



## JACOBS, CORDOVA & ASSOCIATES

### Experience with Independent Regulators In Utility Sectors

#### **Services By Jacobs, Cordova & Associates in Building Independent Regulators and Regulatory Regimes**

Jacobs, Cordova & Associates assists in designing, and tailoring to the country context and development needs, regulatory policies, instruments and institutions for specific sectors, including telecommunications, energy, transport, and water.

**Regulatory policy advice.** Regulatory policy in liberalizing utility networks is a continually moving target. Regulators must put into place the proper incentives for market actors to improve efficiency and serve consumer needs. Regulators must balance consumer interests with those of investors, and short-term welfare against longer-term innovation and dynamism. In telecommunications and energy fields, regulators must work in increasingly open regional and global markets, requiring convergence of domestic regulations with international norms. Pricing policies must reward producers for good service, while keeping prices as low as possible for consumers. Competition policy has an important role to play in leveling the playing field. Jacobs, Cordova & Associates provides expert, technical advice on the design of regulatory regimes in developed and transitional economies.

**Advice on the design and operation of independent regulators, based on international standards of performance in competitive investment environments.** A highly regarded institution of modern regulatory governance is the independent regulatory body, often used in network sectors such as energy and communications, and in other sectors where sector-specific oversight is needed such as financial services. Independent regulators are intended to shield market interventions from political interference, and to improve transparency, stability, and expertise. They must ensure non-discriminatory access and economically rational pricing for services. But experience in many countries shows that independent regulators have not always resolved serious regulatory failures, and have not always succeeded in establishing independence and credibility. Jacobs, Cordova & Associates helps to improve design and performance of these critical institutions in initial and later stages to meet market needs.

**Assistance in drafting major regulatory decisions.** Independent regulators must draft complex decisions that are clear, persuasive, and meet market expectations. The quality of decisions is important in influencing credibility and market confidence. Jacobs, Cordova & Associates offers an advisory service to independent regulators to assist in bringing individual decisions up to international standards in reasoning, content, and presentation.

#### **TELECOMMUNICATIONS AND ENERGY**

##### **Training:**

JC&A studied the design of independent sectoral regulatory commissions in **Korea** for the Korean Economic Research Institute (KERI). We examined the evolving regulatory governance of the privatized utilities industries in Korea. Since Korean line ministries have been historically active in managing the utility industries to implement



industrial policy, the establishment of independent regulators to administer the traditional regulatory tasks, such as pricing and quality control, is a dramatic reform. Based on transaction cost economics, international benchmarks, and public management, we recommended the design of regulatory institutions best suited to Korea.

In our reviews of regulatory practices in **Senegal and Mauritania** for the World Bank, JC&A reviewed aspects of the telecommunications and electricity regimes in those countries, and we recommended numerous reforms to speed up innovation and investment in those sectors.

The OECD national regulatory reviews led by Scott Jacobs to 2001 include the most detailed examination to date of the design and performance of independent regulators in the telecommunications and electricity sectors. The OECD reports recommend many improvements to independent regulators, including their degree and type of policy and financial independence, their governance and accountability, their transparency and procedures, their staffing, and their relations with competition authorities. The country reviews can be purchased from the OECD.

## **DESIGN OF INDEPENDENT REGULATORS**

Jacobs reviewed the appropriate relations between sectoral regulators and competition authorities in many countries as part of the reviews of competition policy within the OECD reviews of regulatory practices. Sectoral rules often overlap with general competition rules, and competition authorities are often the first example of an independent enforcement body, which sectoral regulators follow in some way. Whether conflict and duplication are best avoided by statutory division of responsibility, by formal compacts among regulators, or by consultation between the competition authority and sectoral regulators depends on the political and institutional context. Many of the competition law and policy reports for the countries reviewed by the OECD can be downloaded at <http://www.oecd.org/EN/countrylist/0,,EN-countrylist-2-nodirectorate-no-no-1160-2,00,00.html>.

In a paper prepared for the OECD, "**Building credible regulators for liberalized utility sectors**," Scott Jacobs noted that the independent sectoral regulator is an important step forward from the traditional approach of regulation of utility sectors by line ministries who are also responsible for policy, industry promotion, and even management of service producers. But, he wrote, new problems are emerging in the design, implementation and concept of the independent regulator. A wider governance view focusing on "checks and balances" between competing institutions in the regulatory regime could be a more flexible and effective guiding principle than "independence" in producing a credible regulatory framework. This paper can be downloaded at <http://www.oecd.org/doc/M00023000/M00023814.doc>.

In **Senegal**, Jacobs, Cordova & Associates reviewed and commented on the new organic law establishing a governance framework for independent regulators of network industries. The Senegalese law will make the governance of independent regulators more transparent and effective.

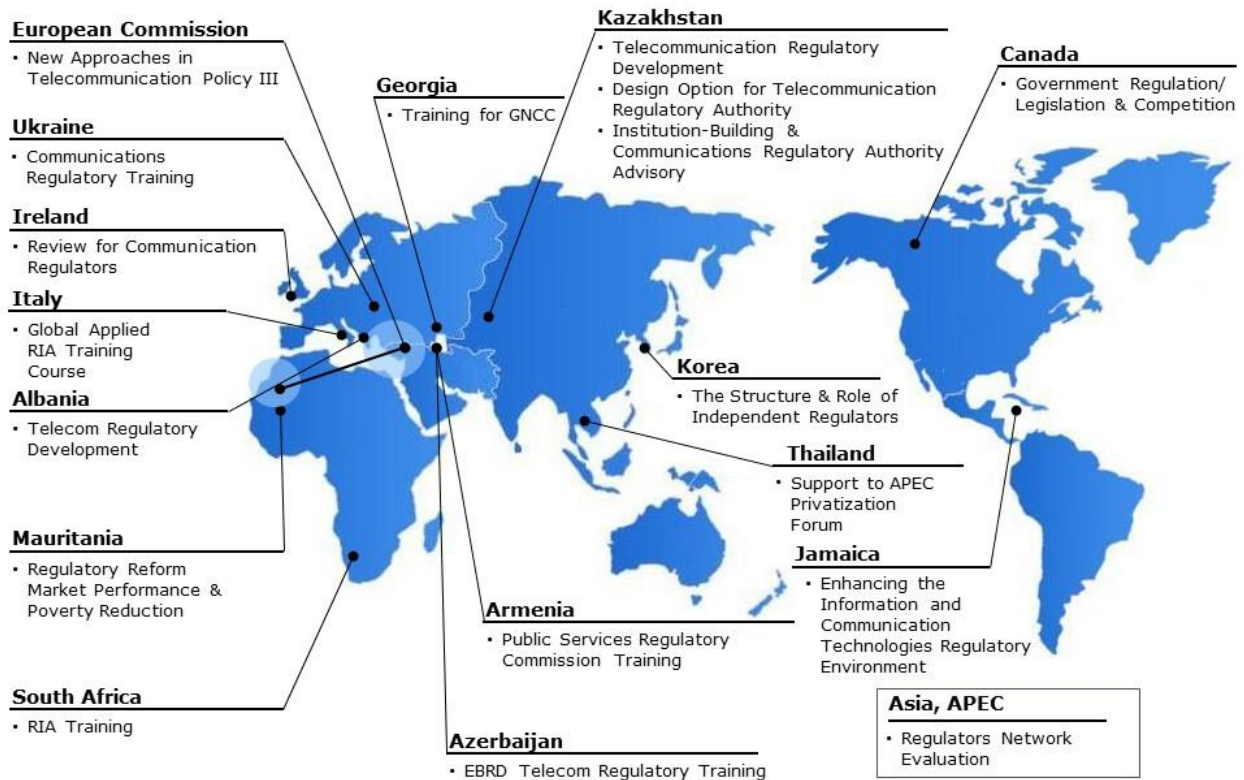
## **INDEPENDENT REGULATORS IN EMERGING ECONOMIES**



Independent regulators were the focus of a presentation by Scott Jacobs, "**Private investment in infrastructure in Asia: Rethinking regulatory governance**," at the APEC Privatization Forum Regional Roundtable in Hanoi, 2002. Jacobs noted that independent regulators are attractive because they appear to address many of the underlying reasons for regulatory failures in Asia. But independent regulators are no panacea during the complex transition to market competition. Most independent regulators are very recent even in developed countries. We know little about the performance over time of independent regulators, or how performance is tied to design or to the wider governing environment. Independent regulators pose potential problems with capture, complexity, rigidity, cost, fragmentation of competition policy, and accountability. We already can see that governments tend to rely too much on under-equipped and unsupported independent regulators to carry out tasks that are beyond their capacities. (Downloaded at [http://regulatoryreform.com/word\\_docs/SpeechAPEC.ppt](http://regulatoryreform.com/word_docs/SpeechAPEC.ppt))

## Utility and Independent Regulator Projects

### Utility and Independent Regulators





**Enhancing the Information and Communication Technologies Regulatory Environment – 2014-2015, Jamaica Ministry of Science, Technology, Energy and Mining.** - The main objective of the project is to provide a framework for the establishment and implementation of a Converged Stand-Alone ICT Regulator. The project objective involves, inter alia, reviewing the current administrative and regulatory framework and governance model for the ICT sector, providing specific recommendations/instructions for drafting appropriate legislation for the establishment of a converged stand-alone ICT regulator, and establishing an organisational structure for a converged stand-alone ICT Regulator.

**New Approaches to Telecommunications Policies – 3, 2009-2014, European Commission.** - A consortium of Regulaid and Jacobs & Associates Europe have been working to implement a programme for support to the development of international cooperation between National Regulatory Authorities across 10 North African and Middle Eastern countries in the Euro-Mediterranean Regulators Group. Type of services: Working with regulatory authorities to set up a regional benchmarking of regulatory frameworks and market development. Based on this design a work plan for EMERG and organize the activities (meetings of regulatory experts, website development, assistance to individual regulatory authorities in cooperation with EU).

**Ukraine Communications Regulatory Training, 2011, National Commission on Communications Regulation.** - Jacobs, Cordova & Associates worked as part of a team led by Premier Dynamics Limited and J Kanervisto Consulting on a European Bank for Reconstruction and Development (EBRD) project that provided support for the development of the Ukrainian communications sector through a specialised training programme. The programme of cooperation aimed to support the National Commission for Communications Regulation of Ukraine (NCCR) in the implementation of a modern regulatory framework in Ukraine, one which reflects international best practice. The training programme also involved of key sector policy-makers, relevant state institutions, private operators, and service providers in the training.

The Electronic Communications Regulatory Training programme had a range of objectives designed to develop further one of the most dynamic sectors of the Ukrainian economy. They included strengthening the institutional and technical capacity of the NCCR and broadening the awareness of modern communications and competition concepts among the regulators, commercial operators, and consumers.

**Ireland Spectrum Review of Communication Regulations, 2010-2011, UPC Communications Ireland Ltd.** - Jacobs, Cordova & Associates provided consultancy advice and assistance to UPC Communications Ireland Limited in connection with the Microwave Multipoint Distribution System (MMDS) spectrum review being carried out by the Irish Commission for Communications Regulation including ad hoc advice, written reports, preparation for and representation at meetings, assisting in responding to the consultation process and other assistance.

**Azerbaijan Communication Regulatory Training, 2010-2011, Azerbaijani Ministry of Communications /EBRD** - Jacobs, Cordova & Associates was part of an EBRD funded project providing technical assistance to the Armenian Public Services Regulatory Commission and to the Azerbaijani Ministry of Communications and IT. The project consisted of a comprehensive 40 day training programme and regulatory assistance in the electronic communications sector and provided in conjunction with Development Dynamics, Cullen International and J Kannervisto Consulting. The project consisted of a comprehensive training programme and regulatory



assistance in the sector of electronic communications provided in conjunction with Development Dynamics, Cullen International and J Kannervisto Consulting Finland.

**Armenia – Communications Regulatory Training Programme, 2010, Armenian Public Services Regulatory Commission/EBRD** - Jacobs, Cordova & Associates was part of an EBRD-funded project providing technical assistance to the Armenian Public Services Regulatory Commission. The project consisted of a comprehensive training programme and regulatory assistance in the sector of electronic communications provided in conjunction with Development Dynamics, Cullen International and J Kannervisto Consulting Finland. See link below for EBRD's Success story on this project <http://www.ebrd.com/pages/news/press/2011/110324a.shtml> The project consisted of a comprehensive 40- day training programme and regulatory assistance in the electronic communications sector and was provided in conjunction with Development Dynamics, Cullen International and J Kannervisto Consulting.

**Training Telecoms Regulators in Georgia, 20120, EBRD.** - Jacobs, Cordova & Associates participated in the EBRD funded training program for the Georgian National Communications Commission (GNCC) during 2010 which had as its objectives firstly, to strengthen the institutional and technical capacity of the authorities; and, secondly, to broaden awareness of modern communications/ competition concepts amongst officials, commercial operators and consumers. Overall, the Program comprised an assessment of the specific training needs of the regulator and ministry; the development of a comprehensive training program covering all key aspects of regulation, with the goal of meeting the regulators specific needs for development of its staff's regulatory skills. The Program also had a practical aspect, whereby Jacobs, Cordova & Associates assisted with practical casework of the regulatory authority in two specific areas over the course of the six months program implementation.

**Kazakhstan V: Institution Building and Communications Regulatory Authority Advisory, 2008-2009, EBRD.** - Following a request from the Government of Kazakhstan, the European Bank for Reconstruction and Development selected Jacobs, Cordova & Associates to assist the Government and the Agency for Information and Communication to establish an independent, sector-specific regulatory authority for communications in Kazakhstan, based upon international best practice. Jacobs, Cordova & Associates provided full and substantive practical support and assistance to the Government and AIC in the following areas: institutional establishment, legislative drafting, staff training, organisational capacity building, institutional decision-making process development and implementation and regulatory implementation. JC&A Director, Michael Griffin worked on the design of a model for telecommunications regulation including decision making processes, functions, legal form, structure and staffing, financing and organisation. He also helped to draft the necessary legislative reforms and the implementation plan.

**Expert Witness British Virgin Islands.** - During 2012 and 2013, Michael Griffin was engaged as an expert financial witness in an appeal by Digicel BVI Limited against a decision of the Telecommunications Regulatory Commission (TRC) in the British Virgin Islands. A comprehensive report was provided to the Court and the case was heard over 5 days in the BVIs in October 2013 with Michael Griffin presenting his detailed report and being cross examined by counsel for the plaintiff and defendant.



**New Approaches to Telecommunications Policies -2, 2005-2008, European Commission.** - Regulaid (in a consortium with Clifford Chance and Frontier Economics) implemented this three-year programme for support to National Regulatory Authorities across 10 North African and Middle Eastern countries as part of EU –funded program to improve regulatory policies in neighbouring countries. Designed, managed and implemented a three-year regional programme of regulatory development and support, including a large number of regional and in-country subprojects aiming to establish, strengthen or accelerate the set-up of a modern telecommunications regulatory framework and independent regulatory authorities; harmonise the regulatory framework and practices with that of the European Union.

**Regulatory Impact Assessment, ICASA, South Africa, 2010, Independent Communications Authority of South Africa (ICASA).** - The Independent Communications Authority of South Africa (ICASA) asked for the assistance of Jacobs, Cordova & Associates in applying Regulatory Impact Assessment (RIA) to policy/ regulatory issues in its work. Adoption of RIA by the ICASA was a natural step in the implementation of the ICASA Act adopted in 2000. We conducted a training session for ICASA staff, and recommended steps for ICASA to mainstream RIA and stakeholder consultation into ICASA’s policy processes.

**Albania Telcom Regulatory Development Programme, 2008-2009, EBRD.** - The European Bank for Reconstruction and Development engaged Jacobs, Cordova & Associates to provide practical assistance to the Government of Albania and Telecommunications Regulatory Entity ("TRE") to harmonise the country’s communications policy and regulatory framework with that of the European Union and specifically with the 2002 EU Regulatory Framework in accordance with the Albania-EU Stabilisation and Association Agreement reflecting Albania's aspirations towards Europe and its need to comply with the obligations of their membership of the World Trade Organization.

**Kazakhstan Telecom Regulatory Development, 2006, EBRD.** - Jacobs, Cordova & Associates supported the Kazakhstan Agency for Information and Communication (AIC) in analyzing the design options for a new regulatory authority for telecommunications including identifying best practice models from other jurisdictions. Detailed recommendations on the regulatory structure appropriate to Kazakhstan along with draft legislation to establish the regulator were provided as part of the assignment. .

**Consultancy to Support the 4th APEC Privatization Forum: Establishment of a Regional Regulators Network, 2004, APEC.** - Jacobs, Cordova & Associates assessed the capacities and training needs of Asia’s utility regulators for APEC. Our report, Regulatory Governance in Asia: Training Needs Assessment of Potential Members of the East Asian Utility Regulators Network, concluded that “While a few Asian countries have succeeded in creating credible independent regulators that are able to challenge powerful vested interests, the performance to date of independent utility regulators in Asia is not very promising. The main reason for this was that the external environment of structural, policy, and governance reforms remains extremely difficult.” We published a shorter version in the April 2004 ADB Governance Brief as [Governance of Asian utilities: New regulators struggle in difficult environments](http://www.adb.org/Documents/Periodicals/GB/GovernanceBrief10.pdf). Download report here: <http://www.adb.org/Documents/Periodicals/GB/GovernanceBrief10.pdf>.

**Regulatory Reform Market Performance and Poverty Redution in Senegal and Mauritania, 2003, World Bank.** - Jacobs, Cordova & Associates analyzed regulatory reform, market performance, and poverty reduction in Mauritania, reported the results to the Mauritanian



government in October 2002. The reports, “REGULATORY REFORM, MARKET PERFORMANCE, AND POVERTY REDUCTION IN SENEGAL AND MAURITANIA” concluded that “The legacy of interventionist and inefficient rules and practices inherited from previous economic policies is still prevalent, and many policies of the state continue to be captured by private interests. The domestic policy environment is hostile to private enterprise start-ups, investment, and innovation. Scope for market activity remains constrained due to slow privatization. Serious competition abuses are tolerated. State intervention through actions such as subsidies for failing enterprises, interference in rate-setting in liberalizing industries, and hesitation in opening up even services such as telecommunications are reducing investment and damaging market performance. Regulation of vital network industries, including electricity, telecommunications, water, and transport, suffers from inconsistent application; gaps in institutions, policies, and rules; and confusion in the role of the state as regulator and manager. Regulatory uncertainty has reduced the value of state assets, such as in mobile telephony, where the government is dissatisfied with the prices offered for licenses.”