THE WORLD BANK GROUP

Telecommunication Sector Note in the Palestinian Territories: Missed Opportunity for Economic Development

Note for the Palestinian Ministry of Telecommunications and InformationTechnology

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1 Executive summary

The Telecommunications Sector Assessment Note in the Palestinian territories is a knowledge product prepared by the World Bank in response to a specific request from the Palestinian Ministry of Telecommunications and Information Technology (MTIT) to assess the performance of the telecommunications sector, identify specific issues and make recommendations for further development and reform.

MAIN FINDINGS

The Oslo framework, the reference agreement between the Israeli and Palestinian counterparts to support economic development and stability in key economic sectors, has failed to deliver its promise of an independent telecommunications sector in the Palestinian territories. According to the principles of the Oslo Agreement, ***"Israel recognizes that the Palestinian side has the right to build and operate separate and independent communication systems and infrastructures including telecommunication networks, a television network and a radio network."*** Several resolutions of the International Telecommunications Union[1] confirm the right of the Palestinian people to have access to an independent telecommunications network.

The principles of the Oslo agreement with respect to the telecom sector remain valid. However, its provisions are not applied. This is presenting enormous challenges for Palestinian telecom operators, a clear detriment to the Palestinian consumer, a fiscal loss for the Palestinian Authority, and an overall delay for sector development. The Joint Technical Committee (JTC) under Oslo, intended to be a regular, technical (non-political) platform to address bilateral issues, has shown inadequate and ineffective performance, and progress since 2008 on bilateral issues has been limited:

• The lack of spectrum is a significant constraint to the development of the industry; in late November 2015, an agreement for a limited release of frequencies to Palestinian operators to launch 3G services has been signed. If implemented, the agreement would finally allow Palestinian operators to introduce mobile broadband using 3G, about eight years after their initial request. The agreement would still place the Palestinian operators at a competitive disadvantage, as Israeli operators have 3G and 4G capabilities and are able to attract higher value customers. As the MENA region is moving towards 4G, the recent agreement on the release of frequencies can hardly be celebrated as a success— although it does represent a first step forward. Combined with other restrictions, the delay in mobile broadband negatively affects Internet development.

• The second mobile operator (Wataniya) cannot fully play its competitive role for the mobile market. Its operations in the West Bank suffered a two-year delay due to Israeli restrictions on releasing the spectrum. The situation for Gaza consumers is worse as Wataniya still cannot start its operations due to restrictions on accessing spectrum and importing civil material[2].

• The presence of widespread, unauthorized activity by Israeli operators in the West Bank with mobile broadband capabilities (Israeli operators have 3G capabilities since 2004 and 4G since 2015) has the effect of creating unfair competition at the expense of Palestinian operators which cannot even deliver 3G services. Depending on sources, Israeli operators may currently capture up to 30% of the West Bank market in volume — i.e. number of subscribers. The Israeli market share in value — i.e. measured by the total sales — is even higher as Israeli operators capture high value-added Palestinian customers by providing 3G and 4G.

Other constraints have a negative impact on sector performance, including (i) restrictions on the import of equipment for telecom and ICT companies, (ii) restriction of movement of goods and people within Area C that impedes the deployment and maintenance of infrastructure, and (iii) the requirement by Israel that Palestinian operators go through an Israeli-registered company to access international links.

Some domestic regulatory and competition issues persist, chief among them the strengthening of the regulatory framework with — ideally —the creation of an independent regulatory agency. They still present an important reason in addition to unilateral and bilateral issues for inadequate sector performance. However, some achievements are substantial when compared with other countries in MENA that have yet to introduce similar reforms, and compared to the situation in 2008.

• With the issue of a second mobile license (to operator Wataniya) the authorities have introduced a mobile-focused competitor enjoying *de jure* rights on equal footing with incumbent operator Paltel. Paltel and Wataniya are robust companies, with deep know-how in the sector, technology proficiency, excellent commercial skills and solid investors. These companies are essential assets for the economic development of the Palestinian territories. If unilateral and bilateral constraints are alleviated, chief among them the release by Israeli operators of spectrum for 3G and 4G and the lifting of Israeli restrictions on the import of equipment for Wataniya in Gaza, they could make a substantial contribution to the development of the Palestinian Territories.

• The Palestinian authorities allow facilities-based ISPs, wherein a local ISP can acquire a broadband license and become a broadband operator. As a result, local entrepreneurs can acquire rights and directly invest in the development of broadband infrastructure at access level. This has been a factor of success for the development of broadband in other emerging regions, especially in Eastern Europe. Few countries in MENA have adopted this liberal approach, which is the norm in Europe and other regions. This achievement is noteworthy.

• Palestinian ISPs with a broadband license can use alternative infrastructure built by non-telecommunications operators, in accordance to the law and relevant regulations. For example, the fiber optics infrastructure of JDECO, a Jerusalem utility company, is used by at least one ISP. JDECO may be willing to lease infrastructure to other operators.

• MTIT has also introduced competition in the VoIP and WiFi markets by introducing new licenses.

For the introduction of competition through the award of mobile and broadband licenses to be successful for the Palestinian territories, the overall domestic regulatory framework needs to be strengthened. Despite the achievements mentioned above, there is still the critical need to issue regulations to tackle the dominant position of Paltel in selected segments, and of unauthorized Israeli operators. There is an active and pressing debate on the need of a new law, and on the introduction of an independent regulator. The introduction of an independent regulatory authority reflects good international practice and should be considered as a priority.

Regardless of the timing of the creation of an independent regulator, however, the regulatory framework is lacking a minimum regulatory package of key regulations that support competition in in advanced markets. For example, the regulatory framework should be strengthened through a package of regulations to address dominance and potential anti-competitive risks such as (i) limited access to essential infrastructures in the fixed broadband market, (ii) on-net / off-net price differentiation in the mobile market, and (iii) fixed and mobile cross-subsidizing.

There are specific, additional issues of regulatory and institutional uncertainty in Gaza, preventing the development of the telecom sector:

• Any company applying for a telecom license in the West Bank must go again through a whole new licensing process in Gaza. This generates inefficiencies and costs.

• Several counterparts mentioned that Gaza authorities are levying tax on telecom companies. While the principle of taxing telecom companies can be legitimate, any fiscal revenues should be managed directly by the PA or by a dedicated fund such as a Universal Service Access fund.

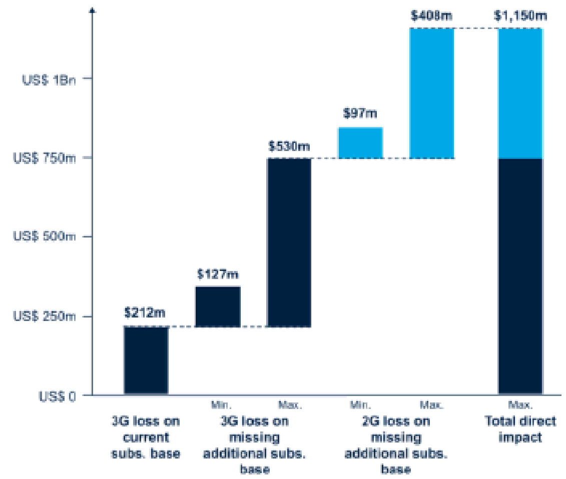
• MTIT does not have control over the Palestinian National Internet Naming Authority (PNINA) —and more specifically over the PNINA servers — which is located in Gaza is the official domain registry for the Palestinian country code Top-Level-Domain (".ps"). While the absence of MTIT control over PNINA does not currently prevent Palestinian companies to register and operate a website, MTIT should have control over this Authority.

The impact of unilateral and bilateral issues as well as domestic issues on the performance of the telecommunications sector is compelling:

• The price of fixed and mobile services is still high, and mobile data is particularly expensive, especially compared with the offers of unauthorized Israeli operators.

• A high-level, possibly conservative estimation of the foregone value due to lasting effects of unilateral and bilateral issues as well as domestic issues is provided based on a benchmarking with peer markets. **The total revenue loss for the Palestinian mobile sector during the last three years (2013-2015) ranges from US$ 436 to 1,150 million.** The revenue loss directly attributable to the absence of 3G is between US$ 339 and 742 million and the total 2013-2015 Value Added Tax fiscal loss for the Palestinian Authority is between US$ 70 and US$ 184 million[3]. The direct impact represents up to 3.0% of the GDP over the last three years.

Figure 1: Total revenue loss over the last three years (2013-2015) for Palestinian mobile operators due to the absence of 3G and other bilateral and domestic issues



Source: World Bank calculation

In short, compared to the 2008 situation assessed in the World Bank Telecommunications Sector Note (World Bank, 2008), there has been very limited progress on the bilateral side and noticeable progress on the domestic side. On the bilateral side, spectrum issues emerged as the most important bottleneck for the sector, in the context of an industry that has strongly evolved towards the use of radio resources for data communications. The creation of an independent regulator remains the most important domestic priority, but in some areas (sector liberalization, liberal licensing regime), the authorities have taken positive steps that most countries in the region have still to embrace. Most of the issues identified in the current Note were already mentioned one way or another in 2008, and a high-level assessment of the progress achieved during the last 7 years is provided in the table below.

Table 1: High-level summary of progress and stagnation since 2008

Main issues (2008)	2008 situation	2015 progress
Unauthorized competition and technical coordination	○ Dysfunctional JTC ○ Israeli restrictions on spectrum release and no 3G services ○ Unauthorized competition by Israeli operators ○ Israeli restrictions to import civil and ICT material across borders (especially in Gaza)	○ Dysfunctional JTC ○ Little progress on spectrum (release of 2G spectrum for a 2nd operator in the West Bank). The release of 3G spectrum has been delayed, placing unauthorized mobile Israeli services at a clear advantage. ○ Still unauthorized competition by Israeli operators; data suggests that their market share has diminished but could rise again as they are able to provide 3G and 4G services and data packages that cannot be matched by Palestinian operators. The presence of aggressive data packages from Israeli operators may also prove to be a competitive challenge for DSL offer. ○ Israeli restrictions to import civil and ICT material across borders (especially in Gaza); difficulties to obtain permits to operate in Area C (infrastructure deployment and maintenance). ○ Restriction on access to international links (possible only through an Israeli-registered company).
Weak Sector Institutional and Regulatory Capacity	○ No independent regulator ○ MTIT is resource constrained ○ Tax collection to be improved ○ Transparency and governance to be enhanced	○ Still no independent regulatory agency. ○ Improvements on the policy side but incomplete implementation (no regulatory authority): • 2009: a Telecommunications Law was approved; the 2009 Law provides for the creation of the Palestinian Telecommunications Regulatory Authority (PTRA) • 2010: MTIT published a Statement of National Telecommunications Policy • 2014: MTIT published its ICT Strategy
Promotion of new entrants	○ High entry barriers for new entrants, no competition in mobile	○ Substantial progress for the mobile market: i) a second operator (Wataniya) launched operations in Q4 2009 but still cannot operate in Gaza; ii) MTR decrease based on LRIC model ○ Substantial progress for the fixed market: i) introduction of liberal ISP licensing regime; ii) a form of bitstream access is available; iii) possible access to alternative infrastructure, iv) FTR decrease based on LRIC model
Market dominance	○ Operator dominance (single mobile operator Paltel-Jawwal and dominant ISP Paltel-Hadara)	○ Regulatory framework needs to be strengthened: i) framework to deal with significant concerns by telecom challengers and new entrants regarding dominance of Paltel; ii) no Number Mobile Portability; iii) RIOs to access Paltel's infrastructure

RECOMMENDATIONS ON BILATERAL ISSUES

Revive the JTC platform to address bilateral issues. Specific areas of focus include a **comprehensive and long-term agreement on spectrum,** beyond the current agreement on 3G, and including 4G spectrum as well as spectrum for network backhauling and other wireless broadband access technologies, ensuring the Palestinian operators the right to develop independent, facilities-based, networks, and, if they wish, accessing shared passive infrastructure facilities.

Review the mechanisms for the functioning of the JTC to ensure greater trust, efficiency and openness. Some suggestions to explore include:

• A commitment to meet on a scheduled and regular basis whatever the political context on both sides;

• The inclusion of a trusted and independent third party with legal and technical expertise to review requests and proposals from both side and provide suggestions where relevant;
• The commitment to i) not disclose sensitive or preliminary proposal and information; ii) and conversely to publish public reports and updates on the work and progress of the JTC.

Release 3G and 4G spectrum. Competition in the mobile market has been the driver of mobile market growth and innovation in all markets, including in distressed, post conflict environments, and releasing additional spectrum would provide benefits to Palestinian residential and corporate end-users. Leaving a mobile-monopoly market structure in Gaza is unhealthy for competition and Gaza consumers. The absence of 3G/4G spectrum assigned to Palestinian operators is also hurting Palestinian consumers. The Israeli authorities have provided a proposal to allocate dedicated spectrum to the Palestinian operators, as well as spectrum on a shared principle on the 2100MHz band. A full allocation of spectrum resources, beyond the 3G spectrum, should be negotiated.

Lift Israeli constraints on the layout of microwave links and the import of civil and telecom material —particularly in Gaza. Some options include:
• Streamlining the administrative procedure for security clearance with stable, objective, transparent and non-discriminatory criteria to be fulfilled;
• Palestinian telecom and ICT companies providing all the needed clearance forms and proofs;
• Israeli authorities monitoring the use of civil and telecom material— particularly in Gaza —with the possible involvement of a trusted third-party performing a detailed audit on a regular basis to ensure all security concerns are dealt with.

Mitigate the effect of unauthorized telecom activity. The issue of unauthorized Israeli telecom activity in the West Bank has been present through the implementation of the Oslo agreement. Two measures can address this issue:
• Palestinian operators should be able to access similar resources as Israeli operators, in order to be on the same competition ground. This includes accessing sufficient spectrum to deploy independent 3G and 4G/LTE systems (which can be shared with Israeli operators on a voluntary basis); this is a top priority for action;
• An ideal cooperation between Israeli and Palestinian authorities would limit the coverage of Israeli operators in the West Bank. This includes the review of telecom equipment deployed (e.g. micro-cells with a smaller coverage radius can limit the coverage compared to macro-cells)[4]. However, the track record (especially of the JTC) suggests skepticism as to the reach of a solution to limit coverage.

RECOMMENDATIONS ON DOMESTIC REGULATORY AND COMPETITION ISSUES

Create an independent regulator. The creation of an independent regulator (PTRA) is the top domestic priority, with the setting up of a regulatory framework in line with international best practices. The regulatory framework shall ensure an objective, transparent and non-discriminatory approach with the industry, supported by openness and public consultations.

Implement the telecom law. The Note also urges that Palestinian counterparts to implement the existing law without delay, or introduce amendments to ensure it is consistent with global best practices.

Resolve several legal and institutional issues affecting the sector with a minimum regulatory package, including:
• The monitoring of the market with the institution of an ICT observatory.
• The introduction and enhancement of regulatory tools such as market observatory, market definition, identification of Significant Market Power (SMP), remedies definition and enforcements, monitoring and sanctions;
• The enforcement of Reference Interconnection Offers (RIOs) to provide a more dynamic, transparent non-discriminatory and cost oriented wholesale market;
• The assistance in the setting-up of an *ex post* competition department or authority (to complement the *ex ante* regulatory approach) to monitor and approve potential mergers and prevent potential anti-competitive behaviors.

Enhance capacity and skills. The legitimacy and efficiency of MTIT and the to-be-created PTRA must be supported by the continuing recruitment of skilled workers to keep up with market developments and complex regulatory tools. This remains a challenge as the labor market is small and the salaries in the public sector are lower than in the private sector.

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[1] Cf. the following ITU resolutions: Resolutions 99 and 125 from the Plenipotentiary Conference PP-14, Resolution 18 from the World Telecommunication Development Conference WTDC-14, Resolution 12 from the World Radio Communication Conference WRC-12.
[2] This has also impacted Wataniya's business plan which has an open claim against the Palestinian Authority, asking for part of its license proceeds to be waived given the limited deployment of its operations compared to the rights under its license.
[3] Additional fiscal revenues are not estimated in this Note such as corporate taxes.
[4] Although the economic impact is marginal, Palestinian operators should also limit their signal reach within Israeli territory.