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**22nd European Regional ITS Conference
Budapest, 18-21 September, 2011**

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Role of institutions for effective telecommunications regulation: Palestine as a case study

Abstract

This paper investigates Palestine's institutional foundations in order to decide on the most appropriate telecommunications regulatory system. It is based on the work of Levy and Spiller's institutional endowment framework. Comments and adjustments to the framework are also discussed and regulation within fragile states is also analyzed.

Depending on international reports and interviews with key stakeholders of the telecommunications sector, the paper present Palestine's institutional endowment framework in addition to adjustments needed to accommodate fragility and occupation.

JEL codes: L96 or Z00

Keywords: Telecommunications regulation, Regulatory design, Institutional Reform

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1. Introduction

Institutions played a significant role in implementing recent telecommunications regulatory reforms. Issues such as regulatory independence, accountability, transparency, clarity, conflict resolution, and right of appeal were emphasized in regulatory frameworks that aimed at better performance of the telecommunications sector through introducing competition, attracting entry and investment, and promoting public confidence in the sector.

As a result, telecommunications regulatory authorities were established (or reformed) with a mandate and a degree of independence employing a set of regulatory best practices such as accountability, transparency, and efficiency to protect consumers' interests, promote and maintain competition, prevent abuse of market power, and create a favorable investment climate.

Establishment of telecommunications regulatory authorities and the ability of such authorities to effectively regulate the market depended on the institutional endowment and experience of the country itself. Countries with solid institutional experience, established rule of law, high degree of accountability and transparency, and independent Judiciary found it easier to establish a regulatory authority; and the authority found it smoother to operate within such enabling environment. On the other hand, countries with limited or nonexistent institutional experience found it hard to establish a regulatory authority; and the authority faced many difficulties in stamping its authority and autonomy.

In their attempt to implement best regulatory practices, most developing countries copied telecommunications regulatory frameworks of developed countries. However, developing countries focused more on the structure of regulatory authorities, and paid little attention to prerequisites necessary to support their work such as independent Judiciary, strong rule of law, and regulatory values such as autonomy, accountability, and transparency. This resulted in a practice that is far different from what has been written in the law.

As a result, regulators lacked necessary regulatory commitment because governments can exert pressure on them to modify or overturn decisions, especially highly politicized issue such as tariff setting. Such pressure is applied in different forms, such as removal of regulatory authority's heads (either board or executive manager) from position, staff appointment, or budget setting. For example, the Electricity Regulatory Board in Kenya has witnessed 5 Chairmen in six years.

The story is not different in the Palestinian Territory. There is a great gap between law and practice. Since its establishment in 1995, the Palestinian Authority has been ridden with corruption, nepotism, and ineffectiveness. All its institutions have failed to deliver.

In August 2009, the Palestinian Authority announced a 2 year plan to build institutions that are capable of efficient performance to support establishment of an independent state. Almost simultaneously, the PA President signed the 2009 Telecommunications Law that establishes an independent regulatory authority. The law has been effective since the Palestinian Legislative

Council has been paralyzed. Nonetheless, political parties' representatives announced that their parties will reject the law once the Council is back to function².

However, accountability, transparency, and rule of law have been fragile since the establishment of the Palestinian Authority in mid 1990s, and Judiciary is not independent. Establishing a telecommunications regulatory authority within such environment shall most likely lead to a weak institution with limited autonomy to provide effective regulations.

This paper uses Levy & Spiller's institutional endowment framework as a reference for the best regulatory system that is compliant with Palestine's institutional endowment. The remaining of this paper consists of the following: Section 2 presents research question and methodology, section 3 discusses Spiller and Levy's institutional endowment framework, section 4 describes Palestine's institutional endowment, section 5 suggests adjustments to be made on the framework, while section 6 provides a brief conclusion.

2. Research question and methodology

Research Question

This paper attempts to answer the following question: how does the institutional endowment framework fits Palestine, and what are the necessary adjustments?

Methodology

To answer the research question, this paper follows a qualitative research approach. First, it examines the institutional endowment framework set by Levy & Spiller (1994) and Levy & Spiller (1996) It also presents comments and criticism for the framework and incorporates new developments on institutional capacity related to unstable states.

Second, it presents the current institutional capacity of the Palestinian Authority. Data is collected via governmental and international reports that track institutional developments in the Palestinian Authority.

Finally, interviews with key stakeholders in the telecommunications sector are conducted to take note of stakeholders' perception of institutional foundations and experience's importance on telecommunications regulation and the creation of an effective and independent telecommunications regulatory authority. Interviewers consist of:

- A representative of the Ministry of Telecommunications Information Technology
- A representative of the incumbent operator (fixed, mobile, data) – Paltel
- A representative the second mobile operator – Wataniya Palestine
- Two representatives of Newly licensed providers of broadband Internet, VoIP, and Wi-Fi
- A representative of Palestinian IT Association of Companies

² The constitution states that any laws signed by the President during which the Legislative Council is inactive for whatever reason, are still in need for approval from the Council, and shall be presented to the Council on its first session after returning to function.

- A representative of Internet Society, Palestine chapter – ISOC.PS
- An expert involved in discussions regarding the 2009 Telecommunications Law

3. The institutional endowment Framework

In 1994, Levy and Spiller presented their institutional endowment framework, which is based on a comparative study for five countries (Argentina, Chile, Jamaica, Philippines, and the UK) to determine whether liberalization of the telecommunications sector could be attainable under different institutional environments. Levy & Spiller (1994) proposition is straightforward; looking at regulation as a contractual problem, the specific characteristics of telecommunications³ may lead to governments' attempts of administrative exploitation to achieve short-term political gains⁴ and extract operator's quasi-rents.

Administrative exploitation varies from setting prices below the long-run average cost, specific requirements concerning investment, equipment purchases, and labor contract rents. The degree of administrative exploitation depends on the country's political and social institutions and their interaction with regulatory process. The contractual problem becomes a regulatory design⁵ problem, where the effectiveness and credibility of a country's regulatory framework (its ability to attract private investment) varies with its political and social institutions.

Therefore, operators' performance can be satisfactory if institutions are able to restrain administrative exploitation. Levy & Spiller (1994, p. 202) defines three mechanisms to restrain arbitrary administrative exploitation: 1) Substantive restraint on the discretion of the regulator, 2) formal or informal constraints on changing the regulatory system, and 3) institutions that enforce the formal/informal constraints.

Institutions' ability to put in place these mechanisms depends on the country's institutional endowment, which consist of five elements (Levy and Spiller, 1994, page 206):

1. Country's legislative and executive institutions; which are the formal mechanisms for
 - a. appointing legislators and decision-makers and for making laws and regulations
 - b. implementing these laws that determine the relationship between legislators and executive
2. Country's judicial institutions for
 - a. Appointing judges and determining internal structure of the judiciary
 - b. Impartially resolving disputes among private parties or between private parties and the state
3. Customs and other informal broadly accepted norms that can be used as constraints on individual or institutions actions

³ Economies of scale and scope, sunk assets, and broad range of domestic demand. (Levy and Spiller, 1994, page 203)

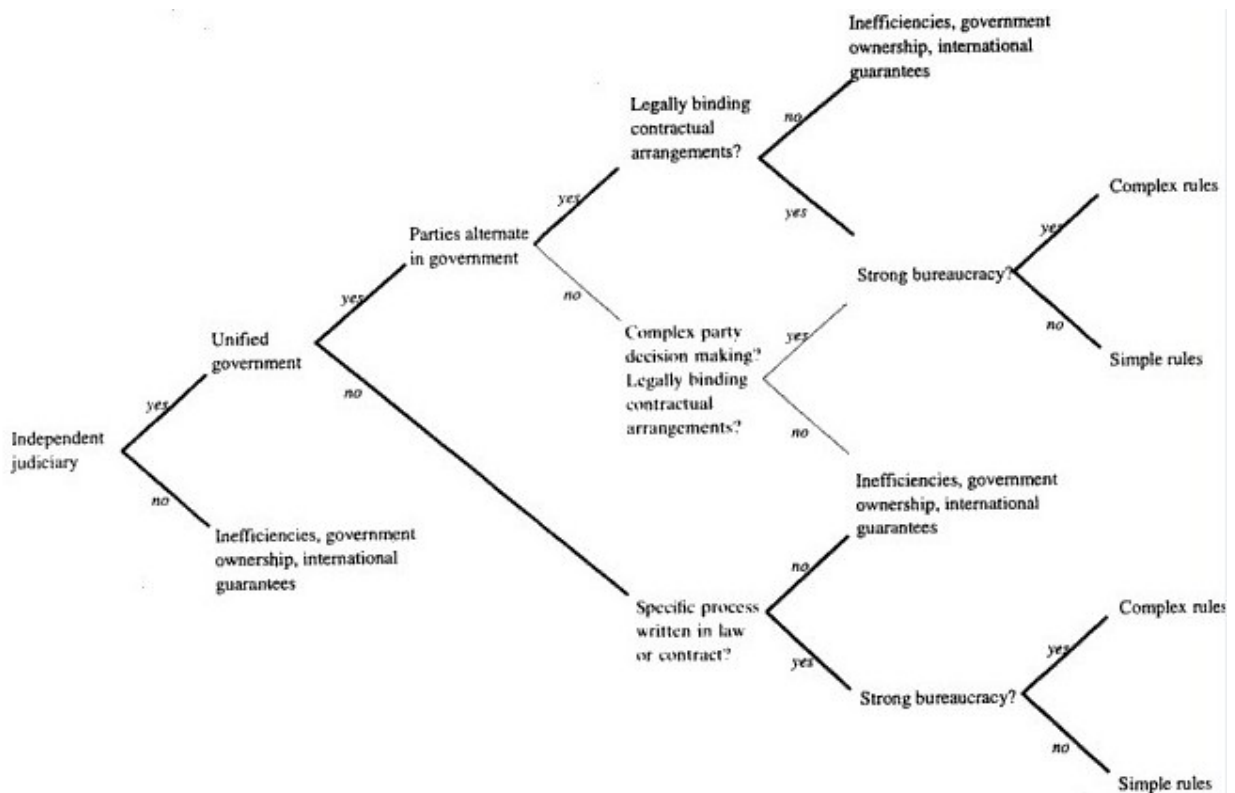
⁴ Such as lowering local call prices, better labor conditions, etc.

⁵ Regulatory design is a combination of regulatory governance (mechanisms that society uses to constrain regulatory discretion) and regulatory incentive (rules governing utility pricing, cross or direct subsidies, entry, interconnection, etc.) Levy and Spiller (1994, page 205)

4. The character of the conceding social interests within a society and the balance between them
5. Administrative capabilities of the nation

Therefore, regulatory design (governance and incentives) should be compliant with the country's own institutional endowment. An unstable country, in that sense, may not be able to effectively import the telecommunications regulatory framework of the UK, because it does not have the same institutional endowment of the UK in terms of an independent judiciary, a proper system of checks and balances, etc.

The institutional endowment framework formulates a decision tree that defines type of regulatory design a state should pursue based on its institutional qualities. The following graph shows the decision tree.



Source (Levy and Spiller, 1996, page 8)

Not only institutional endowment affects regulatory design, but also it plays an important role in private firms' decision to enter the market. For example, the authors put an emphasis first on the country's ability to produce an independent judiciary system because lack of independent judiciary would drive private participation away since the risk of arbitrary administrative exploitation would be high, and private firms would not be able to guarantee an impartial dispute resolution. (Levy and Spiller 1994, page 210) Therefore, with lack of international guarantees as a possible safeguard, public utilities, including telecommunications in unstable states would be in better position under public ownership.

3.1 Additions and comments on the framework

(Cherry & Wildman, 1999) and (Stirton & Lodge, 2002) have addressed the institutional endowment framework. While Cherry and Wildman (1999, page 608) aim was to match restrictions on regulatory discretion founded in the US constitution and those of the framework, Lindsay and Lodge (2002, page 3) took a further step and attempted to assess whether Levy and Spiller framework is supported by empirical data after 15 years of the initial framework. Their main criticism of the framework lies with two main points.

First, the framework provides a narrow view of the goals of regulation by looking at regulation as a contractual problem and concentrating on economic goals over other societal and non-economic ones. The main objection here is that while such narrow view would be true in developed countries, where social goals such as universal service obligations and consumer protection could be attained if economic objectives are met (Nenova, 2007, page 70), this is not the case in developed countries, where societal goals gain more importance and affects the level of tradeoff between equity and efficiency.

Second, and more importantly, the framework overlooks research in regulation that points out to two major sources of corrupting influences; political institutions (i.e. the executive) and social collective action (i.e. capture). While private investors do seek guarantees that governments would not renege on their promises, network industries has been dominated with monopolies that have high degree of influence on policies.

To that effect, the Jamican experience on liberalization provides different explanation than what the framework initial hypothesis proposes that is the fight between the Jamican government and the private monopoly C&W does not present the hypothesis of governments trying to exploit the private investment, but rather such fight was essential for liberalization of the sector while the government still honoring C&W exclusivity agreement. (Stirton & Lodge, 2002, page 9)

Due to the above observations, and based on analytical interpretation of developments in Jamican telecommunications sector, the authors proposes three possible interpretations to Levy and Spiller's framework. First, the framework has been falsified by such developments. Second, the framework is correct, but the Jamican new telecommunications ACT of 2000 and subsequent regulatory reforms were "ill-advised mismatch." Third, Jamaica's institutional endowment has changed, resulted in strengthened capacity and greater autonomy of its administration, both in telecommunications and in general. Authors end up with third interpretation as the most reasonable one.

Choosing the third option as the most reasonable interpretation contribute actually to the validity of the framework as it shows that strengthening institutional capacity does, indeed, affect quality of regulations. The only criticism left within this option is the long exclusivity clause (25 years in the framework) that is given to a private firm, while institutional reform and strengthening of institutional endowment took only 10 years! Nonetheless, validity of the framework is strengthened.

3.2 Within the context of unstable states

Cherry & Wildman (1999) and Stirton & Lodge (2002) discussed the framework within stable countries with independent judiciary and stable governments (unified or otherwise). However, attention to unstable States has not been mentioned, which the original framework includes in the case of the Phillipines.

3.2.1 What is unstable States?

The term “unstable State” can include a wide set of countries according to different categorizations. The term is usually substituted or associated with terms “Ineffective State“, “Fragile State” and “Falling State”. According to OECD (2008, p. 2), “States are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations”

The above definition is applicable to a wide set of countries that have different causes of fragility such as war, political instability, etc⁶. OECD (2008, p. 7) focuses the discussion of fragile States with respect to social contracts. It recognizes that stability of a state is reached through negotiations between the state and its citizens over delivery of basic services taking into consideration the state’s capacity. Once reached an agreement (or equilibrium), the state and its citizens enter a social contract that provides stability. Thus, stability or fragility is a result of “weaknesses in the dynamic process through which citizens’ expectations of the state and state’s expectations of citizens are reconciled and brought into equilibrium with the state’s capacity to deliver services.” Failing to reach equilibrium is a critical determinant of fragility.

Social contracts are determined by several factors, including (OECD, 2008, p. 18) :

- *expectations* that a given society has of a given state
- *state capacity* to provide services, including security, and to secure revenue from its population and territory to provide these services
- *élite will* to direct state resources and capacity to fulfill social expectations
- the existence of *political processes* through which the bargain between state and society is struck, reinforced and institutionalized
- *legitimacy* plays a complex additional role in shaping expectations and facilitating political process

Failure of agreeing to one or a combination of the above could lead to fragility, so it’s not simple to determine which states will be fragile. In telecommunications context, failing a social contract would lead to weak regulation or even a situation where regulatory authorities do not have full control over the market. The following is an example to issues emerging from fragile states:

- Kosovo: No international gateways are assigned to Kosovo. Regulatory authorities use Serbian and Slovenian international gateways. (Cullen International, 2010)

⁶ Torres and Anderson (2004, page 5) list State collapse, loss of territorial control, low administrative capacity, political instability, Neo-Patrimonial politics, conflict, and repressive polities as source of diverse causes and symptoms of ineffective States.

- West Bank and Gaza (Palestinian Territory): Bulk of core network (switches) are hosted outside the territory; spectrum allocation is controlled by Israeli authorities; imported equipment takes lots of times (years) for security clearance. (World Bank, 2008)
- Somalia: Six mobile operators, each covering a geographic region due to civil war⁷
- Arab countries: Absence of adequate appeal process and ownership of ruling parties/family of telecommunications companies negatively affects quality of regulation. (Sutherland, 2010)

3.2.2 Disadvantages of unstable states

Problems of fragile states are mainly institutional. Fragile states suffer from limited resources and close relationships between political elite and businesses that are discussed above. In addition, fragile states suffer from the lack of political will and capacity and poor public sector that is ridden by corruption and lack of rule of law. Such factor put fragile states at a disadvantage.

3.2.2.1 Political will and capacity

Strong political will or commitment and capacity is needed for effective regulations. According to Brown et al (2006, p. 85), “an effective regulatory system requires both ‘commitment’ (will) and ‘capacity’ (ability to develop, implement, and honor policies, programs, and regulations) on the part of the government.”

Therefore, States can create or import a telecommunications regulatory framework, but unless there is commitment from the government in legal process and enforcement, these frameworks will remain ineffective, and goals will not be achieved.

Countries are categorized into four categories according to their political will and capacity: (Brown et al, 2006, p. 85)

- Category 1: Strong and able. Countries with strong commitment and capacity. They have high probability of creating well-functioning and effective regulatory institutions without long delays;
- Category 2: Weak and capable. Countries with weak commitment but strong capacity. They have adequate resources in terms of funding and/or expertise, but they lack the political will to initiate and enforce reforms;
- Category 3: Strong and incapable. Countries with strong commitment but weak capacity. They have a political will to initiate necessary reforms, but they do not have the means (capacity) to implement and enforce these reforms;
- Category 4: Weak and incapable. Countries with weak commitment and capacity. They have no or few functioning institutions, and they lack both political will to initiate reforms and means to implement and enforce them.

Category 1 consists of developed countries, while developing countries will be spread over category 2 and 3. Majority of fragile states are most likely to be found in category 4 with few in

⁷ <http://developing-telecoms.blogspot.com/2009/07/somalia-while-daring-operators-turn.html>

category 3, where they might have a strong political will to reform, but they lack enough skilled labor to enforce regulation. (Brown et al, 2006, p. 88)

When political will and capacity are low, adopting a telecommunications regulatory framework and establishing a regulatory authority becomes nothing more than a decoration. In such environment, inconsistent decisions would not be uncommon, and investors would view such States as a risky place to invest.

Eberhard (2007, p. 1) has highlighted the issue of increased regulatory risk due to inconsistent regulatory decisions:

“It was hoped that independent and accountable regulatory agencies would de-politicize tariff-setting and would improve the climate for operational management and private investment through more transparent and predictable decision-making. . . . These constraints, plus lack of capacity and experience, have resulted in many regulators making inconsistent and non-credible regulatory decisions that have created a new kind of risk for consumers, utilities, government, and investors, namely that of regulatory risk”

What would make political will for reform low? According to Duckett (2001, p. 23), the new political economy (NPE) answer to this question is that governments resist attempts to reduce their control. The NPE suggests that politicians would be involved in interest-maximizing activities including economically damaging or wasteful government intervention such as purchasing support or accepting bribes in exchange for the distribution of subsidies, licenses, loans, jobs, or services.

3.2.2.2 Poor public sector performance

Good public sector performance and service delivery is essential for the maintenance of the social contract discussed above and for the creation of public sector jobs. This requires that the public sector would have adequate financial resources in order to spend on essential services. The gap between fragile and stable states in public spending is significant. For example, average annual public sector spending per capita in OECD countries is above \$10,000, while it does not go above \$200 in fragile states. (Asian Development Bank, 2007, page 2) In addition to limited resources, corruption, poor governance, and weak institutions are considered the reason behind low public expenditure. (Asian Development Bank, 2006, p. 4)

High level of corruption

The Danish Institute for International Studies defines corruption as “abuse of public office for private gain” (DIIS, 2006, p. 1), while Transparency International⁸ defines it as “misuse of entrusted power for private gain.” According to Damoni Kitabire, corruption is magnified in fragile states because, *inter alia*, of the weak institutional framework and limited experienced labor and disregards of any provisions in the constitution⁹.

Holders of public offices usually fail to maintain a clear distinction between what is public and

⁸ http://www.transparency.org/news_room/faq/corruption_faq

⁹ Presentation on “Fighting corruption in a fragile state.” <http://www.oecd.org/dataoecd/15/58/39724765.pdf>

what is private, which leads to increased misuse of power. (DIIS, 2006, p. 1) In addition, new form of corruption is generated when the state decides on economic reforms and migrates from centrally planned to market-led economy. (Asian Development Bank, 2006, p. 4) According to Transparency International's corruption index¹⁰, fragile states such as Somalia, Afghanistan, and Iraq suffer from high levels of corruption.

Weak rule of law

(Winder, 2007) suggests that rule of law could be defined in three ways. The first definition provides a simplistic legal meaning that is “compliance with the laws as stated—adherence to statutes, whatever those may say.” The second definition requires that this sense of adherence should be translated, within a society, into a common respect for due process in a way that enables society to reach for an impartial resolution conflict mechanism such as an independent court, where rights such as the right to see charges and evidence, the right to offer defense, and the right to be considered innocent until proven guilty are guaranteed. The third definition adds to the previous two a requirement that laws should be just. Because of the difficulty in defining what a just law is, the third definition is the least used to define the rule of law.

Domingo (2009, p. 131) argues that rule of law is critical to the legitimacy of governments. In that sense, rule of law becomes about a) the degree to which there is political will and institutional capacity to ensure accountable governments; b) the capacity of the state to protect and deliver the rights of citizens and; c) the state's ability to enforce the law and protect its citizens through the provision of security against different forms of threat.

According to Winder (2007, p. 2) and UNDP (2009, p. 2), problem with rule of law in fragile states are linked with a) corruption, in the sense that state officials view themselves as above the law; b) collapse of the political community and institutions, which are the source of law or; c) common feeling of unjust laws among people.

Therefore, building state's institutions and combating corruption are two important tasks in order to restore the rule of law in fragile states. In particular, UNDP (2009, p. 2) suggests that developing the rule of law requires functioning courts, equal treatment before law, timely redress of grievances and effective institutions. Because of the limited resources of fragile states, most of reform initiatives are supported by the International community through several organizations such as UNDP, USAID, and the World Bank.

4. Institutional endowment of Palestine

Palestine's institutional endowment can be categorized with the likes of Argentina and the Philippines. It can be best described as a “Presidential rent-seeking” with a “political investment cycle.” The following provides a summary on the institutional endowment components

¹⁰ http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

4.1 Judiciary

Articles 97 and 98 of the Palestinian Constitution (Palestinian Authority, 2003) emphasize independence of the Judiciary and prohibit any other governmental branch from interfering with it. In reality, however, the judicial system has been corrupt. This is obvious on political-related trails. At best, security forces do not adhere to court orders or disregard procedures that require a court order, which reflects a general tendency of lack of respect for the law. Brown(2010, p. 4) notes that there is a gap between what's written in the constitution and what's been implemented:

“The problem is that many of these more general promised developments are simply not occurring. There is no separation of powers; ... Court orders have ignored; judges have bowed out of some sensitive political issues; and the independence of the judiciary is hardly guaranteed.”

Effect on telecommunications

Within telecommunications, there is almost no history of legal disputes. A major reason for that was the monopoly of Paltel over the sector and the close relationship they enjoyed with the government, especially during the first timeframe. However, since market liberalization started in 2006 new operators and service providers have entered the market. The need for an independent and adequate judicial system is apparent. None of the interviewed stakeholders see that, within its current state of capabilities, the judicial system can support the sector and help resolving possible disputes.

While the issue of judiciary independence was a sensitive one, where some declined to comment and others maintained that for telecommunication-based cases Judiciary could be seen as independent, qualification and experience of the Judicial system to handle telecommunications cases carried more weight. For example, ISOC has an opinion that while the Judicial system is independent enough when it comes to pure commercial issues:

“The problem of the judicial system is understanding the technical problems and implementing their decisions. That's really is the problem, not independence, in my opinion”

The independent expert has a similar opinion:

“I don't believe it's totally independent. As it related to telecom I believe it is insufficient as well, and that's something we have major discussions on. I don't think that the existing judiciary system is up to card when dealing with telecom disputes, and it is one of major factors in looking at the regulatory body and see how successful it can be. Without a judiciary system just as technically at the regulatory body then disputes which are bound to happen would hit dead end. So that technical capacity (and I don't mean engineering technical capacity, but technical capacity in terms of regulatory capacity) within the judiciary is key”

However, there hasn't been a single dispute between operators to examine the extent of lack of

independence on telecommunications¹¹. What is of a more concern to the operators is the time taken to resolve a dispute in courts. Again, lack of expert judges that are able to understand telecommunications terminologies and apply the law comes to play. For example, Wataniya is on the opinion that current judicial system is under development in order to have a well-respected system. However, at current pace, Wataniya would be reluctant to settle a dispute through courts.

“Because if Wataniya have a problem with Jawwal and I want to go to court right now and it will take 5-6 years to solve the problem, I [Wataniya] wouldn’t do that.”

To overcome any possible dispute, companies rely on licenses issued by the ministry and service level agreements (SLAs) negotiated by companies when there is a need to access/interconnect. This reliance on licenses and SLAs is aligned with Spiller and Levy’s framework.

4.2 Government (Executive and Legislative)

According to the Palestinian Constitution (2003, article 5), Palestine is Parliamentary democratic system, where the people directly elect their President and representatives to the Palestinian Legislative Council (PLC). The government, is lead by a Prime Minister (usually leader of the majority) and confirmed by the Legislative Council.

Through its relatively short history, the governance system of the Palestinian Authority (PA) can be categorized by three timeframes, the one-party ruling timeframe (1994 – 2006), dual-party timeframe (2006-2007), and the political split timeframe (2007-Present). During the first timeframe, the PA was dominated by Fatah, the leading political party in the Palestinian Liberation Organization (PLO) that was responsible of the Oslo agreement¹². The first Presedintial and Parlemtary elections resulted in Fatah securing a comfortable majority in the Legislative Council and Arafat, leader of both PLO and Fatah becoming the first Preseident of the PA. Relationship between the ligeslator and executive was smooth for the most part of that timeframe. A Fatah-led government had full discrection on social, economic, and political issues. Privatized sectors, including telecommunications, were handed to monoplies.

During that lifetime, Paltel were given a wired and wirelss telecommunications license with exlusivity until 2006 for fixed communications and 2004 for mobile communications. The PA was a major shareholder at the beginning, but it sold most of its shares. It still have around 6% of shares to date, as Paltel indicated in the interview.

In 2003, political reform started. A constitution was adopted and the Prime Minister position was introduced. In 2005 current president of the PA, Abbas was elected and new parleminatary elections were due in 2006.

¹¹ There have been two incidents in the past year related to media, where telecommunication sector was caught in between. Both incidents involved the District Attorney ordering Internet Service Providers to block access to certain websites based on political reasons. In both incidents the DA completely disregarded the judicial system and presidential order with regard to blocking websites.

¹² The Oslo agreement or deceleration of principles is the first agreement between Israel and PLO. According to the declaration and following agreements (Oslo II, Wye River), Israel will gradually pull out of Palestinian territories in the West Bank and Gaza Strip until a final peace settlement, based on UN resolutions 242 and 338 is reached out by 2000¹². A Palestinian Authority (PA) will be established in place of the Israeli civil administration.

The dual-party timeframe was a result of Hamas decision to participate in the 2006 parliamentary elections. Hamas won with a comfortable majority, gained control over the legislative council and formed the government. This resulted in conflicting political agendas between the President (Fatah) and the Prime Minister (Hamas). Number of laws, including the 2006 telecommunications law were rejected by the legislative council as a result of this conflict.

In early 2007 political struggle resulted in a political split where Hamas took full control over Gaza Strip and established a Hamas-based government, while Fatah controlled the West Bank and established a “technocrat” government supported by Fatah, for the most part. In both areas, governments have greater discretion and almost nonexistent formal restraints, even though some institutions exercise a higher degree of accountability and transparency compared to first timeframe¹³.

Recently, there have been formal talks for a reunion and new presidential and parliamentary elections, with both governments resigning and a unified government appointed by the PA President to prepare for new elections.

Effect on telecommunications

A. First timeframe (1996-2003)

During the first timeframe, the PA decided to privatize the sector after short time of managing it through the ministry of telecommunications and post. Privatization process resulted in awarding Paltel with a license to exclusively operate the wired network for 10 years (1996-2006) and to develop the network for 20 years (1996-2016). Paltel also got an exclusive mobile license to its subsidiary Jawwal for 5 years (1999-2004) or 120,000 subscribers, whichever comes first.

According to World Bank (2011), PA's decision to privatize the sector and to award Paltel with a statutory monopoly was sound and rational considering the high risk of operating in politically unstable region. However, proceedings by which Paltel was awarded the license raised doubts. First, before awarding Paltel its exclusive license, the PA had reached an agreement with another company to award it with a telecommunications license. The PA then revoked the license. Second, there was no formal tendering process in both cases. Finally, the license and its annexes were kept private until 2008, where the ministry itself did not have a copy. (World Bank, 2011, page 35) In a recent interview, current minister of telecommunications said that the ministry's efforts for increased liberalization is constrained by Paltel's license since some provisions are “above the law.”¹⁴

During the same time, PA President signed the 1996 Telecommunications Law¹⁵ (Palestinian Authority, 1996), where Ministry of Telecommunications and Post became the entity responsible for policy making and sector regulation.

¹³ In West Bank, laws are drafted by legal committees then approved by the cabinet and signed by the President as emergency laws. They become effective once they are signed, but they are still in need to be passed by the Legislative Council when it resumes its operations in the future. In Gaza Strip, the government has revived the Legislative Council, but it is composed of Hamas members living in Gaza Strip.

¹⁴ <http://maannews.net/arb/ViewDetails.aspx?ID=410486>

¹⁵ The law was signed before establishing the Palestinian Legislative Council

Relationship between the ministry and Paltel went smooth for the most part. A friendly politician-business relationship could be observed here as mentioned in Levy and Spiller's framework. ISOC, CoolNet and other stakeholders have pointed to such a relationship, where almost all decisions went Paltel's way.

B. Second timeframe (2003-2007)

There has been a dramatic change in the political scene that affected the sector. First, the leading party Fatah witnessed internal conflict that resulted in enacting a constitution, introducing the prime minister position and announcing of new elections to be held in 2006. Second, Hamas participation in the parliamentary elections changed the political layout. Its majority government ensured, for the first time, that restraints on regulatory discretion would be possible, even for the wrong reasons.

That's what happened when calls to reform the telecommunications sector that started in 2003 resulted in a new telecommunications law (Palestinian Authority, 2006) that supports liberalization of the market in 2006. The President of the PA signed the law. However, the legislative Council rejected that law, among other laws, as signs of political tension between the two major parties started to surface. Putting things into context, the move of the Legislative Council was more of a political vendetta rather than exercising a healthy restraint action against the executive. ISOC is in line of this interpretation, as they were one of the main bodies pushing for the 2006 law. ISOC explains that "Part of it [rejection of the law] was the new majority party rejected everything the president has done."

Nonetheless, under this government, Wataniya was awarded the 2nd mobile license, where the PA through Palestine Investment Fund was a major shareholder with 30% of total shares, which is a source of concern to Paltel, as they have indicated in the interview. Also, Wataniya awarded large contracts for advertising activities to a company owned by the President's son. Again, these acts are aligned with the "political investment cycles" hypothesis.

C. Third timeframe (2007-Present)

After the political split, a Hamas government gained full control over Gaza Strip, while a Fatah-supported technocrat government gained control over the West Bank. Both governments have full discretion and nonexistent formal restraints on their decisions. The difference though, in West Bank, is that unlike the first timeframe, partial liberalization has been achieved, where a 2nd mobile operator Wataniya is competing with Jawwal, and several small companies were licensed to offer voice and data telecommunications services and compete with Paltel. The West Bank government has started a series of steps to strengthen market liberalization starting with introducing the 2009 Telecommunications Law (Palestinian Authority, 2009) that establishes an independent regulatory authority and strengthens competition in the market. Also, introducing the bit stream access model and licensing operator(s) to provide telecommunications services through power lines were of the major highlights. In addition, the ministry has engaged in negotiations with Paltel, which resulted in an agreement of functional separation between voice, mobile, and Internet divisions in exchange for a 3G spectrum license. The situation resembles, to some extent, Stirton & Lodge (2002) explanation of Jamaica.

Events that took place during the three timeframes, resemble those of the Philippines, where a fully functioning regulatory governance structure has not put in place. In addition, development of the telecommunications sector can be characterized by a “political investment cycle”, where investment by Paltel varied from high investment period during the first timeframe into a low investment period in later stages, especially the third timeframe¹⁶.

4.3 Bureaucracy

Bureaucracy in the PA suffers from several inefficiencies that render its performance as weak. One main source of inefficiencies is the low level of expertise especially in policymaking and technical issues. Another source is corruption and weak enforcement of the law.

With regard to the low level of expertise, Palestine has a small skilled labor base, where both private and public sectors compete to attract. According to the MTIT’s deputy minister, the ministry offers around 10% of salaries offered by the private sector. This put an immense pressure on the ministry to attract skilled workers. To compensate this, the ministry supports its staff with training programs and links its members with international agencies such as ITU. However, this means that the ministry would take too much time in keeping up with market developments.

For example, the ministry declared that pricing of telecommunications services in future ROIs will be based on LRIC starting April 2010. Until now, LRIC estimations are not ready, and although Paltel have submitted their LRIC-based prices, the ministry was unable to verify those figures. Stakeholders consider this to be a problem. For example, Paltel recognizes that although there have been improvements, the ministry’s resources are limited, and this hinders its ability to upgrade their staff skills.

“At the end, any operator in the world would like the regulator to be informed and professional. For example, when we talk about costing, it is extremely important when we talk we understand each other and use the same terminologies. However, they do have their limits in terms of resources and finances and their expertise. They are trying to improve, but you cannot do this in short time.”

The same problem is found in other ministries and governmental agencies. While the PA had put in place several programs to develop and train its bureaucracy, in general it remains weak and unskilled.

¹⁶ <http://maannews.net/arb/ViewDetails.aspx?ID=410486>. The current telecommunications Minister have declared recently that Paltel has to increase its investment, especially in NGN before both parties sit down for license extension negotiations in 2015.

With regard to corruption, International Transparency’s Corruption Perceptions Index¹⁷ does not include information on Palestine’s public sector corruption. However, Transparency-Palestine¹⁸ has issued several reports addressing corruption in public sector. Also, the World Bank (2011) has published its report on enhancing governance and reducing corruption. Both organizations suggest that nepotism is the main source of corruption in Palestine.

With regard to enforcement agencies, corruption and weak rule of law result in a process of selective enforcement, where some court orders are neglected, while others are enforced mainly because of political reasons. Violation of the rule of law is not uncommon. Within telecommunications, practices such as call tapping and websites blocking are among the most common violations by security agencies. Although there has been a presidential order that prohibits such practices, they still occur, albeit in smaller frequency. While such practices can be found elsewhere, the real uncertainty comes from the fact that court orders specific to telecommunications disputes might be overlooked by enforcement agencies.

4.4 Regulatory commitment

Reflecting on its institutional framework, Palestine’s regulatory system can be categorized as a “Presidential rent-seeking” with a “political investment cycle.” This description matches levy and spiller’s framework for weak capacity countries. The following table shows the regulatory history and commitment.

Ownership	Regulatory History	Performance	Restraining Mechanisms		
			Substantive Restraints	Restraints on System Changes	Enforcement of Restraints
Private Paltel: Fixed + Mobile Wataniya: Mobile Several small data/voice service providers	License-based, with Rate-of-Return regulation. Price benchmarking also used.	Profitable for initial investment in all markets with high prices. After partial liberalization, competitive prices in mobile, but high prices in data (high access	Monopoly rights plus fair rate of return.	License amendments Require company's agreement.	Unknown

¹⁷ http://www.transparency.org/policy_research/surveys_indices/cpi/2010

¹⁸ <http://www.aman-palestine.org/eng/index.htm>

		charges) met with underinvestment			
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5. Adjustments to and comments on the framework

Section 4 illustrated Palestine’s institutional endowment, which resembles Argentina and the Philippines’. However, there are two important factors needed to be addressed in the case of Palestine. First, the Israeli control of telecommunications resources, and second; PA’s institutional capacity building efforts.

5.1 Israeli control over vital telecommunications resources

One major concern for investors is the degree of power and control Israeli occupying forces have over some vital telecommunications resources. This control is the result of Oslo agreement in 1995, which in its economic annex stated that the PA has the right to build a telecommunications network in areas under its control (areas A and B defined by the agreement), while other matters such as international gateway, importing equipment, access to area C, and spectrum shall be kept under the Israeli control. Such matters proved to be critical.

With regard to international gateway, although the PA got its own international dialing code number (970), in does not have an independent international gateway, and is not permitted to use any international gateway other than the Israeli one. In effect, it doesn’t matter for a caller in the US, for example, to use Palestine’s (970) or Israeli (972) code to get through and connect to either a fixed or mobile Palestinian number. Inability of using its own international gateway or negotiate with other neighboring countries, such as Jordan or Egypt put Palestinian operators at disadvantage as Israeli operators gained a bargaining power over international traffic, which resulted in higher cost for Palestinian operators and higher prices for consumers.

Importing equipment is also under Israeli control, and over the last 15 years Palestinian operators suffered from Israeli authorities’ continuous refusal to allow for some equipment to enter the Palestinian market, which affected their ability to maintain their networks. Also, most of Paltel and Wataniya core network is hosted outside Palestine. Paltel main switches are hosted in London, England, which adds around US\$ 5 million to the cost of supplying telecommunications services. Likewise, Wataniya main switches are hosted in West Jerusalem.

With regard to access to area C, Palestinian operators have to get authorization from Israeli authorities to install its equipment in order to serve communities living there. This is not always easy, which results in low quality of telecommunications services. Main problem of area C territories is mobile. Due to limited number of antennas installed in area C, reception of Jawwal and Wataniya signals is weak. With the presence of 4 unlicensed Israeli operators that have better coverage in area C and equivalent coverage in area B, a considerable market share (20-40%) is lost.

While operators can overcome the above problems with good marketing and product differentiation plans, the real problem is spectrum. In both occasions, when the PA licensed Jawwal in 1997 and Wataniya in 2006, both companies had to wait for 2-3 years until Israel

agreed to assign spectrum frequency.

For the case of Wataniya, only international and diplomatic pressure on Israel made it release the spectrum as Tony Blair used his diplomatic position at the Quartet's special envoy to pressure Israeli authorities into releasing frequencies¹⁹. Shortly after, Israel release 2G frequencies and Wataniya started offering its services in WestBank only, even though 3G services are not yet available. Currently MTIT is in negotiations with the Israeli authorities to allow Wataniya to operate in Gaza and to release 3G spectrum for both Jawwal and Wataniya.

Without international pressure, Wataniya project would have failed. Any future investor for the planned 3rd mobile operator would not be motivated to enter the market with such Israeli's control. Since management of spectrum will not be under Palesinian control before a final settlement between Israel and Palestinian Authority is reached, international gurantee is critical and becomes one of the institutional exogenous elements that firms look for.

5.2 Institutional capacity building

Taking Stirton & Lodge (2002) under consideration, changes on overall governing system since 2006 (or even as early as 2003) should provide an alternative explanation or addition to the framework.

Reform in governance and political environment has its implications on regulatory reform and performance. Events of 2003 and 2006 discussd in section 4.2 brought up governments with far more experience and competence than previous years. Emphais on fighting corruption and imroving government performance and effeincy started to be heard more often. Hamas built its election campaign on fighting corruption, while Fatah promised of internal reform and control of corruption.

Although political conflict between Fatah and Hamas negatively affected the political process and reform, and eventually led to two governments with greater discretion, topics such as corruption of politicians and government were no longer treated as taboo. Several civil society organizations, Amman-Palestine being the most vocal, were formed and started to issue periodical reports on the state of corruption, nepotism, unauthorized public spending, etc.

After the political split up, the Fatah-supported technocrat government in West Bank published its 2-year plan, which aims to eliminate corruption and decrease ineffectiveness in public sector as a prerequisite to establishing an independent Palestinian state. To achieve those objectives, the plan focuses on institutional development, where such institutions would be the base for a law-based system.

However, the problem is that such institutions are being built at slow pace. Influence of corruption, especially nepotism can still be traced, and people pushing for reform and institutional building face many roadblocks. In his attempt to explain why institutions are not

¹⁹ <http://www.jpost.com/MiddleEast/Article.aspx?id=187813>
<http://www.dailymail.co.uk/news/article-1311237/Special-investigation-How-Blair-rescued-Palestine-deal-worth-200m-2m-year-paymasters.html>

being developed at an acceptable rate, Brown (2010, page 1) argues that concentration on the actions of politicians instead of the results of such actions is a mistake. This is what is happening in the PA, where the term “Fyyadism”, which refers to the prime minister Salam Fayyad, has gained much attention and attached the whole process of capacity and institutional building to one person, or at best his team.

Within telecommunications, the same issues seem to be reflecting on how MTIT approaches regulatory reform, where most of the initiatives were led by the last two ministers. However, institutionalizing such activities is also going at a slow pace. While the latest minister has brought in a qualified team that has better regulatory experience, such team is still crippled by the surrounding environment. The minister himself complained lately, after the website blocking incident, that “Dark forces are still working hard.” Even when the latest incident of blocking websites was resolved, it was based on individual efforts from the minister, some politicians, and the President himself. The DA’s actions went unchallenged, either by the executive, legislative or judiciary.

Stakeholders did share this explanation in one way or another and pointed out that steps taken by the ministry so far are not being institutionalized. For example, when asked about the transparency of regulatory process, Coolnet implied that there is still struggle within the PA, which appeared during deliberations over establishing an independent telecommunications regulatory authority.

“I see that what has been written and prepared about the authority was transparent, good, and fair, and I suspect that it was the reason behind delaying establishment of the authority. Many parties did not anticipate that and the way the authority is designed. They suspected they would still have power over it, and because of that the authority has been delayed.”

Inability to institutionalize individual initiatives and activities has been expressed by ISOC and the expert: For example the expert opinion on MTIT’s expertise in policy making address the gap between individual-based and institutional-based actions.

“I think within the last 2 ministers the capacity for policy making at least on an individual basis is much better than it was. We have people within the ministry (I am not talking about the system per se, but individuals). The institutional know-how, I am not sure how can we measure, but the individual know-how we can point to a handful of people who have a depth of understanding of regulatory affairs. The goal is how can we take this individual know-how and put it in institutional knowledge base.”

This is not to say that things have not improved. On the contrary, all stakeholders assert that things nowadays are much better than before, and that government’s performance, including MTIT’s has improved drastically. Nonetheless, There appears a struggle within the government and its agencies on how and if reforms should be carried out. Until such struggle is resolved, private sector cannot put its full trust in a risky system.

These lines of events resemble, to some extent, what have happened in Jamaica, a struggle to introduce reform including reform of some institutions. This is currently happening in Palestine with a major difference. Palestine's institutional endowment is not fully developed. Thus such struggle is not stable since the environment that is supposed to maintain stability and credibility of whatever outcome resulting from such struggle is itself vulnerable. To that extent, relying on what seems to be institutions in the making should only be coupled with solid guarantees.

Within such environment, what MTIT is currently pursuing could be described as the best possible solution, that is a license-based regulatory system, where each operator or service provider protects its investment through a license that clearly defines rights and obligations of each player in the market until institutions are fully built, capacity of staff is developed, and a complex regulatory system can be put in place.

Current experience of MTIT with licensing is encouraging. Although, there is still some notes on the way licensing is being handled, with divergence of licenses being the most critical note; nonetheless, MTIT has worked with several international consultants to produce licenses according to best international practices. That's exactly what happened with Wataniya, as their license cover in details every aspect in the market including anti-competitive provisions.

6. Conclusion

Being small, unstable, and effectively under occupation, the Palestinian Authority faces various challenges in the road to effectively manage its resources and regulate its markets, including telecommunications. This paper lays down institutional endowment of Palestine based on Levy and Spiller's institutional endowment framework, which proposes that firms' decision to invest in a given country depend on the country's institutional foundations, mainly its judiciary, governance structure, and the competency of its bureaucracy, that are able to put restraints in political exploitation. Then, the paper put forward needed adjustments to the framework in order to accommodate problems stemming from instability and occupation.

Based on interviews with key stakeholders and examined international reports, the institutional endowment of Palestine resembles, for the most part, the one of the Philippines, in which it is a "Presidential rent-seeking" aligned with "political investment cycle", where the PA had vested interest in both Paltel and Wataniya.

Examining specifics of Palestine's institutional foundations shows that judicial system lacks independence and experience, governing structure is made up of unified, one-party government for the most part of PA's lifetime, and its bureaucracy is weak and corrupt. During the three timeframes of its governing structure, the PA was met with few, if non-existent actions that restraint its decisions on telecommunications issues. Accordingly, its regulatory system should be based on internationally-guaranteed licensing based system.

MTIT, acting as both policy maker and regulator, moved to such system around 2003. Based on PA's commitment to the World Trade Organization's Basic Telecommunications Agreement (BTA), MTIT issued a 2nd mobile and several voice and data licenses. Such step marked the start of telecommunications liberalization processes and is compliant with Palestine's institutional

foundations.

However, firms' decision to invest in Palestine is affected by Israeli control of vital telecommunications resources, especially spectrum frequency. Wataniya's experience provides an insight for future plans to introduce new licenses and attract foreign investment. Israeli's refusal to grant Wataniya the needed frequencies has negatively affected investors' trust. The project was about to be declared as a failure after 3 years of waiting and zero revenue. Only political pressure via the Quartet's special envoy prevented such failure and secured minimal frequency spectrum that Wataniya needed to start offering its services. Therefore, an international guarantee becomes essential as a part of Palestine's institutional endowment.

PA's plan to develop its institutions and the recent 2009 Telecommunications Law are seen as a right step in the direction of upgrading institutional foundations of Palestine. However, work is still in progress and it faces many obstacles as part of hidden conflict between political players. It is only when such struggle is over that one can assert to which direction the decision tree Palestine should be positioned. Meanwhile, an internationally-guaranteed licensing system would still be the most appropriate.

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