enabling state technology to deliver/service
- Prior resource to skills
- Public sector feasibility
Economic regulation

- Market entry/duplication of resources
- Wholesale prices
- Open access
- Infrastructure sharing
- High demand spectrum
- Rights of way
Technical regulation

- prevent discrimination (price, exclusion)
- blocking
- transparency
- Absolute non-discrimination
- Limited discrimination (VOIP)
- No regulation

Secure and
Individual rights
- Cybersecurity
- Privacy/anonymity
- Surveillance
- IPR
Competition Regulation

- anti-competitive behaviour
- vertical integration
- horizontal
- price squeeze
- anti trust -
  mergers & acquisitions

DANGERS OF INSTRUMENTAL COMPETITION /TECHNICAL REGULATION IN DYNAMIC MARKETS
Impact on innovation?
Convergence and clash of regulatory cultures & challenges of symmetrical regulation

Internet
- Openness
- Interoperability
- Redundancy
- End-to-end
- Open, neutral platform supporting co-operative and competitive services, though interoperable standards and quality of services

Telecom
- Closed
- Proprietorial
- Dumb device
- Intelligence in centre
- Privatisation/liberalisation
- Market structure - licensing
- Infrastructure - network investment and extension
- Universal access
- Monopoly regulation
- Access regulation
- Standards, scarce resources

Broadcasting
- Free-to-air - classical public good (non-rivalrous, non-exclusive)
- One-to-many
- Production cost high/reception low
- Subscription walled gardens
- Negative/positive regulation
Complex Adaptive Systems

- continued rapid technological and economic change (Moore’s, Cooper, Metcalfe Laws)
- growing interdependence among players in proliferating two- and multi-sided markets
- digital technology accelerates innovation and intensifies competition
- high fixed/near zero incremental cost technology necessitates pervasive price discrimination resulting in market concentration
- recognition of the importance of investment and innovation in capacity development
- realistic view about the prospects and limits of unregulated markets realising the benefits of ICT.

See Johannes Bauer 2012, Robin Mansell 2013
From static to dynamic regulation

- Creating conditions that facilitate high capital investment required for deployment of next generation networks to support innovation
- Static regulation transition from monopoly to open market (assumes core network infrastructure in place)
- Structural and conduct regulation at wholesale level (interconnection, unbundling, price regulation).
- Digitisation and convergence allows for multiple entrants, migration of services and content across platforms
- High levels of substitution - fixed, wireless, instant messaging, social networking
- New complementarities - content & apps drive data
- limiting control over information flows
- guidelines for design
- scalable, adaptive networks

Example: Zero rating
+ affordable access & use
+ increase competition
+ transparent
+ case by case
Net neutrality

- Outcomes assessed in terms of QoS
- Ambiguous results of net neutrality regulation
- Negative effect on infrastructure investment
- Poorer QoS for paying/high end users
- Better quality for all
GLOBAL GOVERNANCE

ITU

World Trade Organization

IGF Internet Governance Forum

ICANN
Secure and trusted

Individual rights vs. state powers
- Cybersecurity
- Privacy/anonymity/RTBF
- Surveillance
- IPR
- TRUST
Principles of Internet governance (Brazil) Marco Civil da Internet - Net Mundiale

- Privacy, freedom of expression
- Democratic and deliberative governance
- Universality
- Diversity
- Innovation
- Net neutrality
- Non-liability
- Functionality, security, stability
- Interoperability and standards
- Legal and regulatory environment