

# Convergence and Standardization in Telecommunications Regulation: Trajectories of Change in the Asian Regulatory State<sup>1</sup>

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*Abstract:* What forces are shaping regulatory reform in East Asia? Among governments long characterized as 'statist' and 'interventionist', is there convergence on a new set of regulatory techniques and policies as a result of these forces? It is widely acknowledged that global pressures have created new constraints and boundaries for domestic selection and variety in the provision and regulation of telecommunications, an industry that defies national boundaries and, in its rapid technological development, imposes strong external pressures on policy makers. However, the political stakes are high and governments have come under strong domestic demands from both business and long-established bureaucratic interests to resist many of the pressures for change. The four case study governments investigated here – Hong Kong, Malaysia, Singapore and Thailand – are chosen for the dissimilarities in their domestic economies and systems of government. As well, their telecommunications systems have evolved in quite different forms. Yet they have all liberalized their telecommunications systems using similar sets of regulatory instruments. This convergent process is only in part the product of conscious reform by political or bureaucratic leaders. It is also a product of self-reproducing standardization by industry insiders with strong transnational linkages. The regulatory state in Asia is the outcome of the insertion of these new administrative forms and practices into different national political and institutional contexts. The resulting adaptations and hybrids promise to create as many varieties of the regulatory state as there are different states, but the underlying similarities are inescapable.

The 'globalization of reform' is a common phrase used to describe many dimensions of contemporary state restructuring and public sector reform, but it is not uncontested: an alternative view is far more sanguine of the 'convergence' of national regimes on global models, stressing not only the common themes but the continuing – if not deepening – variety in processes and outcomes (Common 2001; Hood 1998, chapter 9; Pollitt 2001). But the global trajectory of some reform movements is indisputable – for example, there are multiple channels through which ideas and experience spread, including multi-lateral institutions that promulgate dominant models and fashionable templates. Much attention in the public sector reform literature has been paid to convergent forms and trends such as new public management (NPM) or the 'new governance' (Salamon 2002) while, in the case of regulatory reform, theorists have identified a constellation of trends under the label of the 'regulatory state' (or even 'post-regulatory state' (Scott 2004)).

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In this paper, I take a particularly striking case of convergence – the changing administrative organization and style of national telecommunications regulation – and look at the processes and the outcomes in four South-East Asian jurisdictions: Hong Kong, Malaysia, Thailand and Singapore. The analysis proceeds as follows: first, a discussion of the ‘regulatory state’ and ‘new governance’; second, a brief review of theories of convergence and their applicability to the telecommunications policy sector; and third, an account of the trajectory of telecommunications regulatory reform in the four cases, which aims to demonstrate how and why, despite very different starting points and divergent domestic political conditions, they all ended up with a variety (the emphasis is on ‘variety’) of the same kind of new regulatory regime.

### *The Regulatory State*

The so-called ‘regulatory state’ is characterized both as a product of a changing global economic order and also as a constellation of new regulatory techniques and organizational forms. Its central features are the increasing scope of pro-competitive regulation by independent regulators and the deployment of a particular mix of regulatory instruments ((Moran, 2001; 2002; Cook, Kirkpatrick, Minogue and Parker eds., 2004; Jordana and Levi-Faur 2004; Levi-Faur and Jordana 2005; Schmidt 2004). In an era dominated by neo-liberalism, the underlying aim is to create a more efficient economy under the pressures of globalization, that is, to force businesses to compete and to strip away anti-competitive institutions and practices (Rioux, 2004). The state’s traditional regulatory roles of a mix of direct provision and ‘setting down rules and powers,’ honed over decades of social and economic protection, are supplemented or substituted by various modes of hands-off oversight and more light-handed regulation, including self-regulation. Transnational and supranational institutions play a bigger role, often through standardization and self-monitoring. However, while regulation may be ‘softer’ and the range of actors entailed in it expands, the state does not disappear from the picture, for ‘...ends are ultimately set and determined by the sovereign state’ and regulatory regimes characteristically involve ‘...legal underpinning for indirect control over internal normative systems’ (Scott 2004: 167-8).

The regulatory techniques featured most prominently in this model – such as contracting, quality assurance and the use of performance indicators – are the kinds of ‘instruments’ or ‘tools’ of government that have also been directly associated with ‘the

new governance’ (Salamon 2002). Most are also characteristic of NPM. Both ‘old’ and ‘new’ regulatory instruments are depicted in Table 1, which classifies regulatory techniques according to the kinds of resources used for steering (authority, money or knowledge) on the vertical axis and the underlying basis of the nature of regulation (from compulsion to voluntarism) on the horizontal axis. The instruments said to be characteristic of new governance and the regulatory state use less direct application of government authority and ‘softer,’ less intrusive forms of intervention (located towards the bottom-right rather than the top-left of the grid).<sup>2</sup>

Table 1 - Steering Mechanisms and Modes of Regulation

	<i>Direct Government</i>	<i>Regulatory Standards</i>	<i>Indirect Government</i>	<i>Self-regulation</i>	<i>Standardization</i>
<i>Authority</i>	Ownership and direct provision or restraint	Legally binding <i>ex ante</i> rules of conduct	Procedural / framework rules and contracts	‘Shadow of hierarchy’ (fall-back rules)	Compulsory reporting & monitoring (league tables)
<i>Incentive structures</i>			Taxes, auctions, concessions, subsidies	Delegation to private actors and ‘industry forums’	Peer pressure
<i>Learning</i>			Education / information provision	Communication in private networks	Benchmarking / best practice models

Not only is there a new mix of techniques but also a greater reliance on ‘para-state’ and non-state actors. The growth of independent regulators and the use of more indirect forms of regulation are accompanied by a growth in the power and role of industry experts. The role of enforcement is shared with private ‘regulatory officers’ employed both by industry associations and by large corporations in their compliance divisions. Industry associations monitor their members according to collectively agreed on ‘best practice’ standards (usually arrived at in cooperation with the independent regulator and often backed by ‘fall-back’ legal provisions that are kept in

<sup>2</sup> The use of ‘old’ and ‘new’ should not be taken as suggesting that the process has involved inventing new instruments. In the art of statecraft, most things have been tried at one time or another. The argument is that the ‘mix’ is changing. Table 1 is adapted from Knill and Lenschow (2004); on the classification of tools into ‘sticks, carrots and sermons’ see also Bemelmans-Videc et al. 1998.

reserve). ‘Benchmarking’ is a common tool, as each organization monitors and corrects itself according to agreed standards. The industry in question, in close cooperation with state actors, develops regulatory norms and standards in non- or quasi-governmental (and increasingly transnational) arenas of professional interaction (Slaughter 2004). The partial decoupling of regulatory capacity from traditional state forms is closely associated with globalization and the rise of transnational networks of governance. In such a context, as the next section discusses, there may be particularly powerful forces for convergence: as Levi-Faur (2005) argues, the regulatory state is at one and the same time a national (bottom-up), transnational (horizontal) and supranational (top-down) phenomenon.

### *National Convergence within the Global Telecommunications Sector*

The liberalization of domestic telecommunications markets and the accompanying regulatory reforms seem to have been an unstoppable trend over the past twenty years or more. Governments everywhere, facing similar competitive pressures and technological development, have undertaken corporatization or privatization of state-owned telecoms, opening up of new markets to multiple providers and the introduction of new regulatory regimes under the control of an independent regulator (Drahoš & Joseph 1995; Levi-Faur 1998). How do we explain these seemingly convergent trends? A diverse literature encompassing many disciplines and traditions has produced a number of possible answers to this question. Various forms of ‘modernization’ theory, especially those naming technological change as a driver, underpin some perspectives, as just indicated in the case of telecommunications. In economics, a political economy tradition postulates a ‘race to the bottom’ among competing jurisdictions anxious to provide equally business-friendly regulatory environments for foot-loose capital.<sup>3</sup> In contrast to this structural explanation, in which agents are mere ‘bearers’ of an overwhelming logic, another viewpoint stresses ‘ideational’ factors and the role of agents in an increasingly globalized world culture (Drezner 2001, 55-63). Actors also play a role in diffusion theory, which offers reasons why some kinds of models or examples are imitated rather than others: for example, factors such as distance, prestige and familiarity come into play, as well as frequency of direct contact and communication between the relevant actors (Eyestone 1977). Anne-Marie Slaughter (2004) argue that the proliferation of ‘global networks’ directly stimulates such processes. International organizations under the auspices of bodies such as OECD and the United Nations can play a major role in coordination

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<sup>3</sup> This view is confounded somewhat by a competing logic of the ‘race to the top’, in which some jurisdictions succeed by making a ‘quality’ pitch as a differentiation strategy.

and in the legitimation of models and templates (Sahlin-Andersson 2001, 45; 67-9).

All of these approaches overlap with organizational theories of isomorphism (DiMaggio and Powell 1991). Organizations adapt to their social, economic and political environments, which primarily comprise other organizations. The logic of copying is dominant as organizational leaders observe successes in other organizations and react mimetically to the threats and opportunities provided by such examples. These processes of isomorphic change are particularly powerful in situations of high uncertainty, such as rapid technological change and high economic instability. However, organization theorists also note the extent to which this process involves 'editing' and 'transformation' through selective borrowing, local interpretation and 'hybridization' (Sahlin-Andersson 2001). When what is being copied (a 'reform') has a strong ideational element, fashion may be a driving force, suggesting that the new way of doing things may be only skin-deep, appearance rather than substance: 'reform talk' is only loosely coupled with actual practice, so much reform is essentially hypocritical (Brunsson 1989). Christopher Pollitt (2001) has also argued for the need to distinguish between first, convergence in adopted models and ideas (the most common); second convergence in implemented measures; and third convergence in outcomes (the least common).

In the case of the potential for convergence in the telecommunications sector, two intrinsic features help shape outcomes: first, the trans-border scope and nature of the industry and second, the rapid pace of technological development. The first characteristic has given rise to a number of international arrangements and mechanisms for coordination, principally under the auspices of the International Telecommunications Union (ITU). Technological change in telecommunications is also nothing new, but in the information technology sector it has accelerated rapidly in recent years, continuously making existing modes of provision redundant and placing a high premium on innovation and flexibility in domestic markets, as well as requiring further coordination across national borders by regulators and industry standards-setters. However, while these features of the industry may well explain convergence on technical 'best practice' and the impossibility of holding out against modes of provision and distribution that literally know no borders, the extent to which these transformations are accompanied by pro-competitive, market opening strategies may require other forms of explanation. One such explanation is a top-down one: the erection of a supra-national regulatory regime.

International cooperation over telecommunications regulation has been transformed in

the past thirty years from a model based on technical cooperation between state-owned monopolies via the coordinating instrument of the ITU, to one based on open competition between multi-national corporations (including some that remain fully or partly state-owned) under the umbrella of the WTO ‘trade in services’ agreements (Drahos and Joseph 1995; Braithwaite and Drahos 2000). Market access has become the rallying cry for the new supra-national regulatory regime. Under the General Agreement on Trade in Services (GATS) Annex on Telecommunications, negotiated between 1994 and 1997, governments signed up to a process under which they agreed to a timetable of liberalization, albeit of their own chosen kind and pace. Each of the governments of Hong Kong, Malaysia, Singapore and Thailand signed on and made commitments to liberalization.

The most important players in this supranational regulatory regime are the ‘core’ nations of the USA, Japan and Europe. The world’s largest multi-national telecommunications manufacturers and providers are located in these countries, seeking open access for investment and trade in the global industry. As well, each of these governments has a particularly strong interest in ensuring that all significant telecommunications markets provide efficient, low-cost telecommunications services to their foreign investing companies. The ‘peripheral’ nations all seek the benefits of integration into the system of international trade, and the core nations extract their price for membership of the club – liberalization of each country’s domestic markets. In some shape or form, this comprises privatization of state-owned monopolies, access for overseas as well as domestic private investors and market entry for new providers in all segments of the market. For peripheral nations, an innovative, efficient telecommunications sector is a key infrastructure support for assisting local players in the international trading system and in attracting foreign business to invest in the domestic market. Our four governments have each at one time or another announced their intention of creating a ‘regional information hub’ through liberalizing their telecommunications markets. The goal is to stimulate the local telecommunications sector to be at the leading edge of innovation and efficiency, and for this purpose, the presence of the industry’s major global players (either directly or through tie-ups with local providers) is important. Meanwhile, the traditional domestic monopoly provider is encouraged to enter the global market through overseas investment in other newly-liberalized telecommunications markets.

While the international free trade regime is the basic framework within which national regulatory systems operate, other transnational players also shape regulatory reform (see Appendix Table 1). The IMF and the World Bank have supported privatization

and pro-competitive telecommunications regulatory reforms in developing countries. Their technical and financial assistance is often the trigger for the reform process and shapes its outcomes. The World Bank supports *InfoDev*, an on-line support network for providing technical assistance on information and communication technology (ICT) to developing countries. The Bank has published a series of manuals on regulatory reform and countless research reports and discussion papers on privatization policy and regulatory techniques.<sup>4</sup> OECD has also played a major role in disseminating information on best practice in telecommunications regulatory reform, particularly among its member countries. This dissemination of ideas about regulatory reform has overlapped at significant points with the OECD's wider advocacy of NPM.

Regional multi-lateral institutions also play a role in affirming commitments to liberalization and in supporting technical development including disseminating and exchanging policy-relevant information. The Asia-Pacific Telecommunity (APT) is a regional organization of government departments, regulators, manufacturers, providers and other stakeholders co-sponsored by the ITU and the UN, holding regular conferences and meetings, disseminating a newsletter and publishing annual reports (see Appendix Table 4). Australia and New Zealand provided initial financial and secretarial support for this organization (Stevenson 1991, 487). At the intergovernmental level, ASEAN Telecommunications ministers meet annually as ASEAN-TELMIN (See Appendix Table 3). APEC – Asia Pacific Economic Cooperation – is a body that promotes trade liberalization in the region.<sup>5</sup> The APEC Telecommunications Working Group (APEC-TELWG – see Appendix Table 2) had its first meeting in 1991 (Stevenson 1991). It operates through a number of task forces and steering groups, in which officials from relevant ministries and regulatory agencies participate for the exchange of information and preparation of reports for circulation. Liberalization and regulatory practice are frequently on the agenda of these meetings. One concrete result has been a mutual recognition agreement on standards.

Regulators in countries participating in these fora, including those in the four jurisdictions discussed here, pays explicit attention in its organizational mission and

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<sup>4</sup> The *InfoDev Practical Handbook for Telecommunications Regulators* is available at <http://www.infodev.org/content/library/detail/842> (accessed 19 July 2006). The on-line version is in Arabic, Chinese, English, French, Russian and Spanish. For other examples of 'how to do it' publications see also Wellenius (1997) and Wallsten (2002).

<sup>5</sup> APEC is a regional association of 'economies', not 'states' or 'governments', thereby avoiding treading on the toes of ASEAN while also emphasizing its largely economic focus. It thus is an ideal setting for informal, networking among sectoral policy specialists on 'technical' matters, as distinct from inter-state conflict and diplomacy.

structure to international operations. For example, in Hong Kong the Regulatory Branch of the Office of Telecommunications Authority (OFTA) lists participation in ‘international and regional telecommunications fora’ as a core task. Within the Asia-Pacific region, Australia adopts a self-appointed leadership role (Stevenson 1991). Australia’s industry regulator has a ‘regional strategy’ that sets out a program of ‘regional collaboration and information exchange on radio-communications, standardization and convergence matters’.<sup>6</sup> It refers specifically to the APEC-TELWG and to regional collaboration in preparing for ITU meetings and agreements. Malaysia’s regulator also emphasizes participation in ‘regional preparatory meetings for global conferences and other activities which focus on Malaysia’s and the region’s requirements.’<sup>7</sup> That is, the networks of contacts and cooperation are extensive and regular. They also include *ad hoc* exchanges, such as the event organized by OFTA in Hong Kong in August 2005 to discuss Australia’s recent experience in convergence of telecommunications and broadcasting regulation, when the acting deputy chair of the Australian Communications and Media Authority (ACMA) was among the invited participants. OFTA and the ACMA have a regular staff exchange scheme for senior regulatory officers, with an individual spending several months as the other’s guest each year (Cheah 2005).

Thus, the transnational mechanisms of persuasion, cooperation and communication are multiple and complex in the telecommunications policy sector. The most compelling force for convergence is the WTO, which provides a mechanism of persuasion and negotiation by which governments sign up to the process of entering the global telecommunications market. ITU and its technical and standardization work is the other main forum. Gaps and the detail are filled in by the various networks of technical, professional and government-business cooperation and communication that disseminate practical knowledge. Each of the four governments had already embarked on telecommunications industry reform before signing up to the WTO-monitored market opening commitments. Each of them eagerly participated in the other sector-specific international and regional organizations and networks, often competing for opportunities to host events and meetings.

This international activity can be an important channel for the spread of ideas and norms about telecommunications reform. However, it is only part of the story. The various bodies and networks have no direct jurisdiction over the decisions of

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<sup>6</sup> See [http://www.acma.gov.au/acmainterwr/telcomm/international\\_activities/regional%20strategy.rtf](http://www.acma.gov.au/acmainterwr/telcomm/international_activities/regional%20strategy.rtf), accessed 24 April 2006

<sup>7</sup> See [http://www.cmc.gov.my/what\\_we\\_do/intl\\_act/index.asp](http://www.cmc.gov.my/what_we_do/intl_act/index.asp), accessed 24 April 2006



particular governments in the regulatory reform process. Even signing up to WTO is in one sense only a signal of good intention, as the kind and level of commitment made is voluntary and ‘slippage’ on implementation is common. The liberalization process in each country follows its own path, influenced by local political events as well as by sector-wide ideas and norms. Domestic players beyond the networks of actors involved in cross-border sectoral arenas are also important actors. In the next section, we trace in outline the steps each of the governments took in the process of regulatory reform, and show how, despite very different starting points and different reform processes and timetables, they all converged on the same regulatory model.

#### *Four Trajectories with a Common Target*

The four jurisdictions encompass two high income and two middle-income economies; two relatively small ‘city-states’ and two larger, more complex polities.<sup>8</sup> Singapore and Malaysia share a common colonial and institutional heritage. These two and Thailand have a prime minister and cabinet, parliamentary system of government, while Hong Kong has been described as ‘neither parliamentary fish nor presidential fowl’ (Scott 2000, 29). Singapore and Malaysia are usually classed as ‘soft authoritarian’ political systems, while Hong Kong has very limited democracy but high levels of political and civil freedoms. Singapore and Hong Kong are often singled out as prime examples of ‘administrative states,’ where highly paid, meritocratically selected civil servants receive high public regard and play prominent roles in state policy making and management. Singapore is distinctive for its high level of state ownership in key sectors (approximately 60 per cent of the domestic economy is in state hands). Malaysia’s bureaucracy shares many features with Singapore’s but operates in a more politicized context, including a set of pro-Malay positive discrimination policies across all sectors of policy. Quite distinctively, Thailand’s administrative system is the classic ‘prismatic bureaucracy,’ mixing traditional, patrimonial features with modern bureaucratic forms, while its largely free and open competitive political system (that is, since the military opted out in 1991) is rife with corruption, violence and an increasingly strong inter-penetration of politics and business.

Among the four governments, there has been a highly selective adoption of a variety of public sector reform models and techniques (Common 2001, Cheung 1997, Painter 2004, 2006). Thus, privatization was attractive to Malaysia as part of a shift in economic strategy in the 1980s (discussed later) but Singapore retains a very large

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<sup>8</sup> The term ‘jurisdiction’ or ‘government’ is used throughout because Hong Kong is not a ‘country’.

state-owned sector, albeit one that is corporatized and part-privatized. Thailand is (on the surface) following a privatization program but the government is facing severe domestic opposition and obstacles. Hong Kong has always had a small publicly-owned sector, but paradoxically some commercial entities that remain in public ownership (such as the Post Office) are run by civil servants, albeit as semi-commercialized 'Trading Funds.' Each of the four governments has adopted a relatively conservative stance to reforms such as 'autonomization,' contract employment and internal markets and remains, by and large, attached to a traditional hierarchical departmental system, staffed by a career service. In this regard, they are typically Asian bureaucracies in the 'statist' tradition. Hong Kong has gone furthest in contracting out and in using contract employment (but not for elite civil servants). In Thailand, a series of *ad hoc* reform commissions since the early 1990s have been strong on NPM rhetoric of but, until very recently, the government has been very weak in reform capacity (Bidyha 2001, Painter 2006). Malaysia, Singapore and (increasingly) Hong Kong have been strongly attracted to TQM and to benchmarking against ISO standards as a means of administrative improvement.

In the case of telecommunications reform and restructuring, the path to liberalization differed significantly between the four cases. Some of the differences stem from the different institutional starting points of the four domestic and international telecommunications sector; others are related to domestic political factors, such as the stakes involved in 'dividing the spoils' when parts of the industry were opened to new players. Thus, in Malaysia, granting of licenses to new players was commenced in the second half of the 1980s as part of a wider trend towards privatization by a government disillusioned with the performance of its public enterprises (Jomo et al. 1995). It has been well documented that privatization for the Malaysian government was an instrument not only of fostering Bumiputera (Malay) interests but also of favouring a hand-picked selection of well-connected businessmen under the patronage of top UMNO (the ruling political party) and government leaders. The processes involved were ad hoc and secretive and followed the so-called 'first come, first served principle' under which the government invited 'good proposals' and responded individually to them (Jomo et al. 1995, 84-5; Salazar 2004). In the telecoms sector, key well-connected business figures, some with little if any experience or credentials in the business, gained highly favourable treatment in the issue of new licenses in the period up to 1995. In sum, the first phase of the liberalization of the telecoms industry in Malaysia was about dividing up the spoils and positioning the winners – all of them well-connected with the UMNO political elite – to reap the benefits. License decisions were made by cabinet, and were inextricable from a series of intricate,

politically-inspired deals over ownership and control. Only later did the basic elements of a pro-competitive set of regulations begin to develop.

A similar story emerges from the history of liberalization in Thailand, where a form of privatization that created new market players preceded the halting introduction of a new, pro-competitive regulatory regime. The use of state monopoly power in the telecoms sector to provide business opportunities to associates and political allies presents an even more vivid picture of highly selective, government-business collusion and patronage than in the Malaysian case (Sakkarin 2000, 148-63). The principal instrument of privatization used in Thailand was the 'Build – Transfer – Operate' (BTO) concession, under which a private company is sold the right to build or upgrade a piece of public infrastructure which is then transferred to state ownership. The private company is leased the infrastructure for a contracted period, with a share of revenue flowing to the concession-grantor over the life of the contract.<sup>9</sup> The first such concession was granted in 1986. Numerous concessions were granted to a variety of private firms, all of them in one way or another politically or bureaucratically well-connected. The Chatichai Government of 1988-91 alone granted no fewer than twenty-two telecommunications concessions.

In Thailand, the state monopoly power over provision and operation of telecommunications services was divided between three government agencies: two state-owned enterprises, the Telecommunications Organization of Thailand (TOT) and the Communications Authority of Thailand (CAT) and the Department of Posts and Telecommunications (DPT). TOT provides domestic voice services and CAT runs domestic non-voice services and all international services. Thus, both were able to grant paging and cellular service licenses and concessions. In this way, Thailand's telecommunications sector emerged as a set of patron-client interdependencies between the two main state providers and private companies, each with a monopoly concession to provide to a segment of a market. Ultimately, following mergers and takeovers, the outcome was to create three or four national private telecommunications operators with a presence in all segments of the market in one form or another, each of them owing their position in the industry to a series of concessions. TOT and CAT, each of which sat on a stream of revenue from the concessions, played an increasingly small operational role, the former as a domestic fixed line operator in control of about half of the fixed lines, the latter as the provider of all international calling links (Mesher and Jittrapanun 2002).

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<sup>9</sup> More common elsewhere is the BOT scheme, under which ownership of the assets only reverts to the government after the contracted period.

In free market flag-carrier Hong Kong, the monopoly operator was privatized in 1981 (with its core monopoly intact), following the same fate as its mother company, Cables and Wireless in the UK. Very soon, the Hong Kong government looked for ways to promote competition in areas beyond its exclusive franchise (liberalization of customer premises equipment from 1983; three analogue mobile service licences issued in 1987; and one digital cellular services license in 1992). In 1992, the government established an independent regulatory authority, the Office of the Telecommunications Authority (OFTA), which took over the regulatory role from a government department, and appointed an Australian regulator to run it. A revised Telecommunications Ordinance spelt out the independent role of the Authority.

The Singapore government, rather than embarking on privatization, adopted a strategy to improve SingTel's efficiency and performance, quickly upgrading its technological level before it mandated corporatization in 1992 and part-privatization in 1993. New services were introduced at a rapid pace, such as automatic paging services in 1983, the public phone card services for local and IDD calls in 1985, message paging services in 1987 and cellular mobile radio system services in 1988. Marketization was adopted in the form of outsourcing of labour-intensive work, such as the installation and maintenance of underground cables and through contracting private companies to provide technology-intensive services. As part of the 1992 restructuring, a separate regulatory agency, the Telecommunications Authority of Singapore (TAS), was set up. SingTel's cellular and paging services were privatized and liberalized in 1997. In 1998 StarHub (another government-linked company) was the only bidder for a second license to operate on the fixed-line network. The government promised StarHub and SingTel not to liberalize further that segment of the market until 31 March 2002. In 1999, the internet services segment was also liberalized by introducing international competitors through lifting the foreign equity limit on Internet Access and Exchange Service Providers. Regulations on conduct and content were introduced for these new players in 1998 and 1999.

The Singapore Government, in response to the Asian Financial Crisis, seized on IT and the telecommunications sector as a key driver of growth and committed itself fully to liberalization and internationalization. Characteristically, it did not drag its feet. In signing up to the WTO telecoms agreement it committed to full liberalization by 2000. As a result, the Singapore government reneged on the agreement with StarHub and Singtel, and paid US\$1.2b in compensation. Singtel, however, remained 80 per cent government owned under the umbrella of Temasek, the government's

conglomerate investment arm. In 1999, Singapore amalgamated the regulatory authority, TAS with the National Computer Board and formed the Infocomm Development Authority (IDA), a statutory body with the remit to oversee development of the ICT industry in Singapore.

The Hong Kong government's clear intent to liberalize the telecommunications market in the early 1990s was restricted by the exclusive rights granted to HKTC and HKTI (the two inherited providers, now in private hands) on local and international phone services respectively, which were set to expire in turn in 1995 and 2006. However, from the mid-1980s, the Government used its licensing powers to open access for new operators through Public Non-Exclusive Telecommunications Service (PNETS) licenses (which enabled Value Added Network Services on HKTC's network) and Public Radio Service (PRS) licenses. The regulator carefully monitored the access and interconnection negotiations. These licenses were challenged by the dominant operator in the courts, but the judgments were in the regulator's favour. Hong Kong also signed on to liberalization under the WTO. After a series of negotiations with HKTI, the government in 1998 announced payment of US\$864 million as compensation for permitting the three non-dominant FTNS (Fixed Telecommunications Network Services) operators to connect with the fixed network and operate international services. The removal of the last monopoly accelerated the pace of liberalization. In March 1999 mobile number portability services began (the third in the world to provide this), and in January 2000 external facilities-based telecommunications and local wireless FTNS were introduced. Since 2001, 34 FTNS, Fixed Carrier Licensees and Mobile Carrier Licensees have been issued, adding to nine such players already in the market. In the same period, more than one hundred licensees operated in the IDD market.

The large number of players in a small, highly competitive environment is a striking feature of Hong Kong's post-liberalization telecommunications market. A key event in the recent history of the industry was the takeover of HKT in 2000 by PCCW, owned by Richard Li Tzar Ki, son of Hong Kong's billionaire business tycoon, Li Ka Shing. PCCW to that point was a small venture company seeking to ride high on the 'dot com' boom and its successful bid for HKT overcame an offer from SingTel. Richard Li's PCCW shortly after won a sole tender bid to develop a large area of land on Hong Kong Island as part of the so-called 'Cyberport', a government-coordinated project to create a 'hi-tech' R&D and innovation hub. Criticism of this project as a case of 'collusion' with local business 'cronies' in following years dogged the SAR Government. Meanwhile, PCCW fared badly on the stock market (along with many

other telecoms), declining in value by about one-half by 2003. Nevertheless, it continued to operate aggressively and innovatively in the marketplace, offering telephone, cable broadband, broadband TV and a range of other ‘packaged’ services. Thus, the dominant operator by one means and another survived the transition to a competitive market environment. Government ‘interference’ and support for the local dominant operator was also seemingly evident in 2006, when Macquarie Bank seemed on course to take over PCCW. Other foreign interests also expressed an interest. In this case, the sensitivity of the Beijing Government about foreign ownership of a strategic asset was possibly the determining factor in the failure of the bid and the success of competing, last minute bid by a local ‘white knight’.

Despite the rapid entry of some private players into the Malaysian and Thai telecommunications market, regulatory reform proceeded more haltingly. Market opening preceded regulatory reform. It was not until 1996 that the Malaysian regulatory authority arrived at a basic regulatory code to allow interconnection with the dominant operator’s fixed line at a realistic cost. In the meantime, none of the licensees sought to compete in any other than the emerging mobile markets. Similar to Singapore, it was the Malaysian Government’s conversion to an IT-led growth strategy that stimulated this phase of reform. A National Telecommunications Policy was launched in 1994 by Prime Minister Mahathir, with a commitment to develop Malaysia as ‘the regional and international telecommunications hub in Southeast Asia’ and a supportive attitude towards ‘orderly competition’. The rhetoric of ‘liberalization’ and ‘globalization’ was strong in Mahathir’s pronouncements on his plan to make Malaysia an advanced economy, which he dubbed *Vision 2020* (Bunnell 2004: 52). The Asian financial crisis also hastened the government’s new strategies. In 1997, the principal owner of one of the main licensees faced a debt crisis with the result that Danaharta, the government-owned asset restructuring company, took over his share (a move that was widely perceived as a classic example of ‘cronyism’).<sup>10</sup> In this context, the decision to embark on telecom sector regulatory reforms was part of a wider strategy of industry restructuring.

Australian international consultants from McKinsey and Co. highlighted in a report the critical issue of technology convergence (telecommunications with broadcasting and the internet, and wired with wireless communications systems) along with the need to embrace the liberalization agenda. The end result was two new Acts in 1998 – the Communications and Media Act (CMA) and the Communications and Multimedia

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<sup>10</sup> The final outcome was ‘re-nationalization’, with the takeover of Celcom by Telekom Malaysia in 2003

Commission Act (CMCA) – and the establishment of a Malaysian Communications and Multimedia Corporation (MCMC) to take over from JTM the role of telecommunications industry regulator. The restructuring also produced a new Ministry of Energy, Communications and Multimedia (reorganized as Energy, Water and Communications in 2004). The CMA articulated a clear pro-competitive philosophy in setting out a list of objectives and principles:

The Communications and Multimedia Act 1998 is based on the basic principles of transparency and clarity; more competition and less regulation; flexibility; bias towards generic rules; regulatory forbearance; emphasis on process rather than content; administrative and sector transparency; and industry self-regulation ([http://www.mcmc.gov.my/mcmc/the\\_law/legislation.asp](http://www.mcmc.gov.my/mcmc/the_law/legislation.asp)).

In Thailand, institutional reform and the establishment of an independent regulator were a more torturous affair. As early as 1992, a ‘TOT restructuring and privatization study’ was commissioned by the government from Coopers and Lybrand. A landmark was cabinet approval of a Telecommunications Development Master Plan in 1995 (drawn up with assistance of the World Bank) proposing separation of the roles of operator and regulator; a restructuring of TOT and CAT into a new public corporation responsible for fixed line and other infrastructure and a fully privatized operator; and the division of the country into zones, in each of which separate regulated duopolies of public and private providers would provide services (Blasko 1998: 533-5). A 1997 version of the Plan set out a program to meet the commitments made in 1995 under GATS to ‘completely liberalize telecommunications services’ by 2006.<sup>11</sup> Section 40 of the 1997 Constitution, which provided for a number of new government commissions to combat corruption and to improve transparency in government, set out the creation of an independent telecommunications regulator.

Of the five major ‘milestones’ towards ‘full liberalisation’ under the WTO commitment—corporatisation of TOT and CAT; creation of an independent regulator; conversion of the BTO concessions into operating licenses (requiring some kind of payment from the concession holders to TOT or CAT to compensate them for loss of revenue); privatisation of the two operators; and the relaxation of strict limits on foreign ownership—the first was achieved by 2003; the second in 2005; and the third,

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<sup>11</sup> This commitment is hedged by a number of conditions, for example the ‘passage and coming into force of all necessary new communication acts’ and a limitation on the number of licenses due to ‘scarce resources’ (Mesher and Jittrapanun 2004: 101). Moreover, the commitment refers only to fixed-line services, not value-added. Compared with other governments, Thailand’s commitments are very modest (Somkiat and Taratorn 2002: 7)

fourth and fifth are either in the ‘pending’ tray or are in process of implementation.<sup>12</sup> The election in 2001 of Thaksin Shinawatra as Prime Minister added new dimensions to the complexities of reform. As one of the principal concession holders, his companies benefited considerably from the status quo.<sup>13</sup> All the concession operators were in a strong position to hold out in negotiations for concession conversion. Neither of two proposals for conversion—the first in 1999 and the second in 2001—formed the basis for a settlement. The first was objected to because of the high cost to the concessionaires and the second was seen by TOT and CAT as too generous. Without concession conversion, it was difficult to put a precise value on the assets of TOT and CAT and clear the way for privatisation. A major step towards meeting the WTO commitments was the passage of legislation in 2000 and in 2001, setting out the regulatory and operational powers of the proposed National Telecommunications Commission (NTC) (as well as a separate broadcasting regulatory authority) and detailing the legal framework for regulating a liberalised market – licensing, interconnection, pricing, universal services and consumer protection.<sup>14</sup>

With the corporatisation of TOT and CAT, regulatory powers formally came to sit with the Minister for Information and Communications Technology (MICT), established as part of a wider bureaucratic restructuring in 2002. However, TOT and CAT continued to make decisions on such matters as the adjustments of concession fees and prices for access. The Thaksin Government had little incentive to hurry up the establishment of the independent regulator. In any case, it was being held up for other reasons. A series of scandals and political battles ensued over the appointment of the members of the NTC, causing it to be aborted after long delays (Pasuk and Baker 2004, 207). In 2003, the process started all over again and, despite continuing controversy, the Commission was finally established in October 2004.<sup>15</sup>

NTC’s appearance on the scene as the independent regulator created a new player in an already crowded field of contending bureaucratic, political and commercial interests. Neither its commissioners nor its staff (most of them inherited from the Department of Post and Telegraph) had any experience or expertise in pro-competitive regulation. The World Bank prepared advice on how to establish the organization and

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<sup>12</sup> An amendment to the 2001 Telecommunications Ordinance was signed into law in January 2006 to lift the limit on foreign ownership from 25 to 49 per cent.

<sup>13</sup> Under its concession with TOT until 2015 for mobile services, Shin Corporation’s AIS (unlike its main competitors) paid no access fees to connect with the local fixed line network (Mesher and Jittrapanun 2004, 102).

<sup>14</sup> For a critical review of the second of these Acts, pointing out some gaps and deficiencies, see Somkiat and Taratorn (2002).

<sup>15</sup> Controversy persisted over the commissioners’ former connections with the industry – either as former officials or as advisers to private companies.



the staff relied heavily for guidance on the Bank's Regulatory Handbook.<sup>16</sup> International consultants were hired to begin drafting licenses and other regulatory instruments. Basically, there was nothing to build on. Prior to its establishment, there was no systematic, consistent set of regulatory documents or instruments located in any one place. The pre-existing regulatory system was constrained by the cumulative effect of a combination of deals among different public authorities and with private concession holders. For example, there were no general regulations on interconnection or access, pricing and number portability. NTC faced the formidable task of unraveling some of the existing arrangements and imposing its own regulatory authority. This, in turn, cast further doubt on plans to privatize TOT and CAT, as without a clear set of regulatory policies in place (including settlements to disputes over the terms of the new licenses to be issued by NTC) their potential value was hard to estimate.

Initially, there was a series of question marks over the status of the NTC, in particular its neutrality in relation to industry players. Given the background of most of NTC's members, there was a presumption that they had pre-existing industry loyalties (*The Nation*, May 6 2005). The Commission defended itself by pointing out that there was no legal prohibition on pre-existing experience, but that clear provisions on direct conflicts of interest were strictly upheld. Questions were also raised about NTC's independence from government.<sup>17</sup> When the NTC met the Prime Minister in a 'courtesy call' in June 2005, the press reported that the Prime Minister's work schedule noted that the NTC would be meeting him 'to learn about his policies and receive guidelines for the Commission's future operation.' The Commissioners denied when questioned that this was what happened at the meeting (*The Nation*, June 16 2005). Industry players had other worries: they were concerned at the Commission's indecisiveness and apparent internal divisions and they felt aggrieved that the Commission sought assistance from outside experts and the World Bank, rather than drawing on domestic industry expertise.<sup>18</sup> TOT and CAT issued press statements openly challenging attempts by NTC to unravel existing arrangements.

The Commission struggled to address so many issues simultaneously in its first year of operation. Its Act required it to hold public consultations and to circulate draft regulations for comment, but these processes were somewhat *ad hoc* and abbreviated.

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<sup>16</sup> Interview source; the Handbook is available at <http://www.infodev.org/content/library/detail/842>

<sup>17</sup> Members are appointed by the King for a fixed term of six years, supposedly safeguarding their independence. Three of the founding members were appointed for a three-year term in order to institute a system of staggered re-appointment.

<sup>18</sup> Interview sources

It issued licenses to TOT and CAT in August 2005, but left them to negotiate interconnection charges in the absence of its own set of guidelines or procedures, which were under preparation. A series of public conflicts and negotiations ensued over new regulatory fees. TOT sought reductions and exemptions, while also seeking to pass them on to its concession holders. The latter, in their turn, objected (*The Nation*, 19 August; September 2, 15, 23; October 13, 2005). Private operators were invited to apply for licenses for their existing and additional business, including 3G, satellite, international gateways and VoIP. AIS set up three new subsidiaries to apply for different categories of license and also entered into negotiations with CAT for a deal on international gateway services (CAT's monopoly was set to end under the new regime).

NTC stated its basic priorities and objectives in terms that indicated a commitment to the pro-competitive menu of instruments—for example a competition code, a cost-based interconnection regime and regulatory fees at internationally benchmarked rates. However, it was under constraints created by existing provisions and by other pressures. In negotiations with the United States Government on a bilateral free trade agreement, the NTC expressed its opposition to opening 3G mobile services to foreign firms, other than in partnership with local operators, when the 25% foreign ownership ceiling would apply. NTC also proposed to delay opening satellite-based gateway services until 2009 (Shin Satellite enjoyed a monopoly of such services) (*Bangkok Post*, 1 September 2005). Chief executive of Shin Corp made a plea for NTC to treat local business 'favourably' so as to enable them to compete on a 'level playing field' with overseas companies (*The Nation*, October 25 2005).

The prospect of major regulatory changes prompted a major 'shake-out' in the industry. In October 2005, the founding family of UCOM sold its holding to Norwegian-owned Telenor Asia, which controlled the second largest mobile operator, DTAC. The result was a merger of these two mobile operators. NTC (yet to promulgate its competition code) merely announced it would 'look into' the deal (*The Nation*, October 25 2005). In January 2006 the Thaksin family sold Shin Corporation to a consortium headed by Temasek, a Singapore government-linked holding company that owned the majority of Singapore's telecommunications flag-carrier Singtel (which already owned a 25 per cent stake in AIS). This deal prompted fierce debate and criticism over the complex route by which compliance with foreign takeover rules was achieved; the terms of the sale, which required approval of the Securities and Exchange Commission waiving the need for Temasek to go through a formal share tender process; and the complex arrangements by which the Thaksin

family avoided potential tax liabilities (*The Nation*, Jan 25 2006).<sup>19</sup>

### *Convergence and Variety*

Table 2 shows the state of regulatory reform in the four jurisdictions. It is evident that there is a strong similarity in the model now in place, despite very different starting points and quite histories of distinctive political and bureaucratic conflict over the issue. Indeed, the striking thing is that from such different separate starting points and histories, such a rapid convergence on a common template has occurred. Such is the power of the forces to convergence in the telecoms sector.

Table 2: Telecommunications Regulatory Regimes in South East Asia

	<b>Hong Kong</b>	<b>Malaysia</b>	<b>Singapore</b>	<b>Thailand</b>
Corporatization	-	Yes	Yes	Yes
Privatization	Full	Partial	Partial	No (Pending)
Independent Regulator with Licensing Power	Yes (1992)	Yes (1998)	Yes (1999)	Yes (2004)
Competition Code	Yes	Yes	Yes	Pending
Non-discriminatory Inter-connection Code	Yes	Yes	Yes	Pending
Industry Self-Regulation	Limited	Extensive	Limited	No
Transparency of Regulatory Decisions / Advice	Yes	Yes	Yes	Yes
Appeals Mechanism	Tribunal / Courts	Minister / Courts	Minister	Minister

Just as there are core similarities, so there are differences in detail. One striking difference, at least on the surface, is in the extent of government ownership in the sector. This has to be seen in context, however. Singapore and Malaysia continue to show no interest in divesting themselves of their majority ownership in the dominant telecoms operators. However, ‘politicization’ of their operational business decisions is

<sup>19</sup> The foreign takeover amendment was signed into law three days before the deal was finalised. These events played a significant role in triggering the street protests that led to Thaksin’s step-down from office and Thailand’s continuing political crisis.

no longer a key issue – the decision to liberalize effectively rules this option out. Both operators were corporatized from an early date and part-floated on the stock exchange so as to put their management on a commercial footing. Somewhat paradoxically, both governments have used their influence over these operators to hasten liberalization rather than hinder it – in the case of Malaysia, TMB was forced to sell part of its nascent mobile business to a new entry while in Singapore, the dominant operator Singtel, which is heavily regulated in its domestic markets, is encouraged to seek its profits overseas. This is not to say that the regulatory regime does not serve their interests in some measure, as in Hong Kong, Singapore and Malaysia there was a policy on the part of the regulator that stability of provision be maintained and that the transition to market opening be ‘smoothed’ so as to prevent major disruptions.

Some of the differences can be put down to ‘regulatory competition’ (that is ‘being first off the block’ or offering a particularly investor-friendly environment). In Malaysia, the new regulatory instruments developed by the MCMC since 1998 stress convergence as a key theme, in a manner that attracts world-wide interest. Licenses and controls issued by the minister may cover content, applications, network services or network facilities across each of the industry sectors. MCMC regulates telephony, internet service providers and broadcasters using common principles and methods. Thus, in a revised access regime announced in 2005, MCMC identified a range of different ‘bottlenecks’ that potentially give a provider market dominance and adopted a common set of principles in the form of guidelines for ensuring open access on reasonable commercial terms, including independent dispute resolution mechanisms. Access agreements must be registered with MCMC, permitting monitoring of the process.

This new regulatory style stresses openness, public input and industry consultation and strongly emphasizes neutrality and objectivity (for example, independently conducted performance audits of service quality). Another new departure has been the establishment of four ‘industry forums’ – Consumer Forum, Access Forum, Content Forum and Technical Standards Forum. These are an expression of MCMC’s commitment to self-regulation. They are inclusive of both the ‘supply’ and ‘demand’ side of the industry and the object is to use them to achieve voluntary compliance with agreed standards and guidelines. For example the Consumer Forum is composed of forty-eight members from telecom providers, non-governmental organizations and public interest groups and oversees the consumer complaints handling process in accordance with a set of agreed standards. The Content Forum has developed a code on content (embodying sanctions) which industry members can sign up to, and also

deals with complaints and runs a 'Content Advisory Centre'. The Access Forum, however, failed to reach agreement due to conflicting commercial interests on the details of an access code, and the MCMC called in consultants instead in the framing of its code.

The exact institutional arrangements that underpin the 'independence' of the regulator differ across the four cases (Table 3). Two issues are at stake here: first, neutrality amongst the different industry players and second, independence from the political executive. The first is supposedly guaranteed by transparency provisions, which (as we saw in Table 2) are institutionalized in all four cases. Provisions such as publication of advice to a minister serve both to reinforce neutrality and to maintain the appearance of independence. On the surface, Thailand's NTC conforms closest to the 'ideal' of independence (an appointments process in which the political executive has no role; fixed terms; a high level of budgetary and staffing independence; and no powers of ministerial direction). In reality, the appointments process is heavily politicized and there are question marks over the extent of informal government interference. The NTC is a new body, its establishment was fraught with political conflict and it remains under public suspicion for its links with the industry. In Thailand, it is the norm that public officials in government agencies have close patron-client links outside the civil service with politicians, businessmen, the military and others. The telecoms sector has been particularly notorious for such alliances, with a long history of collusion and corruption dating back to the granting of the first contracts and concessions. Each of the members of the NTC has, in one form or another, a history of past involvement in the industry. Added to this is the complication that the Prime Minister at the time of its creation owned the country's biggest telecoms conglomerate. Nevertheless, going by the formal provisions and (to date) the public behaviour of the NTC, they are 'going by the book,' with public proceedings and a series of decisions overturning existing arrangements and emphasizing neutrality and transparency. Whatever is going on behind the scenes, the remarkable thing is that all of a sudden, after decades of bureaucratic murkiness and secret dealings, the public face of regulation takes a form that is so alien to tradition.

An important difference of the MCMC from other regulators is that the power to grant a license remains with the minister (although spectrum allocation is left entirely to MCMC). However, this power is circumscribed by the fact that the MCMC must give advice after calling for public submissions, and the minister must give reasons for rejecting it. So far, the minister has not rejected such advice from the Commission. While there is a strong sense of separate corporate identity in the Commission, at the

same time, MCMC includes a ‘government member,’ a distinctive feature that emphasizes the extent to which the political executive wants to keep some control. These institutional arrangements, which seem to make less of the need for full and formal independence, may reflect the ‘developmental state’ orientation of the governments’ role in economic policy and planning: telecommunications reform is much too important for national development that it can be left entirely to the regulators. But at the same time, the regulator’s ‘neutrality’ and ‘independence’ are stressed in its public pronouncements. The regulatory style adopted by MCMC exhibits openness, encourages public input and industry consultation, and strongly emphasizes neutrality and objectivity (for example, external, independently conducted performance audits of service quality).

Table 3: Regulatory Authorities – Varieties of Independence

	<b>Hong Kong OFTA</b>	<b>Malaysia MCMC</b>	<b>Singapore IDA</b>	<b>Thailand</b>
Method of Appointment	Chief Executive	Minister	Minister	King, following public process of selection by Senate
Term of Appointment	Indefinite	3 years (max. 2 terms). Minister may dismiss without reasons	Specified by Minister	6 Years
Number of Members	1	5+ (1 member ‘represents the government’)	2-16 (as Minister determines)	7
Powers of Ministerial Direction	Yes, but must be written and published	Yes	Yes	No
Staffing	Civil Service Terms	Autonomy	Partial autonomy	Partial Autonomy
Funding	Fees	Fees	Budget + Fees	Fees + (interim) budget top-up

In Singapore, both independence and neutrality look questionable. The minister has full discretion over appointments and powers of direction. Moreover, the independent regulator is not a separate authority but is located as a branch within the IDA, which also has industry development as its remit. There are internal ‘firewalls’ between the regulatory branch and the industry sponsors, although the heads of each meet and discuss each others’ business at IDA executive meetings. A degree of trust is required of industry players in the belief that, behind the scenes, there is not a leakage across the boundaries. The regulator’s operating proceedings are governed by similar rules of transparency as in the other jurisdictions – collection of public submissions; time for

comments and rebuttals; publication of draft findings; and full publication of reasons. In Singapore, the Minister is the authority to which a final appeal on the regulator's decision is made, a practice wholly consistent with its strong executive-led regime and which does not raise undue alarm from industry stakeholders.

Hong Kong's independent regulator also operates within a distinctive bureaucratic and political culture. The self-invented slogan of 'positive non-interventionism' nicely captures the sense of role and mission of Hong Kong's elite civil service, reflecting not only its market-friendly stance but also its paternalistic, guardian role within an 'administrative state' (Painter 2005). The TA is shown on the organization chart as a branch of the parent department, not as a separate agency (a not uncommon convention for statutorily independent officers in Hong Kong). The TA regularly consults informally with industry players as well as holding formal hearings (a practice consistent with strong, informal links between the civil service and big business); he is a member of the civil service 'directorate' (Hong Kong's 'mandarinate') and enjoys close relations with other civil servants; and he meets regularly for informal exchanges with the Principal Official (the 'minister') and his departmental permanent secretary. That is, while he is inextricably part of the civil service milieu, this does not detract from the perceived 'independence' of his judgments.<sup>20</sup>

As to the regulatory instruments that these independent regulators are deploying, they too are as if drawn from the same manual (in some senses, this is literally true). Hong Kong has the longest history of 'hands-off' pro-competitive regulation, including the use of *ex post* in preference to *ex ante* instruments, which leave things as far as possible to commercial negotiation as distinct from bureaucratic discretion. Hong Kong learnt early that a clear and tough legal framework insisting on access and interconnection at 'real cost' was a key component of a pro-competitive regime. However, the details of these agreements have been left for commercial negotiation, with the regulator insisting only that they be registered. Throughout, the Hong Kong regulator has also taken the view that new technology must be facilitated rather than held back, despite the threat that this poses to incumbents. In Singapore, the instrument was a standard 'Reference Interconnection Offer' that had to be drawn up

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<sup>20</sup> The Hong Kong association of telecoms operators has been highly critical of the 'toughness' and 'intrusiveness' of the regulator, calling for a new set of arrangements – a board including outside members – that will somewhat dilute the power of the single-person authority: see *Maintaining Hong Kong's Leading Telecommunications Role*, December 2002, available on-line at <http://www.itahk.org.hk/index01.htm>, accessed 2 May 2006

by the dominant monopoly owner of infrastructure, through a transparent process under the watchful eye of the regulator.

The extent of industry self-regulation is also a matter where national differences in bureaucratic and political culture can be observed. Only in Malaysia has a conscious effort so far been made to get the industry to organize among itself to collectively but voluntarily self-regulate. Malaysia has a strong tradition of close government-business relations through a variety of consultative mechanisms, all with a strong 'top-down' flavour. The MCMC has worked hard to engineer its Industry Forums in this manner, and where they deal with matters in which strong commercial conflicts of interest are absent, they have been successful. By contrast, for example, the Hong Kong telecommunications sector is characterized by cut-throat competition and a tradition of adversarial relations (for example, through frequent recourse to the courts to settle commercial disputes or to appeal the decision of the regulator) such that industry cooperation does not come easily. The local telecommunications industry forum is little more than a 'club' for industry players to meet and exchange views with, occasionally, an effort to express a collective viewpoint on matters of regulatory policy (characteristically, to complain about 'over-regulation' by the TA). At the same time, there is a formally constituted Telecommunications Users & Consumers Advisory Committee, one of many such advisory bodies set up over the years by the Hong Kong Government to provide an instrument for the bureaucracy to undertake consultation and to seek 'consensus' with societal groups in the absence of other democratic procedures.

### *Conclusion*

Going on the evidence of the four cases, the emergence of Asia's regulatory state is a bottom-up process in a context of powerful top-down pressures, informed by strong networks of cross-jurisdictional linkages. The narratives of reform have shown how local contexts and political strategies combining many different motives and objectives shaped the sequencing and pace of change and the shape of the outcomes. For each government, liberalization of telecommunications markets was seen in terms of wider policy issues: pro-competitive regulation and privatization were used strategically for the pursuit of domestic policies and partisan or bureaucratic objectives (Painter and Wong 2005a). But the accounts have also clearly identified commonalities in the trajectories of change and in many of the outcomes. The dominant presence of the WTO framework was a key driver in each case. Moreover, although we have not sought to unravel all the cross-jurisdictional flows of ideas and



contacts, it is clear that the parallel processes of policy formulation and legal drafting comprised linked, transnational fields of doctrine and practice.

Yet the differences in detail among the actual forms taken by the new regulatory institutions and instruments are also testament to the persistence of local administrative and legal traditions. The resulting adaptations and hybrids promise to create as many varieties of the regulatory state as there are different states, even though the underlying similarities are inescapable (Painter and Wong 2005b). The common features are partly the result of diffusion and imitation and will be sustained and multiplied as a consequence of the transnational character of the institutions and networks through which this diffusion takes place. These networks, already dense and active, will likely become more so as the forces that drive market integration and regulatory convergence continue to exercise their influence over national governments.

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Appendix Table 1: The Telecommunications Supranational Regulatory Architecture

	<b>Inter-national Telegraph Union (ITU)</b>	<b>World Bank</b>	<b>Organisat-ion for Economic Co-operati-on and Develop-ment (OECD)</b>	<b>World Trade Organiz-ation (WTO)</b>	<b>Association of Southeast Asian Nations (ASEAN)</b>	<b>Asia-Pacific Telecom-munity (APT)</b>  (Joint Initiative of UN and ITU)	<b>APEC Telecom-munication &amp; Infor-mation Working Group (APEC-TEL WG)</b>
<b>Year of Formation</b>	1865	1944	1947	1948 (GATT) 1995 (renamed to WTO)	1967	1979	1989
<b>Current Members</b>	189 member states and 642 sector members	184 member countries	30 member countries	148 member countries	10 member countries	33 Members, 4 Associate Members and 103 Affiliate Members including governments and industries	21 member economies (the word 'economies' is used to describe APEC members)
<b>Objectives</b>	<p>* Maintain and extend international cooperation between all its member states for the improvement and rational use of telecoms of all kinds</p> <p>* Promote and offer technical assistance to developing countries in the field of telecoms, and also to promote the mobilization of the material, human and financial resources needed to improve access to telecoms services in such countries</p>	<p>* Provide a vital source of financial and technical assistance to developing countries around the world</p> <p>* Provide low-interest loans, interest-free credit and grants to developing countries for education, health, infrastructure, communications and many other purposes.</p>	<p>* Foster good governance in the <u>public service</u> and in <u>corporate activity</u></p> <p>* Help governments to ensure the responsiveness of key economic areas with sectoral monitoring.</p> <p>* Decipher emerging issues and identify policies that work</p> <p>* Help policy-makers adopt strategic orientations through individual <u>country surveys and reviews</u></p>	<p>* Help trade flow smoothly, freely, fairly and predictably through:</p> <ul style="list-style-type: none"> <li>- administering trade agreements</li> <li>- acting as a forum for trade negotiations</li> <li>- settling trade disputes</li> <li>- reviewing national trade policies</li> <li>- assisting developing countries in trade policy issues</li> <li>- providing technical assistance and training programmes</li> <li>- cooperating with other international organizations</li> </ul>	<p>* Accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations</p>	<p>* Promote the expansion of telecoms services and information infrastructure and the maximization of the benefits of information and telecoms technology</p> <p>* Undertake studies into developments in telecoms and information infrastructure technology and policy and regulation in coordination</p> <p>* Encourage technology transfer, human resource development and the exchange of information</p>	<p>* Improve the telecoms and information infrastructure in the region and facilitate effective cooperation, free trade and investment and sustainable development.</p>
<b>Mechanisms and Documents/Agreements on Telecoms</b>	<p>* General Secretariat and Telecom</p> <p>* Radio-communication (ITU-R)</p> <p>a) <u>Regulatory Publications</u></p> <p>b) <u>Conference Publications</u></p> <p>c) <u>Resolutions</u></p> <p>d) <u>Service Publications</u></p> <p>e) <u>Recommendations</u></p> <p>f) <u>Reports</u></p> <p>g) <u>Handbooks</u></p> <p>h) <u>Opinions</u></p> <p>i) <u>Software and Databases</u></p> <p>* Standardization (ITU-T)</p> <p>* Development (ITU-D)</p>	<p>* Regulatory 'Toolkit' (2000)</p> <p>* Telecoms Regulation Handbook (2000) covering licensing, interconnection, pricing, competition policy and universal service.</p>	<p>* Annual reports</p> <p>* Case studies, e.g. Regulatory Overview of the Telecoms sectors 2001</p> <p>* Country surveys,</p> <p>* Guidelines, e.g. on Broadband Development 2004</p> <p>* Manuals, e.g. Interconnection Principles 2001; OECD</p>	<p>Fourth Protocol to the General Agreement on Trade in Services (adopted 30 April 1996; entry into force 5 February 1998). This document provided the legal basis for the annexation of new basic telecoms schedules to the Uruguay Round services schedules.</p>	<p>* <u>ASEAN Plan of Action in Transport &amp; Communications (1994 - 1996)</u></p> <p>* Statement of Intent - ASEAN Telecommunications on Regulators Council Singapore, 8 August 1997</p> <p>* Ministerial Understanding on ASEAN Cooperation in Telecommunications and Information Technology Kuala Lumpur, Malaysia, 13 July 2001</p>	<p>* APT Yearbook 2004</p> <p>* Three APT Newsletters each year</p> <p>* Ten or more major APT Reports each year</p>	<p>* Meeting Documents produced by 10 telecoms working groups</p> <p>* Task group Activities</p> <p>* Chair's Reports</p> <p>* Tel Ministerial Documents</p> <p>* Regulatory Updates</p>

Appendix Table 2 – Activities of APEC-TELWG (2002-4)

Posting Date	Title
2004/11/12	<u>Training Program Design for Phase II Implementation</u>
2004/07/08	<u>Progress towards Adopting and Implementing the WTO Reference Paper</u>
2004/07/08	<u>Cover Letter (TEL Chair to APEC CTI Chair)</u>
2004/06/23	<u>Stocktake of Progress Toward a Fully Liberalised Telecommunications Sector in the APEC Region</u>
2004/05/01	Improving Website Accessibility in the APEC Region
2003/09/26	<u>Optimal Topology of Testbeds and Simplified Commercial Networks in the APEC Region</u>
2003/03/18	<u>Distance Learning Project on Telecommunications Technology</u>
2002/03/07	<u>Interconnection Resources Project</u>
2002/03/05	<u>APEC TEL Regulatory Structures Project Phase III – Regulatory Analysis Report: Trends and Challenges in the Regulation of Converging Markets</u>
2002/03/05	<u>APEC TEL Regulatory Structures Project Phase III – Regulatory Options and Framework Report: Addressing the Needs of a Converging World</u>
2004/11/12	<u>Training Program Design for Phase II Implementation</u>
2004/07/08	<u>Progress towards Adopting and Implementing the WTO Reference Paper</u>
2004/07/08	<u>Cover Letter (TEL Chair to APEC CTI Chair)</u>
2004/06/23	<u>Stocktake of Progress Toward a Fully Liberalised Telecommunications Sector in the APEC Region</u>
2004/05/01	Improving Website Accessibility in the APEC Region
2003/09/26	<u>Optimal Topology of Testbeds and Simplified Commercial Networks in the APEC Region</u>
2003/03/18	<u>Distance Learning Project on Telecommunications Technology</u>
2002/03/07	<u>Interconnection Resources Project</u>
2002/03/05	<u>APEC TEL Regulatory Structures Project Phase III – Regulation of Converging Markets</u>

Appendix Table 3 – ASEAN-TELMIN Meetings

Venue and Date	Title
Hanoi, 26 Sep 2005	<u>The 5<sup>th</sup> ASEAN Telecommunication and IT Ministers Meeting (5<sup>th</sup> TELMIN)</u>
Bangkok, 5 Aug 2004	<u>The 4<sup>th</sup> ASEAN Telecommunication and IT Ministers Meeting (4<sup>th</sup> TELMIN)</u>
Bangkok, 5 Aug 2004	The 1 <sup>st</sup> ASEAN plus China, Japan and Korea Telecommunications and IT ministers meeting (TELMIN); The 1 <sup>st</sup> ASEAN and India telecommunications and IT ministers meeting (TELMIN)
Singapore, 19 Sep 2003	<u>The 3<sup>rd</sup> ASEAN Telecommunication and IT Ministers Meeting (3<sup>rd</sup> TELMIN)</u>
Manila, 27-28 Aug 2002	<u>The 2<sup>nd</sup> ASEAN Telecommunications Ministers Meeting (2<sup>nd</sup> TELMIN)</u>
Kuala Lumpur, 13 Jul 2001	Ministerial Understanding on ASEAN Cooperation in Telecommunications and Information Technology
Kuala Lumpur, 13-14 July 2001	<u>The 1<sup>st</sup> ASEAN Telecommunications Ministers Meeting (1<sup>st</sup> TELMIN)</u>
Singapore, 8 Aug 1997	<u>The 3<sup>rd</sup> ASEAN Telecommunication Regulators' Council (ATRC) Meeting; Statement of Intent - ASEAN Telecommunication Regulators Council</u>

Appendix Table 4 – APT Programme of Events in 2005

Venue and Date	Title
Vietnam, Feb 24-25	Regional Workshop on e-Government
Thailand, Feb 28	APT-ITU Joint Meeting on the Role of ICT For Disaster Reduction
Thailand, Feb 28 - Mar 3	The 2nd APT Conference Preparatory Group Meeting for WRC-2007 (APG2007-2)
Thailand, Mar 4 - 5	APT Wireless Forum Interim Meeting
Thailand, Mar 29 - Apr 1	The 9th ASTAP Forum
Thailand, Apr 26 - 29	The 25th APT Study Groups Meeting
Singapore, Jun 15 - 17	Asia Pacific Forum on Telecommunications Policy and Regulation
Singapore, Jun 18	Preparatory Meeting for Plenipotentiary Conference 2006
Thailand, July 5 - 7	Seminar on Leveraging Private Investment for Rural ICT Development
India, Jul 18 - 21	Asia-Pacific Telecommunication and ICT Development Forum (ADF)
Rep of Korea, Jul 28 - 30	APT Operators Forum
Thailand, Aug 3 - 5	Seminar on ICT Technologies and Broadband Applications
Indonesia, Aug 22 - 24	Symposium on Network Security and SPAM
P.R.China, Sep 5 - 8	2nd Meeting of the APT Wireless Forum
P.R.China, Sep 9	Workshop on RFID in Ubiquitous Environment
Australia, Oct 25	Workshop on IP Telephony and Next Generation Networks
Australia, Oct 26 - 28	The 10th ASTAP Forum
30 Nov-8 Dec	The 10th Session of the General Assembly (30Nov.-2Dec.) The 29th Session of the Management Committee (5-8 Dec.)
<b>Sub-regional and Country Events</b>	
Indonesia, Mar 15	Workshop on Wireless Technology Toward Broadband Society
Philippines, Mar 18	Workshop on Broadband Wireless Technologies Toward Information Society
Fiji, Oct 3 - 5	APT/ PITA Meeting on SPAM and Security
Thailand, Nov 9-11	Workshop on Policy including USO/USA for GMS
Pakistan, Nov 28 - 29	Meeting for Eligible Non-members
Maldives, Dec 13-15	7th SATRC Meeting