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The Role of Public Consultations in  
Regulatory Decision-Making:  
Thoughts and Reflections Based On  
Regulatory Decision-Making Mechanisms  
in the Egyptian Telecoms Market

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## ABSTRACT

This paper builds upon empirical data collected from 42 interviews with decision-makers, regulated companies, and civil society organisations in the Egyptian telecoms sector to investigate the role of public consultations in regulatory decision-making processes. The analysis of regulatory decision-making mechanisms in the Egyptian telecoms sector has indicated that public consultations are regarded as integrated components of regulatory decision-making processes. Nonetheless, the paper emphasises that the issue is not just about conducting these consultations in a ritualistic fashion to legitimise regulatory decisions. The way in which the input of interested stakeholders is taken into account by the sector's independent regulator represents an important factor which affects the quality of regulatory decisions, the image of the regulator, and the overall legitimacy of regulatory governance. The analysis of the interview responses from the Egyptian case has indicated that despite the best efforts of the regulatory agency to approach the interested stakeholders in the telecoms sector via consultation processes, for many of them, the regulatory decision-making process is still a black box. No one knows for sure what happens within the regulatory agency or how their responses to public consultations are dealt with. In other words, they see no direct link between their inputs and the final regulatory decisions. Following on from this the paper suggests that more openness and transparency is required regarding the way in which public consultation responses are dealt with and the relationship between public consultations in general and the final decisions taken by the independent regulatory agency.

Key words: Public consultations, Regulatory decision-making, regulatory governance

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## 1. Introduction

Transparency stands as one of the main pillars for making sound, accountable and effective regulatory decisions. A transparent regulatory decision-making process should allow the participation of affected stakeholders and should clearly and openly identify the procedures to be followed and the ways in which regulatory powers and authorities are exercised. In this context, public consultations provide a widely utilised tool through which regulators can take account of the view points and concerns of affected parties. Via public consultations, regulators can make high quality and cost effective decisions. They can also be sure that regulatory developments will be legitimate and easily enforced as they reflect the preferences of affected parties.

Because of the claimed positive impacts of public participation and consultation on regulatory decision-making processes, different governments around the globe have mandated regulatory agencies in different policy arenas to consult affected stakeholders prior to decision-taking. Nonetheless, the scope of such mandates differs from one country to another. The EU for example makes it compulsory for telecoms regulatory agencies to consult with affected parties before taking any decisions which may have certain impacts on them. In Egypt, the National Telecommunications Regulatory Authority (NTRA) has made a commitment to consult with all affected parties before taking regulatory decisions. As stated in the code of conduct of NTRA “NTRA will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation” (NTRA website).

The widespread utilisation of public consultations in regulatory decisions-making processes raises fundamental questions about the value added of this policy tool. In other words, are public consultations a panacea for all regulatory decision-making problems? Do they really result in high quality and cost effective decisions? How public consultations impact on regulatory enforcement? These questions will be addressed in this paper by analysing the public consultation on Broadband Wireless Access (BWA) which has been undertaken by the NTRA in two phases. Consultation documents will be collected and a documentary analysis will be conducted of these documents in an attempt to explain the procedural as well as the interactive aspects of the consultation process. The responses of stakeholders will be analysed to highlight the main concerns raised by the regulated companies and the extent to which their inputs and contributions have been taken into account by the regulatory agency. The documentary analysis will be supported by the analysis of the interview data in addition to informal discussions with telecoms stakeholders in order to provide a second opinion on the issues under investigation and to triangulate the data used for the analysis.

The paper argues that public consultations provide effective means to communicate with affected stakeholders, to facilitate regulatory developments and to legitimatise regulatory decisions provided that they have been conducted correctly, openly, transparently and completely. To put it another way, public consultations are not ends but means to arrive at better regulatory decisions which take account of the affected parties' concerns. Having said that, the focus of regulatory agencies should not be on holding such consultations in a ritualistic fashion to fulfil legal obligations but on the ways in which the inputs from these consultations are processed, analysed, and reflected in the final decisions. In that sense, public consultations can be regarded as a double-edged weapon; on the one hand if they are used effectively they produce many advantages for regulatory decisions, but, they may also undermine the legitimacy of regulators and decrease trust from involved stakeholders if they feel that their contributions have been disregarded.

The paper is divided into two main sections plus a conclusion. In section one, an overview of the role of public consultations in regulatory decision-making processes will be provided in an attempt to unpack public consultations as regulatory tools and to underline the value added of using consultations for regulatory decisions. The pros and cons of public consultations are considered and the case for and against using them as a part of the regulatory toolkit are examined. Section two focuses on analysing the BWA public consultation process in the internet market in Egypt as a spring board to reflect on the theoretical discussions about the impact of public consultations on regulatory decisions. For contextualisation purposes, a brief overview of the internet market will be firstly provided followed by a detailed analysis of the consultation process itself.

## 2. Public Consultation and Regulatory Decision-Making: An Overview

Consultations could be broadly defined as “actively seeking the opinions of interested and affected groups” (Rodrigo and Amo 2006:1). It is a two-way communication process wherein regulators may seek the input of regulatory stakeholders regarding regulatory developments. Combining the term ‘public’ with consultation adds more vagueness and fuzziness to this concept as ‘public’ can be used by regulators to refer to different things. The ‘public’ can be very largely defined as all interested parties but it can also be used to specifically refer to those who are affected by certain regulatory decisions. The way in which the public is represented in consultations is another issue of concern. While some emphasise the importance of opening consultation processes

to individual stakeholders some call for only representing the public via organisational forms such as industry associations and consumer groups (see Blackstock et al. 2006). In the context of this paper public consultation will be perceived in accordance with Parry et al. (1992: 16) as a participative process that includes “taking part in the process of formulation, passage, and implementation of public policies”. As such, public consultations can be conducted at different stages of decision-making processes ranging from the planning of new regulations to revising and updating existing ones.

Regulators may hold consultations for different purposes in order to achieve different goals and objectives. Consultations could be merely used for communicating information and mobilising support for existing policies with no or limited ability of involved stakeholders to change these policies. Consultations could also be used to inform participating actors about certain policy issues and to listen to their ideas about how to improve current situations but with no commitment from regulators to put into action the preferences of stakeholders. Finally, regulators may use consultations to genuinely address policy issues and allow stakeholders to shape policy problems and influence regulatory decision-making process (Rodrigo and Amo 2006; Blackstock et al. 2006; Litva et al 2002). Consequently, consultations may take different shapes and forms with different levels of formality. In that sense, Public consultations can range from informal meetings to more formalized and structured written consultations (ITU, ICT regulation toolkit).

Regulators can hold public consultations using different tools including: formal invitations for written submissions; individual meetings with one or more interested parties; meetings, seminars, and workshops with representative groups; issuing draft documents containing the preliminary view of the regulator and soliciting comments from the public at large; public hearings; surveys; discussions with independent advisers, regulatory professionals and regulatory institutions in other jurisdictions (Ibid). These consultation tools are not mutually exclusive and regulators may use more than one at a time to come up with clearer vision regarding the discussed issues.

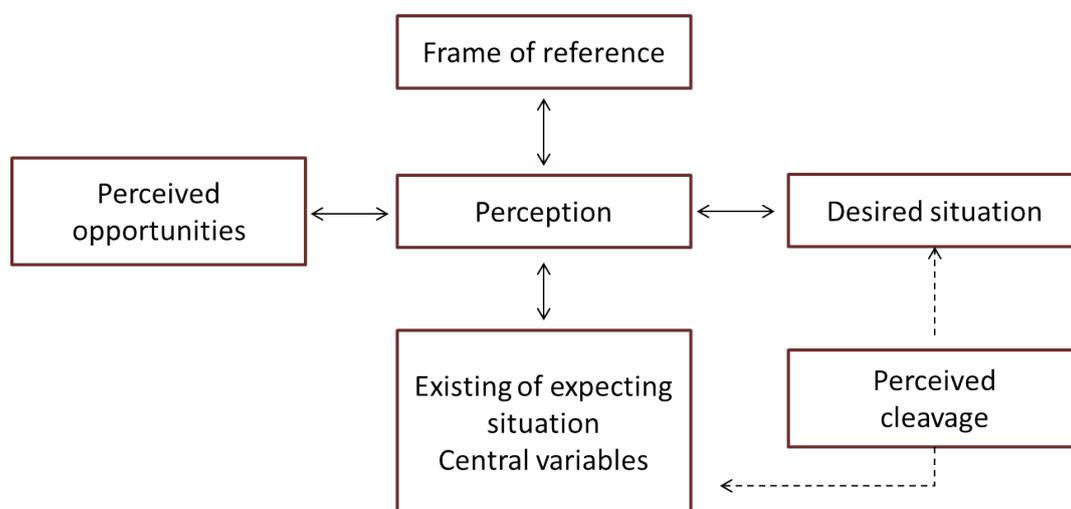
### 3. The Rationale behind Holding Public Consultations: A Critical Perspective

A review of the literature on the role of public participation and consultation in regulatory decision-making reveals that at least three stands could be identified as driving forces for including wider stakeholders: substantive, instrumental, and normative (Blackstock et al. 2006). The overall

argument for using public consultations as a regulatory policy tool for making and enforcing regulatory decisions always rests on the benefits of stakeholders' participation and the positive impact of such participation on the quality of regulatory decision-making processes and outcomes (Irvin and Stansbury 2004). From a substantive point of view, public consultations should ultimately lead to better regulatory decisions. Good regulatory decisions in turn are expected to instrumentally reflect in the legitimacy of regulators and enhance the acceptance of regulatory decisions by other stakeholders. Normatively speaking, the confidence of regulatory stakeholders in regulatory governance, in general, and regulatory decisions, in particular, will increase as a result of the increased decision-making skills.

At the level of regulatory decision-making processes, and from a substantive point of view, involving affected stakeholders via public consultations will allow them to get in touch with regulators and discuss regulatory developments. This in turn will give participants control over the decision-making process and improve the overall problem formulations. In regulatory arenas, problems should not be treated as tangible objects that can be perceived and assessed objectively. Their existence cannot be established simply by determining what the 'facts' are in a given case (Dunn, 1994). In other words, a situation is considered a problem when actors perceive it as such. In this sense, regulatory problems are best perceived as social constructs (see figure 1).

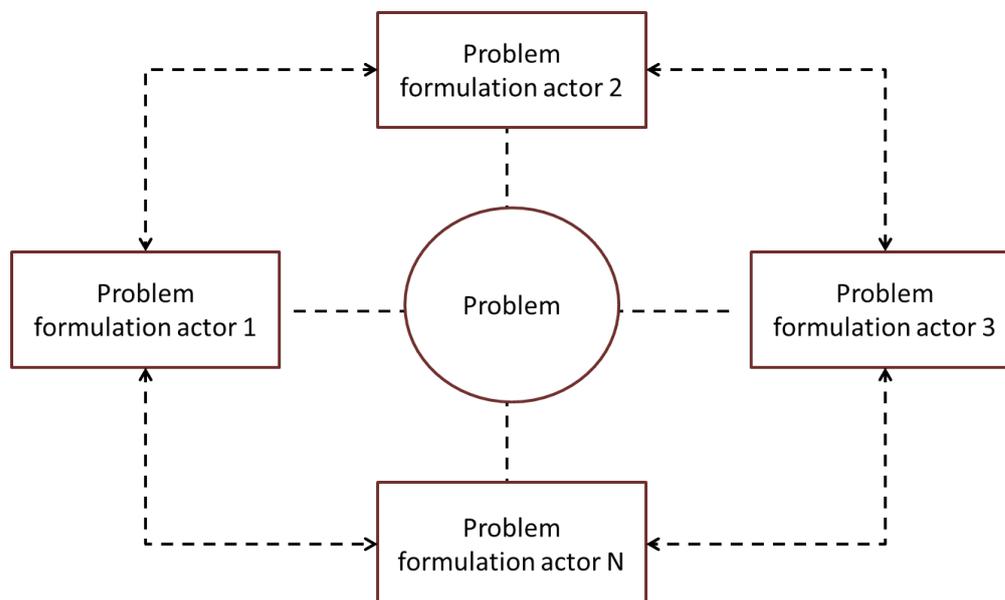
Figure 1: Problems as Social Constructs



Source: Klijn and Koppenjan (2004:30)

In public consultations, actors identify problems and pathways from existing to desired situations based on their understandings and perceptions of the issue(s) at stake. Each actor or group of actors including regulatory agencies filter the facts of the situation through their frames of references and come to a conclusion regarding what should be done to improve the current situation. In this context, participating stakeholders are engaged in a two-level game of problem formulation (see figure 2). At the first level, actors try to frame the problem, each from his perspective using different techniques to serve their interests. After that, each actor tries to promote his problem definition and convince the other actors to adopt his view of the way in which the problem should be dealt with. This task can be straightforward if the game has only one level and one direction from a specific actor to the others.

Figure 2: problem formulation in consultation processes



Source: Badran (2011: 107)

In practice, each of the participating actors presents his definition, and his view of the proposed solutions. This takes the game to the second level, where different problem definitions, different perceptions, and different views about the required course of action interact together. While promoting their ideas, views, and perceptions about the problem at stake, actors tend to appear as scientific and objective as they can. They try to rationalise the process of problem formulation by adopting several scientific techniques for gathering and analysing information. They involve experts and research units that can support their viewpoints. In short, they try to speak in the authoritative language of science.

Looking at problem definition and formulation as an interactive process should help coming to a common understanding among involved stakeholders regarding the issues at stake. This in turn will result in directing the available resources in the right way to make correct decisions and sort out regulatory problems. For regulators, holding public consultations makes them better educated about stakeholders' preferences which in turn enable them to make and take informed and cost-effective decisions. Participatory decision-making approaches are expected to reduce the likelihood of litigation and to minimise stakeholders' resistance and enforcement costs.

Stakeholders' participation via public consultation results in more realistic policies and regulatory decisions. Holding public consultations allow different groups of stakeholders to express their opinions and concerns regarding the discussed regulatory issues. In other words, public consultations empower regulatory stakeholders and give them the opportunity to converse and persuade regulators with their viewpoints. Hence, regulatory policies and decisions made via public consultations will be grounded in stakeholders' preferences and will lead to limited or no resistance during the implementation stage as well as more legitimacy and credibility for the decisions. Nevertheless, while engaging stakeholders in regulatory decision-making via public consultations could empower them to echo their concerns and express their opinions, the quality of the final decision depends on the willingness of participating actors to invest their resources in consultations.

As Litva *et al.* (2002) note "There has been little research looking systematically at the public's preferences for being involved in particular types of rationing decisions, nor indeed, has there been a critical examination of the degree of involvement desired by the public". In case of apathy, where stakeholders are unwilling to take part in consultations or to commit the required resources, holding public consultations may not be the best way for making regulatory decisions. In this regard, Blackstock *et al.* (2006: ii) have noted that "The legitimacy and conduct of any process relies on the people who take part in it; whilst the outcome of any process will be dependent on the application of appropriate techniques in a professional manner".

The above-mentioned pros of public consultations should not lead us to conclude that such a participatory regulatory decision-making approach is problem free. For participants, consultation processes are time and resources consuming and require a great deal of commitment to engage in policy debates and try to air ideas and convince decision-makers with participants' logic. This makes consultations for some actors a dull process which might delay important decisions that markets might urgently need. At the same time, involved stakeholders need to see the impact of their inputs on the final decision made by regulators. However, in consultations over complex regulatory issues where participating stakeholders may hold different perceptions about the problem at stake and the way forward that might not be a straightforward process. It takes time for the regulatory agency to collect, organise and analyse actors' viewpoints and to decide how close their perceptions were to its initial formalisation of the problem. Such a lengthy process may push participating stakeholders to lose faith in the value of their participation particularly when the final policies and decisions do not reflect their preferences.

The number of involved actors and the level of coherence is another critical factor that should be taken into account when regulators decide on the value of holding public consultations. Generally speaking, the wider the formulation of the substantive content of the problem, the higher the representation level of objectives, interests, and demands, and the lower the level of resistance at the implementation phase. But how wide should the formulation be? The process of enlarging the number of participating actors is known as 'scope optimisation', which means that 'the definition of the problem situation provides the room to manoeuvre for finding a solution and for increasing the possibility of an optimal intertwinement of objectives' (Klijn and Koppenjan, 2004: 164-165). This means that the process of scope optimisation is conditioned by the quality of the participated actors and their usefulness to the process of interaction. To put it another way, the scope optimisation process is not an end but a means to develop a collective solution that benefits the largest number of involved actors. As a result, when the scope enlargement leads to the inclusion of some actors who could not contribute effectively to the process of goal development then no new value will be added.

In addition to the scope of participation, the level of coherence among participating stakeholders in terms of the way in which they perceive the issue(s) at stake may also influence the quality of regulatory decisions via public consultations. Ostrom (1990) has noted that more coherent groups lead to more effective collaborative decisions. However, if the diversity of stakeholders added to the complexity of their goals and objective we can hardly ever end up having a coherent decision-making situation. Stakeholders participate in regulatory decision-making process to protect their interests against regulators and other involved actors; the higher the stakes of involved stakeholders,

the greater their resistance for contradicting and conflictive ideas and perceptions. Regulators are required to manage and coordinate participants' perceptions throughout the consultation process. In the words of Roschelle and Teasley (1995) they need to create what 'joint problem space'.

Consequently, Starting with an ex-ante definition of the problem by regulators and sticking to it might lead to conflicts between actors and increase the gap of disagreement between them. Therefore, in order to bridge differences between actors, regulators should aim at creating substantive variety in terms of encouraging the generation of different ideas, options, and alternatives. It should be admitted that it is not an easy task to handle the variety created. The attempt to coordinate the ideas, views, objectives, and solutions generated in order to bridge the gap in perceptions can be very time consuming. It also requires a considerable effort to communicate with other actors and to have contact with parent organisations to figure out the impact of specific solution on the interests of the organisation.

The same issues can also be raised from a regulatory point of view. Involving stakeholders in regulatory decision-making processes is not an easy task. It requires devoting a considerable amount of the agency's time and resources in order to facilitate the participation of affected parties (Lawrence and Deagen 2001). Regulators may also lose control over the decision-making processes especially if participating actors were more powerful and resourceful compared to the regulatory agency. This danger can be obvious in newly liberalised markets wherein powerful and expert telecoms companies try to influence regulatory decisions made by newly established less experienced and less powerful regulators. In such a context, holding public consultations may backfire and result in a more hostile environment of regulatory policy-making. It might also produce higher dependency from regulators to the regulated industry because of the information asymmetry and ultimately lead to a regulatory capture (Badran 2012).

Added to this, participatory decision-making is generally more costly compared to single-authority decision-making. The resources allocated to holding public consultations may leave regulators with limited assets to enforce the made decisions. Weeks (2000) has emphasised the high cost of public participation and the importance of taking account of the contextual factors of involving the wider public including the salience of the issue, the available timeframe, and the potential impact of the decisions.

The lack of required capacities, competences and professional skills may represent another challenge for regulators to hold public consultations. Collaborative and participatory decisions-making differs from traditional top-down decisions (see Badran 2011). Regulators are required to develop a whole set of new skills and competencies to successfully engage stakeholders in decision-

making. The ability to ‘pick’ important problems and to ‘fix’ them has been identified by Sparrow (2000) as being one of the major regulatory competences. Motivated by achieving concrete results, regulators try to specify problem areas and design interventions to solve them. This process, or what Sparrow calls ‘regulatory craftsmanship’, requires substantial professional skills that should be at the disposal of regulatory agencies. It is no longer realistic for regulators to think of themselves as all-knowing, tough, single-minded, individuals who make decisions that are followed by stakeholders. In public consultations regulators should acknowledge and appreciate the differences in opinions among involved actors. Conflicts of interests and disagreement are more likely to take place in participatory decision-making. As Badran (2013: 3) puts it “regulators are required to treat conflicts and disagreement between actors as a natural resource. They need to know how to raise an issue in a constructive manner, and how to attack problems while respecting other actors’ views, perceptions, and demands”.

Public consultations could also be used for cosmetics reasons either to conform to statutory legislations or to justify regulatory decisions and enhance their legitimacy and credibility. In such situations, regulators do not take public consultations seriously and they merely hold them to complete the misleading picture of transparent and accountable decisions-making mechanisms. As Litva *et al.* (2002: 1826) put it stakeholders’ views “will be heard but no guarantee that they will be heeded”. The locus of public consultations can be a good indicator of the seriousness of regulators. For instance, if regulators tend to consult stakeholders on secondary order issues the impact of public consultations on policy and decision-making processes will be minimal. Konisky and Beierle (2001) have noted that participatory decision-making processes will have a limited impact on actual policies and decisions if the discussed issues fall out of the realm of the actual decision to be made.

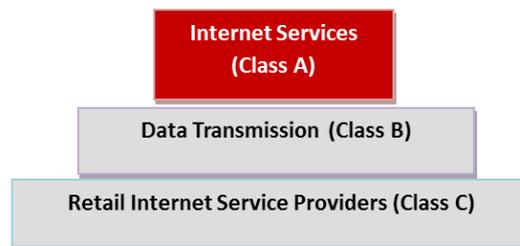
## 4. Consultation Processes and Regulatory Decision-Making in the Egyptian Internet Sector

This section will focus primarily on analysing the BAW consultation process held by the NTRA in order to establish a regulatory framework for providing this service.

### 4.1. A glance on the internet market and regulation in Egypt

Among the first administrative moves made by the TRA when it began to regulate the internet and data market in 1999 was to categorise ISPs' licenses hierarchically into three categories (see figure 3).

Figure 3: ISPs licenses Categories



Source: Badran (2011: 171)

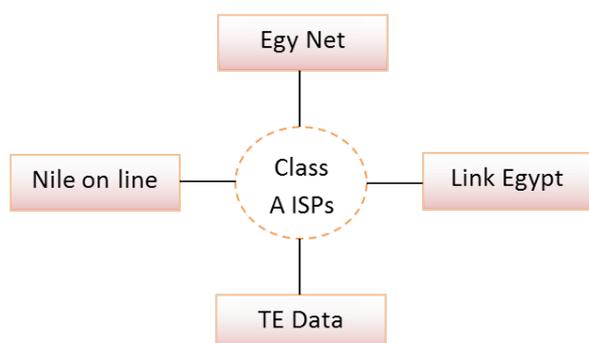
As the figure indicates, at the top of the pyramid come ISPs, categorised as class A licensees then class B and C. According to their licenses, such ISPs are permitted to provide internet services to Class B and C as well as end-customers. They are allowed to establish their own international gateways using fibre optics or cables leased from TE. Added to this, class A ISPs can co-locate equipment at TE exchanges to establish their own high-speed backbones and internet access networks (El-Nawawy, 2003).

ISPs licensed as data transmission services providers or class B providers occupy the next level of the pyramid. These companies are authorised to use TE's infrastructure or to lease network elements from class A licensees in order to build high-speed data networks to serve the end-customers. Class

A and class B licensees can also provide internet services to end-customers by using the gateway of one of class A ISPs. Class B licenses are also extended to empower licensees to establish international gateways using transmission media (fibre optics or cable) leased from TE to provide global data transmission services to closed user groups. The licensees are authorised to transfer data using international data networks and not the internet (voice traffic is not allowed). Retail internet service providers or class C licensees form the base of the pyramid. They are only allowed to use class A infrastructure to provide services to end-customers.

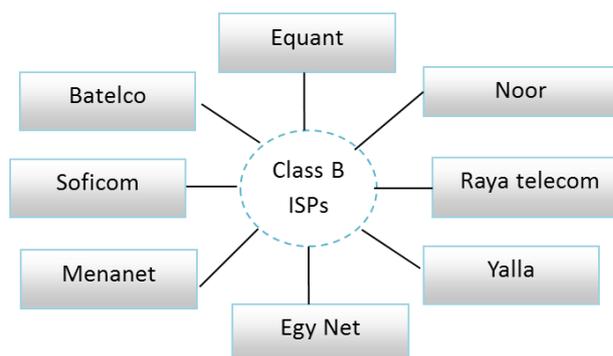
The class A license has been granted to four ISPs while class B license was issued to eight ISPs (see figure 4 and 5).

Figure 4: Class A licensed ISPs



Source: Badran (2011:172)

Figure 5: Class B licensed ISPs



Source: Badran (2011:172)

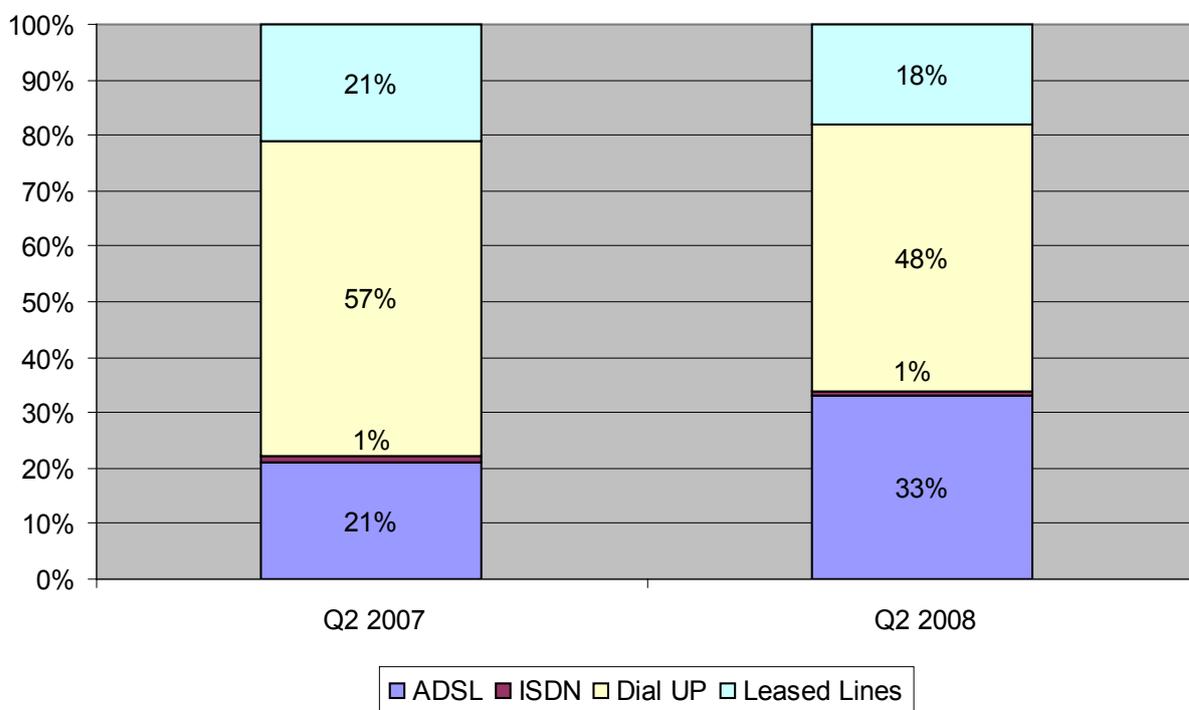
The main characteristics of class A ISPs include: owning of the infrastructure such as equipment, networks, and ports that allow users to access the internet; having an exclusive contract with TE for international long distance gateways access; having the right to lease their infrastructure and their international long distance gateways to class A and B ISPs and having the right to sell their internet services directly to the end users (Abdel-Hafez and Wahba, 2004). Classes A and B have the right to interconnect their networks with the Public Switched Telephone Network (PSTN) based on an interconnection agreement with TE. This allows the licensees to provide dial-up and high-speed internet access services to their customers based on a revenue-sharing model. With regard to class B ISPs, they are required to have their interconnection to the public internet established by

class A ISPs. The commonality between class A and class B ISPs is that they both own their own infrastructure. However, class B providers are not allowed to access the international gateways except via class A ISPs.

The category of class C includes a wide range of virtual operators, about 210 companies that work under the umbrella of either class A or class B. these operators are not allowed to provide their services directly to the end users. These ISPs provide two types of data and internet services: dial-up and broadband services which include the Asynchronous Digital Subscriber Lines (ADSL) and the Integrated Subscriber Digital Network (ISDN) services. The dial-up service is used with the same traditional speed and tariff as national calls.

As the indicators of the MCIT and the NTRA show, despite the efforts of the MCIT and the NTRA to increase the number of broadband users, most of the consumers prefer subscription-free dial-up internet services (see figure 6)

Figure 6: Internet Users by Mode of Access

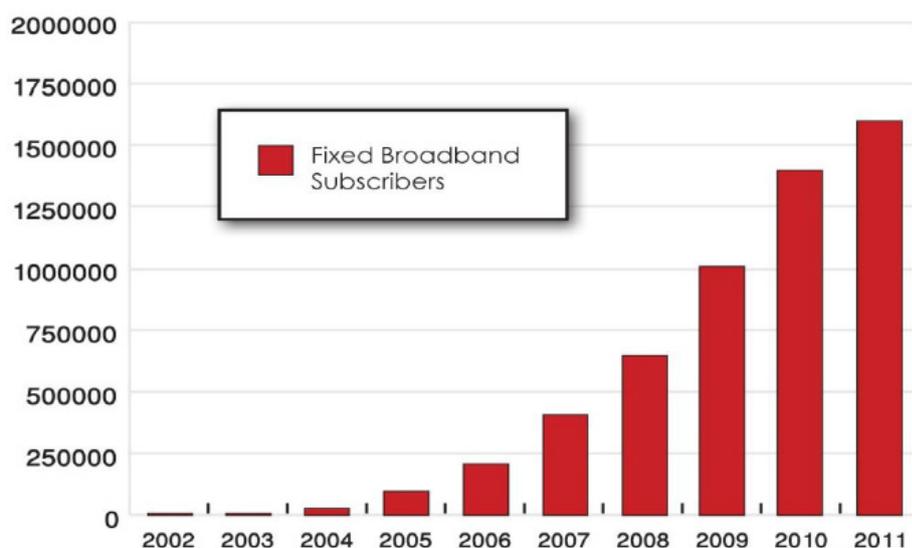


The data for creating this figure is taken from MCIT and NTRA

As can be seen from the figure, dial-up internet users represented 57% of the total internet users in 2007. This percentage declined to 48% in 2008 as a result of broadband initiatives introduced by MCIT and regulated by the NTRA which aim at encouraging internet users to subscribe for broadband services. This in turn led an increase in the percentage of broadband users from 21% in 2007 to 33% in 2008. However, the competition among dial-up service ISPs (210 companies) gives the users of this service a wider range of choices which enables them to resolve most of their problems by simply changing the ISP. The rest of the internet users either have leased lines (18% in 2008) or subscribe to ISDN provided over TE's telephone network. Overall, the total number of internet users increased to 11.3 million subscribers in the second quarter of 2008 compared to 10 million users in quarter two of 2007. Similarly, the internet penetration rate increased from 13% to 15.13% for the same period.

Since 2008 the internet market in Egypt was growing with an average growth level of 30.000 subscribers per year (eMisr National Broadband Plan 2011: 19). As figure 7 indicates, the total number of Fixed broadband subscribers has reached 1.6 millions in 2011. In addition to developing the fixed broadband market, NTRA was experimenting with wireless internet market since 2004. The starting point was the establishment of WiFi public hot spots under class A license in 2004 in an attempt to encourage the utilisation and the spread of this technology.

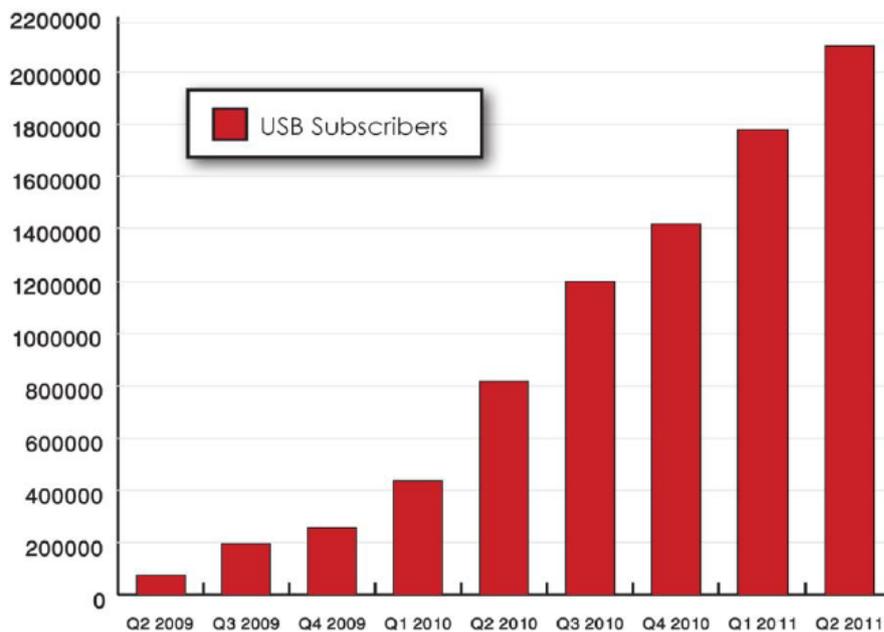
Figure 7: Evolution of ADSL Subscribers over the Last Decade



Source: eMisr National Broadband Plan (2011: 19)

The NTRA has continued its efforts to encourage the adoption of wireless technologies throughout 2005-2009. Two pilot projects have been initiated in collaboration with the Ministry of Communication and Information Technology and 2 ISPs to introduce WiMAX technology.

Figure 8: Evolution of Mobile USB Subscribers over the Last Decade



Source: *eMisr National Broadband Plan (2011: 21)*

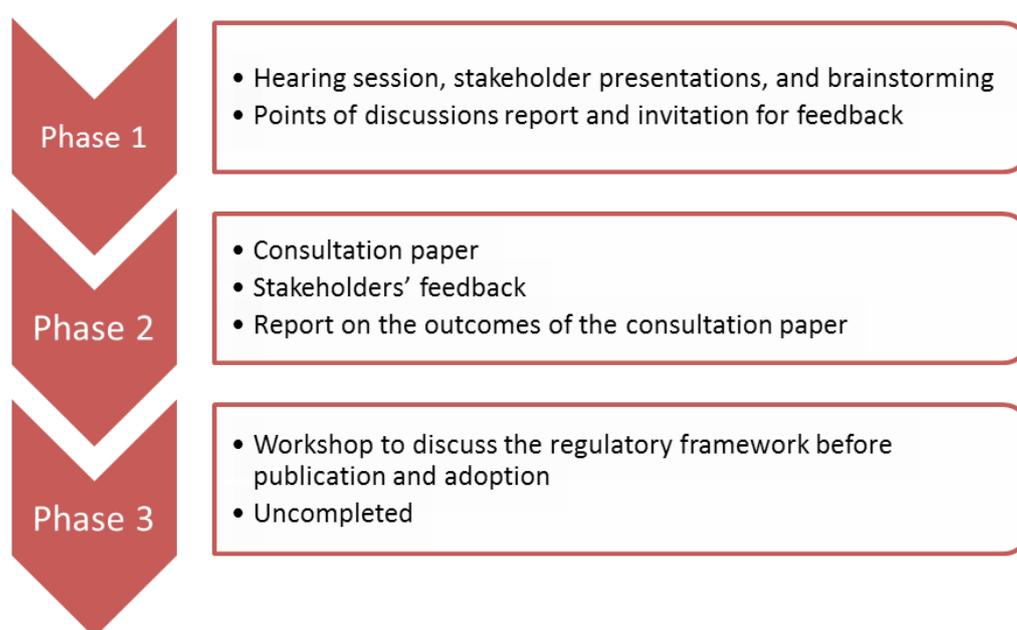
Due the competition among the three mobile service providers in Egypt the mobile broadband market has also witnessed a boom (see figure 8). As the figure indicates, since 2009 the mobile broadband market has been steadily growing. The total number of subscribers to this service has reached 2.2 million by June 2011.

#### 4.2. The BWA Consultation Process

With the main features of the internet market in Egypt so identified, the discussion moves in this section to focus on the analysis of the BWA consultation process. As mentioned above, the NTAR was experimenting with wireless internet technologies since 2004. In 2006-2007 the authority has decided to launch a consultation process to get an idea about what ISPs and the rest of the stakeholders in the Egyptian internet market think about introducing wireless broadband and the ways of doing so. It is worth noting in this regard that, despite the commitment made by the NTRA to widely consult with stakeholders regarding regulatory decisions the BWA consultation is the only published consultation on the authority's website. This can give an indication about how serious and keen the regulator is on using public consultations for informing the decision-making process.

As reported by the NTRA the consultation process is divided into three main phases (see figure 9).

Figure 9: phases of the consultation process



As the figure indicates the consultation process started with a hearing session in 2006 organised by the NTRA and attended by a number of stakeholders including ISPs, ICT companies and participants from other interested organisations. In this session, the NTRA has provided an overview of BWA technologies with a special focus on WiMAX and highlighted some of main issues associated

with the introduction of wireless broadband. The main points of discussions have been summarised and published by the NTRA which invited affected parties to respond to specific questions related to the points and concerns raised in the hearing session. That was a good move by the NTRA to widen the spectrum of participation and to allow those who have not attended the hearing session to express their opinion.

The report published following the hearing session in April 2006 highlighted four main points: technology neutrality; different application for BWA; different scenarios for the regulatory model and licensing issues. The NTRA was quite keen on getting feedback from market players regarding which BWA technologies should be utilised and whether different technologies should be regulated differently. Another issue of concern was BWA applications and structures which may lead to different regulatory frameworks. The NTRA asked stakeholders to provide their opinion based on a selection from three main applications: nationwide network, backhauling and last-mile access network. Based on the discussed BWA technologies three regulatory models have been identified by the NTRA for stakeholders to provide feedback on: nationwide service provider, regional service provider and network operator. The authority has emphasised that these three models are not mutually exclusive and a combination of them is possible. Finally, the report has stated that the NTRA will decide upon the licensing schemes in the light of the agreed upon technology and applications.

Eight responses have been published on the NTRA's website in which the responded stakeholders have raised different issues of concern and provided their take on the issues highlighted by the regulator in its report. The number of responses was limited due to the fact that only few stakeholders have been invited to the hearing session and some major players such as ACT have expressed their disappointment for being excluded from the invitation. As stated by the ACT's V.P. Business Development and Senior Legal Counsel "ACT is disappointed that it was not notified nor invited to the first hearing following repeated meetings with and input to the NTRA and MCIT regarding BWA in Egypt". Despite such a disappointment by some of the market players the received responses show a high quality discussion of the points raised by the regulator. The points of discussion can be categorised under the following subheadings:

Technology neutrality: respondents disagreed about the importance of using technology and service neutrality. The majority of responses were urging the NTRA to impose standards on operators in order to guarantee a minimum level of harmonisation in the market. From this angle, technology neutrality may lead to a fragmented broadband market. As put by Ericsson "For public communication systems in general, the concept of "technology neutrality" needs to be carefully considered,

particularly for the reason that these systems are mass-market systems and need to be harmonized”. The same idea has been emphasised by other stakeholders including the MCIT and NOL which called for the application of international standards in order to minimise the regulatory burden and allow an easy movement for users among service providers.

This line of thoughts has been counter argued by other stakeholders namely ACT which was completely against any form or shape of regulatory imposition on service providers. According to this view, technology and services should be left to the operators themselves to decide upon as they will pay for it. Additionally, specifying standards and technology will add to the regulatory burden as the regulator will be required to evaluate the pros and cons of existing as well as future technologies and there is a very slim chance to get such an evaluation right. As ACT puts it “Regulatory imposition of technology and services requires that a regulator understand the capabilities and drawbacks of various current and future technologies. A regulator trying to forecast future technologies and the services that such technologies can offer places a heavy burden on itself to be correct”. Therefore, ACT urged the NTRA to leave issues related to technology and service to operators which are more flexible and responsive to changes in the market.

Applications and regulatory model: the analysis of the responses has indicated that most of the respondents were in favour of a nation-wide network with either nation-wide licensed operators or a combination of nation-wide and regional operators. This line of argumentation has been justified on different grounds. Firstly, new operators need to make use of economies of scope and scale available in the market in order to be willing to invest in new technologies and to roll out new networks. Secondly, quality and availability of services was another reason to argue for nation-wide networks. In this regard CNG has mentioned that issuing licenses at national and regional levels will “ensure a good quality service for the end customers and the availability of the services to the customers everywhere in Egypt”. Thirdly, national licenses are required for competition purposes. New entrants will not be able to equally compete with existing incumbent if they have been granted only regional licenses. As ACT puts it “A new market entrant is at a significant disadvantage vis-à-vis the incumbent operator in Egypt. The disadvantage is only compounded where the fixed line incumbent has a national license. From a customer perspective, the new entrant cannot be viewed as only a regional player when its competition is national” (ACT 2006). Finally, nation-wide networks and national licenses have been argued for in order to achieve uniformity in frequency assignment and distribution across Egypt. If national and regional licenses are granted simultaneously, national operators will lose the economies of scale and scope to get a reasonable return on their investment.

Licensing scheme: an issue of agreement among most of the respondents was the speedy

application of the licensing scheme. “We hope that this dialog will lead to the announcement of a near-term timetable for a BWA spectrum licensing process that is open to all qualified operators” (ACT 2006). The same issue has been emphasised by Intel by stating that “Intel believes the WiMAX licensing should be complemented as soon as possible”. Regarding the method of licensing, there has been a debate around three main ways: auction-based, beauty contest, and a combination of these two methods. Auctions have been regarded as a fast and efficient way to allocate spectrum for new operators as they guarantee that allocated spectrum goes to those which value it most. On the other hand those who argue against auction-based spectrum allocation have criticised this method because it disregards many issues which are equally important to money. As stated by ACT “The beauty contest approach to licensing gives the NTRA the framework to assess how an operator will contribute to increasing competition in the access market; ensuring consumers have access to information, the Internet, and the general development of an open, educated, and connected society” (ACT 2006: 10). The NTRA has proposed a combination of beauty contest and auction but in practice that means the licensing process will end up as an auction process among those bidders who can make it to the auction stage.

As can be seen from the analysis of the responses of stakeholders predicated in the first stage of the consultation process, both the regulator and the interested parties were willing to invest resources in the process and to engage in a meaningful debate about how to develop a framework to regulate this new services. The feedback from market players formed the basis for the second stage of the consultation process wherein the NTRA published a formal consultation paper and invited a wider range of stakeholders to provide their feedback. Based on the points raised by stakeholders in stage one, the NTRA has asked market players to provide their opinions regarding nine main issues (see table 1).

Table 1.

|   |  |       |                          |          |                          |
|---|--|-------|--------------------------|----------|--------------------------|
| 1 | Do you agree to issuing licenses nation-wide?  | Agree | <input type="checkbox"/> | Disagree | <input type="checkbox"/> |
| 2 | Do you agree to the award of three licenses?   | Agree | <input type="checkbox"/> | Disagree | <input type="checkbox"/> |
| 3 | Do you agree that existing licensed telecommunication service providers should not be excluded from applying for the licenses? | Agree | <input type="checkbox"/> | Disagree | <input type="checkbox"/> |

|   |  |                                |                                   |
|---|--|--------------------------------|-----------------------------------|
| 4 | Do you agree to the license award process specified?   | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |
| 5 | Are the decided annual fees suitable?  | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |
| 6 | Are the facilitations proposed by the regulatory authority for the license award expected to help in providing the service rapidly at suitable prices? | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |
| 7 | Does the license period allow for suitable financial returns?  | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |
| 8 | Is the allocated frequency spectrum suitable for the provision of services nationwide?   | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |
| 9 | Does the variety in permitted services allow for achieving financial returns?  | Agree <input type="checkbox"/> | Disagree <input type="checkbox"/> |

Stakeholders were also invited to provide feedback on a proposed regulatory framework for BWA. Responses from stakeholders were as positive as those received in the first stage. The authority has received 23 responses from different types of stakeholders (national and international operators, component vendors and solution integrators). Out of the 23 responses only 21 have conformed to the format required by the NTRA and have consequently become the focus of the analysis. The following table summarises stakeholders' responses on the abovementioned issues:

Table 2.

| Issues  | Agree | Disagree | withheld |
|---|-------|----------|----------|
| Do you agree to the award of a nationwide license?  | 17    | 3        | 1        |
| Do you agree to the award of three licenses?  | 11    | 9        | 1        |
| Do you agree that existing licensed telecommunication service providers should not be excluded from applying for the licenses?                          | 12    | 7        | 2        |
| Do you agree to the license award process specified?  | 10    | 9        | 2        |
| Are the decided annual fees suitable?   | 8     | 11       | 2        |
| Are the facilitations proposed by the regulatory authority for the license award expected to help in providing the services rapidly at suitable prices? | 14    | 5        | 2        |

| Issues   | Agree | Disagree | withheld |
|--|-------|----------|----------|
| Does the license period allow for suitable financial returns?                          | 9     | 11       | 1        |
| Is the allocated frequency spectrum suitable for the provision of services nationwide? | 7     | 14       | 0        |
| Does the variety in permitted services allow for achieving financial returns?          | 15    | 5        | 1        |

As the table indicates, some of the raised issues have been a subject of agreement among the majority of stakeholders such as the issuance of the license(s) on a nationwide base as well as the level of facilitation proposed by the authority and permitted services. On the other hand, most of the stakeholders opposed the proposed fees, expected financial returns and the allocation of frequency spectrum. The awarding process and the number of licenses to be garneted have been a subject of debate among consulted parties. The comments provided by the NTRA in its report published in December 2006 with regard to the points raised by stakeholders were explanatory in nature and did not show how the authority is going to address these concerns. The report did not also indicate the reaction of the NTRA to the issues raised by regulated companies in relation to the proposed regulatory framework. It is also noteworthy in this regard that the report was the last published document on the consultation process and science then it is not quite clear what is going on within the black box or the regulatory decision-making machinery.

#### *4.3. BWA Consultation Process in the balance*

The abovementioned analysis of the consultation process on BWA demonstrates that both the regulatory agency and the industry were engaged in two phases of serious and rich discussions on how to regulate the provision of this new service. Generally speaking, the industry welcomes this approach by the NTRA to involve affected parties in the decision-making process. According to regulated companies, this participatory decision-making approach allows them to express their opinions and to raise any concerns about disused regulatory issues. As put by an interviewed senior manager in one of the leading internet companies “The NTRA is keen on listening to the regulated industry. Regulated companies can participate in different events such as hearing sessions and consultation processes. In hearing sessions, the NTRA does not present any position it just raise an

issue and listen to the view points of the regulated companies. Each company can participate and present its view”.

Procedurally speaking, most of the interviewed companies were happy with the way in which the consultation was held and submit that the authority has succeeded in ticking every single box with respect to organising the debated and brainstorming sessions as well as making the outputs of these sessions available for the wider stakeholders to comment on. The analysis of the interview material also shows that respondents agree that the authority was also transparent regarding the feedbacks received from stakeholders as it made them all available on the website which allowed the different players to be aware of each other’s stand on the discussed issues. “The NTRA has managed the consultation process efficiently and has successfully facilitated the debate among participating parties. The process was transparent and documents were published on the authority’s website” (interview with CEO of class A internet company).

Nevertheless, the overall process was quite far from being perfect. To begin with, it is clear from the very beginning of the consultation process the absence of consumers’ representation. As can be noticed from the published documents, the involved stakeholders either in stage one or two were from the regulated industry and some governmental agencies such as the MCIT. This could be explained by the highly technical nature of discussions which consumers might not be fully aware of. However, this does not justify the total absence of consumers’ representation. As the aforementioned theoretical discussion indicates, a stakeholder and a participatory decision-making approach call for the inclusion of all affected parties. Therefore, even though consumers might not be familiar with technical jargon they should have had their voice echoed somehow in the process.

Another issue of concern was the way in which the regulatory agency dealt with the outputs of the two phases of the process particularly the second phase. Most of participated market players are still kept in the dark with respect to many of the raised regulatory issues. In an interview with a CEO of one of the leading internet companies in Egypt the respondent commented on the consultation process on BAW by saying that “we have been invited by the NTRA to express our opinion regarding the new regulatory framework for BWA. We did participate in the process from the very beginning and responded to the consultation paper published by the regulator. Nonetheless, since then we have heard nothing about the final decision in this regard and the market is full of rumours which worsen the situation”. In a fast-changing and dynamic market such as the internet this silence by the sector regulator is not welcomed by the industry as it adds to the existing uncertainty and makes it hard for operators to plan ahead. In this regard, a manager in a class A internet company has stated that “The internet is a fast-changing market in which the competitive advantage for a specific player

depends on how fast its responses to the changes are. As such, and in the absence of a transparent and clear vision to the future of the sector the rumours can control the behaviour of the regulated industry”.

Interviewees were particularly angry as they have seen no results until now for the time and efforts they invested in the consultation process. “The process has been on hold for long time and no one knows for sure why” (Governmental affairs manager in a class A ISP). “Rumours about using WIMAX technologies have led many companies to sign contracts with other parties and to import wireless equipments which cost them a lot of money and resources. And finally the NTRA decided to postpone the whole issue for future consideration for no clear reason” (Planning manager, class A ISP). These angry voices have called for higher levels of transparency and responsiveness from the NTRA. They asked to receive a return on the resources they allocated to actively engage in the consultation process. They have also highlighted the lack of a long term strategic plan to set the contours for future changes in the market. As stated by a planning manager in one of the ISPs “Without a long term plan it would be difficult for internet companies to make informed decisions regarding which technologies to invest in and which parts of their networks to develop”. Such a plan would help the regulated industry preparing itself for the future changes and reducing the uncertainty with regard to different issues.

Another important issue which has been highlighted in stakeholders’ responses in the second phase of the consultation process and came up in interviews is the viability of the proposed business model for regulating BWA. According to some voices in the industry one of the main reasons behind the difficulties faced by the ISPs nowadays is that the regulator was interfering in issues which should be left to businesses and market forces. A CEO in one of the leading ISPs has stated that “The business model of the internet industry in 2000 was not profitable. The model was dominated by government intervention at the level of inputs and outputs. At the level of inputs, all ISPs were required to buy most of the facilities necessary to provide the service from TE which determined high prices for such facilities. At the level of outputs the government was interfering to determine lower internet prices in order to increase the number of subscribers”. Some of the interviewees have raised concerns about repeating the same mistake again as the proposed regulatory framework for BWA-as they interpret it-reflects high level of regulatory intervention in business decisions.

With the lack of clear responses and communications from the NTRA to assure the regulated industry regarding the raised issues and concerns some of the interviewees have questioned the rationale behind the whole consultation process. As stated by a manager in one of the leading national operators, “consultation as I far as I understand is a two-way communicative process. We

have been asked to provide our feedback on how to regulate the BWA and we did. I think we have the right to know how our feedback has been used by the regulator to form the regulatory framework for service provision. We also need to know how the points we raised will be addressed by the regulator”. This comment denotes that the consulted parties expect to see the impacts of their inputs on final regulatory decisions the same way the regulator expects to receive their opinions on the issues under consultations. The lack of response from the regulator to the issues raised by the industry may push them to refuse to participate in future consultations.

## 5. Conclusion

This paper has focused on the role of consultations in regulatory decision-making processes. The consultation on BWA in Egypt was used as an illustrative case in order to shed some light on the pitfalls of involving stakeholders in making regulatory decisions. The discussion has indicated that public consultations are regarded as a double-edged weapon. On the one hand, they could lead to better regulatory decisions which meet stakeholders’ preferences. On the other hand, if public consultations are held cosmetically to fulfil legal obligations or to superficially involve affected parties, in these cases, they may undermine the legitimacy of the regulator and decrease the level of trust between the agency and the industry. For businesses, consultations are not free activities; they require resources to be allocated in order to actively engage in regulatory debates. Therefore, if businesses will not see the impact of their inputs on the final regulatory decisions and developments they might be reluctant to devote anymore time or resources to such processes. In short, it good for regulators to consult stakeholder but it is better to reflect what they say in regulatory decisions.

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