

## **GOVERNMENT AND THE PRIVATE SECTOR WORKING TOGETHER TO CREATE THE AFGHAN TELECOMMUNICATIONS INDUSTRY**

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Case study prepared for the Enabling Environment Conference

### **I. BACKGROUND INFORMATION: TELECOMMUNICATIONS IN AFGHANISTAN**

The growth and development of the telecommunications sector in Afghanistan is often cited as a success story, an example of how the Government of Afghanistan (GoA), specifically the Ministry of Communications (MoC), has worked with the private sector to establish a sectoral environment conducive to driving significant private sector foreign investment into Afghanistan since early 2003.

Total projected investment into the sector at the end of 2006 (including licence fees and network expansion investments) made by Telecom Development Company Afghanistan Limited (Roshan), Afghan Wireless Communications Company (AWCC), Areeba (part of the MTN-Investcom Group) and Etisalat is estimated to be approximately US\$ 500 million.<sup>1</sup> This investment has led to the rapid buildout of national telephony networks in Afghanistan for the first time in the country's history. Telecommunications operators in Afghanistan are thriving in a market where, after decades of war and a non-existent telecommunications infrastructure, the demand for telecommunications services is extremely resilient.<sup>2</sup>

Growth in the sector relative to similar underdeveloped markets with similar socio-economic characteristics (e.g. per capita purchasing power) has been unexpectedly rapid. Mobile penetration in Afghanistan has risen from approximately 0.2 percent in early 2003 (two in every 1,000 Afghans had a mobile phone) to an estimated 6.9 percent at the end of 2006. As of April 2007, mobile penetration is estimated to have passed eight percent.<sup>3</sup> Comparative studies suggest that the market in Afghanistan is growing at a pace equivalent, proportionately, to the Chinese mobile telecommunications market. Further, in India, it took almost 10 years for the mobile telecommunications market to reach seven percent penetration, as opposed to the 3.5 years it took in Afghanistan.

The emergence of a competitive telecommunications sector has resulted in telephony coverage for 40 percent of the population of Afghanistan, and in significant reductions in access and usage pricing. The price of SIM cards has dropped from over US\$ 150 in early 2003 to approximately US\$ 10 today. National retail tariffs have dropped from approximately US\$ 0.30/min in early 2003 to approximately US\$ 0.10/min in 2007 with some operators offering promotional or off-peak national tariffs as low as US\$ 0.03/min.

**Table 1: Overview of telecommunications sector in Afghanistan**

Operator	Licence / Launch Date	Est. Market Share Subscriber Base <sup>4</sup>	Shareholders
Telecom Development Company Afghanistan (Roshan) http://www.roshan.af	Jan 03 (licence) for US\$ 5m Jul 03 (launch)	Est. 50% 1,250,000	Aga Khan Fund for Economic Development – 51%;  Monaco Telecom Int'l (majority owned by Cable & Wireless PLC);  MCT Corp (USA).
Afghan Wireless Communications Company http://www.afghan-wireless.com	Jan 03 (licence) <sup>5</sup> for US\$ 5m 2002 (launch)	Est. 35% 835,000	Telephone Systems International Inc. (USA) – 80%;  Government of Afghanistan
MTN (Areeba) http://www.mtn.co.za http://www.mtninvestcom.com	Oct 05 (licence) for US\$ 40.1m Jul 06 (launch)	Est. 15% 380,000	MTN – MTN purchased Investcom LLC for US\$ 5.5bn – 100%
Afghan Telecom http://www.afghantelecom.af	Incumbent – formally awarded an operating licence <sup>6</sup> in 2006	N/A	Government of Afghanistan – 100%
Etisalat	May 06 (licence) for US\$ 40.1m <sup>7</sup> Yet to launch	N/A	Etisalat – Dubai owned telecommunications operator

Telecommunications operators have been the source of significant direct value to the GoA – in 2004, 2005 and 2006, it is estimated that between 10 and 20 percent of the GoA's domestically generated revenues were derived from licence fee, import duty and tax payments made by telecommunications operators to the GoA.<sup>8</sup>

The combination of the scale of private sector investment into the telecommunications sector; the role played by the MoC in engaging with the private sector and establishing a policy, legal and regulatory framework that has encouraged private sector participation; and the results which such investments have generated have, to date, not been replicated in any other sector of Afghanistan's economy.

## II. THE STORY OF REGULATING THE TELECOM SECTOR IN AFGHANISTAN: IMPLEMENTATION OF THE GOVERNMENT'S APPROACH OF NON-INTERVENTIONISM

By November 2003, there were two licensed mobile telephony operators in Afghanistan – AWCC and Roshan. AWCC had originally been licensed during the Taliban era. Roshan received its

licence in January 2003, for an initial fee of US\$ 5 million after a competitive tender process, and commenced commercial operations in July 2003. Toward the end of 2003, the MoC published its **first draft policy (Policy)<sup>9</sup> on telecommunications** since the fall of the Taliban regime. The Policy embodied a **commitment to private sector-led reconstruction of telecommunications** within Afghanistan, committing the MoC and the GoA to:

- ◆ create a “legal and regulatory environment that nurtures and accelerates industry growth” and “establish a level playing field for competition”
- ◆ “engage private investment to the greatest extent possible”
- ◆ “introduce market liberalisation” i.e. increase competition through transparent licensing processes
- ◆ “rapidly separate the Ministry's Telecommunications Department into a state-owned enterprise to be known as Afghan Telecom”<sup>10</sup>

Significantly, the Policy also acknowledged that **the role of the Government was not to own and operate telecommunications assets but instead “to create an enabling environment for private investment, competition and industry growth.”**

Certain parts of the GoA have sometimes found it difficult to discard a *dirigiste* impulse or tendency toward economic growth and the private sector (a possible legacy of the Soviet intervention in Afghanistan). However, the MoC has consistently held itself back, sometimes with difficulty, from intervening in the businesses of telecommunications operators in Afghanistan, by and large allowing competitive market forces to meet demand and drive the delivery of telecommunications services within the country.

From time to time, the MoC has cited retail prices in India and Pakistan and questioned why Afghan retail prices are higher. The industry has always responded by stating: (i) that the costs of doing business are higher in Afghanistan than in India and Pakistan (e.g. security costs, substitution for lack of infrastructure costs, electricity generation costs, relatively high costs in terms of access to capital factoring in a risk premium for Afghanistan); (ii) that any intervention on retail pricing would limit the private sector's ability to generate adequate returns and would therefore lead to a dramatic slowdown on further investment; and (iii) that market forces would drive down retail tariffs over the medium-term which has been the case since 2003.

### Effective Implementation of Public Policy Goals

A regurgitation or “cut and paste” of best practice policy goals is easy. Delivering on such policy goals in the Afghan context is not. Yet, **since 2003 the MoC has gone some distance in delivering on its stated objectives:**

- ◆ In the absence of a Telecom Law, the MoC **established, by ministerial decree, an ad hoc regulatory agency, the Telecom Regulatory Board (TRB)** to regulate telecommunications operators on the basis of their operating licences.
- ◆ In the middle of 2005, the MoC **initiated an auction process for third and fourth mobile telecommunications licences**, keeping to its policy commitment to introduce further competition.<sup>11</sup>
- ◆ In September 2005, the MoC **completed the corporatisation of Afghan Telecom (AT)**, thereby preparing AT, in principle, for privatisation.
- ◆ In December 2005, the **Telecom Law of Afghanistan (TLA) was enacted** laying the formal groundwork for the formation of a partially independent industry regulator – the Afghanistan Telecommunications Regulatory Authority (ATRA).<sup>12</sup>

### Importance of Legal and Regulatory Frameworks

The MoC has perhaps, along with the financial and banking sectors, **achieved most in creating a legal and regulatory framework which makes for a marginally easier case for further foreign direct investment into the sector in Afghanistan.**

Concrete examples of legal assurances that have been extended to telecommunications operators by the gradual emergence of a commercial legal and regulatory framework include:

- ◆ **Expropriation Protections.** Article 57 (1) (5) of the TLA extends the expropriation protection provisions in the Private Investment Law (PIL) (2005) to telecommunications operators.
- ◆ **Transparency in Decision-Making.** Articles 8, 9 and 10 of the TLA lay the foundations for the process by which ATRA must reach any regulatory decision. The provisions did not exist a year ago and extend some comfort to telecommunications operators that decisions must be made in a transparent and consultative manner. In principle, a route to appeal extends further assurances that the operations of telecommunications operators in Afghanistan will be subject to fair and non-arbitrary regulation.
- ◆ **International Arbitration Protections.** The PIL allows for any dispute between a foreign investor and the GoA to be resolved through an international arbitration rather than the Afghan courts.
- ◆ **Competitive Processes.** Article 14 of the TLA makes it mandatory for ATRA to establish transparent competitive bidding processes when issuing new licences. Such a provision enshrines a transparency requirement and, in principle, reduces the opportunity for inefficient allocations of licences on the basis of patronage or political influence as opposed to merit, resource and qualification.

The enactment of laws is, however, only a first step, albeit a significant first step in the evolution of a robust legal and regulatory framework. During 2006, Roshan closed a US\$ 65 million round of senior financing that included the participation of multilaterals as well as foreign commercial banks including Standard Bank PLC. The transaction represented the first time a foreign commercial bank had made a significant cross-border loan into Afghanistan in the post-Taliban era. Such a loan would not have been approved by a foreign commercial bank such as Standard Bank had some of the legislation above not been enacted.

Nonetheless, **any legal and regulatory framework must be tried and tested before it can be claimed as effective.**

- ◆ Would an Afghan court or ATRA have the capacity and technical expertise to adjudicate a complex telecommunications dispute?
- ◆ How would a foreign bank enforce security over an asset in Kandahar in an event of default?
- ◆ Would Afghan courts uphold such security?
- ◆ If they did, would the physical security situation in Kandahar permit that foreign bank to repossess such an asset?
- ◆ Would an international arbitration award for the fair market value of an expropriation be honoured?

### **Public – Private Dialogue: From *Dirigisme* to a More Enabling Environment**

Since 2003, telecommunications operators have consistently attempted to convey to the GoA the importance of (i) **fiscal and legal predictability** in ensuring steady future flows of investment into the telecommunications sector and (ii) reaching a fiscal understanding whereby the **GoA, in its eagerness to grow its domestic tax base without really having the capacity to broaden that base**, does not overtax a sector that is already contributing heavily to Afghanistan's reconstruction in the short-term, when such overtaxation may have an impact on the GoA's long-term fiscal revenues.

In 2005, the Government of Afghanistan enacted a new **Income Tax Law (ITL)**. The ITL introduced a 10 percent **Business Receipts Tax (BRT)** on the provision of telephony services and **effectively voided earlier investment agreements** that Roshan and AWCC had entered into with the Ministry of Finance (MoF) in 2003. The combination of licence fee and BRT obligations effectively meant that the sector would be paying the GoA 20 percent of gross revenue prior to paying corporate tax on net income. As a result of the ITL's enactment, Roshan and AWCC jointly lobbied the MoF on two fundamental issues. First, the GoA's discarding of the investment agreements would set an alarming precedent for foreign investors looking to invest in Afghanistan. Such **unpredictability could create a perception that the GoA is not a reliable long-term partner of the private sector**, which in turn would diminish flows of foreign investment into Afghanistan. Second, a **capricious, short-term approach to increasing domestic tax revenues by overtaxation of the telecommunications sector**

**would also impede future investment**, job creation and economic development generated by the rapid growth of the telecommunications sector.

After a lengthy period of negotiation with the MoF and the MoC, the industry entered into a comprehensive settlement agreement with the GoA that resulted in a reduction in the aggregate BRT and licence fee burden from as much as 20 percent to 14.5 percent of gross revenue. Whilst the GoA's readiness to enter into such an agreement is an encouraging testament to its willingness to listen to and accommodate the concerns of the industry, the true test will be its adherence to the terms of the settlement agreement for the next 10 years. Although the settlement agreement is a fair example of constructive public-private dialogue with positive outcomes, **the GoA is still caught between reformist elements within it that accept the necessity for consultation, dialogue and predictability and the *dirigiste* tendency** for whom (i) the considerations of the private sector are secondary and (ii) there remains an element of suspicion about the motivations of the private sector in spite of the stated constitutional commitment to nurturing private sector driven development.<sup>13</sup> The Attorney General's Office has recently initiated an investigation within the Ministry of Finance and has intimated that the Minister of Finance did not have the legal authority to enter the settlement agreement on behalf of the Government of Afghanistan in spite of the fact that the terms of the settlement agreement were approved by the President of Afghanistan and the cabinet of the Government of Afghanistan.<sup>14</sup>

The lack of predictability and suspicion of the private sector continues to exert influence within the GoA. Two further recent examples illustrate the tension between reformists who acknowledge the need for rapidly expanding the scope of private sector initiative and conservatives suspicious of any form of private sector involvement and success. First, in December 2005, elements within the GoA launched an initiative to nationalise the international gateway operations<sup>15</sup> of telecommunications operators. This initiative was not supported by the MoC and after considerable lobbying by the MoC, telecommunications operators and sector stakeholders such as the Asian Development Bank, the initiative was shelved. Second, on two separate occasions during 2006, the MoF increased import tariffs on telecommunications equipment, from five to eight percent and then subsequently from eight to 10 percent, in spite of assurances to the industry that import tariffs would remain at eight percent for "a number of years" after the first increase. Whilst the MoC and ATRA have supported the industry in lobbying against unpredictable increases, it remains

to be seen whether the second increase will be reversed. This will be an important step in reinforcing an ethic of transparency, forbearance, consultation and predictability.

In a context of a still somewhat uncertain environment, the lack of adequate, transparent and impartial dispute resolution mechanisms in Afghanistan is a disincentive to investment. **The enactment of laws is only a first step in creating an enabling legal framework in Afghanistan. Laws must be backed by an administrative capacity to interpret and enforce.** For example, the TLA provides for an appellate body to which telecommunications operators may appeal ATRA decisions. In principle, this may be acceptable; in practice, that appellate body has yet to be formed.

Overall, through the end of 2006, telecommunications operators (perhaps due to the relative scale of investments they have made into Afghanistan) have largely succeeded in working with the GoA to develop and create an environment in which dialogue and consultation is an accepted means to the end of good policy and decent legislation.

### General Impediments to Growth and Investment

Significant obstacles to further investment and growth remain. Some of these obstacles, such as lack of security and a lack of electricity raise the cost of doing business for all Afghan enterprises irrespective of the sector in which they operate and their size.

*The continued expansion of the telecommunications sector will be hampered by:*

- ◆ **A chronic and increasing lack of security**, particularly in southern parts of the country
- ◆ **A lack of infrastructure**, including a lack of access to stable sources of electricity
- ◆ The **high costs of financing** given the risk premium attached to investing in and lending to Afghanistan
- ◆ **A lack of terrestrial telecommunications infrastructure** linking urban centres within Afghanistan by fibre-optic cable. It should be noted that on April 15, 2007, digging work commenced on the construction of a national fibre-optic ring. In 2006, the MoC entered into a contract with ZTE of China for this construction which would, once completed, lower costs of doing business for operators thereby potentially leading to lower retail

tariffs, provided that operators may lease fibre-ring capacity from the Government of Afghanistan on a reasonable commercial basis.<sup>16</sup>

Security concerns in southern Afghanistan are preventing operators from expanding their operations into southern parts of the country. In the face of an inability to invest in the south, it is expected that operators will re-allocate investment earmarked for southern Afghanistan into more peaceful parts of the country. In the event that the instability in southern Afghanistan spreads to other parts of Afghanistan, it is likely that foreign investors may consider re-allocating investments originally destined for Afghanistan out of the country altogether.

Irrespective of the situation in southern Afghanistan, telecommunications sites throughout Afghanistan are manned by at least two security guards (in some instances the number of armed security guards at a site is as high as 20) 24 hours a day. The high level of expenses for security represents an amount that is considerably higher than in comparative markets.

### Sector Specific Impediments to Growth and Investment – Interconnection Dispute Resolution

In late 2006, ATRA intervened in the market to regulate interconnection charges. **An analysis of the dispute and of the scope of ATRA's intervention serves to highlight broader concerns that may drastically limit future investment.**<sup>17</sup> On January 16, 2007, ATRA determined that charges for interconnection would be regulated at US\$ 0.029/min for 2007 dropping to US\$ 0.026/min in 2009. Subsequent to the decision, Roshan and AWCC both notified ATRA of their intention to appeal on the grounds that the decision set rates below the operators' actual costs<sup>18</sup> and did not account for the Afghan specific costs highlighted in Table 1. An application of the decision would result in Roshan and AWCC being forced to carry interconnection traffic at a financial loss. In the companies' opinion, the decision to impose sub-cost rates is effectively an intervention that will force them, as net recipients of traffic from other operators, to lose money.

The decision has removed the incentive for further investment in network expansion. In light of the negative investment environment created by the decision, it is probable that the rapid growth in mobile penetration to date will slow down significantly and that growth in revenues to the MoF generated from import duties applied on

capital imports and use of mobile phones will also be negatively affected.

The decision has also highlighted some continuing deficiencies in the sectoral legal and regulatory framework. For example, Article 10 (3) of the TLA allows for an aggrieved party to appeal an ATRA decision to a Financial Services Tribunal formed under the Central Bank Law of Afghanistan. However, the Tribunal has yet to be established. Further, the Central Bank Law only permits financial institutions to bring appeals before the Tribunal, excluding telecommunications operators. Whilst a reading of the TLA may offer comfort to an aggrieved operator, in reality, Article 10 (3) of the TLA provides no practical comfort to that aggrieved operator.

It is understood that Roshan and AWCC have jointly written to ATRA highlighting mathematical errors in the cost model used by ATRA's consultants, Piepenbrock Schuster Consulting, to calculate interconnection costs. Roshan and AWCC have requested that ATRA correct the mathematical and formula based errors that have been identified in the interconnection model. ATRA and the Minister of Communications have given verbal assurances that any mathematical errors found in the interconnection model would be corrected. As of the middle of April 2007, ATRA has yet to make any form of public announcement on how it intends to revise the interconnection model and correct the errors. Although ATRA should be commended for transparency in sharing the interconnection model with operators who had challenged its correctness, the manner in which ATRA resolves the interconnection dispute is likely to set a fundamental precedent for future foreign investment into Afghanistan.

### **Afghan Telecom and Perceptions of Impartial Regulation**

In spite of stated policy commitments to do so, the **Government of Afghanistan has yet to privatise Afghan Telecom**. AT remains wholly owned by the GoA. The Minister of Communications is the Chairman of AT. Afghan Telecom's continued operation in the sector as a state-owned enterprise gives rise to a **material conflict of interest** in that the MoC is performing two contradictory roles. First, the role of the MoC and ATRA is to create policy and to regulate the sector. Second, the MoC continues to manage AT on a day-to-day basis, an operator which it also is bound to regulate. By delaying the privatisation of AT, the MoC perpetuates a perception of partial regulation. In turn, such a perception, irrespective of whether or not ATRA is regulating in favour of Afghan

Telecom, will serve to impede future private sector flows of investment into the sector. The uncertainty regarding the availability of a fully functioning legal and regulatory framework highlighted above, combined with the potential partiality of regulation arising from the Government of Afghanistan's continued ownership of Afghan Telecom are fundamental issues that still remain to be resolved.

In addition to the regulatory issues, **market distortion** is a significant issue in that Afghan Telecom is being run on an ongoing basis at a significant commercial loss. This enables Afghan Telecom to charge retail rates that, according to ATRA calculations, are far lower than Afghan Telecom's costs as well as far lower than the retail charges of the other private operators.

### **III. SYNTHESIS AND ANALYSIS OF ISSUES**

Overall, through the end of 2006, telecommunications operators, perhaps due to the relative scale of investments they have made into Afghanistan, have largely succeeded in working with the GoA to develop and create an environment in which dialogue and consultation is an accepted means to the end of good policy and decent legislation. The MoC has perhaps, along with the financial and banking sectors, achieved the most in creating a legal and regulatory framework that makes for a marginally easier case for further foreign direct investment into the sector in Afghanistan.

*A number of factors have contributed to the growth of the sector in Afghanistan since early 2003. At the same time, other factors have impeded and may continue to impede investment and growth:*

#### **Framing and Effectively Implementing Public Policy Goals**

- ◆ The Policy published in 2003 embodied a commitment to private sector led reconstruction of telecommunications within Afghanistan. Since 2003 the MoC has made considerable progress in delivering on its stated objectives, consistently holding itself back from intervening in the businesses of telecommunications operators in Afghanistan.
- ◆ It has kept to its policy of introducing further competition (issuing the third and fourth licences in 2005). It completed the corporatisation of Afghan Telecom (AT), thereby preparing AT, in principle, for privatisation.

- ◆ Telecom Law of Afghanistan (TLA) was enacted in December 2005, laying the formal groundwork for the formation of a partially independent industry regulator.
- ◆ The legal assurances that have been extended to telecommunications operators by the gradual emergence of a commercial legal and regulatory framework include expropriation protection (under the TLA), transparent regulatory decision-making following a consultation process (TLA), competitive bidding processes for new licences (TLA) and international arbitration protection under the Private Investment Law.
- ◆ A compromise was found following the introduction of the Business Receipts Tax in addition to licensing fees. Operators could convince the MoF that this change would set an alarming precedent for foreign investors, and that the overtaxation of the telecommunications sector would also impede future investment, job creation and economic development generated by the rapid growth of the telecommunications sector.

### **Ongoing Concerns about the Regulatory Framework and Cost of Doing Business**

- ◆ The GoA is still caught between reformist elements within it and *dirigiste* tendencies. The lack of predictability and suspicion of the private sector continues to exert influence within the GoA. It is still uncertain whether a second, unpredicted increase in import tariffs will be reserved or not. In a context of a still somewhat uncertain environment, the lack of adequate, transparent and impartial dispute resolution mechanisms in Afghanistan is a disincentive.
- ◆ Significant obstacles to further investment and growth remain. Some of these obstacles, such as lack of security and a lack of electricity, raise the cost of doing business for all Afghan enterprises, irrespective of the sector in which they operate and their size.
- ◆ At the present time, the ATRA decision to regulate interconnection charges by imposing sub-cost rates may drastically limit further investment in network expansion and could slow down the rapid growth of the sector (and the resulting Government revenues).

## **IV. CONCLUSIONS AND RECOMMENDATIONS**

The establishment of a generally conducive legal and regulatory environment, the emergence of the two newest operators, the planned privatisation of Afghan Telecom and increased predictability, transparency, consultation and forbearance all mark notable progress in the development of the telecommunications sector. It is fair to call this a major accomplishment. There is every incentive for both the public and private sector to respect the framework and to put into place the final pieces of the puzzle, such as assurances of greater predictability and the dispute resolution mechanism.

### **Recommendations**

- ◆ Formation of an industry association during 2007 to formalise joint representation of operator concerns to the Government of Afghanistan
- ◆ Commitment by the Government of Afghanistan to a roadmap and timeline for the privatisation of Afghan Telecom
- ◆ Formal adoption of, and adherence to, Rules of Procedure for ATRA
- ◆ Rapid establishment of the Telecom Development Fund in 2007 with transparent and clear procedures governing disbursement of funds to qualifying projects. In the event of a failure to establish the TDF by end of 2007, funds paid into the TDF (approximately US\$ 10 million) should be returned to licensees pro rata to their contributions to fund further network expansion
- ◆ Completion of a study in 2007, in conjunction with the World Bank, on the fiscal burden on the telecommunications sector in Afghanistan relative to similar markets, as well as completion of an analysis on the impact on MoF revenues of implementing a fiscal regime taxing telephony usage over the taxation of imports of capital equipment
- ◆ Continued investments in capacity building at ATRA and the MoC and the rapid formation of a transitional appellate telecommunications tribunal to which operators could appeal ATRA decisions. The tribunal should comprise the Government of Afghanistan, parliamentarians, as well as representatives of key stakeholders from the World Bank and other sector specialists.

## V. DISCUSSION QUESTIONS

1. What have been the factors of success in the case of the telecommunications industry working with Government to create an enabling environment whereby dialogue and consultation is the norm? Are there lessons learnt that can be transferred to other sectors?
2. What has been the significance of the legal and regulatory framework for the telecommunications operators? Which of the legal assurances (expropriation protection, transparency in decision-making, international arbitration protection and competitive bidding processes) are particularly important for investors? Which elements of the legal and regulatory framework are missing?
3. In cases of fiscal or legal unpredictability in other sectors, has public-private dialogue been able to resolve issues? How? To what extent have issues been resolved on a case-by-case basis, as opposed to systemic solutions?
4. What is required to improve dispute resolution? What will it take to establish the industry specific tribunals already provided for in legislation (telecommunications, financial services)? How will the recently signed arbitration legislation improve dispute resolution across all business sectors?
5. In which other sectors do state-owned enterprises running at commercial losses compete with commercial based companies? What is the impact on the competitive environment? Are there other instances of potential impartial regulation, whereby Government is at the same time the owner of an enterprise and the regulator of the industry in question? What measures can be taken to resolve this issue?

*This case study was prepared by Roshan in consultation with other telecommunications operators.*

<sup>1</sup> Source: Roshan and Ministry of Communications estimates.

<sup>2</sup> Source: MTN – <http://www.mtn.co.za>. In their annual report for 2006, MTN cited ARPU (Average Revenue Per User Per Month) at \$14 which is markedly higher than ARPU in other emerging markets. ARPU for India is at US\$ 7, Pakistan US\$ 4. ARPU is expected to decline as lower pricing and increased coverage enables less well off Afghans to purchase and use mobile phones.

<sup>3</sup> For the purposes of this case study and for calculating penetration rates, no accounting has been made for “dual” or “triple” users – i.e. users who may have more than one or two mobile telephones from different service providers.

<sup>4</sup> Source: Operator estimates as of April 2007.

<sup>5</sup> AWCC was issued a new licence in January 2003 similar to that issued to Roshan. Prior to January 2003, AWCC was authorized to operate under a licence issued to it by the Taliban regime.

<sup>6</sup> Afghan Telecom was awarded a “unified” licence, the scope of which is arguably more expansive than the GSM licences awarded to Roshan, AWCC, Areeba, and Etisalat. For example, Afghan Telecom may offer internet services under its licence whereas other GSM licensees would have to obtain Internet licences in order to be able to offer commercial internet services, for which a fee would have to be paid.

<sup>7</sup> Etisalat was awarded its GSM licence in May 2006 after Warid Telecom (an Afghan-owned company that had previously provided a range of telecommunications services to Afghan Telecom) failed to pay an entry fee of USD\$ 40.1m to the Ministry of Communications. Warid Telecom was awarded the 4<sup>th</sup> GSM licence

<sup>8</sup> [Source IMF – GoA historical domestic revenue figures along with analysis of sectoral contributions].

<sup>9</sup> <http://www.moc.gov.af/Documents/Policies%20and%20Laws-MoC/Telecommunication%20policy-English.pdf>

<sup>10</sup> The corporatisation of Afghan Telecom is a necessary precursor to Afghan Telecom’s (AT) privatisation. This is seen as a final step in fulfilling the MoC’s commitment to remove itself from management and operations of telecommunications assets, and to focus on impartial regulation and policymaking. AT’s privatisation was expected to take place during 2006 but may have been delayed due to a perception of a lack of investor interest in the sale and a fear of the negative signals that a failed privatisation would send internally within the GoA and externally to the foreign investment community.

<sup>11</sup> Investcom, since acquired by MTN – <http://www.mtn.co.za> - and Etisalat – <http://www.etisalat.ae> - were awarded the third and

fourth mobile telecommunications licences. Investcom and Etisalat each paid US\$ 40.1million for their licences. The fact that these licence fees were so much higher than the 2003 licence fee paid by Roshan is often cited as an example of the positive progress being made by the Afghan economy. In 2005, the fees paid were higher and were paid by large sector conglomerates which may have balked from entering the bidding process in 2003.

<sup>12</sup> Whilst the enactment of the TLA was viewed as a positive step in the development of a legal and regulatory framework for the sector, the manner in which the TLA was drafted concerned a number of operators. The TRB discouraged any form of comment process whereby operators could contribute to the draft TLA. Further, significant substantive changes were made to the version of the TLA submitted by the MoC to the Ministry of Justice apparently without the approval of the MoC. These changes were made by the *Taqnin*, the legislative department within the Ministry of Justice.

<sup>13</sup> Article 10 of the Constitution of Afghanistan states that: “The state shall encourage, protect as well as ensure the safety of capital investment and private enterprise in accordance with the provisions of the law and market economy.”

<sup>14</sup> A signed extract of the minutes of the cabinet session approving the terms of the settlement agreement was appended to the agreement itself in order to avoid the validity of the settlement agreement being questioned at a later date.

<sup>15</sup> The international gateway operations are the facilities which telecommunications operators use to send telecommunications traffic to and from Afghanistan.

<sup>16</sup> In a recent interconnection (see also note 16 below) dispute resolution exercise, ATRA assumed a weighted average cost of capital (WACC) of between 10 and 15 percent on the industry. WACC typically factors in a country’s risk premium. The latest edition of the Euromoney country risk index lists Afghanistan as the second riskiest country in the world with a rank of 185, alongside Iraq and North Korea. See “The Repercussions of Oil and Conflict, *Euromoney*, September 2006, pp. 400-408. The Telecom Regulatory Authority of India assumes a WACC of 14 percent for operators in the Indian market (Telecom Regulatory Authority of India (Forty Fourth Amendment) Order, 2007, p. 49). Euromoney attributes a country risk rating of 55.99 (out of 100) for India, compared with a rating of 4.24 for Afghanistan.

<sup>17</sup> Interconnection is the wholesale price that telecommunications operator 1 pays telecommunications operator 2 for sending traffic to telecommunications operator 1’s customers. A

fundamental economic principle of interconnection regulation is that operator 1 must be able to recover the costs of carrying operator 2’s traffic.

<sup>18</sup> In September 2006, Roshan reported to ATRA that its actual costs of providing interconnection was approximately US\$ 0.07/min.