01

TELECOMMUNICATIONS IN TRANSITION

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In the European Bank for Reconstruction and Development's countries of operations, the legal and regulatory environment for telecommunications networks and services is an important determinant of overall investment and market effectiveness. The EU countries have demonstrated the success that the presence of sector-specific regulatory bodies in each country can bring.

The key legal and regulatory developments in telecommunications

During the final two decades of the 20th century, technological advances allowed alternative ways of offering telecommunications services, thereby providing the initial impetus for challenging the sector's traditional monopoly structure. The United Kingdom introduced the first enabling legislation, the Telecommunications Act in 1984 which privatised British Telecom, removed its monopoly over telecommunications services and established a sector regulator to introduce network competition.

In 1990, the First European Directive on Open Network Provision[1] created a single market in value-added telecommunications services in the European Union (EU). More liberalising directives followed in the 1990s.

In order to promote a competitive approach for all telecommunications markets and to accelerate liberalisation, the World Trade Organization (WTO) in 1997 reached a binding agreement on members' commitments,[2] an important element of which was a reference paper defining a set of regulatory principles for the establishment of fair market conditions.[3] In 1998, the EU made full liberalisation a legal obligation for all member states and since then its policy and regulatory framework has become increasingly recognised as the global benchmark.[4]

The EU legal and regulatory framework for telecommunications

Since the 1998 legal obligation to member states came into effect, EU authorities have been implementing liberalisation of the electronic communications sector.[5] The EU laws for the sector comprise the 2002 regulatory framework (supplemented by enhancements due to be implemented in 2009)[6] which itself rests on the foundation of the competition provisions in the EU Treaty. The framework requires national authorities to regulate the sector in accordance with common rules. Compliance with these rules is closely monitored by the European Commission and, where necessary, is enforced on national authorities by the European Court of Justice.

The EBRD commenced a project in May 2008 to assess the communications sector in each of the countries in which it operates.

Countries that are preparing for EU membership are particularly encouraged to abide by the framework whereas compliance is mandatory for member states.

The 2008 EBRD Communications Sector Assessment[7]

The EBRD (European Bank for Reconstruction and Development) commenced a project in May 2008 to assess the communications sector in each of the countries in which it operates. The communications sector in this context refers to the market for the supply of telecommunications services, principally fixed-line, mobile and broadband services.

The specific objectives of the communications sector assessment were:

- First, to provide a credible assessment of the communications sector in the Bank's transition countries in order to encourage, influence and provide guidance for ongoing and future legal reform efforts in those countries
- Second, to provide credible information by which the EBRD can measure the legal and regulatory risks in relation to specific investment activities in the telecommunications sector.

In order to appraise the EBRD's transition countries, Cullen International, in conjunction with Development Dynamics, worked with the EBRD to create an assessment model which applied WTO principles for the telecommunications sector together with the EU experience in implementing effective market regulation.

The EBRD assessment model

The assessment model is based on the WTO reference paper, although many of the specific indicators are drawn from the examples provided by the EU regulatory framework. The model for each country comprises the following elements:

- operational environment, covering competitive safeguards and interconnection access
- institutional framework, covering regulatory independence and dispute resolution and appeal
- market access conditions.

Although there is a rough equivalence between the three categories, slightly more weight has been attributed to the operational environment because this defines the ability of operators to compete in a fair market that is protected against the abuse of a dominant position. The institutional framework which oversees compliance with laws and regulations has second priority as it is essential that this function is carried out in an impartial manner. Slightly less weight has been given to market access conditions because of barriers to entry or complex authorisation procedures, which may prevent operators from participating in the market or prevent them from making investments.

A further element of the model assesses whether a country distorts the market when it promotes a more universal telecommunications service.

The results of the assessment

The individual country assessments are presented in the form of diagrams (see Chart 1 on page 8), which include six main group indicators (defined below). For each indicator, the diagram presents the scores as percentages of the maximum achievable rating. The scores begin at *zero* at the centre of the chart and reach *1.00* at the outside so that, in the overall chart, the fuller the coloured "web" the better the scores in the assessment. The model assigns 32 points to the institutional framework, 30 points to market access and 38 points to the operational environment.

> **A country's legal framework should include a regulatory authority that is independent from the operators, reasonably free from political pressure and with sufficient powers to regulate the market.**

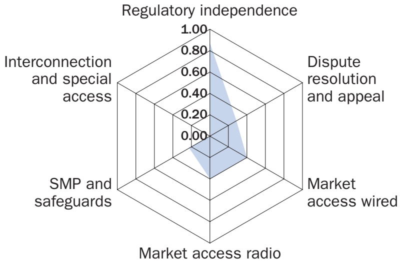
The six group indicators (and point-scoring potential) in the diagrams are detailed below:

1. **Regulatory independence (maximum 22 points)** A country's legal framework should include a regulatory authority that is independent from the operators, reasonably free from political pressure and with sufficient powers to regulate the market.
2. **Dispute resolution and appeal (maximum 10 points)** A national regulatory authority (NRA) should have the power to resolve commercial disputes between operators and there should be a reasonably efficient appeal mechanism. A country's scoring is reduced if the appeal procedure takes too long or if the appeal mechanism is not being used.
3. **Market access (wired) (maximum 20 points)** In telecommunications, services can be provided over physical connections (wired) or by using the radio spectrum (for example, mobile phones). Since radio frequencies can be a scarce resource, different regulations need to apply in order to ensure fair access for a fully competitive market. This indicator rates the authorisation framework for networks and services that do not depend on scarce resources. A country's scoring is reduced if services are not open to competition, if there are high licensing fees and if authorisation procedures are not plain and transparent.
4. **Market access (radio) (maximum 10 points)** The regulatory framework should ensure non-discriminatory access to the radio spectrum. This indicator also considers whether other scarce resources (such as blocks of telephone numbers) are available to all operators.
5. **Significant market power and safeguards (maximum 20 points)** Competitive safeguards should protect new entrants against the anti-competitive practices of an incumbent operator(s) with significant market power (SMP), including an objective procedure for identifying the existence of SMP. This indicator assigns a higher value if this procedure is based on a formal market analysis according to competition law principles, and a lesser value if a more simple procedure based on market share is used. It looks for specific implementation (in legal provisions and in practice) of facilities that improve a consumer's competitive choice, such as the ability to keep their existing phone number when they change operator, or the ability to choose the cheapest operator for making different types of calls.
6. **Interconnection and special access (maximum 18 points)** This indicator gives points for the existence of a reference interconnection offer (RIO – an inter-operator agreement enabling customers of one operator to be able to make calls to customers of another operator) that is approved by the NRA and published. A country's scoring is reduced, however, if the legal framework does not set out a requirement for non-discrimination for RIO usage or if there is little evidence that the RIO is being used. Similarly, the indicator looks for the existence of a reference unbundling offer (RUO – a special type of inter-operator agreement that allows a new operator to rent subscriber access facilities from the incumbent operator in order to provide competitive services) and assigns value where an RUO has been approved and additional points if it is actually used to provide services by alternative operators.

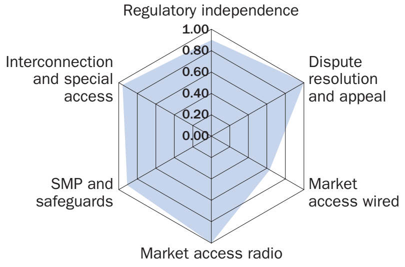
Another measure, universal service, is not shown on the diagrams and takes into account the effectiveness of universal service regulation. The WTO and EU frameworks leave individual countries to define their universal service policy. Where one exists, the assessment model looks at whether it is being implemented in a technologically and competitively neutral manner.

Chart 1
Quality of telecommunications regulatory frameworks in transition countries

Serbia

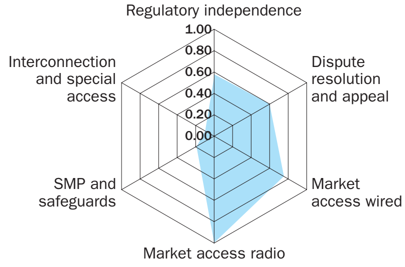


Turkey[11]

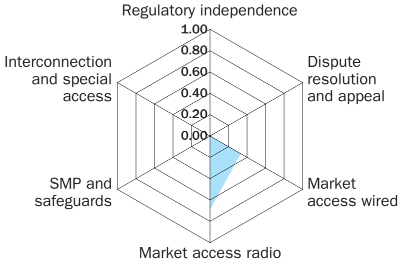


CIS+M

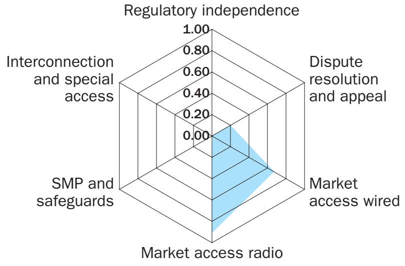
Armenia



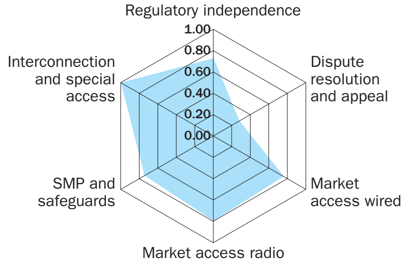
Azerbaijan



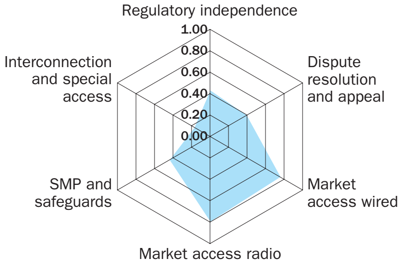
Belarus



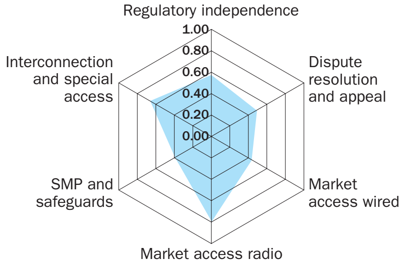
Georgia



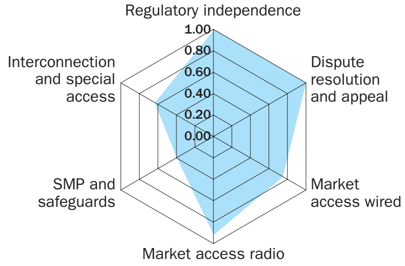
Kazakhstan



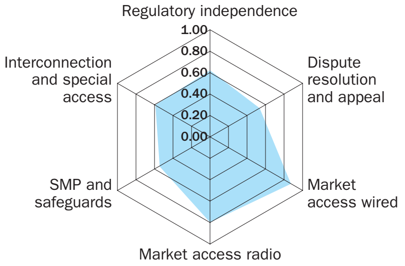
Kyrgyz Republic



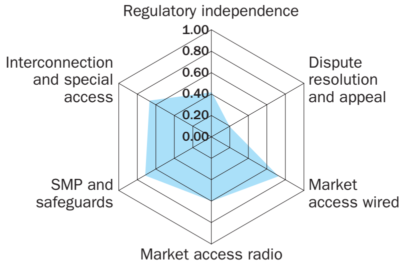
Moldova



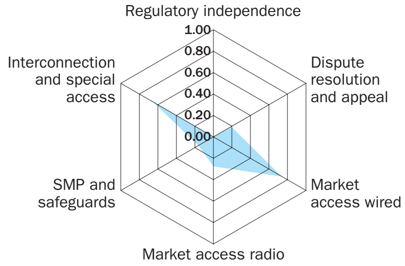
Mongolia



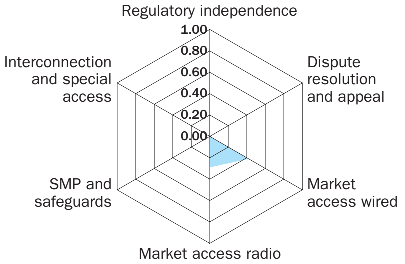
Russia



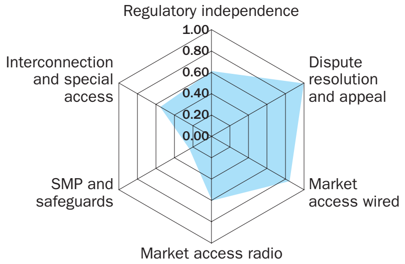
Tajikistan



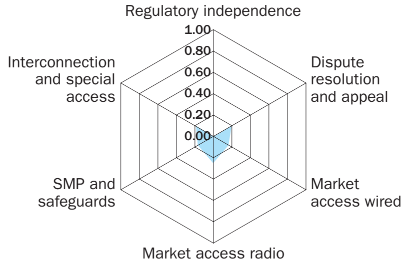
Turkmenistan



Ukraine



Uzbekistan



Note: The diagrams show the combined quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. The extremity of each axis represents an ideal score of 1.00, that is, full compliance with international standards. The fuller the "web", the closer the overall telecommunications regulatory framework of the country approximates these standards. SMP – Significant market power.

Source: EBRD, Telecommunications Regulatory Assessment, 2008.

Case study

Albania

The new Law on Electronic Communications that came into force in June 2008 is the main legal instrument that regulates the telecommunications sector in Albania. It defines the institutional framework, including the responsibilities of government, the relevant ministry and the national regulatory authority. The Law replaces the previous Law on Telecommunications 2000 and is intended to bring the Albanian law into compliance with the principles of the EU 2003 regulatory framework for electronic communications.

In seeking to implement the EU regulatory framework well before accession to the European Union, Albania is pursuing an aim that is based primarily on its own, direct economic interest and not simply to satisfy the European Union's conditions of entry. A modern, independent regulatory regime is needed at all times. The EU framework is not static and to keep abreast of regulatory practice and policy development in the European Union, Albania will follow closely the day-to-day agenda and activities of the committees and groups which exist to maintain consistency among all European countries that are EU members or working towards it.

A key strand of policy in Albania is therefore to achieve full compliance with the EU framework and to maintain this position continuously until accession is achieved.

Regional results

Country scores in the assessment reflect the level of compliance with the defined regulatory benchmarks for implementation of a liberalised telecommunications market. "Full" compliance in Table 1 means an assessment score of 90-100, "high" compliance scores 75-89, "medium" compliance 50-74 and "low" compliance under 50. (It is possible to have full compliance even if a country's scoring is reduced on some of the indicators.)

All countries in CEB are members of the European Union and have harmonised their legislation with the *acquis communautaire*, the body of law that countries must adopt to become EU members. Latvia, Lithuania and Slovenia received maximum 100 per cent ratings (see Chart 2). Although the others achieved between 90 per cent and 99 per cent because of some remaining issues with implementation, they were still judged to have achieved full compliance under this assessment.

In SEE, Croatia, FYR Macedonia and Romania achieved full compliance, having aligned their frameworks with the EU's *acquis communautaire*. Bulgaria achieved less than full compliance due to remaining concerns about regulatory independence and weaknesses in its market review implementation. Albania (see case study) and Bosnia and Herzegovina achieved high compliance. In the medium compliance category, Montenegro had weaknesses in its identification of, and remedies for, market dominance. Serbia was in low compliance because its licensing regime is not yet developed and it has insufficient competitive safeguards (see Chart 3).

In the CIS+M, only Georgia achieved a high compliance rating in the assessment, scoring highly in the market access conditions and regulatory independence categories. There were, however, some weaknesses regarding competitive safeguards. In Moldova the regulatory framework is undergoing a radical overhaul and past performance may not be a relevant indicator of the future. In addition to Moldova, six countries achieved medium compliance: Armenia, the Kyrgyz Republic, Mongolia (see case study on page 12), Montenegro, Russia and Ukraine. Market access in these countries was generally good, but most had weaknesses in their institutional framework or operational environment. Russia has implemented relevant competitive safeguards in a strong market and Ukraine scored highly on dispute resolution and appeal mechanisms. The seven other countries of the region, including Kazakhstan (see case study on page 11) were grouped in the low compliance category, mainly because regulatory provisions remain insufficiently independent of government (see Chart 4).

Conclusion

Advances in telecommunications technology have produced significant consumer and economic benefits over the last 10 years. For example, mobile networks have overtaken fixed-line penetration and the growth in broadband services is having a significant impact on every aspect of domestic and business life. Regulatory progress across the EBRD's countries of operations remains variable. The countries of the EU have already achieved regulatory effectiveness and their markets are operating competitively.

Table 1
Quality of telecommunications regulatory frameworks in transition countries/compliance with WTO and EU standards

Full compliance	High compliance	Medium compliance	Low compliance
Croatia	Albania	Armenia	Azerbaijan
Czech Republic	Bosnia and Herzegovina	Kyrgyz Republic	Belarus
Estonia	Bulgaria	Moldova	Serbia
FYR Macedonia	Georgia	Mongolia	Kazakhstan
Hungary		Montenegro	Tajikistan
Latvia		Russia	Turkmenistan
Lithuania		Ukraine	Uzbekistan
Poland			
Romania			
Slovak Republic			
Slovenia			

Note: The results for Serbia do not include Kosovo. Assessed separately, Kosovo achieves medium compliance, its main shortcomings being in the area of interconnection, special access and competitive safeguards (see full assessment report at www.ebrd.com/country/sector/law/telecoms/index.htm for more detail).
Source: EBRD, Telecommunications Regulatory Assessment, 2008.

Case study

Kazakhstan

Until 2007, the telecommunications sector was regulated by three separate entities:

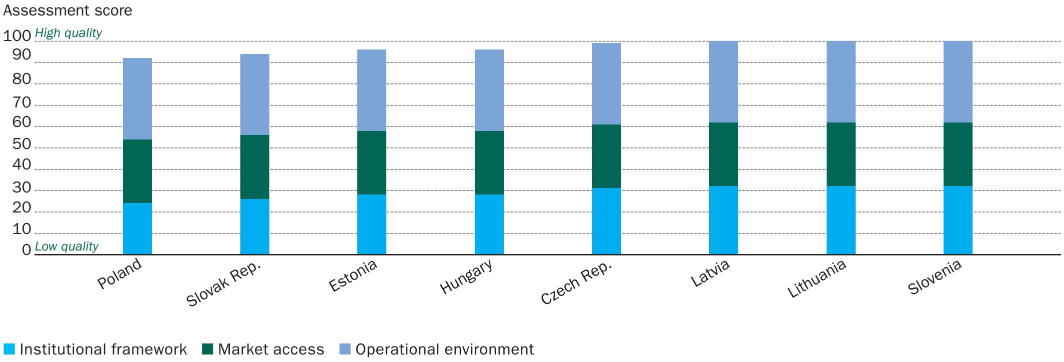
- the Agency for Informatics and Communications (AIC)
- the Agency for Natural Monopolies (AREM)
- the Committee for Protection of Competition (CPC) which was replaced by the Agency for Protection of Competition (APK) in 2007.

Before 2007 the three regulatory agencies appear to have acted largely separately from each other. Although regulatory actions have been attempted since the opening of the market to competition in 2004, using existing laws on telecommunications and competition, very few have been implemented and the sector continues to be dominated by the incumbent operator KazakhTelekom, which is 51 per cent owned by the government.

In 2007, all relevant powers to regulate the sector were transferred to the AIC. New regulatory methods and procedures are being prepared and progressive regulatory proposals for retail tariff rebalancing, market access and interconnection charging have been drafted, but the necessary steps have not been implemented by KazakhTelekom.

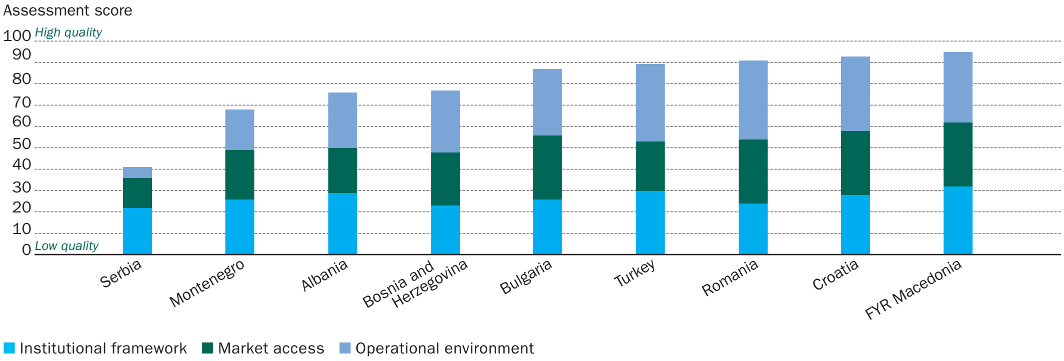
The absence of meaningful control over KazakhTelekom's market dominance has made market entry or survival for competitive operators difficult. Therefore, the market continues to make slow progress on consumer choice, competitive investment and new services.

Chart 2
CEB/Quality of telecommunications regulatory frameworks, by indicator



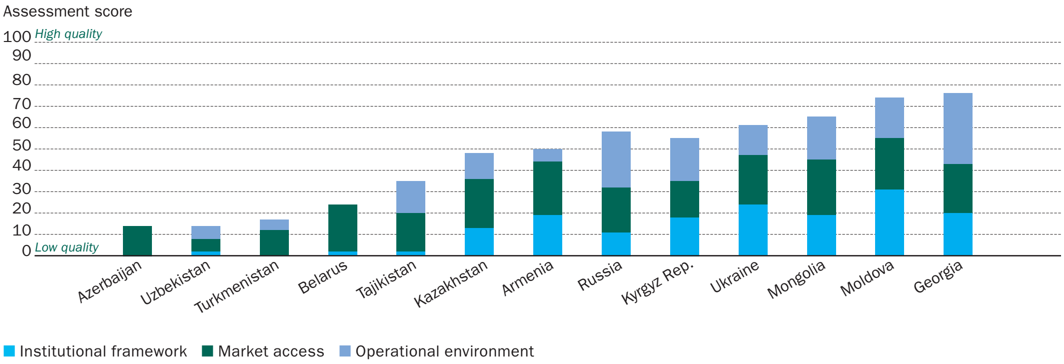
Note: The chart also shows the score for each country in the region for quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. Combined scores are calculated on a scale of 0 to 100, with a score of 90 or more indicating full compliance with international standards.
Source: EBRD, Telecommunications Regulatory Assessment, 2008.

Chart 3
SEE and Turkey/Quality of telecommunications regulatory frameworks, by indicator



Note: The chart also shows the score for each country in the region for quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. Combined scores are calculated on a scale of 0 to 100, with a score of 90 or more indicating full compliance with international standards.
Source: EBRD, Telecommunications Regulatory Assessment, 2008.

Chart 4
CIS+M/Quality of telecommunications regulatory frameworks, by indicator



Note: The chart also shows the score for each country in the region for quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. Combined scores are calculated on a scale of 0 to 100, with a score of 90 or more indicating full compliance with international standards.
Source: EBRD, Telecommunications Regulatory Assessment, 2008.

Case study

Mongolia

Mongolia has the lowest population density in the world. Its 2.7 million people occupy a vast territory. Rural inhabitants, numbering just over 1 million, are spread very thinly. Fixed penetration is only 6 per cent and mobile penetration is around 46 per cent. Broadband penetration has not yet reached 1 per cent. Although technically liberalised, little or no competition has emerged in the fixed-line market and growth (and competition) has been through wireless services.

The Communications Regulatory Commission (CRC) is responsible for a range of regulatory functions including licensing, numbering, SMP designation and operating conditions, interconnection and tariffs, spectrum management, radio frequency allocation, dispute resolution, investigations, compliance, technical standards and the management of the universal service fund.

The Law on Communications 2001 liberalised the telecommunications market, although there is evidence that certain sectors (such as mobile telephony) were liberalised, to an extent, before 2001.

More recently the CRC has encouraged fair competition in defined markets, partly through increased transparency in its decision-making process.

A significant success story is the innovative use of competitive universal service funding processes to increase investment in rural areas. Although it is a sparsely populated country with challenging geography, the Mongolian experience can teach many of its CIS neighbours lessons in how to implement a successful universal service policy by energising and motivating a nation's existing licensed operators.

SEE is fast catching up, as are some countries of the CIS+M. Other countries have been slower to adopt regulatory reform. Although the approaches to sector policy and regulation still vary regionally, the overall impetus is towards greater liberalisation. Competition has generally become the accepted tenet in all telecommunications markets.

The EU's implementation of a common telecommunications regulatory framework has demonstrated how successfully such an approach to market regulation can be applied across different countries with variable initial market characteristics.

In SEE countries the adoption of the EU framework has been viewed as a defining step towards better-functioning markets, as well as being an essential part of the EU accession process. The progress that some countries in this region have made in recent years has been remarkable, given earlier records of relatively low investment and poor economic management.

However, policy-makers and market regulators in the CIS+M have yet to embrace fully the necessary independent regulation and competitive safeguards to complete the liberalisation of the sector. Nevertheless, continuing growth of mobile services and strong demand for broadband services provide significant investment prospects in the region.

The CIS+M countries do not have a common legislative and regulatory framework in each country, and they still retain past methods, leading to a slower transition. The key success factor in the EU (and in the transition countries that demonstrated high compliance in the assessment) is the existence of an independent regulator in each country with powers of secondary legislation to enforce low barriers to entry, effective market access and proper competitive safeguards.

Notes and authors

[1] See "Council Directive on the establishment of the internal market for telecommunications services through the implementation of open network provision" ec.europa.eu/archives/ISPO/infosoc/legreg/docs/90387eec.html accessed on 18 December 2008.

[2] Scheduled commitments on basic telecommunications services annexed to the fourth protocol of the General Agreement on Trade in Services, 15 February 1997.

[3] See www.wto.org/english/news_e/pres97_e/refpap-e.htm. "Negotiating Group on Basic Telecommunications", accessed on 8 December 2008.

[4] "Progress report on the single European electronic communications market 2007" (13th report) (COM [2008] 153).

[5] The term "electronic communications" covers all forms of communications via electronic means, via telephone (fixed-line or mobile), facsimile, internet, cable, satellite and so on. The open definition of this term reflects the principle of technology neutrality which is one of the fundamental features of the EU Telecom Rules.

[6] See "Proposal for a Directive of the European Parliament and of The Council of … 2007 amending Directives 2002/21/EC, …2002/19/EC… and 2002/20/EC" ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/dir_better_regulation_en.pdf accessed 18 December 2008.

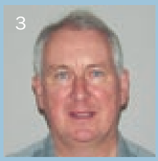
[7] The full assessment report, country-by-country analyses and regional comparative assessments can be found at www.ebrd.com/country/sector/law/telecoms/index.htm.

[8] Although the Czech Republic is included (for comparison purposes) in this region, it has "graduated" from the EBRD, meaning that the Bank no longer makes any investments there.

[9] Although Bulgaria is an EU member state, it is included in SEE in this report for the purpose of regional comparison.

[10] Although Romania is an EU member state, it is included in SEE for the purpose of regional comparisons.

[11] The diagram on Turkey has been added to reflect its new status as a country of operations within the EBRD, effective November 2008.



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