PROPERTY RIGHTS, REGULATORY RISK AND PRIVATE INVESTMENT IN KENYA'S TELECOMMUNICATIONS SECTOR

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ABSTRACT

Many countries have instituted regulatory reform programs, seeking to stimulate private investment in their public telecommunications network. Effective regulation encompasses two components: the formal regulatory incentives and the regulatory governance structure. Although the regulatory governance – the institutional endowment underlying the regulatory scheme – determines the impact of the incentive, it is often overlooked in regulatory design initiatives.

The potential impact of the regulatory governance structure is examined through a case study of the reform program currently underway in Kenya's telecommunications sector. For more than a century, that sector has operated under public control and in the shadow of an administrative process that was corrupted in colonial times and offered fresh opportunities for distortion under post-independence governments. Furthermore, the sector continues to operate in the same predatory arena of distributive politics that contributed substantially to its decline.

The performance of Kenya's telecommunications sector continues to be constrained by its history and, although the formal structure has changed, the institutional underpinnings of the sector – the regulatory governance structure – remain largely unaltered. This legacy dilutes the security of property rights and creates scope for administrative expropriation in several ways. The government and regulator can change the regulatory scheme easily and are not effectively restrained from violating contractual commitments to private parties. In addition, local mechanisms enforcing restraints on the regulator and government are weak or non-existent. Property rights in Kenya, therefore, remain uncertain, forcing investors to adopt strategies to manage, deflect or re-allocate the regulatory risk posed by Kenya's weak domestic institutions. While these strategies are useful, most of them have costs that render them sub-optimal if the sector is to be efficient in the long term.

To consolidate the gains made in the reform efforts so far, attention should be now be paid to strengthening the regulatory governance structure that supports the definition and enforcement of property rights. Evidence from other countries shows that, unless this is done, privatization programs will not stimulate an optimal level of the telecommunications investment that is so badly needed for Kenya's economic growth.

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