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*Incumbent Response to Telecommunications Reform:
The Cases of Jamaica and Ireland, 1982-2007*

Indianna Deborah Minto

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Abstract

The 1980s and 90s have seen a focus on telecommunications reform globally. Reform has to varying degrees witnessed the introduction of competition, privatisation and new institutions that have inherently posed a threat to the dominance of former monopolists, now incumbents. In spite of these challenges, incumbents have remained dominant in their respective settings and in some cases have regained ground lost at the outset of reform.

Research on regulation and regulatory reform has nonetheless remained silent on these actors and why they have managed to remain dominant. Additionally, while enforcement approaches have shed some light on how firms respond to regulation in general, there has not been enough of an appreciation of incumbents as a special category and of their effects on regulation.

The aim of this thesis is to investigate the ways in which incumbents have responded to reform and to uncover the various forces that affect this response. In so doing, it hopes to advance an understanding of these actors and why they have remained at the centre of their regulatory space. This is undertaken through case studies of telecommunications reform in two countries, Jamaica and Ireland.

This thesis shows that incumbents are active participants in the regulatory space, adopting creative strategies to heighten competitiveness and maintain dominance in the face of change. Secondly, the study takes a more focused view of firms showing that they are not necessarily monoliths but may be segmented internally by geography and by divergent groups and interests. It is shown that this has important consequences for the timing and success of regulatory reform and the design of new regulatory regimes with special implications for small states. Finally, the work highlights the fact that the incumbent's response is not only conditioned by regulation. Thus, while important, the relationship between the regulator and regulated firm does not explain the full breadth of the latter's behaviour.

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CHAPTER ONE

INCUMBENT FIRM'S RESPONSE TO CHANGE

1.0 Introduction

The 1980s marked a proliferation of research on regulation. Much of this has been on processes of regulatory reform, a term used mainly to refer to the period from the 1980s to early 2000 where substantial re-adjustments were achieved in the structure and rules governing the utilities sector.¹ Most of these changes took place firstly in telecommunications, with the sector being seen as a trendsetter in regulatory reform.² For instance, Souter writes that, "The initial approach to the regulation of privatised utilities was also developed with telecommunications... specifically in mind" (1994: 18). These changes were substantial leading to a gradual shift away from monopoly and state provision to liberalisation and competition, as well as an increase in the number of legislation and rules in the sector.³ As such, it is the change of rules which have facilitated privatisation, liberalisation, competition and the establishment of institutional arrangements governing how firms interact with each other, with customers and importantly, with the state, that are considered here under the rubric of regulatory reform.⁴

¹ A host of excellent and detailed reviews already exist on regulatory reform in utilities. These included Henry, Matheu and Jeunemaitre (2001); Walden and Angel (2001); Braithwaite and Drahos (2000); Graham (2000: 151-168); Baldwin and Cave (1999); Gillett and Vogelsang (1999); Baldwin, Scott and Hood (1998); chapters 14-17 of Beesely (1997: 251-367); Prosser (1997); Baldwin (1995a); Armstrong, Cowan and Vickers (1994); Centre for the Study of Regulated Industries (1994); Hain (1994); Lipworth (1993: 39-57); Adam Smith Institute (1992); Kay, Mayer and Thompson (1986). Also see Souter (1994: 16-17) for a discussion of the similarities and differences in the regulation of some of these industries.

² That is, in terms of the number and extent of reforms that the sector has undergone when compared to other utilities. For instance, telecoms is affected by and has seen more rapid developments in technology than other utilities carrying more possibilities for competition (Prosser 1997: 58). This is also seen in the growth in the number of laws and rules in the sector. For instance, in Australia the number of pages of legislation is said to have increased from 1,600 in 1997 to around 10,000 by 2007 (Berg 2007).

³ See Lloyd (2003); Wallsten (2003); Walden and Angel (2001); Braithwaite and Drahos (2000: 322-359); Gillett and Vogelsang (1999); Cho (1998); Curwen (1997); Prosser (1997: 58-87); Levy and Spiller (1996); Petrazzini (1995); Armstrong, Cowan and Vickers (1994: 195-246); Sikes (1992); Cawson (1990); Harper (1989); Kay (1994: 77-88); Vickers and Yarrow (1986) for an outline of some of the changes that have been experienced in this area as well as some of the special features of telecoms in relation to other utilities and the wider society and economy. For instance, Harper observes that it handles a far greater number of individual transactions than any other utility (Harper 1989: 15-16) while Wheatley sees this as the largest global machine (1999:1).

⁴ Others have also used this approach to define regulatory reform. Trillas and Staffiero, for instance, view regulatory reform as "the institutional and structural changes that took place in infrastructure industries in the 90s, including liberalization and privatisation" (2007: 2-3).

However, even in this context of wide coverage, there remains some vital areas of work that have yet to be covered in the literature. For instance, Christensen and Lægveid suggest that even with the growing research on regulation and regulatory reform, there is still not enough empirical or comparative analyses and as such, more work remains to be done in filling this gap (2005: 2). Further, according to Wallsten, “the most elusive research so far, though has been on the effects of regulatory reform” (2003: 220). A gap also exists on one of the main figures - incumbents and their response to changes such as regulatory reform.⁵ According to Fligstein, these are firms “that dominate a particular market by creating stable relations with other producers, important suppliers, customers, and the government” (Fligstein 2001: 17). In this case, the term is used to denote those former monopolists in telecommunications who operated under special rights and privileges prior to regulatory reform.⁶ As such, accounts of regulatory reform have tended to downplay or ignore the role of incumbent firms in such processes. Koski and Majumdar have also observed that there is still, “relatively little evidence of what ... firms have actually done in terms of their behavioural responses” (2002: 455).

The existing literature is therefore, unable to give an insight into why incumbent firms have remained dominant in spite of widespread reforms mainly aimed at reducing the dominance and control that these former monopolies had over their national telecoms industry. In essence, regulatory reform was about reducing the power of these firms in as much as their monopoly position, dominance and control over telecoms was seen as the basis of their power and prevented others from entering and operating successfully in the market. Much attention has instead been spent detailing these changes (privatisation, liberalisation, competition and the change in industry rules that have facilitated these processes), but less has been spent analysing the incumbent’s role in the development and response to these processes. An answer to this question however, requires a focus on the tactics and strategies that such firms have adopted in dealing with these shifts in their operational environment or regulatory space; shifts that have

⁵ Not only after but also during the actual period of industry reform.

⁶ Carroll and Hannan make a similar argument in their explanation of the value of their demographic approach in understanding corporations and industries and how these respond to change (2004: especially, 401).

inherently threatened their positions at the helm of the telecoms sector. The 'why' in this case is therefore, inextricably linked to the 'how' (i.e. how have incumbent firms responded to regulatory reform; how have incumbents managed to retain their market power and strength?) as well as the 'what' (i.e. what tactics and strategies have they employed towards this end?).

The literature on regulatory enforcement has focused some attention on the options and strategies available to regulators seeking to get firms to comply with rules. In so doing, it indirectly gives an entry into a discussion of the way firms in general respond to regulation. Among this body of work is the notable 1992 publication by Ayres and Braithwaite, which calls for a responsive or tit-for-tat pyramidal approach to regulation (1992: 19-53, 54-100). The Smart Regulation approach also encourages more flexibility in the choice of regulatory instruments while allowing for more variety in terms of who can fulfil the role of 'regulator' (Gunningham and Sinclair 1998: 375-454). Risk regulation has also more recently emerged as a significant participant in this debate on compliance.⁷

For the most part, these approaches help in understanding the choices available to regulators in the enforcement game and how regulation may proceed depending on the response of regulated firms. However, they remain limited for the present purpose for a number of reasons. That is, the emphasis remains on the regulator, with the regulated firm being considered mainly as an object of regulation, simply responding to the regulator's tactics. In so doing, these largely ignore the possibility for other actors and concerns (outside of the official industry regulator) to shape firm behaviour. To some extent, these approaches also lend to a view of these former monopolies as large actors that are slow and unable to change. As such, they only give a partial view of regulation, in so far as they do not allow for a more nuanced understanding of the force of regulation on firms or how these firms *really* respond to regulation or industry reform. Additionally, there is not enough recognition of the internal differences in power and resources which exist among these entities and the impact that these differences may

⁷ See for example, Rothstein, Huber and Gaskell (2006); Black (2005); Hood, Rothstein and Baldwin (2001).

have on the way firms respond to regulation and regulatory reform.⁸ This is, as it relates to for example, the pace and timing of reform and the nature of the regulatory regimes that emerge from such periods of reform.

Additionally, these frameworks are limited in their ability to explain the part played by incumbent firms in regulatory reform, in understanding how these respond to changes meant to challenge their position in their operational space, as has occurred in telecoms.⁹ Here reforms meant to change the position of monopolies, (e.g. competition) and free the sector from the control of these firms have, nonetheless, seen incumbents remaining at the helm of the industry in many countries, including Ghana, Barbados, the United Kingdom, Spain, Germany and South Africa.¹⁰

Finally, where the regulated firm is considered as a monolithic structure, these approaches do not offer much in the way of understanding how reforms affect and are responded to internally. The same applies for firms who may be structurally dispersed. For instance, where the 'firm' is part of a trans-national business with head offices and subsidiaries located in different countries, as is the case with incumbents/former monopolies such as, Cable and Wireless with its headquarters in London and operations in regions such as the Caribbean. Thus, the firm may not be the closed entity that is portrayed but may be segmented internally by the different interests at play within the organisation (e.g. the board and management).

Such internal difference as well as the existence of a number of actors which drive change in large dominant incumbents may have an impact on regulatory strategies aimed at

⁸ The responsive approach does to some extent acknowledge that firms differ in terms of their behaviour (see Mendeloff 1993: 712). However, the argument here is for greater consideration of size and how this affects behaviour or response to regulation.

⁹ This operational environment is not a strict formal market since the social and informal aspects of this are taken into account. As such, social relations, political alliances as well as the cultural norms, which operate within the sector and the wider context within which incumbent firms operate, are included here. This definition takes the work further in line with the regulatory space thesis, which allows for a consideration of social relations in regulation. For instance, Stirton and Lodge, suggest that social relations typify the regulatory space, which in turn affect regulatory capacity (2002: 14). In this case, the firm's operational space is also its regulatory space, since the same actors populate it.

¹⁰ Ghana Telecom for instance remains the largest operator and one of the single largest employers standing at 3,927 in 2002 (Ghana Telecom 2002: 13). In 2007, Deutsche Telekom had a little over 80,900 staff (Deutsche Telekom 2007: 13). For Telefonica this number was 57,058 in 2006 (Telefonica 2006: 27). Deutsche Telekom, Telefonica and others such as France Telcom have also successfully advanced services beyond their national borders, taking increasing market shares in areas such as Latin America, Africa and the Middle East, all since regulatory reform.

achieving reforms and at influencing the behaviour of these actors. For instance, a regulator may choose to appeal to the firm as a unit or to specific interests or power brokers within the regulated firm. Such internal differences may also dictate the strategies and choices available to the firm in its response to industry reform. Thus, while these divergent interests may provide points of influence for regulators aimed at securing support for reform, they can also make regulatory reform more complex in so far as they increase the number of claims and interests, which regulators and lawmakers have to take into consideration when designing a new regulatory regime. In the end, such considerations invite a more focused and in depth view of the regulated firm at an institutional and organisational level to see how they respond to regulatory reform as well as to assess the true extent to which its activities are conditioned by regulation, given the success of incumbents in a post-reform era.

This work aims to address these issues by examining how dominant incumbent firms, arguably the main objects of regulation,¹¹ respond to regulatory reform, uncovering and analysing the tactics used in their bid to protect their position at the centre of their operational sphere and the actors that may influence their response. It argues firstly, that the incumbent firm is not simply an object of regulation. Rather, it affects the operations of other actors, including the industry regulator and helps to shape, as much as it is shaped by regulation. Secondly, incumbents are not necessarily unitary or monolithic structures - even if they may appear to be from the outside - but are instead internally segmented. This reality may have important consequences for how they respond to change and in turn, the pace with which industry reform proceeds. Thirdly, a firm's response to change is not only external but also internal warranting a consideration of the ways large dominant, incumbents change internally and the way they utilise resources and market power to adjust to change.¹² Finally, its tactics need not only be

¹¹ Indeed, Prosser notes that the regulated firm in this instance has in practice been the "enterprise being privatised after having benefited from a legal monopoly" (1999: 200). As noted earlier, these are mainly incumbents.

¹² The economics literature on competition has also helped to shed some light on the way firms respond to regulation. Such studies have covered the activities of firms in a number of sectors e.g. pharmaceuticals (Bergman and Rudholm 2003); financial services (Flier, Van Den Bosch and Valeria 2003); the food industry (Thomas 1999); religion (Ekelund, Hebert and Tollison 2004); the computer industry (Sengupta 2004); and publishing (Hardstone 2004). One of the most investigated settings has been telecoms

conditioned by, or be in response to regulation or the regulator's prompting but may also be shaped by other considerations (e.g. competitive pressures), which in the end, challenge the view of compliance and firm response as a bilateral relationship involving regulator and regulated firm.

These aims will be achieved by examining the process of regulatory reform in the telecommunications¹³ sector in two small countries, the Republic of Ireland and Jamaica. These will provide the context in which the above propositions can be tested given that regulatory reform has taken place more recently in these countries, a point, which also makes it easier to collect information on processes, which are still fairly current. Further, whereas there has been some coverage of these cases, they remain peripheral in terms of the wider context of the debate and approaches to regulation and regulatory reform even while providing a fertile context for examining issues of compliance and the complexities in designing regulatory regimes.¹⁴ These cases are also relevant in as far as they offer new contexts to test established ideas and for their potential to add to existing views and understandings of regulation and regulatory reform, which have tended to focus on large developed settings.

It is maintained, that periods of regulatory flux and overall policy reform, are among the greatest threats to incumbent firms as these usually imply some change or accommodation, which has the potential to affect their privileges and control (power and dominance) in their specific operational arena. It is for this reason that a sector such as telecommunications

(Vickers and Yarrow 1988; Beesley and Laidlaw 1995; Maher 1999; Choné, Flochel and Perrot 2000; Koski and Majumdar 2002; Perry and Shao 2002; Correa 2001; Krouse and Krouse 2005). However, these approaches share some similarity with the compliance approaches reviewed above in that they still have a narrow view of incumbent firms. Thus, while providing some useful data, the picture presented is still a partial one. That is, the emphasis on deterrence strategies and on markets tends to ignore the activities of the incumbent after entry has occurred and where deterrence fails. The focus also tends to be on firms competing in a market with passing acknowledgement of the non-economic related responses when firms feel threatened by market changes. So while these studies have been useful in getting beyond presentations of the dominant incumbent as an impotent actor, there is nonetheless, room for a more in depth and richer consideration of incumbency beyond a purely economic function. The incumbent firm in many ways is more than an economic actor with its operation and impact transcending the economic space.

¹³ To use Coates' definition, "the controlled movement of electrons and photons for data generation, collection, transfer, storage, manipulation and use" (1977: 196)

¹⁴ Lodge and Stirton have written some of the more recent reports on telecoms reform in Jamaica (Lodge and Stirton 2001: 92-108; 2002; Stirton and Lodge 2002); while for Ireland, Hastings (2003) and Massey (2002) have reviewed similar developments from an industrial relations and economic point of view.

(telecoms), which has experienced a period of sustained reform in rules and structure, offers a good platform from which these issues can be observed.

The next section aims to establish the research more firmly within the specific context of regulation studies, particularly, in the area of compliance, which has indirectly helped to shed some light on how firms respond to regulation. It shows the gaps that exist in this area of research in terms of the monolithic representation of the regulated firm while highlighting the differences that exist among firms in terms of size and the impact that large dominant firms, such as incumbents, can have on the development and success of regulation. The presentation also aims to demonstrate how a lack of this limits an understanding of these actors particularly on how they have managed to remain strong contenders in the telecoms sector, in spite of reforms meant to challenge their positions and the relevance of such an understanding in regulation.

This section will then be followed by a discussion of the development of the telecoms industry with a focus on incumbent firms and the role they have played in this sector, particularly their relationship with Regulators, as a means of establishing the context for the research. 'Regulators' in this sense is used inclusively to include both line ministers and the independent regulatory agencies (IRAs) formed mainly during the last two decades.¹⁵ As used here, regulation is also taken to be an activity, which can be carried out by non-state actors.¹⁶

¹⁵ According to the International Telecommunications Union's, (ITU), a total of 134 Independent regulatory agencies existed in 2004 (2005: 5). By 2007, this had increased to 145, a significant increase from the 14 that existed in 1990 (Schorr 2007: 3).

¹⁶ Admittedly, the term regulation tends to carry different meanings depending on the side of the globe from which one views it. However, a discussion of the concept will indicate that regulation and regulatory reform particularly for those pre-1990s accounts of the phenomena tend to locate this activity in the realm of the state. For example, one of the most oft quoted definitions is that of Selznick's, which sees regulation as the "sustained and focused control exercised by a public agency over activities that are generally regarded as desirable to society" (1985: 363-4). This definition resembles Hood et al's (1999:3) later definition of regulation as the mobilization of public authority to achieve a public end. Also, see Prosser (1997: 4-6). On the other hand, definitions of regulation in the United Kingdom and Europe tend more to be associated with "the whole realm of legislation, governance and social control" (Majone 1990:1). As such, regulation as an idea and method is seated in various disciplines including political science and law. The difference in definitions has in short been handled expertly elsewhere and the present research would not obviously benefit from carrying on this discussion. The important point here is that this work leans towards a more open view of regulation as an activity that can be carried out by a number of actors other than public bodies as presented by authors such as Black (2002; also see Abraham and Lawton Smith 2003:2). Also important is the view that regulation is a complex phenomenon in

The section then closes with a proposal on the way the firm responds to change, a proposal on how the different drivers of change can aid understanding of regulation and an outline of the remainder of the work.

1.1 Key Approaches to Regulation

The crux of the argument thus far, has centred on the partial view which current approaches have on incumbent firms and how they respond to change. The aim in this section will be to seat the discussion within a specific theoretical context via a discussion of regulation and how the issue of incumbency has been covered in the regulatory literature. As will be argued the emphases in these works encourage accounts of regulation and regulatory reform, which favour certain actors and particular accounts over others. In so doing, the role played by key stakeholders in regulation, including the regulated firm is often not fully investigated, given the importance of this actor for the success of regulation.

The literature on enforcement and compliance has helped to shed some light on how firms respond to regulation.¹⁷ However, this does not directly discuss the role of incumbent firms in detail or as a specific category. The responsive approach for instance, pays close attention to the regulator and the strategies that it can employ in regulating the firm. Nonetheless, the (by proxy) focus on firms does allow some scope for a consideration of these actors and indirectly of incumbent firms in regulatory reform.¹⁸ This literature includes a number of approaches that have emerged mainly since the 1990s.¹⁹ However, these do not all warrant individual coverage as they share some of the same challenges that will be highlighted in those to be covered here. Admittedly, they are not extremely useful in addressing the main

developed as well as developing states. There is however, less in-depth research on the processes of regulation and regulatory reform in the developing world.

¹⁷ See Baldwin and Black (2007: 2-3).

¹⁸ Johnstone also argues for greater attention to this actor in his work on the role of the regulated firm from the point of view of occupational health and safety regulation (1999: 378-381).

¹⁹ Among these are the writings of Kagan and Scholtz (1984); Baldwin (1995b); Sparrow (2003); Hawkins (2001; 1984); Hutter (1997); Braithwaite and Walker (1987); Parker (2002); Gunningham, Kagan and Thornton (2004); Gunningham and Kagan (2005); Fairman and Yapp (2005). There is also the more popular responsive approach (Ayres and Braithwaite 1992: 19-53; 54-100), smart regulation (Gunningham and Sinclair 1998a: 375-454) and risk-based approaches (see note 7) to regulation. See Baldwin and Black for a review of these and other compliance approaches to understanding regulation (2007: 5-15).

questions posed in this work about incumbents, their response to regulatory change and why they have managed to remain dominant actors in spite of these changes. As such, emphasis will be primarily on the major and earlier approaches – responsive and smart regulation. These approaches have made significant contributions to this area of research and indeed, much of the work that has emerged since their formulation have in one way or another been informed by these writings, (particularly, the responsive approach).²⁰

One of the early and more influential approaches within this body of work is that of Ayres and Braithwaite (A&B) who in arguing for ‘responsive regulation’ broadened the debate beyond the compliance versus deterrence discussion that had typified regulation studies prior to the 90s (1992: 20-21; also Baldwin and Black 2007: 5). The authors’ approach rested upon, a ‘tit for tat’ strategy to be employed by regulators in their bid to shape the behaviour of firms or industries.²¹ Here regulators gravitate upward from softer compliance seeking strategies to more punitive measures depending on the response of the regulated firm (Ayres and Braithwaite 1992: 35-39). Enforcement strategies here range from persuasion as a starting point to extreme punitive measures of licence revocation in the case of a single firm; while self-regulation to command and control type regulatory strategies could be employed for regulating whole industries.²² The focus on the regulated firm, or industry, is to the extent that the regulator’s strategies can be seen or assessed for the degree of compliance of the regulatee. From such an angle, the ways in which firms may respond to the regulator and change based on the approach that is utilised by the latter can be understood. For example, firms may decide not to comply with soft measures such as negotiations, in which case the regulator can draw for its ‘big gun’ to get the desired response. The presentation is however, one of the regulated firm or industry as a taker of regulation, almost with a ‘straight-jacketing’ effect, in as much as the option is simply either to comply, or not to comply.

²⁰ These include, Parker (2006; 1999); Johnstone (1999); Mendeloff (1993); and later refinements of the responsive approach by Braithwaite (2006; 2002). The Smart regulation approach and its relationship with more recent concepts and developments such as ‘decentring’ regulation, ‘empowering participants’ and ‘complementary mixes’ of regulatory tools and techniques is also noted by Black (2007: 58).

²¹ This followed from Scholz’s earlier recommendation that a tit-for-tat approach can advance the benefits, which accrue to all parties in regulation (1984: especially 192-3).

²² See Ayres and Braithwaite (1992: 19-53, 54-100) for a more in depth coverage of this approach.

The smart regulation proposition by Gunningham, Grabosky and Sinclair (1998), like the responsive regulation approach also suggests a variety of strategies that the regulator can employ in regulating firms, albeit with more strategies being made available to regulators.²³ This approach was developed in response to some of the limitations to the A&B's framework, namely the lack of flexibility and limited choice of strategies for regulators. The smart regulation approach addresses this by supposing that a bundle of strategies can exist at each rung of the enforcement hierarchy. This makes it possible for a more flexible mix of strategies and regulators (including, non-governmental actors, such as corporations) to operate at each level of the enforcement pyramid, thus offering more flexibility and choice (see Gunningham and Sinclair 1998: 399-403). This approach is useful in that, it can potentially help lower the costs and other features associated with state regulation (see Baldwin and Black 2007: 11). However, like the responsive approach, the focus is largely on regulated industries or the regulated 'firm' as a universal category with little allowance for internal differences within this category or for a consideration of how these affect regulation or the firm's ability to respond to the regulator's attempts to change the respective industry.

More recent work includes the risk-based approach to regulation.²⁴ Risk regulation has taken on increased relevance in organising regulatory regimes²⁵ in recent times (Rothstein, Huber and Gaskell: 2006: 91-92). A particular feature of risk regulation is what is seen as its "knowledge-generating nature", making it relevant for compliance related activities, given the amount of information required by the latter (Ibid: 94). The main focus is on the "targeting of inspection and enforcement resources that is based on an assessment of the risks that a regulated

²³ Baldwin and Black suggest that the nature of certain issues may make it difficult to gravitate naturally up a pyramid of sanctions, while it may also be difficult to move up and down the pyramid (2007: 6).

²⁴ The area of risk management has since its entry into regulation studies, witnessed significant growth with scholars such as Garland suggesting that, "modern societies are risk managing societies" (2003: 73). Also, see authors such as O'Neill (2002) for some of the shortcomings to risk regulation. For instance, attention to risk management prerogatives can lead to a business losing focus on its core objectives (2002; also in Rothstein, Huber and Gaskell 2006: 106). The emergence of risk regulation and the particular features of this approach have been covered expertly elsewhere and hence, do not warrant extensive coverage here. See for instance, Rothstein, Huber and Gaskell (2006); Black (2005); Power (2004 and 1997); the essays in Ericson and Doyle's edited volume (2003); Hood, Rothstein and Baldwin (2001).

²⁵ Harris and Milkis see a regulatory regime, "as a constellation of (1) new ideas justifying governmental control over business activity, (2) new institutions that structure regulatory politics, and (3) a new set of policies impinging on business (1996: 25).

person or firm poses to the regulator's objectives" (Baldwin and Black 2007: 12). The Risk-Based approach considers how regulation can be tailored to minimise risks (and in so doing, heighten compliance from regulated firms).

In response to the perceived limitations of these approaches Baldwin and Black have suggested a more recent formulation of a "really responsive" approach to regulation which appears to be more aware of the complexity of the issues which regulators face in carrying out their tasks (2007: 3-4). In so doing, this latter approach resembles the institutional approach in Hancher and Moran's 'regulatory space' thesis in so far as it allows for a wider range of actors (including large dominant firms) and the impact that these have on regulation and the achievement of regulatory goals (see 1989: 271-300).²⁶ The regulatory space thesis also goes beyond these, acknowledging that 'regulated firms' is not a uniform category; rather, it proposes that some large firms, operate as quasi-government agencies, given their importance and contribution to societies (Ibid. 1989: 274- 276; see Turner 1989: 5). This point is relevant for small and developing countries. For instance, large firms such as Cable and Wireless Jamaica (C&WJ) have been noted for their overall contribution to "production, employment, income, balance of payments, and general welfare" in the Caribbean (Hope 1986: 136). This may have implications for the extent to which a regulator may be able to wield sanctions such as licence revocation or criminal penalties, given the relevance of the firm's success for the economy at large. In other words, dominant firms influence the strategies of governments and are in turn influenced by government and regulators.²⁷ According to Hancher and Moran (also in Baldwin and Cave 1999: 30), this makes for a more interesting approach to regulation. One which attempts to capture these shifting episodes (e.g. industry change) and relationships and role

²⁶ Hancher and Moran's thesis is less about compliance but has been included here given its wider relevance to this work. In particular its ability to capture the complexity of regulation, relationships and social relations involved in regulation are useful frames here. Nonetheless, the regulatory space exposition faces a similar shortcoming with the compliance approaches, in that internal dynamics of the regulated firm are ignored. That is, it does not allow for a consideration of how internal dynamics of this actor and how its organisation and structure could impact on regulation and the regulator's ability to regulate the sector.

²⁷ See Petrazzini (1995: 5). Zeigler notes that this theme of exchange also appears in corporatist writings such as Schmitter's (Zeigler 1988:17). These authors question the dichotomy between the public and private - a dichotomy which guides capture approaches to regulation.

played by incumbent regulatory firms in industry reform and the design of regulatory regimes. In other words, these allow for a more eclectic view of the regulated firm and its activities within the market.

Finally, one of the classic approaches to understanding regulation is Capture theory, which has its foundation in economics (See Prosser 1999: 203). Capture theory goes beyond the above approaches by giving more character to the regulated firm suggesting that this actor (or industry) can 'capture' the regulator and that government regulation was aimed mainly at preventing entry.²⁸ Regulation thus, benefited incumbents in as much as it meant that they were protected from competition and the public interest was not necessarily represented in this relationship (Mueller 1989: 235-238; see also, Lodge 2002: 16). In its portrayal of regulation as a bilateral relationship between the incumbent firm and the regulator, this approach resembles those compliance approaches above in that though the latter allow for some role of third parties, they do nonetheless, portray the relationship between firm and regulator mainly as a bilateral affair.²⁹ What this approach offers is a more nuanced view of the regulated and incumbent firm – one, which acknowledges that they are not simply recipients of regulation, but also influence rules and regulations. Further, it allows for a consideration of incumbents in so far as attention to large powerful firms acknowledges that some firms have more power and influence to direct regulatory policy than others.

1.2 Limitations of Approaches

The discussion thus far has highlighted some of the limitations to approaches to understanding regulation. This section is aimed at examining these within the context of the present investigation of incumbent firms and their response to regulatory reform.³⁰ Thus, while these

²⁸ See the seminal works of Stigler (1971: 3-21); Quirk (1981; especially Chapter 1). Also see Merrill (1997: 960-961) and chapter 6 of Ogus (1994: 99-120). Authors such as Prosser have also critiqued this bilateral approach arguing that capture can take place by actors other than the regulated firm (1999: 204).

²⁹ For instance, the responsive approach provides a role for public interest groups who will vie with each other for a place in regulating industry (See Ayres and Braithwaite 1992: 57-58; Braithwaite 2006: 884-898).

³⁰ Also see Baldwin and Black, who have carried out a detailed review of the compliance approaches in their call for a 'really responsive' approach to regulation (2007: 1-24).

formulations offer much in the way of understanding the regulatory game, they do not say much directly about incumbent firms (possibly, with the exception of capture theory and the regulatory space approach) choosing largely to focus more on firms as a single category. Even here, the main focus is on the regulator, reducing the extent to which the firm can be assessed more directly. Capture theory, while allowing for such attention, also has its limits.³¹

Further, the approaches discussed here have evolved based on the experiences of developed countries,³² not giving much insight into the experiences of developing countries such as Jamaica. Further, it is difficult to apply the responsive approach in developing countries, given the lack of capacity to make this approach flexible (Braithwaite 2006: 896), laying the foundation for an investigation of how regulators in such settings can achieve successful regulation. Even so not all the countries in the developed world have been given equal coverage, also allowing room for a consideration of some of these ignored settings (in this case, Ireland).

1.2.1 Drivers of Change

These theories and approaches examined above are significant and influential in the development and understanding of regulation. Nonetheless, the explanatory power of these approaches is somewhat limited to the present purpose.

Firstly, the bilateral focus has seen the relationship between regulator and incumbent being presented as the most important.³³ While there is no denying the importance of this relationship such approaches run the risk of ignoring the fact that the firm (like the regulator) operates in a space characterised by a host of other actors and interests that also affect its activities and choices. Further, and similar to the compliance approaches, the bilateral relationship emphasised by capture theory also ignores the role played by other actors and

³¹ See notes 27 and 28.

³² This includes the regulatory space thesis, which was informed by the experiences in industrialised western economies (see Hancher and Moran 1989: 271).

³³ See for instance, critiques of the compliance approaches from Baldwin and Black (2007: 1-24). A number of works have also emerged over the years highlighting other limitations of enforcement approaches to regulation. These include reviews by Mendeloff (1993: 711); Johnstone (1999: 378-390); Haines (1997: 219-220).

interests in determining the behaviour of regulated firms.³⁴ There is little allowance for actors outside the regulator to condition the behaviour or effect change in the regulated firm.³⁵

As such, these present a rather static view of regulated incumbent firms ignoring the wider factors that may cause a shift in their strategies and tactics or to which the regulated firm may respond.³⁶ There is, therefore, still an emphasis on the role of the regulator with the firm as the recipient and little attention to the firm as a potentially important actor in its own right with the ability to influence as much as it is influenced by regulation. This includes the possibility that some of its actions may be determined by factors residing outside the IRA or government. The question following from above is: what are the drivers of change for the incumbent? Such a consideration is important in assessing the value of regulation, industry change and the degree to which the reorientation of incumbent firms and their behaviour is about compliance.³⁷ Such knowledge can also help to inform regulatory strategies, offering more variety in the tools available to IRAs in small developing countries for shaping firm behaviour. This is important for overcoming some of the constraints noted by Braithwaite (2006: 896).

Following from the approaches discussed above, regulation (by the IRA and governments) may be seen as one of the main factors affecting firm behaviour. However, this does not constitute the full spectrum of change drivers for incumbent firms.³⁸ Included here is

³⁴ Merrill argues that this approach led to interest groups being ignored with emphasis on independent industry regulators and regulated industries (1997: 960).

³⁵ The Smart approach is less the case here. Nonetheless, there is still not enough of an allowance for roles such as interests/issues (e.g. internal ethos or drive for competitiveness) as opposed to actors as an explanation of firm behaviour, neither is there enough room for 'external considerations' as in international institutions.

³⁶ Some authors have for instance, considered how incumbents behave in relation to other influences such as, competition focusing on their response to entry and the deterrence strategies they employ in order to prevent new players from entering their markets (e.g. Bergman and Rudholm 2003: 455-465; Etro 2004: 281-303; Krouse and Krouse 2005: 35-46). Braithwaite has also reworked the responsive approach to apply to the developing world where he acknowledges a role of NGOs and a variety of other actors in the area of human rights regulation (2006: especially 891-892).

³⁷ Such an understanding may also aid the regulator in assessing what options can be employed for controlling risks and regulating firms.

³⁸ Baldwin and Black also emphasise this point noting that factors such as the culture and competition are also drivers of corporate behaviour (2007: 7). This type of analysis has been offered by the 'target analytic' approaches to regulation. See for example, Kagan and Scholtz (1984: 67-95). Using the regulatory space approach, Haine's research suggests that the behaviour of firms to the hazards they caused could not be put down to regulation but instead could be understood in the context of pressures which they faced in their regulatory space (1997: x, 60); see also Johnstone's review of Haines' work (1999: 381-382). As noted before, economists have also considered the role of large firms, and

the role played by other actors including customers, external organisations and interests - e.g. IMF, WTO and developed states, such as the United States (US) - competitive pressures, and the culture and trend governing the regulatory space at any one point in time. This is important since the world in which these firms exist is not static and they too may evolve in line with changes in their environments. These pressures exist within the firm's operational or regulatory space.³⁹ On the other hand, drivers also include pressures from within the firm; for instance, its internal mission or drive for modernisation and improvement. These may be conditioned by changes in its regulatory space or by internal desire for reform. This suggests some scope for innovation and independence in the choices and strategies of the firm, in as much as it has the capacity to choose how, when and in what manner to respond.⁴⁰

Knowledge of the drivers of regulated firm behaviour can assist countries with concerns around regulatory capacity to overcome such limitations in so far as they are able to design more targeted measures to obtain greater compliance. That is, in as much as these offer regulators alternative points of access or means to influence the regulated firm, such an understanding may offer resources for regulators in small or developing settings a means of bolstering regulatory capacity and heightening compliance. For instance, writing of developing countries, Braithwaite notes the difficulty for regulators to impose the 'big stick' of the responsive approach given the demands on capacity (2006: 884).⁴¹ A focus on the multiple

particularly of incumbents in competition. However, the internal dynamics of the firm and how these affect response and choice of strategies is still largely overlooked.

³⁹ The approach here is similar to a systems theory view of organisations and change in that its focus is not on the firm in isolation but rather on interaction and interdependence among a number of variables that have an impact on the incumbent. See for example, Greene (1999: 218). This is also similar to another approach used to understand regulation - stakeholder theory. However, whereas stakeholder theory argues that the regulated firm will be only one concern in the regulator's frame of activities (Prosser 1999: 196) it is suggested that the *regulator* may also be but one of the number of interests or influences on the regulated firm's behaviour.

⁴⁰ These drivers of change also bear some resemblance to Rhydderch et al's drivers of organisational change (2004: 217). Other categories of influences have been proposed by Baldwin (1990) and Kagan and Scholtz (1984) and HM Customs and Excise (2003). These have been framed in the context of factors contributing to non-compliance for firms, again emphasising the regulated/regulator relationship when in fact, the regulator is not the only concern for the firm. Haines, on the other hand, looks at the factors affecting an organisation's capacity for 'virtue' (good corporate conduct), which includes, the amount of competition, which exists in an industry, and the location of "the organisation within the contracting hierarchy" (in Johnstone 1999: 379, 383). Also see, Kagan and Scholtz (1984: 67-95); Braithwaite, et al (1994).

⁴¹ A similar argument can be made for the smart approach.

drivers of change and influences on regulated firms can, therefore, assist such states in dealing with the limitations of compliance approaches and capacity gaps. Further, where a regulator faces risks of capture, an awareness of the diverse points of influence or drivers of the incumbent firm's behaviour may allow the IRA or the government to overcome the power or force of a large dominant incumbent.

Thus, instead of retracting a licence, regulators may instead choose to appeal to an influential external actor (such as, an international agency) for support. Where the state has comparatively less resources than the regulated entity, it may seek to elicit the support of other local actors to bring pressure to bear on the firm; in much the same way that Braithwaite suggests that NGO regulators in the developing world may seek support from more powerful international actors such as the EU (2006: 892). In such an event, the boundaries of the 'regulatory space' may expand beyond the traditional conception to include external actors with regulation becoming internationalised.⁴² Nonetheless, the extent to which individual change drivers noted above can stand on their own or are unrelated to regulation and its reform may not be straight forward. It is debateable, for instance, how far a change in rules - as may take place under regulatory reform - can be separated from competitive pressures if these rules allowed for the reconstitution of the market and the entry of competition. This will also be considered in the context of the change drivers proposed above.

1.2.2 Incumbents as Monoliths

Secondly, most of the literature on regulation focuses on the regulated firm as a single uniform structure – a monolith. Such a static view may ignore the internal reality of actors at the industry level (diversity based on size, resource and influence) and organisationally (within the firm) given, that these firms may in fact be marked internally by divergent groups and interests.⁴³ This

⁴² In this way the regulatory space here more resembles Braithwaite and Drahos's conception of a regulation as an internationalised activity (2000).

⁴³ Analyses of state-industry relations in the US come close to accepting that 'firms' is not a single category. The state is presented as a powerful omniscient mediator merely balancing the interests of multiple actors and establishing the rules by which they play. According to Williamson, the problem here is that the issue of varying power levels and how it determines the level of access of each group and

may be the case for incumbent firms who may be able to exercise more influence in the regulatory process and over developments in the regulatory space, particularly at times of industry change, more so than other actors.⁴⁴ For instance, incumbents are owners of fixed networks to which entrants must connect in order to operate. They are of great importance to the pace of developments in the sector, sometimes being able to delay sector reform and the development of competition by delaying the transfer of lines to competitors, information to regulators or even by refusing to sign on to new industry regulations where these require a change in its contractual arrangements. Competition has for instance, been slowed in Barbados, given the unwillingness of the incumbent to allow access to its network (See Schmid 2006: 63-77). Lodge and Stirton have suggested that the incumbent in Dominica also refused to allow access to its network (2002: 20). As such, the way regulators operate and how rules and regulations unfold in practice will be affected by the way these firms respond to such rules and regulations.⁴⁵

At a second level, and as will be shown in the cases in this study, the regulated 'firm' may be a geographically dispersed actor spread across a number of countries with each site having different levels of authority as may exist between a head office and its subsidiaries in other territories (i.e. a multinational company). At a third and final level, the regulated firm may also be differentiated internally among shareholders, employees and managers inviting a view of this actor, not just as the 'regulated firm' but as an organisation with internal rules, governance, structure, actors and interests.⁴⁶ These stakeholders may in turn, have disparate

impact on the content of policies is not sufficiently addressed or even taken into account given the assumption of equality among actors. Though theorists of liberal pluralism have tried to address this issue of power imbalance (e.g. Ehrlich 1982) "there is little serious consideration given to the fundamental nature of the imbalance" (Williamson 1985:140). By ignoring this imbalance the issue of access and variability in influence (as a direct result of power imbalance) are not considered. The view here is that a firm at the centre (in this case, the incumbent) will have more influence and access than others.

⁴⁴ In inferring that regulation is captured by large firms (incumbents) who are protected from competition, capture theory does acknowledge this idea of difference and the role of size and resources as determinants of the regulated firm's ability to influence regulation (see Stigler 1971: 3). This is also the case in the regulatory space thesis (see note 55).

⁴⁵ Johnstone argues, a similar point in his discussion of occupational health and safety regulation (1999: 378-381)

⁴⁶ The stakeholder approach to regulation, for instance, identifies employees, managers and shareholders as some of the actors that ought to be considered in regulation (Souter 1994: 10-11). But while the call has been made for these actors to be seen as stakeholders in regulation, there has still not been much

views on organisational objectives and how they should be obtained, a case which may become more real in instances of industry reform where there may be struggles to have the final say over company policy.

This segmentation has important consequences for regulation and regulatory reform. For instance, internal governance and structure may shape the variety and choice of response, which firms may adopt in response to industry reform and regulation. These also relate to the level of resources that firms may have at their disposal, including their ability to develop internal regulatory capacity to counter the force of the regulator and other change drivers. For instance, the regulated incumbent firm, which is part of a Multinational Company (MNC) with locations in different countries, may be able to access resources through its network of companies, equipping it with capacity and expertise, which may frustrate the activities of regulators and the development of competition.⁴⁷ This may constrain the activities of regulators particularly in a small or developing country setting where regulatory capacity may be weak and the impact of these large actors can be felt beyond their sector.⁴⁸ As such they may constrain the options available to the regulator (making regulation more complex and costly). Further, the option of graduating up a set of sanctions may simply be impractical again given the value of the incumbent to the industry and overall economy and the costs involved in certain strategies.⁴⁹

This segmentation has a more direct bearing on regulatory strategies. As the access to network resources can dictate the way the firm responds to regulation, so too can the regulators'

attention given to how these really *count* or *matter* in terms of how they affect regulation and industry reform. Parker's work has also pointed out the existence of internal actors within large corporate firms arguing that these may help to ensure that corporations remain socially responsible (see for example, 2002).

⁴⁷ Hancher and Moran also observe that large firms are also, "often multinationally organised enterprise...a locus of power, a reservoir of expertise...and an agent of enforcement in the implementation process" (1989: 272).

⁴⁸ This applies in the case of small states such as the islands of the Caribbean. Hope notes that large MNC firms, "provide managerial, administrative, engineering, and other technical skills that are in short supply in the Caribbean" (1986: 134). For this reason, he suggests that trans-national firms within the region cannot simply be understood in narrow economic terms since their influence and activities extend to the cultural and political realms (1986: 135). This will be borne out in Chapters two and six. In a similar vein, Braithwaite suggests that, "networked corporate power" may be more powerful than that possessed by the state and NGO regulators even in developed countries (2006: 891). Thus, even while Hancher and Moran's regulatory space thesis was developed in the context of large industrialised, capitalist economies, their description of large actors (see note 32) is also applicable to small developing countries.

⁴⁹ See Baldwin and Black (2007: 6).

tactics and strategies be modified to take advantage of a geographically dispersed or internally segmented regulatee. For instance, regulators in a small or developing country setting with a non-compliant incumbent may not have to use the big stick of licence retraction. It may instead try to enrol the support of dominant actors within the firm, or even enlist the support of the home country government (in the case of an MNC) in order to secure the company's support. This is in much the same way that it can appeal to actors in the regulatory space to apply pressure to the firm.

1.2.3 How Firms Respond to Change

Following from the above there then remains the need for a closer look at incumbent firms and how they *really* respond to industry change brought on by moves such as, regulatory reform.⁵⁰ As noted, by accounting for a range of strategies, which may be employed by regulators, the smart and responsive approaches do inadvertently acknowledge that firms respond to regulation in different ways (i.e. they may comply or they may choose not to comply).⁵¹

However, there remains a need for a greater consideration of the response tactics and strategies employed by such actors and not only *why* but also *how* they change overtime. Johnstone argues that knowledge of how firms respond to regulation is important for the success of regulatory ideals such as corporate virtue and for effective and responsive regulation (1999: 379-380). Given that the mass of reforms introduced over the past two to three decades have partly been aimed at effecting a change in the way incumbents operate and their dominance and control over telecoms, it would also be instrumental to consider how these have managed to maintain their power in spite of this situation and the processes of reorientation that these firms have gone through in response to industry reform. Such a focus also comes in light of the presentation of these firms in their former existence as large unresponsive monopolies, unwilling to change. Yet, some of these have managed to hold on to significant market power,

⁵⁰ Compliance approaches do allow for firms to change to some extent as seen in the fact that the regulator can allow for a variety of enforcement and regulatory strategies based on the firm's response.

⁵¹ See again A&B (19-53, 54-100) and Gunningham and Sinclair (1998: 375-454).

making a case for investigating the ways in which incumbents have managed such a feat.⁵² This has implications for regulatory strategies.

Furthermore, the contractual relationship proposed in the compliance approaches and capture theory may lead to an oversimplification of the relationship between the regulator and regulated.⁵³ Interpreting the firm's actions simply as evidence of capture may ignore the variety of ways in which incumbents may choose to respond to attempts by the regulator to change the content and structure of an industry. Rather, a business may choose to remodel itself in order to more adequately face new threats or seek to accommodate the regulator's goals and ambitions within its own strategies. This may be the case even more where there is a failure to actually prevent industry reform. Thus, a potentially interesting story lies in the way a regulated entity deals with industry change in a context where processes, such as capture, have been made less likely, thanks to the entry of more players and rules aimed at bringing more transparency and openness.

It is proposed that response strategies and tactics for coping with change will include a re-orientation in terms of how the incumbent operates in the sector;⁵⁴ how it changes the way it communicates with clients; how it approaches its relationship with regulators, competitors and how it perceives its role in the market. These are mainly exogenous in so far as they pertain to relations and practices within the regulatory or operational space and not so much to what takes place within the firm at an organisational level. Following from this, it is also suggested that the firm's response to change is not only seen in its relations with actors in its operational space, but also takes place internally. That is, in the change in the internal rules, priorities, and ethos and organisation.⁵⁵ Re-orientation may be seen for instance, by examining how the firm challenges and modifies old behaviour and its new routines and the way it communicates. These internal

⁵² For instance, whether this has been due to their role as incumbents or some other factor.

⁵³ Support for this view comes from Fligstein, who argues that portrayal of relations need not always be that of capture or antagonism (2001:38). Rather, interdependency and bargaining more adequately typifies the relationship between states and firms as in newly industrialised countries such as Korea and Taiwan who have adopted this partnership strategy in their developmental model (McNamara 1999).

⁵⁴ For instance, as one of the main players, the incumbent is able to reduce the uncertainties that it faces at any one point since it is they that help to define the rules of inclusion (Fligstein 2001: 16-18).

⁵⁵ This includes culture, which is often expressed as, 'the way things are done' in the organisational change literature (Cameron and Green 2004: 224; Scotts 1999: 52).

strategies may include efforts to reduce operational costs, revision of personnel size and training, and the introduction of measures to increase efficiency and the search for ways of increasing its overall competitiveness.

Johnstone's brief review of firm response to changes in occupational, health and safety standards noted that industrial restructuring had resulted in, "organisations operating through multiple business entities, and resorting to outsourcing, franchising, and downsizing" (1999: 380). For former monopolies in the UK, Souter notes that regulatory reform had forced incumbents to become more concerned with the need for cost cutting and a drive for efficiency. Additionally, the threat of a loss of market share can result in lay-offs where these pressures force a reconsideration of salaries and costs (Souter 1994: 43-44).

As such, the pressures brought on by regulatory reform (technological development, price regulation, competition) may force the firm to consider adjusting internally (or organisationally) as opposed to simply seeking to change the rules or capture regulation. This proposition of external or systemic reforms having an effect on the internal organisation of the incumbent is similar to the notion of 'colonisation' in organisations. As used in the organisational literature, the term describes "external pressures for change that penetrate into the 'genetic codes' of organisations and transform their outlook and workings" (Rothstein, Huber and Gaskell 2006: 102; also see Laughlin 1991). Such an outlook welcomes a more varied view of incumbent firms, which sees them not only as regulated entities but also as organisations with internal structure, capacity and processes, which are influenced by developments in their operational space.⁵⁶

A consideration of these strategies and tactics is important given their ability to indicate a firm's strength and skill to affect or influence regulation. This is useful as this work also aims to assess the role that incumbents have played in telecoms reform. Thus, where a firm possesses significant resources and internal regulatory capacity, vis-à-vis the regulator, then the success of regulation, the extent to which the regulator can proceed with its duties, as well as the

⁵⁶ The overall approach here is also in line with Baldwin and Black's call for attention to a "firm's own operating and cognitive frameworks (their 'attitudinal settings')", in order to attain more responsive regulation (2007: 3-4).

propensity of the firm to regulate itself and hinder reforms may be affected. Johnstone who notes that the capacity of the regulated firm will affect its ability to comply with regulation proposes a similar argument about the nature of the strategy employed by the regulator to attain compliance (1999: 379, 381). These will also affect the way in which the firm chooses to respond to threats to its power. This debate is especially interesting in the case of incumbent firms who have in the past been the recipients/beneficiaries of state protectionism as former state-owned entities, with a long history of operation in their respective countries; and in some cases “quasi-public bodies” as described by Hancher and Moran (1989: 274-276).

Finally, a failure to view these actors as more complex participants in regulation may result in a narrow view of regulation and regulatory reform as well as a failure to appreciate the complexity of the regulatory task. Further, analyses of change in regulation may be weakened or at best remain incomplete and unbalanced where the complexity of these actors and their activities in relation to issues such as regulatory design and enforcement are ignored. Accounting for the incumbent and its interplay with other actors and considerations through a focus on factors influencing the firm’s activities and its response to change adds to the existing approaches by providing a more comprehensive view of regulation and regulatory change. Ultimately, this focus can assist in the design of more responsive regulation and identification of ways in which regulators can overcome limitations of size or resource.

1.3 Incumbents and Regulatory Reform

This section highlights the importance of focusing on incumbents and advances an argument for considering this actor specifically in the context of telecommunications reform. This will then be followed by a discussion of case and data collection methods. The chapter then closes with a summary of the rest of the work and conclusions. It has been suggested that a case exists for considering the dominant incumbent firm in regulatory reform in as much as knowledge of this actor’s response can help in assessing the effect of regulation and its reform, how regulators in small and developing countries can achieve more responsive regulation as well as, to assess the value of regulation vis-à-vis other factors as an explanation for firm behaviour. In looking at

these issues, a case can also be made for considering not only the firm's relationships in the regulatory space but also the internal organisation of the incumbent. All this as a way of understanding the continued dominance of incumbents after reforms aimed at challenging their dominance and power in the telecoms sector. These insights are useful in giving a more balanced view of regulatory reform helping to identify and understand the role of actors outside the regulator while underscoring the complexities involved in such processes. This section seeks to take this discussion further by strengthening the case for examining the incumbent firm and also for considering this actor within the backdrop of regulatory reform.

Coverage of regulatory reform has, for the most part, implicitly assumed that incumbents have been at the mercy of the state and its agents, in this case the IRA, the legislature and line Minister. This goes against the grain, in that it ignores the actual relations, which existed between incumbents and their state sponsors prior to the 1980s where these were often one and the same and where the state often rested on the views of these actors in making sector policy.⁵⁷ For example, the close relationship between the monopolist and the state (or owner) in most countries meant that industry policy was highly geared to the success of the incumbent firm, which often meant protecting it from competition.⁵⁸ Firms possess more industry specific knowledge than most governments, particularly in the years prior to industry reform and in some developing countries where capacity and resource may be an issue.⁵⁹ This, arguably, places them in a position to attempt to manipulate regulations to their advantage, at

⁵⁷ In the US for example, the regulator (FCC) has been labelled as an ally of the main incumbent AT&T (Hills 1992: 126) even while being seen as one of the most openly competitive regimes in the world (Muller 1981: 18). Hall, Scott and Hood (2000) briefly analysed the British incumbent - British Telecoms (BT) and the power it had vis-à-vis the main regulators (Government Department and Independent regulator). The authors portray the incumbent as having a strong relationship and access to regulators leading to it influencing the reform process mainly between 1984-1992 (2000: 87-90). BT's superior work force also allowed it to manipulate licence negotiation episodes, especially those with time constraints. The authors claim that the independent regulator, Oftel, was constrained by the incumbent's interests, pressures on capacity and time. As such, BT is argued to have remained at the centre of the regulatory space with Oftel (the telecoms regulator) and the Department of Trade and Industry (2000:102-3).

⁵⁸ Where the state owned the sector it granted - as in the case of small developing states or colonies such as Hong Kong - monopoly control to a single, sometimes foreign-owned operator who had the wherewithal to manage the sector. This was often justified by economy of scale arguments (Lommerud and Sorgard 2003: 2). Where the telecoms market was protected, firms were guaranteed profits and some governments assured a steady flow of revenue and assistance in governing the sector, as practised in countries such as France during the 1980s (Chamoux 1992: 110).

⁵⁹ See note 54.

least certainly more so than other players, such as new entrants. This expertise has also meant that the firm's input was (and remains) important in designing, implementing and enforcing regulatory policy, making it an important actor in its own right.

However, it has been argued that large organizations while being able to exploit their markets lack the ability to change and adapt to future demands due to inertia (See Flier, et al, 2003: 2165). Remarkably still, this has not been the case in telecoms where large incumbents have managed to ride the tide of reform and, as will be shown in this work, have shifted their operations and modus operandi over relatively short periods.⁶⁰ In most cases, these formerly stagnant monopolies have neither died nor remained static when faced with (direct or indirect) threats to their power. Rather, dominant incumbents have, through a series of structural and operational changes, managed to stay relevant and retain their dominance even while the sector is still in flux.⁶¹ By so doing, they have demonstrated that they are not non-malleable, neither are they necessarily hampered by their size. Rather, their size and position of incumbency are viewed here as being instrumental for these firms and their aptitude to adapt to change in their regulatory space.

Thus, even where they have lost some market share, they remain leaders in the fixed line market. For instance, Table 1 shows that over a three-year period, France Telecom lost 4.9% of its market and Deutsche Telekom 4.6%. While Telefonica had lost a total of 5.7% by the end of 2005 (Table 1.1) the company retained an 80% share of the fixed line market in Spain (Gow 2005: 25). Returning to Table 1.1, it shows that in the case of the UK – the forerunner in liberalisation, having opened its telecoms market from the early 1980s, the incumbent lost only

⁶⁰ Deutsche Telekom remains the dominant player with significant market power in the fixed and broadband market despite the entry of a number of large operators including BT Global Services. See EC (2000: 3); Gow (2006). British Telecoms (BT) also remains the most powerful actor, particularly in the local fixed telecoms market (See Ofcom 2004: 2-14). In spite of decreases in market size over the years the firm's revenues and profits also continue to grow (See Ofcom 2007: 259; BT 2007: 9). The story is also the same for France Telecom (See Bonnet 2001; Wieland 2003). On the other side of the world in the US which has witnessed fierce competition and where the sector has been liberalised for close to two decades and was still witnessing a scenario where new entrants had managed to acquire only around 5% of the total market of local telecoms by 2000 (Koski and Majumdar 2002: 2-3).

⁶¹ For instance, Telefonica has since liberalisation and privatisation acquired massive stakes in Latin American territories including Argentina and Brazil (Gow 2005: 25).

2.2% of its market share in the three-year period with figures reducing and then stabilising. The firm's overall market share was estimated at 82% in 2005.⁶²

Table 1.1: Percentage Decline in Incumbent Market Share in Europe 2002-2005

	2002-2003	2003-2004	2004-2005	Total
France Telecom	1.3%	1.4%	2.2%	4.9%
Deutsche Telekom	1.0%	1.7%	1.9%	4.6%
Telecom Italia	0.5%	0.0%	0.9%	1.4%
Telefonica	2.5%	1.2%	2.0%	5.7%
BT	0.8%	0.7%	0.7%	2.2%

Source: Willing (2005: 2).

This is not particular to developed countries. In Turkey for example, no other entrant has been able to begin operating in the fixed line market, given the costs involved in interconnecting to the incumbent's network (TI 2007). In spite being hailed as a pacesetter in telecoms reform in Africa, after leading the way with market reforms in 1997, the incumbent (Ghana Telecom) remained the dominant operator up to 2005 (see Mangesi 2007; Alvarion 2005).⁶³ In the case of Barbados, the incumbent has slowed competition, through overpricing and has been slow to allow interconnection to its network (see Schmid 2006: 63-77). In Trinidad and Tobago, the incumbent was the only provider of international voice service in 2006, though this market had been liberalised (ECTEL 2006: 3).

⁶² Richardson (2005).

⁶³ Some of this has been blamed on the regulator's inability to provide a levelled playing field for operators due to legislative weaknesses, as well as political interference (Frempong and Henten 2004: 18).

This experience is not particular to telecoms. Hardstone (2004), for example, examined change in the media printing industry showing that incumbents have not been overwhelmed by the development of new technology in their field. Rather, they appeared to have been favoured by reforms since market changes allowed them to learn about new domains while enhancing their power via alliances and acquisitions. They also adopted new strategies that enabled them to deal with uncertainties through technological advancements in their sector. So, rather than challenge the dominance of incumbents, change merely offered new operational opportunities and left the power of the firm intact (Hardstone 2004; especially p. 20).

Almost two decades ago DiMaggio and Powell recognised the area of incumbency as one in need of more attention in academia. In particular, the authors highlighted the issue of power maintenance and how incumbents deal with situations, which threaten their positions as areas, which remained worthy of research (1991:30). This work aims to make a contribution to addressing this gap. In so doing, it invites a consideration of the firm not merely as a passive actor governed solely by directions given by the state and its agents. Rather, the incumbent is presented as a dynamic agent with the ability, not only to respond to changes, but also with the power to direct actions within its operational sphere.⁶⁴

The story of incumbent firms and the tactics they employ in responding to regulatory reform is also one about the tactics of large firms in a complex regulatory space where capture has been made less likely by changes which have led to a more populated, formal and transparent regulatory space.⁶⁵ In such a case, how do these firms respond to change? What role do they play in industry reform? And why are these actors still dominant in spite of such reforms? Section 1.2 has already outlined the assumptions and frames, which will be used to assess these questions. The remaining task in this section is to advance a more sustained argument or justification for focusing on telecommunications and at this specific juncture in the

⁶⁴ Further, as illustrated in economic studies of competition where it is unable to change policies governing its operations, then the incumbent has an arsenal of other tools and mechanisms for coping with policy reform. These range from strategies aimed at preventing entry to those, which limit the profitability and survival of new entrants upon entry (Bergman and Rudholm 2003: 455-465).

⁶⁵ For instance, Rothstein, Huber and Gaskell note contemporary regulation as being, “characterised by heightened oversight and accountability” (2006: 92-93). These features have in turn, made it more difficult for firms to capture regulators.

development of the sector (i.e. regulatory reform). The chapter closes with a discussion of the methodology and an outline of the rest of the work.

1.3.1 Why Telecommunications Reform?

Telecommunications also offers a pertinent case for a study of incumbency given what Petrazzini sees as its dominance by large firms (1995: 12-14). As noted above, it has not been uncommon for a close relationship to exist between the incumbent operator and the sponsoring government department in most countries, where the latter acted as both owner and regulator. This includes countries on the African and European Continents where both had similar organisation and management structures (Akwule 1993: 159-60).

Intrinsically, periods of reform offer opportunities for new operators to enter formerly closed markets, which may result in challenges being waged to the dominance of the incumbent operator. It is at such times that the incumbent will step up efforts to ensure that it does not lose out from such reforms. It is proposed that periods of regulatory reform (as those seen in telecoms in the last two to three decades) pose a threat to incumbent firms, given the potential to affect the firm's privileges, making telecoms a suitable area for studying regulatory reform and the activities of incumbents.

Episodes of change during which negotiation for new structural arrangements take place also offer the incumbent a chance to address existing market failings, therefore, offering opportunities to remake the sector more towards a desired ideal.⁶⁶ Periods of regulatory flux therefore, offer a useful frame for studying the activities of incumbents during periods of industry change. It is here too that the tactics and response of the incumbent as it seeks to minimise and control risks and uncertainties may be witnessed. Where it becomes difficult to brush these actors (incumbents) aside then one is forced to consider the true relations between

⁶⁶ As an example, they may choose to use such opportunities to encourage the introduction of rules to prevent bypass, especially where they retain ownership and control over the fixed network. In such a case, bypass could mean loss of revenues for the incumbent, giving it more incentive to try to address gaps in this area.

these and the more favoured participants (e.g. regulators) and how these relationships affect the process of reform and choice of regulatory strategies.

Telecoms makes for a pertinent area of study and for the application of the themes discussed above for various reasons. Telecommunications is an increasingly important area for all countries and has undergone an immense number of changes over the past two and a half decades. In the case of Jamaica (1.7% of GDP growth in Jamaica in 2001) and Ireland (3.1% of GNP in 2001) regulatory reform has seen increases in investments due to increased spending in areas such as mobile (Brown 2004: 23; ODTR 2002b). It has been a prime sector for regulatory reform and restructuring and has therefore, generated expansive coverage in academia (Wheatley 1999: 2). This utility has wide implications given the many activities and issues involved in its provision, use and regulation. As the largest global machine (Wheatley 1999:1), it handles a far greater number of individual transactions than any other utility (Harper 1989: 15-16). So not only is it a tradable commodity but it is also an essential means of conducting trade (Walden and Angel 2001: 1). Further, it has been affected by and has seen more rapid developments in technology than any other utility resulting in more possibilities for competition (Prosser 1997: 58). As its share of national economies continues to grow (Cho 1998: 3; Sikes 1992: 96) it is becoming increasingly important for countries regardless of their level of development to take advantage of the opportunities afforded by a modern telecommunications regime.

Thus, while the shape of the telecom sector has changed, there is room for a consideration of the real extent to which these changes have taken place, certainly in terms of the power and influence that dominant incumbents had prior to reform. This would also be useful for its implications for the role of regulation on firm behaviour and the ways in which compliance can be encouraged where the regulated firm is an entrenched dominant actor.

Such studies are important in so far as they add to the focus on regulation and regulatory reform by taking the debate forward to actually focus on what has happened to the incumbent firms – the main objects of regulation and regulatory reform in the 80s and 90s. As such, this presentation takes off from where most coverage in the regulatory literature ended,

mainly on the shift in regulatory regimes and the specific institutional and legal changes that have been secured. It aims to do this by building case studies of telecoms reform in Jamaica and The Republic of Ireland – one, a small developing and the other, a small developed country – both of which stand outside of the main contexts or areas covered in the mainstream empirical and theoretical debates on regulation.

1.4 Choice of Cases and Data Collection

The previous sections suggested that there is an argument for an analysis, which considers the role of actors apart from states and IRAs in the reform process and to assess their role in regulatory reform. Moreover, a study of incumbents holds the possibility of enhancing an understanding of the tools and techniques used by dominant firms in their bid to assert their power and influence during periods - of reform – and the ways in which regulators can respond to such firms. It is for this reason that this study leans towards a sociological institutional approach of regulation, which captures the complexity of relationships in the regulatory space as well as the fact that some groups are more privileged than others (DiMaggio and Powell 1991: 11). The approach also allows for attention to the formal and informal relationships, culture and contexts (Brinton and Nee 1998: 5) concerns which are important in this study given the emphasis on capturing less favoured actors in the process of regulatory reform. Such an approach allows for a view of regulation, which acknowledges the role of business and non-state actors in regulation (as for example, the smart regulatory approach) and regulatory reform, thereby allowing for a consideration of the dominant incumbent firm in such processes as well as of other groups such as consumers and entrants. This view is given resonance in the arguments of authors such as Hancher and Moran (1989) and Black (2002), who through their discussions on ‘regulatory space’ and decentring regulation, have suggested that regulation need not be an affair carried out wholly by the state.

The selection of cases has been guided by a number of issues. It has been noted above that where regulatory reform has been examined, coverage has not been uniform, with some countries getting more attention than others, with an emphasis on large industrial nations. Thus,

small and developing settings have been among the least covered.⁶⁷ Even more, little attention has been placed on the response of the incumbent firm to these reforms. In this way, telecoms offer a useful case for the study of the effects of regulatory reform on incumbents, given the implications of reforms for these actors. Such sectoral studies are important in allowing a more comprehensive view of forces and actors at work in regulation.⁶⁸

Special attention will be paid to telecommunications reform in Jamaica and Ireland; two countries where reforms thought to have been unlikely, have in fact occurred (around the same period).⁶⁹ Jamaica and Ireland are two countries whose only similarity, at first glance, is that they are both small and have both been ignored in the academic debate on public policy issues such as regulation. However, both share a similar history in as much as they were British colonies and share the institutional legacy, which accompanies such a history. In terms of economy, both also underwent economic stagnation during the 1980s. However, where Jamaica's economic problems have persisted, Ireland has seen phenomenal growth. Both have faced pressures from external forces to reform their telecoms sectors and have also faced deficits in regulatory capacity in the early years of reform. This constraint has at least theoretically, raised balance of power issues between the regulator and incumbent, making them interesting cases for assessing how these play out in sector regulation. In both cases as well, telecommunications and informatics have been viewed as key areas of economic and social

⁶⁷ There has been increasing recognition of the gaps in the coverage of developing countries (see for instance, Frempong and Henten 2004; Gutierrez and Berg 2000; Gutierrez 1999; Opoku-Mensah 1996; Petrazzini 1995; Mody, Johannes and Straubhaar 1995; Hobday 1990). Additionally, the Jamaican case has in fact received attention from Lodge and Stirton (Lodge and Stirton 2000; 2002; Stirton and Lodge 2002). However, while there has been some coverage, these cases still exist on the periphery of the development of regulation and regulation theory with significant attention still being placed on the US, UK and other OECD countries. This is understandable given that these states are frontrunners in the development of the theory and practice of regulation, with major scholars in the field residing and studying in these settings. Rioux has, for instance highlighted the role of the US in the internationalisation of telecoms trends (2004: 91-110). Likewise, this is seen in the emergence of concepts such as, the 'regulatory state', 'post-regulatory state' and 'hyper-regulatory state' (Moran 2004; Black 2007 and 2001; Scott 2004; Braithwaite 2000; Majone 1994; Loughlin and Scott 1990; Sunstein 1990). Thus, developments in these states often drive the global agenda on regulation. For instance, the developments discussed in the telecoms sector have characteristically taken place in the OECD countries before becoming more a feature of the landscape in smaller countries and the developing world.

⁶⁸ According to Strange, sectoral studies also help to avoid the emphasis on the micro while avoiding the dependence on a macro or grand approach (1991: 39).

⁶⁹ Due to the vested interests in the incumbents and protectionist cultures that existed in the 80s (into the 1990s as well). See Spiller and Sampson (1996) and OECD (2001a: 86).

activity, with both countries being recipients of investments in this area from North America (Schware and Hume 1996: 6-7). As such, regulatory reform has been seen as key to making these countries more attractive to foreign investment.

Attention will be on the activities of the incumbents, Cable and Wireless Jamaica (C&WJ) and Eircom, Ireland respectively, from the 1980s to present. This period embodies the main phases in the incumbent's development (i.e. from monopoly to privatisation to liberalisation and competition). Both countries also view telecom reform as a path to economic growth and as a tool for increasing telecom access for citizens and attracting investors.⁷⁰ In both cases, this modernisation impulse has gone against the grain especially given that very strong incumbents with close ties to the governing elites dominated telecoms in both countries (as will be shown in the coming chapters).

In as much as developments here share similarities with those in other small or developing settings they offer the basis upon which countries ignored in the general debate on regulation can find their own niche and tools for understanding events and identifying ways in which responsive regulation can be achieved in such settings. Beyond the points of similarity, the two cases are also distinct enough to allow for regional, national, institutional and historical variations; potentially, heightening the explanatory power and application of the findings. Accounts of alternative experiences in a comparative framework can offer fruitful insights to discussions on regulation and the relationship between context and regulatory strategies even while it is accepted that the small case size may limit the generalisability of the findings. In this sense, smart regulation, or responsive, is not just about having a different mix of strategies and regulations, but also about being aware of the effect of different institutional and regulatory settings and how these inform the use of such strategies. As will be shown in the coming chapters, this may even mean employing measures, which may be frowned upon in another context in order to secure compliance from regulated firms.

The cases of Ireland and Jamaica also highlight some of the deeper issues which are not outside the scope of regulation studies and which are essential to understanding how regulations

⁷⁰ See IDT (n.d.); ACT (n.d.) and GoJ (1998).

and firms interact with their environment. That is, the various actors and interests at play, the social relations and institutions involved in reform, how these interact at a cultural, legal and political level and how these inform regulation. So points of general application can be made as it relates to countries undergoing legal and administrative reform and particularly, for small countries faced with the task of reforming relations in a sector dominated by strong local or international firms.

There has been a reliance on mainly primary sources in the form of electronic data (e.g. web pages of regulators and incumbents, World Bank [WB], WTO), historical material (e.g. newspaper archives), official documentation (e.g. yearly reports and other policy documents), interviews (e.g. semi-structured and open interviews of public officials and representatives from the incumbents, entrants and commentators in each country) and legal material (e.g. contracts and licences). Secondary sources (e.g. journal publications) have been consulted. These allowed for a consideration of activities from different points of view and locations (within and outside the incumbent's experience of reform). The work is largely qualitative.

Data collection has been dictated by a desire to overcome biases from a reliance on just one source. However, no research technique is foolproof and the usefulness of any one technique may be limited by attending weaknesses. Those selected here are no different, but there are also ways in which limitations can be reduced.⁷¹ Additionally, the sensitivity of some issues (e.g. informal relationship between firm and state and the nature of the former's contribution to government policy) was taken as potential limits to the responsiveness of interviewees and the rigour of the study. Thus, different information sources and research techniques have been utilised (triangulation) to overcome some of the biases involved in

⁷¹ The Internet for example, has been useful in connecting the researcher to a wealth of information and allowing ready access to experts for online interviews. It thus, offers an inexpensive and immediate means of communication and information gathering (Ferguson 1993). The Internet (e.g. via emailing) is of tremendous benefit where financial and spatial constraints are at play. Selwyn and Robson (1998) have, for instance, provided a more detailed discussion of the attributes and problems associated with e-mailing as a research tool. For instance, it does carry a degree of impersonality, which may not allow for the discussion of sensitive issues. Additionally, the use of newspapers can also raise issues of representativeness and objectivity. On the other hand, other techniques and methods have been used to counteract such a limitation were it to occur. However, resources and individuals can be accessed by other means including the telephone, personal visits and trips to libraries (located in Jamaica, the Irish Republic and the UK).

conducting qualitative research. Triangulation does not automatically equate to a set of information that fits neatly into a whole. Nonetheless, it offers the scope for uncovering ‘the whole picture’ of a given episode or phenomena in light of the emphasis on uncovering ignored actors and experiences.

1.5 Organisation of Work

The work is organised thematically with Chapters two and three covering the response of the Jamaican and Irish incumbents to reforms, based on their activities and interactions in the regulatory space. The chapters show that incumbents have a number of ways to respond to change, which evolve as industry reform progresses. Faced with the possibility of industry change, incumbents chose to use their power and influence firstly to prevent change. Where the reality of change became more certain, both incumbents tried to slow down these movements then to make attempts to secure as many gains from the process to protect their positions at the helm of the sector in a post-reform era. This was done by attempting to leverage their position as incumbents in negotiations, attempting to determine the content and path to be taken in the new regime. The chapters also depict the ways in which incumbents can frustrate regulators and entrants thanks to their influence and command of resources important for successful reform and use of the courts to assert their dominance. The chapters also depict the impact of these on regulatory strategies where bartering and exchange have been used to encourage compliance, particularly in the Jamaican case. Responsive regulation, as depicted in these cases is thus about the ability of regulators to extend the regulatory space beyond national conception and rely on bargaining and other creative tools, given the small size and weak capacity of regulators against entrenched, well-resourced incumbents.

Chapters four and five consider the effect of systemic change on the incumbent’s internal organisation and structure. These chapters demonstrate that regulatory reform is not only about changes in the regulatory space with incumbents being able to modernise at a pace that defies the presentation of these former monopolists and large actors as lethargic. This focus

allows for an understanding of why these actors remain dominant and the ways in which they have managed to do so.

Chapters six and seven cover the second theme in the work, namely, that incumbents are not monolithic structures. The chapters focus on the internal organisation and governance of incumbents. Emphasis is placed on the various actors and interests at play and how these affect the way the firm operates, how it is able to respond to change, and how this affects regulatory strategy. Particularly, it emphasises how internal organisation and structure as well as split interests, can constrain the strategies and choices of incumbents and regulators. In so doing, Chapter six focuses on a geographically dispersed firm and how it is able to utilise this structure as an MNC to gain advantage in negotiations with regulators and how this structure affords the firm access to resources and regulatory capacity, which rivals that possessed by a small developing country and in turn, other players in its regulatory space. The presentation in Chapter seven also challenges this notion of the regulated firm as a monolith, again highlighting the internal differences, which may exist and how these affect the incumbent's willingness to embrace change. These findings are important in so far as regulators are able to identify routes of access and influence within the incumbent and utilise these more skilfully in their activities.

Thus, regulators may choose to break the power and influence of way-ward or recalcitrant groups (within a regulated firm or industry) who frustrate their tasks by making appeals to other actors and interests within the firm in a local or nationalised regulatory space as a route to more responsive and successful regulation. Collectively, the chapters show that a number of actors and issues have been at play in conditioning the behaviour of the incumbent firms beyond the activities of the IRA and government. These exist within the regulatory space as well as in the firm itself. Collectively, these represent endogenous and exogenous pressures for change. However, these exogenous pressures are not limited to the firm's immediate operational sphere but also include international pressures, advancing an answer to Hall et al's question as to the existence of an eighth phase in the development of regulation, which has seen the increased involvement of international actors in regulation (2000: 210).

Finally, the work concludes in Chapter eight, with a summary of the main findings and a consideration of the theoretical and practical implications of the research.

1.6 Conclusion

This introduction has served to highlight the context, questions and assumptions that will guide the presentation in the rest of this thesis. Here the concern is mainly with the way incumbents respond to reform and the factors that influence the incumbent's behaviour. In looking at these main themes the work will also take on board the reality that incumbents (and by extension, regulatory firms) are not monoliths and that the response to reform is both external (in the regulatory space) and internal (at the organisational level). The work will also highlight the point that attention to these themes can help to address challenges of responsive regulation and inform strategies for successful regulation in small and developing states.

These have to be some of the more pertinent areas of analysis, in an area where one of the main imperatives of industry reform has been to change relationships - one of the central ones being that between the incumbent and state/regulator. It is this relationship, which was thought to be counter-productive to transparency, efficiency and competition. The nature of the firm's power and its activities in the sector vis-à-vis consumers, new entrants and the state (including line Ministries and Independent regulators) may, therefore, have implications for regulatory accountability, efficiency and the extent to which competition will in fact flourish. Where this reality is ignored, then there is the risk of portraying regulatory reform as a smooth, uncomplicated process or as simply a matter of designing and implementing efficient rules and legislation. Such considerations also have consequence for the design and implementation of reform and transition policies in other network industries and markets characterised by large dominant firms. As such, this study seeks to direct the attention and debate on regulatory reform into another arena and in so doing, capture some of the more complex and informal relationships in the regulatory domain.

As such, the role played by the incumbent firm in the design and implementation of industry policy, not only during the monopoly years, but also importantly, during the reform period is a fertile area of analysis. In so far as discussions on regulatory reform have emphasised the role of the state and Independent Regulatory Bodies (IRAs) they have succeeded in acknowledging but one thing, that incumbents do not always fit the image of a 'lazy giant' at the mercy of the powerful regulator (that is, the state through its various agencies and representatives). This makes for a reading that should be of interest to students, academics and practitioners of regulation and policy-making and to those keen on understanding the role of dominant actors and their relationship with the state and its agents.

CHAPTER TWO

C&WJ's RESPONSE TO REFORMS IN ITS REGULATORY SPACE

2.0 Introduction

This chapter aims to assess the ways that incumbent firms respond to efforts to change the rules and structure in their operational space. It also seeks to identify the drivers or factors, which affect the incumbent's behaviour. It will do this by examining the activities of the Jamaican incumbent, C&WJ, during the period leading up to and after reform. The discussion is divided along three time frames, 1980-1990, 1991-1997 and 1998-2007 covering the main phases in the development of Jamaican telecoms.⁷² Special emphasis will however, be placed on the 1998-2002 period which marked the main period of industry restructuring. The chapter closes with an analysis of the incumbent's response to change where an attempt is also made to identify the main drivers of its behaviour. This discussion will also seek to assess the lessons that can be learnt from such an understanding of incumbent firm behaviour.

It is argued that such analyses can inform the activities of regulators, namely how to achieve more responsive regulation, and hence greater compliance when dealing with large, comparatively well-resourced actors in the regulatory space. That is, knowledge of how incumbents cope with change and issues affecting its behaviour can help regulators to determine what strategies to employ (and when) in order to secure regulatory compliance. This is also important for regulators in resource-constrained regimes, since enlisting the support of other actors (drivers) in the regulatory task can potentially help to reduce the cost of regulation (time, finance and capacity). Essentially, such information can lead to more informed risk regulation and responsive regulatory regimes, offering key lessons for how regulators can approach strong incumbents when re-designing regulation or seeking support for reforms, which inherently represent a threat of these actors' power and influence, especially where it can predict the

⁷² Authors such as, Spiller and Sampson (1996: 36-78), Wint (1996: 49-71) and Stirton and Lodge (2002) have given sufficient outlines of some of the major developments in Jamaica which taken collectively can be viewed as a comprehensive overview of developments in the sector. The aim here is to build a picture of reform, which more comprehensively reflects the actions of the main player in this discussion – C&WJ.

behaviour of such firms. These themes will also be carried through in the corresponding discussion in Chapter three on the Irish incumbent.

Furthermore, the responsive and smart approaches suggest that regulators have varied strategies for dealing with regulated firms. Following from this, Chapters two and three indicate that the regulated firm *also* has its mix of strategies for dealing with regulators, competitors and changes that may occur in its regulatory space. As such, the presentation challenges the view of incumbents as non-malleable actors or as ‘takers’ of regulation, since they are also actively influencing the activities of participants in their regulatory space, including the independent regulatory authority (IRA) itself. This is seen in its influence on sector policy and the framing of legislative rules, to the timing, implementation and enforcement of these rules.

2.1 Bilateralism and a firm Empowered: Privatisation of Jamaican Telecoms 1980-1989

The 1980s emerged with a Government reeling from the effects of debt, rising oil prices, budget constraints and unemployment in Jamaica.⁷³ In its bid to address these problems and meet targets set by the International Monetary Fund (IMF), the Jamaican government decided to sell one of its most valuable assets, the state-owned monopoly provider of domestic telecoms, Jamaica Telephone Company⁷⁴ (JTC).⁷⁵ The sale was also influenced by an international trend towards reducing the size of government (Payton 2003: 100).

By 1985 the parent company of C&WJ, C&W, who already owned 49% of the provider of international telecoms, Jamintel, emerged as the likely heir and key beneficiary of privatisation, with no outside bids being invited (Wint 1996: 58).⁷⁶ For instance, C&WJ was

⁷³ Unemployment stood at 30% in 1980 and 21% in 1975 (Hope 1986: 79).

⁷⁴ The firm became C&WJ in 1998. However, the term C&WJ will be used throughout.

⁷⁵ Proceeds went directly to the IMF to help offset the country's debt under the Structural Adjustment Programme. See McCormick (1993:8); IADB (2003: 3); Gleaner (2002).

⁷⁶ C&W, the multinational has had a presence in many countries around the globe. In the 1960s and up to at least the 1970s C&W represented the largest telecoms firms in the world (Baglehole 1970: preface). Even with divestments since the late 1990s into 2000, its global operations remain one of the largest in the world. Its Jamaican leg commenced operations in 1878 as the West India Telegraph and Telephone Company. Establishing a connection between the islands in the Caribbean proved to be a viable endeavour by the colonial government given the importance of linking its territories in the region and the importance of Jamaica as a transshipment point (Ahvenainen 1996: 15-19).

already making significant contributions to the economy, not only by bringing in foreign currency, but also through licence payments and taxes.⁷⁷ The international market had grown since the 1970s, coming to represent a significant portion of total telecom revenues.⁷⁸ Additionally, C&W's size, technology, capital, expertise and branding as a huge multinational with investments in other parts of the world and even more - already with a footing in the Jamaican sector, made it the obvious choice for inheriting the sector when privatisation became necessary.⁷⁹ All this made the consolidation of a failing domestic market, with a profitable international segment, an attractive option, making C&W the likely recipient of Jamaican telecoms.

By 1987 both government and firm went into negotiations to hammer out the structure of the new regime. This ended with the incorporation of Jamintel and the JTC, into a new Company, Telecommunications of Jamaica with its structure outlined in Figure 2.1 (ToJ 1988: 5). Thus was created the company with the largest annual turnover in the Caribbean (Dunn and Gooden 1996: 1). A year later, five Operating Licences were signed.⁸⁰ These allowed for cross-subsidisation of domestic rates by the more profitable international market, which in itself, also made reform along these lines politically attractive.⁸¹ Indeed, this was one of the main features of the 1988 arrangement with the main features of the agreement between the firm and the state outlined in below in Box 2.1. Cross subsidisation was to allow ToJ to maintain its position as one of the cheapest fixed service carriers, with the country consistently rating amongst the lowest globally.⁸²

With privatisation C&WJ's monopoly extended to international and domestic

⁷⁷ C&WJ was the largest corporate taxpayer and generated average taxes of J\$97 million 1981-1985 and J\$190 million 1987-1991 (Spiller and Sampson 1996: 72). Available figures suggest that it contributed around six billion dollars in taxes over a ten-year period from around 1992 to 2002 (C&W n.d.: 6). Additionally, prior to 1997 C&WJ's contribution of foreign exchange was significant, earning on average \$150 million US each year from settlement rates (Deane 1998).

⁷⁸ In 1978, this stood at 20% and 80% by 1991 (Spiller and Sampson 1996: 66). As an indicator of the value of the international segment to overall profitability of the account the 1988 Annual Report indicated that revenues for year ending March 31 consisted of J\$68.7 million from telephone rentals and other local services, while J\$252.3 originated from International services (ToJ 1988: 11).

⁷⁹ See Wint (1996: 49-71; 2005: 317-338) for a discussion of these and other rationales for the decision to award C&WJ the licence.

⁸⁰ Collectively termed the *All Island Telephone Licence 1988*.

⁸¹ See Spiller and Sampson (1996: 66) and WB (2005: 45).

⁸² Interview: senior executive of C&WJ, Kingston, March 21, 2007.

telecommunications, telegraphy, wireless and telex; it had the right to install or approve attachments to its network and set tariffs for such activities (Dunn and Gooden, 1996: 3). C&WJ's licences therefore, placed it in a position of dominance and power, making it the natural reference point for the government, or other actors, on Jamaican telecoms.⁸³ Thus, at this stage the incumbent is shown marshalling its resource, ties and experience to increase its power and control over Jamaican telecoms. The factors contributing to its growth and development (as well as its gains in this period) help to establish a basis for the firm's power later in its incumbency.

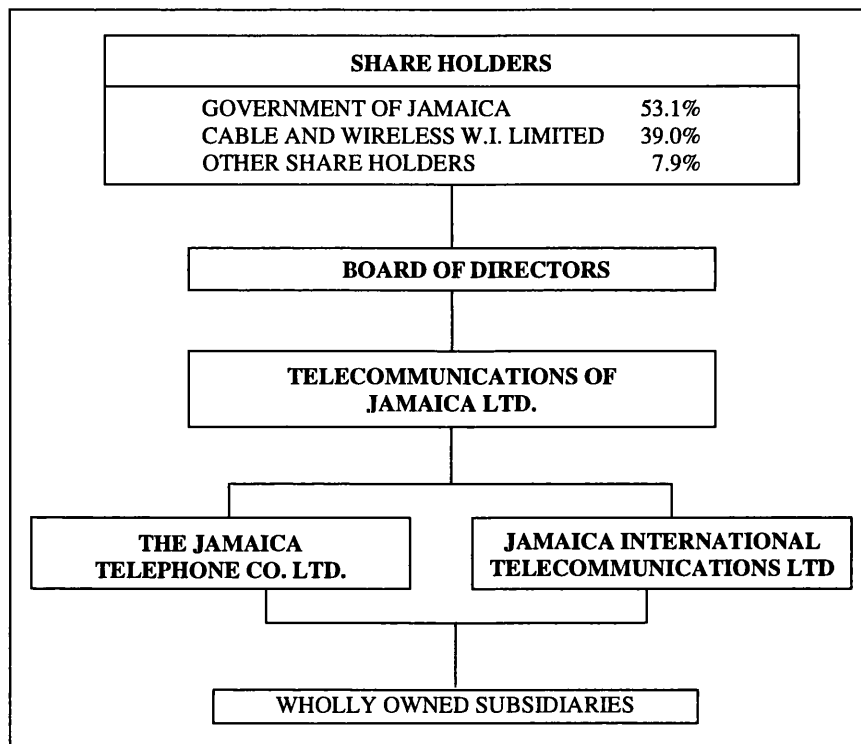
Following from this, the evolution of the 1988 regime could be viewed as evidence of capture by C&WJ given the extensive privileges secured. Further, the close relationship between itself and the state had helped to advance its position in this first round of telecoms restructuring.⁸⁴ The Minister was left as the official regulator⁸⁵ with little or no participation being welcomed from interest groups (including customers) in shaping the regime and subsequently in regulation. As suggested by Dunn, the public interest was neither protected nor represented (1994: 26) with the result that the regime more resembled the contractual type of association highlighted in Chapter one.

⁸³ For instance, the firm represented the government's interests in various international groupings including the Commonwealth Telecommunications Organization (Noguera 1996). This is not necessarily unique to Jamaica or a developing country setting but used simply to suggest some dependence on the knowledge and resources possessed by C&WJ, a fact which may have been heightened by the limited resources and capacity within the state vis-à-vis that of its developed counterparts, particularly at this time.

⁸⁴ Wint also notes this as reason for the firm being awarded licenses in Jamaica, T&T, and Barbados (1996: 57).

⁸⁵ McCormick makes the point that a reduction in state ownership is usually accompanied by the bolstering of its regulatory function as occurred in neighbouring Latin American countries undergoing privatisation at the time (McCormick 1993: 1). The example had also been set by other countries such as, the US and UK (See for example, Beesley 1997; Bishop, Kay and Mayer 1995; Breyer 1990 and 1982). Admittedly, the lack of an independent regulatory body need not be an indicator of lack or even of weak regulation. However, this would have been one way of indicating its intention to foster openness and objectivity. The failure to introduce more independent regulation may suggest the level of mutual understanding, which existed between firm and state and the level of operational freedom that the firm was in fact given.

Figure 2.1: C&WJ Group Structure in 1988



Source: TOJ (1988: 6)

Box 2.1: Main Features of the 1988 Regime

- Commitment from the state to reduce its ownership overtime
- 'Exclusive' ownership over (domestic and int'l) telecoms
- 25-year renewable licence (1988 - 2008)
- 17.5%-20% rate of return
- No change in terms of licence without C&WJ's agreement
- Adjudicator to settle disputes between firm and state
- Pledge to assist firm to secure loans for investment

Compiled from Spiller and Sampson (1996: 72)

As the instrument establishing the regulatory framework and structure for telecoms, the licences were criticised for what was viewed as their very liberal terms. For instance, they gave little administrative discretion to the Minister (Spiller and Sampson 1996: 36). In essence the Minister had little basis for regulating C&WJ or ensuring that the firm met standards regarding quality and service.⁸⁶ This was exacerbated by what was seen as the secrecy and closed nature of negotiations where it was felt that not all aspects of the agreement had been made public (Dunn 1994: 26 and Wint 1996: 55).⁸⁷ Beyond this, the shared ideology and close relations between incumbent and state meant C&WJ operated with little restraint.⁸⁸ Neither were there readily available mechanisms through which the public could hold the firm accountable except through the courts.

The lesson here is that where the regulatory task resides in a ministry, the focused attention and understanding of telecoms needed for effective regulation may be lacking, compromising the overall quality of regulation. In the end the Minister and customers were unable to provide sufficient counterweight to the firm's power.⁸⁹ In effect, the relationship closed off access from other parties, a point, which further aided and protected C&WJ's dominance.

However, such an understanding would have to be considered in the context of other points residing in Jamaica's political culture that highlight the limitations in applying capture theory wholeheartedly to Jamaican telecoms.⁹⁰ As noted by the WB, "efforts to develop

⁸⁶ The licence simply requested that C&WJ deliver continuous and "efficient" service with no measure of this efficiency. The Regulator/Minister in turn, did not introduce any direction to this effect.

⁸⁷ Mills has noted such closed and secretive tendencies as features of governance in small states (1990a: 320).

⁸⁸ Matters relating to the sector were not seen to affect others in as much as the public did not necessarily understand what was taking place between firm and state (Dunn 1994: 26). As such, outsiders were kept out of the policy and regulatory arena leading to dominance and further advancement of C&WJ's role and influence over sector policy and regulation. One interviewee also noted that some public officials had their first jobs with C&WJ and as such may have felt an allegiance and desire to protect the firm (Interview: Hopeton Dunn, January 7, 2005). Also see Mills (1990a: 317-327; 1990b) for a discussion of the impact of small size on governance.

⁸⁹ The chief of the government's negotiating team was made the first chair of the privatised body in 1988 (Interview: former senior staff at C&WJ, November 20, 2006; also in Wint 2005: 328).

⁹⁰ Namely, the government's attempt in 1972 to amend the Constitution in order to abolish the right to private property raised uncertainty among international investors as to the government's credibility (Spiller and Sampson 1996: 42-43; Wint 1996: 49-50; Hope 1986: 34; Brown and McBain, 1983: 85-158). This move to Democratic Nationalism was to witness a process of 'Jamaicanisation' or

privatised production and encourage market-led growth may not succeed unless investors face clear rules and institutions that reduce uncertainty about future government action” (WB, 1992:

1) This point is of particular resonance in the Jamaican setting given past relations between business and government. Thus, seemingly extensive conditions may have marked such recognition by the Jamaican government and a desire to provide the stability needed for the firm to invest in the sector. Thus, while the presentation here allows for capture, it also goes beyond this notion suggesting that not all instances of policies going in the firm’s favour can be taken as evidence of capture.

With such guarantees the firm was in a position to begin infrastructural improvements leading to advances in capacity and quality throughout the sector.⁹¹ This is demonstrated in the increased growth in the number of telephone lines or teledensity.⁹² According to Spiller and Sampson:

... the implication is that the combination of privatisation and regulatory reform provided Cable and Wireless with the incentives and confidence to invest in its Jamaican operation, which it did not have before 1987.

(1996: 75)

On the other hand, teledensity was still comparatively low suggesting that this policy may not have been as effective.⁹³ Thus, the policy of replacing a government monopoly with a private entity meant that in spite of Spiller and Sampson’s suggestion, the conditions had not

nationalisation of key industries, including telecommunications. Even earlier (the 1960s), excessive administrative discretion was identified as a problem for investor security. This uncertainty was demonstrated for example, in renegotiations for renewal of telecoms licences and rate increases with the telecoms firm reducing investments, given the uncertainties it faced concerning its licence (See Spiller and Sampson 1996: 47-50; 1994: 30). As such, the government may have suffered from a credibility issue, which by the 1980s made it willing to relinquish certain rights to heighten investor confidence and security.

⁹¹ Attempts were made to advance cellular capacity, business-based communications systems and the rehabilitation of external facilities to make the network more robust. In order to enhance the reliability of the network particularly against some of the harsh weather conditions periodically experienced by the island and reduce line faults, outside plants owned by the firm were rehabilitated (ToJ 1990: 10). These efforts along with the digitalisation of the telegraph network were to see marked gains being made in the island’s communications infrastructure.

⁹² Defined as the number of main telephone lines per 100 inhabitants of a region or country. This stood at around 2.99 in 1984, 4.46 in 1991, 14.03 for 1997-1999 (ITU 2004). Fixed lines moved from 81,710 in 1987 to 471,000 in 1999 (Brown 2004: 24).

⁹³For instance, in 1993 Barbados had a teledensity of 30.6, Belize 13.3 and the Bahamas 25.5 (Brown 1995: 4).

been provided for the firm to maximise investments in the sector. Rather, the competition or rivalry that may have been needed to spur efficiency and greater progress was lacking resulting in C&WJ operating with much leeway (See Payton 2003: 101). Thus, by 1990 the waiting list almost matched the number of existing lines (88,000) (Noguera 1996: 5). Further, given the small number of actors in the regulatory arena in the 1980s-1990s and the direct routes informal contact with policy-makers, the firm basically went unchallenged in its position at the centre of the sector.⁹⁴ Some of this was owing to what its longest serving chief saw as, the “cordial and co-operative working relationship between the state and [C&WJ]” (ToJ 1988: 7).

The high rate of return was to see frequent rate increases being awarded to allow C&WJ to realise its profit, in spite of the ample rates received from resettlement (see Spiller and Sampson 1996: 36).⁹⁵ However, the firm was keen to keep this separate from its local operations, particularly where it concerned funding network expansion.⁹⁶ As such, network expansion was done at the state’s expense, given its pledge to assist C&WJ in securing loans for such improvements.⁹⁷

The firm thus became a dominant force in the sector, in this instance, viewing industry reform as an opportunity to heighten its power and freedom through greater ownership and control. Thus it could act unilaterally, introducing policies without consultation with the Minister/regulator or customers.⁹⁸ These rights essentially limited the possibility of competition in telecommunications and most certainly not in the fixed line business. In the end, the guarantees ensured that C&WJ would operate risk free with little restrictions on its operations, guaranteed profitability and little oversight (Insight 2001: 1). Even so, these developments also

⁹⁴ The parent company had encouraged this form of relationship with ministers from the 1960s as a means of protecting its markets within the Caribbean (Barty-King 1979: 346-347).

⁹⁵ See note 78.

⁹⁶ Interview: Senior Executive, C&WJ, Kingston, July 20, 2007.

⁹⁷ Interview: Former employee of C&WJ, Kingston, November 20, 2006. Sources included the Commonwealth Development Corporation who granted the firm £10 million repayable 1991-1998 (ToJ 1989: 25).

⁹⁸ For instance, C&WJ blocked direct international dialling through the introduction of an International Call Authorisation System (ICAS) in 1989. This was done without discussion with the state or its customers (Interview: Senior Executive, C&WJ, Kingston, July 20, 2007). However, the incumbent felt the problem of bypass required just such a “drastic measure” and as such, the new system remained intact (see ToJ 1989: 11). In 1988 bypass cost the firm \$49 million and \$70 million or 20% of the total billing for outgoing calls in 1989 (ToJ 1989: 11).

provided the foundation for future challenge in the sector as it pertained to C&WJ's rights and exclusivity. Indeed, it was the uncertainty of the boundaries around these 'extensive' privileges that laid the foundation for much of the developments in the 90s.

The legality of this 'exclusivity' was also questioned given its foundation in the 1893 Telegraphs Act, which at that point had given C&WJ monopoly over the island's telecommunications network. However, the technology considered under this legislation could not have anticipated the revolution that was to take place in communications technology.⁹⁹ Consequently, the 1988 licences did not make specific reference to C&WJ's monopoly rights in these areas with the firm's exclusivity over these remaining doubtful. The period of 'exclusivity' (see Box 2.1) was questioned, given the argument that seven or 10 years would have been ample time for the firm to recover any investments made in the sector (Dunn and Gooden 1996: 3). The stage was thus set for the future challenge of C&WJ's monopoly.

2.2 C&WJ Pushes for New Legislation: 1990-1997

The 1980s ended with C&WJ securing the prize in Jamaican telecoms – what appeared to be exclusive control of international and local telephony on very favourable terms. The 1990s would be spent trying to protect this market as gaps and limitations of the Act on which the 1988 regime was based became apparent. This led to the second phase of attempts by the incumbent to dictate the structure of the sector 1990-1997.

Challenges here were wound up in the threat of bypass¹⁰⁰ that had been an issue for C&WJ since its incorporation in 1987 (ToJ 1988: 4). The 1990s however marked an increase of this practice as firms who wished to have a share of C&WJ's profitable international market began agitating for reform. Bypass was not only a challenge to profits but also to the legality of C&WJ's monopoly with such acts being interpreted as contravention of the 1988 licences.¹⁰¹

⁹⁹ Particularly, the emergence of value added network services; the role of data transmission fibre optic and cellular services were not covered under this early Act. As noted by Stirton and Lodge the Act dealt with telecommunications in a pre-Marconi era (Stirton and Lodge 2002: 4; Lodge and Stirton 2002: 10).

¹⁰⁰ That is, "illegal network access" (ToJ 1988: 4).

¹⁰¹ Such 'violations' were facilitated by the growth of 'Voice over Internet Protocol' (VoIP) technology, which allowed consumers to make international voice calls through their Internet Service Providers,

This awakened C&WJ to the need to protect its status by clarifying and extending its exclusivity by pushing for the introduction of new legislation. And so began the firm's attempts to control and direct the legislative agenda and the shape of its operational space in ways resembling capture. One of its first strategies was to appeal directly to the government, utilising ties and contacts with policy makers to introduce legislation, which would prevent a disadvantageous change in its position. Hence, while it remained structurally dominant it now sought to enhance the legality of this dominance. Thus, by 1990 C&WJ exerted pressure on the state to have the 1893 law updated to include all new forms of communications technology. In a letter that year to the Company chair, the Prime Minister agreed to C&WJ's request, acknowledging its intention to extend C&WJ's exclusivity.¹⁰²

The incumbent's hand was strengthened by an economic slowdown, which saw the government trying to raise funds through the sale of additional shares in C&WJ. Thus, C&WJ offered to pay a greater value for the shares, in return for extending its licence (Lodge and Stirton 2002: 4). The sale was carried through in that year with C&WJ owning 79% of the Company and the public the remaining 21% (Wint 1996: 55). As in the previous episode, these negotiations were not made public. The regulatory space was therefore, a closed arena with the state appearing to have been captured by the regulated firm.

It was only in 1993 with moves to introduce the new Bill before Parliament that the letter was leaked to the media and the public became aware of C&WJ's activities. In previous episodes the firm's attempts to direct the shape of the sector did not draw much attention. However, the public was now more aware and there had emerged a number of firms desiring access to the telecoms market; these lobbied against C&WJ's efforts ultimately sidelining the

circumventing C&WJ's network (C&WJ-AR 2001: 7). The rapid pace in the development of communications technology also hinted at the potential for further bypass. C&WJ acknowledged this, giving it as a rationale for bringing legislation up to speed.

¹⁰² As noted in the letter, "the Government acknowledges that it was the intention that Telecommunications of Jamaica Limited (ToJ) would, under the All-Island Telephone Licence, 1988, issued under the Telephone Act, enjoy the exclusive right to provide public telecommunications services in Jamaica... In order to rectify the situation, it would be necessary to amend the Telephone Act...I wish to give you the assurance that Government intends to take immediate steps to make the necessary amendments" (Gleaner 2000b).

legislation.¹⁰³ With the approach of an election, the government sought to avoid losing support by pushing through an unpopular legislation, instead promising a new legislation after general elections in 1996 (Lodge and Stirton 2002: 10).¹⁰⁴ During this time, however, C&WJ did what it could to prevent or limit entry in the sector.

Its actions were driven by an insistence on protecting its supposed exclusivity and preventing bypass or any move it viewed as being contrary to the terms of its licence until legislative reform was secured. Until then, C&WJ took comfort from the government's pledge that it would, "not do anything, which would, in any way prejudice the company as the exclusive telecommunications carrier for services in, from and through Jamaica".¹⁰⁵ As shown here, the evolution of regulation is also influenced by the electoral cycle, a point that is also substantiated in the Irish case (Chapter three). In Jamaica it is shown as affecting the ability of the incumbent to influence politicians or sector policy, presenting strong motivation against firm capture.

2.2.1 Increase in Sector Regulation

There was however, some recognition that regulation was less than ideal, when attempts were made to introduce more transparency through the Fair Trading Commission (FTC), created in 1993 to prevent abuse of dominance (FTC 2003a: 1). However, the effectiveness and credibility of this body was curtailed by capacity gaps.¹⁰⁶ Nevertheless, it was the power wielded between the minister and the company that remained dominant, especially with what Stirton and Lodge note as an internal agreement not to challenge the 1988 licence (2002: 5).

Continued attempts to bolster regulation and increase the distance between firm and state witnessed the establishment of an independent regulator, the Office of Utilities Regulation

¹⁰³ See Stirton and Lodge (2002: 4-5).

¹⁰⁴ This is supported by an Inter American Development Bank report on privatisation and regulation in Jamaica, which concluded, "the discussion about privatisation has had more to do with timing (e.g. avoid discussion close to elections), rather than with deeper aspects, such as whether privatisation would increase wealth, or increase investment" (IADB 2003: 3).

¹⁰⁵ See note 33.

¹⁰⁶ Problems included weak legislation and budgetary constraints placing restrictions on operations and staffing. For instance, the FTC consistently complained of shortfalls in its budget and the constraints it placed on its functions and ability investigate complaints (GoJ, 2001b: 8; FTC 2003b: 1).

(OUR) in 1995.¹⁰⁷ The establishment of this mega-regulator indicated more than ever, the breach that was to appear in the relationship between firm and state. However, this was not immediately evident given that the OUR did not become operational before 1997. Until this body became operational, the FTC attempted to offer some restraint on the incumbent's activities, especially in the face of a minister who appeared unwilling to do so.¹⁰⁸

The incumbent did not welcome this addition to the sector. In fact, it was to attempt to get telecoms excluded from the OUR's portfolio (Stirton and Lodge 2002: 16). Failing this, the incumbent took little official notice of the regulator, even refusing to contribute fees meant to keep it operational.¹⁰⁹ C&WJ's response was somewhat facilitated by the deficiencies in the 1995 OUR Act. As an enabling legislation, it was deficient in that it failed to give the OUR sufficient power to force the incumbent to comply.¹¹⁰ Thus C&WJ could ignore the OUR, thanks to loopholes in the legislation (Interview: Former OUR staff, Kingston, Jamaica: June 29, 2001).¹¹¹ These deficiencies limited the regulator's power and legitimacy, ultimately compromising its ability to function efficiently. These early years of the OUR's existence saw it growing frustrated at the lack of responsiveness not only from C&WJ but also from other major utilities over which it had responsibility. By the end of its first year it noted that a majority of the complaints that it referred to the utilities operators did not receive a response. Subsequently, the forty day-investigation rate that it had promised clients turned into 60, and in some cases, 100 days (OUR-CA 1998: 14). This point helps to underscore the importance of equipping

¹⁰⁷ This was created at the behest of the WB in return for funding to privatise the national electricity company (Stirton and Lodge 2002: 5).

¹⁰⁸ In 1995, for example, the FTC brought up C&WJ for excessive charges for Internet access. The incumbent later filed a suit challenging the FTC's right to regulate user rates. This was settled out of court (FTC 2003a: 1-2).

¹⁰⁹ According to Sections 6 and 7 of the OUR Act, the regulator was to be financed from fees charged for its service and particularly, moneys from the regulated companies. The Act had also empowered the OUR to oversee service level complaints and establish fees and penalties for the companies it oversaw. However, no enforcement power was given to the body, minimising its ability to collect these fees.

¹¹⁰ One interviewee argued that this may have been intentional, as the government did not want to cede too much power hence, control to an independent body (Interview: Former C&WJ staff and later adviser to Digicel, Kingston, Jamaica, June 20, 2001).

¹¹¹ The Act did not specifically note any organisation that the OUR would regulate. It simply mentioned, "approved organization", which according to Section 2[1] was, "any organisation or any body of persons which by virtue of an enabling instrument, or this Act is made subject to the jurisdiction or control of the office as respects the operation of a utility undertaking". This was used by the incumbent as a rationale for ignoring the OUR's jurisdiction in the sector, especially given subsequent failure to form any 'enabling instrument' (see Stirton and Lodge 2002: 5).

regulators with adequate, legal and technical support if they are to be seen as credible forces in the regulatory space, a finding which also resonates in the Irish case (see Chapter three). Furthermore, it could not issue licenses, only making recommendations to the Minister in this regard (Section 4, OUR Act 1995). The difficulties faced by regulatory bodies are demonstrated, particularly, where they lack sufficient power and resources to carry out their tasks, indicating to the incumbent where the real power existed. This remained the case up to 2000, when the OUR Act was amended and the 2000 Telecommunications Act was brought into force, giving the OUR specific responsibility for regulating the incumbent (Section 4).

The presentation up to this point is of a dominant firm whose role as *the* regulated actor is less clearly defined given it has played a role in defining sector rules and the way regulation proceeded with little restraint. This may result from dependence on the regulated firm (for expertise, to develop infrastructure), which makes negotiations and regulation more a matter of compromise and bargaining in order to achieve optimal results in regulation and the wider economy.¹¹² In this case regulation has to be ‘responsive’ to a number of actors and interests (including macro issues, such as growth and development) that may result in regulators making compromises, reminiscent of capture, with the regulated actor. This is one of the ultimate difficulties in achieving, or even defining, ‘responsive regulation’ in any one context given the range of issues and actors who may affect regulation at different points.¹¹³

As will be shown in the next section, the incumbent also has its mix of strategies to respond to changing market structure and rules. Thus, the regulated firm in this context is not simply a policy-taker as it is seen attempting to define and direct rules contemporaneously with the state.

2.3 Liberalisation and Reform of Jamaican Telecoms: 1998-2007

The practice of protecting the firm from competition even though it had been privatised was to

¹¹² As seen in the government’s need for capital and to develop telecoms and by the impact these had on the experiences of 1988, 1990 and 1993.

¹¹³ Even while it is accepted that these can in turn help the regulator to become more responsive, especially where it is aware of these issues and how they can be used to bring pressure on, and increase compliance from large dominant actors.

end by 1997 when a new Minister took over telecoms.¹¹⁴ The entry of this minister also meant a breach in the collegial relations between firm and state, forcing C&WJ to seek more ways of protecting and asserting its dominance in what was to be an increasingly contested regulatory space.¹¹⁵ Additionally, the conclusion of the WTO Basic Agreement in Telecommunications Services (an annex to the GATS Fourth Protocol in 1997) was to provide one of the strongest motives and blueprint to reengineer Jamaican telecoms.¹¹⁶ Under this agreement the government pledged to provide an enabling environment for competition by March 1, 2000 (Brown 2004: 25). This drive was also facilitated by the ITU, IMF and WB who helped to sensitise the government of the benefits of reform (Ibid: 24). International regulation and support thus, afforded the GoJ additional leverage to revoke its agreements with C&WJ. This third period was therefore to witness a State that was now emboldened against the private monopoly it had created almost a decade earlier. By the late 1990s, telecoms was increasingly being seen as a vote winner for any administration willing to champion the cause of small investors and consumers (Interview: Former C&WJ employee and adviser to Digicel, Kingston, Jamaica 2001).¹¹⁷ Thus, though applications had been made to the former Minister for VSAT licences in early 1996, it was not till the new Minister took over that these were successful. Five licences were awarded in 1998 under the 1973 Radio and Telegraph Control Act. This set the next phase of the story in motion with C&WJ bringing a Court case against the government in 1998, which was to end with the renegotiation of the rules and structure of Jamaican telecoms.

¹¹⁴ Interview: Owner of a small entrant, Kingston, Jamaica June 2005.

¹¹⁵ This breach was made even more real by the fact that the new minister was not a novice when it came to telecoms and competition, having headed the FTC before this appointment. Hence, he brought with him an awareness and understanding of telecoms and the possibility and potential for the sector in terms of the way it was organised and the potential of competition.

¹¹⁶ The GATS is Annex 1B of the 1994 Marrakesh Agreement. The Agreement consists of a number of multilateral arrangements relating to goods, services, dispute settlement and intellectual property. It outlined structures aimed at bringing about global standards in telecom through trade liberalisation including increased transparency and the dismantling of barriers to entry. The Agreement became effective in 1998. See *Annex on Telecommunications* of the GATS; Fredebeul-Krein and Fretag also give a comprehensive review of the GATS (1997: 477-91). Jamaica was given up to 2010 before it had to adopt this system.

¹¹⁷ Various administrations had been harping on the effect that competition could have on the economy and society in various political manifestoes and policy documents (JLP 1997: 26-28; 2002: 6; PNP 1997; 2002: 7). Also see *The National Industrial Policy* and Ministry Paper No. 37 (GoJ 1998; 2001a). These noted the role of communications technology in enabling Jamaica to enjoy access to more communications services at lower prices (GoJ 1998:1).

And so, while the firm's attempts to influence policy were to continue in the mid to late 1990s the shift in its relationship with the Minister meant it had begun to diversify its tactics and response to threats in its operational sphere, since it could no longer rely on this source for protection. This was to move from one underscored by shared understanding, informality and trust to one characterised by uncertainty and increasing antagonism. This saw more of an emphasis on thwarting competition and industry reform through the use of its incumbency and all the privileges afforded by this status. These related to its monopoly over information, its size and resources vis-à-vis the government regulators and competitors and could be seen most visibly in the turn to the courts and the use of anti-competitive measures.

2.3.1 Anti-competitive Practice as an Exercise of Incumbency

C&WJ's activities during the early-mid 90s was about cementing its hold over the telecoms sector by driving policy and legislative reform to fortify the legality of its dominance. However, its ability to direct industry policy became more limited due to increased public scrutiny; it also began focusing more on preventing market entry, given a growing breach in relations with the line minister and as a way of controlling the pace of movements in the sector.¹¹⁸ These moves (also reminiscent of the Irish incumbent's tactics) increased as more competitors sought to enter the market.

In one popular strategy the company would refuse to fill line requests from entrants, thus preventing connection to its network.¹¹⁹ Where C&WJ was forced to allow access, it would sometimes do so slowly, or grant fewer lines than requested. In 1998 for example, it delayed transferring lines to Answering Limited, a small company offering voice-messaging service (FTC 1999a). When it eventually filled the request, it also increased line charges by 60%.¹²⁰ At the same time C&WJ unilaterally introduced the same service to its customer's phone lines

¹¹⁸ As noted by one interviewee from a small competitor, CWJ had, "never been a good partner in this [sector]. They want to be the only ones around" (Interview: Kingston, Jamaica June 20, 2005).

¹¹⁹ See "Fair Trading Commission and Cable and Wireless (Jamaica) Limited settle Intouch Voicemail Suit" (FTC 1999a) and "Cable and Wireless (Jamaica) Limited Responds to Complaint Lodged by the Fair Trading Commission" (FTC 1999b).

¹²⁰ Gleaner (1999).

without their permission. Such delays therefore placed added pressure on small operators. The FTC brought a claim of abuse of dominance against C&WJ in 1999,¹²¹ noting, “we believe it was only because of the plan by Cable and Wireless to get into the market of value-added services that there was this inordinate delay” (FTC 1999a; 2003a: 2). It was also accused of false advertising, since it eventually began charging for the service, when it had been advertised as free. Faced with threat of action from the FTC, the incumbent agreed to a number of measures, including the installation of voicemail only where requested, but justified its actions as an attempt to promote, “technical and economic progress” (Ibid).¹²²

While the OUR was slow in getting started, the FTC filled the void, becoming more active in regulating against abuse, indicating the various institutional arrangements, which can be employed in regulating the behaviour of an incumbent. Thus, where the incumbent chose to ignore the sector regulator, the competition regulator played an important role in monitoring and checking its activities, in so doing, plugging the gaps of the sector regulator.

2.3.2 C&WJ Turns to the Courts

However, one of the main weapons used by the incumbent in slowing competition, frustrating regulation and challenging the legitimacy of regulators was its use of the Court system in the late 90s. As will be seen in Chapter three, this is one of the key strategies employed by such actors when faced with threats to their dominance. Faced with changing dynamics with politicians and growing uncertainty around the rules, and the boundaries of its power, C&WJ turned to the Courts to obtain clarity and to reduce risks and uncertainties. The increase in litigation since the late 1990s marked a departure from the past, with the judiciary becoming a crucial player in the regulatory space.¹²³

This was first used against the FTC in 1995, but since 1998 it became more a feature of

¹²¹ See GoJ (1999).

¹²² The FTC acted under Section 37 of the Fair Competition Act 1993. This was amended in 2001 to increase its enforcement capacity and define its jurisdiction (GoJ 2001b).

¹²³ For instance, in spite of the antagonism, which existed between private utilities and the government to the end of the 70s, the judiciary was not used to solve any of these disputes. In the case of telecoms the then Jamaica Telephone Company had only appealed to the courts against the regulator (Public Utilities Commission) in 1974 (Spiller and Sampson 1996: 43-44; 54).

C&WJ's response to the OUR, though not to the extent witnessed in Ireland (as will be shown in the coming chapter).¹²⁴ Where the OUR or Minister ignored C&WJ's requests, then it was willing to seek resolution through the courts. For instance, while granting the firm's request for a rate increase in 1998, the OUR lessened the amount it originally requested. In a move, which was indicative of where the real power existed, the Minister then reviewed the OUR's decision, further reducing the level of increase.¹²⁵ A further request for a J\$20 for directory assistance was reduced to J\$10.¹²⁶ Earlier applications for rate increase had for the most part gone unchallenged. The minister's refusal in this instance was one of the first indicators of the shift in the relationship and declining influence of the incumbent. The incumbent subsequently called for the matter to be referred to an independent referee. The minister's refusal saw C&WJ taking the government to Court to get a ruling on its right for the matter to be considered by a referee.¹²⁷

With the Court being used to clarify regulatory policy and industry structure, the incumbent's capacity to appeal to the Court also constituted a threat to the state and entrants who were not as well resourced and thus, were unwilling to go through a system that was slow and costly.¹²⁸ According to one entrant, "we would be wasting resources taking C&W to court... they (*i.e.* C&WJ) get away with a lot of things" (Interview: Representative of a small operator, Kingston, Jamaica, June 20, 2005). The act of going before the Courts was also demonstrative of the firm's commitment in ensuring its rights – as it believed them to be – were secured, as was the case in 1998 when it filed a suit against the state for issuing the five VSAT licences.¹²⁹ C&WJ had interpreted this as a direct violation of its 1988 licence conditions and aimed at forcing the government to retract the licences and prevent future licences being issued (Stirton and Lodge 2002: 6). Thus, where the regulators (state, FTC and OUR) failed to clarify the

¹²⁴ See note 108.

¹²⁵ Jamaica Gleaner (2000a); Thompson (2002a).

¹²⁶ Ibid.

¹²⁷ On the day of the hearing, the government announced it had agreed to C&WJ's request and would cover the firm's legal costs (Gayle 1998).

¹²⁸ Interviews: Former OUR staff, June 20, 2001 and January 7, 2005, Kingston, Jamaica.

¹²⁹ Minister of Commerce and Technology v. Cable and Wireless (Jamaica), Suit M089/98, aimed at forcing the government to retract the licences.

boundaries of the firm's monopoly it turned to the courts to seek redress. As such, it was the issuing of the VSAT licences, the legal wrangling between firm and state and the clamour for entry from investors that triggered the next phase of events that saw the most extensive period of reform in Jamaican telecoms.

2.3.3 Negotiated Reform of Jamaican Telecoms

With C&WJ's decision to take the government to Court, the relationship between firm and State became more strained, with the government appealing to C&W Plc. in London and his corresponding Minister in the UK to seek support for sector reform and to retract its case against the government.¹³⁰ Added to this pressure, was the fact that while it had been one of the instigators behind the break-up of British Telecom's monopoly in 1982; C&WJ was now fighting to maintain the same position in Jamaica. Another of the inconsistencies in C&WJ's behaviour meant that the late 90s saw it attempting to enter the US market even while attempting to hold on to its monopoly in the region. This duality helped the Jamaican government to earn support from the FCC as well as the UK government.¹³¹

Further, one of the main foundations for C&WJ's struggle to maintain its monopoly was also under threat. Namely, the 1997 Federal Communications Commission's (FCC) Benchmark Resettlement Order stipulating a reduction in the rates that US companies could pay foreign firms for telephone calls terminated in the country from 2001.¹³² These signalled the beginning of a new era in the international settlement rate system, indicating the impending decline in the firm's earnings.¹³³ The growth in communications technology and the FCC

¹³⁰ Interviews: Former staff and adviser to C&WJ, Kingston, Jamaica, November 20, 2006; Then Minister of telecoms, Kingston, Jamaica, January 6, 2005.

¹³¹ Ibid. Also see Wint (2005: 330).

¹³² Section one notes, the Order aimed to 'establish benchmarks that will govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States.' See FCC (1997). The Order was challenged by C&W plc. with over 100 other telecommunications providers in 1998. The appeal was overturned January 1999. See Cable and Wireless, plc v. Federal Communications Commission and United States of America, 344, U.S. App. D.C. 261; 166 F. 3d 1224.

¹³³ Thus, while C&WJ saw steady increases in net profits up to 2000, it was to witness a decline for the first time in 2001. According to C&WJ, this reduction was influenced by the practice of bypass and the reduction in remittances due to the renegotiation of the international settlement rate regime (C&WJ-AR 2001: 6-7).

agreement had served to lower the political leverage that could be gained from holding on to its monopoly (Lodge and Stirton 2002: 17).¹³⁴ Thus, it appeared that faced with the inevitable, C&WJ made the rational decision to give up its monopoly while it was still in a position to ensure that it came from the negotiating table with as many benefits as possible. C&WJ and its shareholders in London also had an incentive to change their stance, coming to recognise reform as an opportunity to redesign the sector so as to eliminate some of the risks and uncertainties that had plagued its operations (i.e. bypass and lack of clarity around its rights).¹³⁵ As the profitability of the international market had motivated increased ownership of telecoms in 1987, the threat of declining profits now motivated C&WJ to give up its monopoly.

By signalling its willingness for regime change, C&WJ was also signalling its changing attitude to regulation. Thus, rather than an attempt to prevent reform, it now sought to embrace it and its potential benefits. Whereas formal Regulation had been viewed more as a constraint in former years, the firm became more accepting of potential opportunities that more transparent regulation could afford, particularly, the potential for it to shape the regulatory framework to allow it to remain competitive both in the medium and long term.¹³⁶ Both firm and state thus, went into discussions. Ironically, these discussions marked a return to the closed bilateral relationship of the past, with the OUR being excluded from the 1999 negotiations.¹³⁷ As such, it is understandable that the incumbent was slow to recognise the OUR, especially, given the government's own attitude to this actor, once again demonstrating where the balance of power existed in the regulatory space.

The discussions were to see the Court case being retracted in 1999 when a Heads of

¹³⁴ C&W argued that the timing of the Order was unrealistic since other countries, including the US and UK had taken over ten years to introduce competition in their telecoms sector. See Benchmarks Order paragraph 168.

¹³⁵ As it noted in its Annual Report there existed, "a strong tendency towards the introduction of competition in certain areas" (C&WJ-AR 1998: 5). On the other hand, C&WJ also recognised the urgency with which the Minister wanted reform, a fact, which may have unwittingly strengthened the firm's hand at the negotiating table.

¹³⁶ Interview: Senior member of regulatory team at C&W, London, February 22, 2007.

¹³⁷ See Winton (1999). This decision suggested the little regard that the OUR was given by both the incumbent and the Minister at this point. Interview: Former senior staff at C&WJ who also acted as an adviser to the government on telecoms related matters, Kingston, Jamaica, January 6, 2005. He also pointed out that this was also indication of an unwillingness to let the OUR take the lead given the political stakes involved.

Agreement (HoA) was concluded between C&W and the State, the main features of which are outlined in Box 2.2. One of the key elements of this agreement was the government's pledge to protect C&WJ from one of the main threats it had faced since its inception – bypass.¹³⁸ Interconnection rates would in turn guarantee the incumbent an additional source of income. The firm also pledged to sponsor a *Spectrum Management Authority* (SMA). There was also something to be gained from the firm being involved in such a body given the full extent of its ownership of infrastructure within the sector. The sooner the SMA could begin its operations and the less the distraction of funding, then the more it could prevent abuse of the incumbent's rights as network owners. Regulation in this instance could effectively be seen as regulation for or on the incumbent's behalf.¹³⁹

C&W pledged not to proceed with any claims for compensation, even with the premature termination of its contract.¹⁴⁰ Other countries such as Hong Kong had in fact paid C&W to give up its licence and the Jamaica government was keen to avoid a similar occurrence (Interview: then Minister of telecoms, Kingston, Jamaica, January 6, 2005). In return the government made a number of pledges, including a promise not to charge the firm for its new licences to allow for phased liberalisation. Under the HoA, the government also agreed not to issue any additional VSAT licences before full opening of the sector in 2003. The terms of the HoA are laid out in Box 2.2, which demonstrates the firm's pledges and the government's promises.

¹³⁸ See JTC (1988: 7).

¹³⁹ Also given its concern in ensuring that there was no abuse of its infrastructure.

¹⁴⁰ See Box 2.1.

Box 2.2 Main Features of the Heads of Agreement Between C&WJ and Government of Jamaica (GoJ) 1999

C&W Pledges

End of suit against the GOJ
 No compensation for Premature termination of contract
 Sponsor a Spectrum Management Authority (SMA)
 J\$16 million for 200 scholarships over three years
 J\$90 million for a new call centre
 J\$190 million upgrade for Jamaica Digiport improvements
 Install 217,000 land lines by 2003
 Free Internet access to 50 post offices

GoJ's pledges

Prevent Bypass
 No charge for C&WJ's licenses
 Free use of Spectrum
 Phased approach to liberalisation
 No New VSAT licenses up to 2003
 Help secure loans for network

The HoA also noted a set of rights and duties, the violation of which would see the government compensating the firm for losses (See Box 2.3).¹⁴¹ These were to remain in effect six years after the Act had been passed ensuring that even after full liberalisation, C&WJ's dominance over certain areas of the sector would remain unchallenged.

The HoA was to be the precursor to the 2000 Telecoms Act. The Telecom Act 2000 was to mark the beginning of a new era in a liberalised and fully privatised telecom regime. With the new Act coming into effect March 1, 2000, the firm inherited a set of eight enabling licences a few days later on March 14 (C&WJ-AR 2001: 23). These were to run up to March 14, 2015.¹⁴² The Act (and HoA) also made allowance for an SMA. This new regime was to see the firm being given a 15-year renewable licence entitling it to supply all types of telecoms services. Any modifications to the licence had to be agreed mutually. The pricing structure was also changed allowing for more flexibility through the use of price cap regulation.¹⁴³

¹⁴¹ Clause 7.1 of the HoA.

¹⁴² These were the: Carrier (Cable & Wireless Jamaica Limited) Licence, Service Provider (Cable & Wireless Jamaica Limited) Licence, Spectrum (Cable & Wireless Jamaica Limited) Licence, Domestic Mobile Carrier (Cable & Wireless Jamaica Limited) Licence, Domestic Mobile Service Provider (Cable & Wireless Jamaica Limited) Licence, Domestic Mobile Spectrum (Cable & Wireless Jamaica Limited) Licence, Free Trade Zone Carrier (Jamaica Dig port International Limited) Licence and Free Trade Zone Service Provider (Jamaica Digiport International Limited) Licence.

¹⁴³ Introduced in 2001 (WB 2005: 45).

Box 2.3 Terms Under which C&WJ's Compensation Rights can be triggered

- C.9.5.1¹ - where the law is (i) inconsistent with the Policy Drafting Instructions (iii) "in away" detrimental to CWJ
- C.9.5.3 - where there is a failure on the part of the Minister to issue to CWJ new licences "in the manner, at the time specified in and contemplated by the Policy Drafting Instructions in the form provided for" by the Agreement's¹ Annexe
- C.9.5.6 - where the Minister gives an international facilities licence to a new VSAT or Free Trade Zone applicant, or where the permitted International facilities licences are not "in conformity with" the policy Drafting Instructions (see Clause 3.3)
- C.9.5.7 - if Regulations emanating from Clause 4.1 of the Agreement do not correspond with "the Policy Drafting Instructions (see Clause 4.1)
- C.9.5.1.1 - where a court nullifies any part of the new law or Agreement, where provisions are determined to be unenforceable and where this impacts adversely on CWJ
- C.9.9.1 - if Parliament changes any aspect of the Bill *within six years of the effectiveness date* or any additional laws are passed that have a detrimental impact on CWJ
- C.9.9.2 - if *within six years of the effectiveness date* of the new law the re-issue or amendment of rules and regulations has an adverse impact on CWJ
- C. 10 - if *at any time after the effectiveness date* of the 2000 Bill any provision of the latter or the Agreement cannot be enforced or is nullified causing damage to CWJ

¹ C = Clause

Source: Compiled from the *Heads of Agreement between the Government of Jamaica and Cable and Wireless Jamaica Limited* (1999).

The Act allowed for a phased approach to liberalisation, which was to take place fully in three years in March 1, 2003 (Sections 77-83 of the Telecoms Act; Myers 2000). The phased approach was said to be in order to give the monopoly time to prepare itself for competition as well as to compensate C&WJ for its stranded assets.¹⁴⁴ Importantly, the firm was also exempted from paying "any regulatory fees or licence fees during Phases 1 and 11" of the liberalisation

¹⁴⁴ Interviews: Former Director General of the OUR, 2001, Kingston, Jamaica; OUR advisor, 2002, London, UK. C&WJ's aim was to utilise its period of monopoly in long-distance services to augment its strength locally. In so doing, it could meet its goal of becoming the, "carrier of choice in a fully liberalised environment" (EIU 2001).

schedule.¹⁴⁵ Commentators including Foga and Newman have observed that the HoA had reduced the expansion in network services up to 2001 (2001: 7).

The terms of the Act and the Agreement shared many similarities with the HoA.¹⁴⁶ This plus the fact that the Policy Drafting Instructions (PDI) were not made available have lead to the view that the actual legislation was in fact, drafted by Cable and Wireless.¹⁴⁷ According to the HoA, “The Parties recognise that before the Policy Drafting Instructions can be implemented into Law the Bill prepared consistent with those instructions will be the subject of Parliamentary debate and possible modification or rejections by Parliament. The Parties also recognise that such modifications or rejections may give rise to certain rights including, inter alia, an obligation on the Government to compensate CWJ in accordance with this Agreement” (1999:2). As such, the negotiations and resulting agreements concluded in 1999 deserve prime consideration when assessing the influence of the incumbent on regulation and the shape of the new regime. At last C&WJ succeeded in securing the guarantees that it had so long sought to get from the state in order to protect its revenue base. The irony here is that this came as part of an agreement meant to liberalise the sector, while it had failed to secure such a promise during its ‘exclusivity’.

The willingness of the Government to agree to such extensive privileges may have been influenced by a desire to terminate the ongoing court proceedings. As noted by the minister “as long as it [*i.e. the court case*] stood there it probably stood in the way of other things” (Interview: Kingston, Jamaica, January 6 2006). On the other hand, the Minister’s actions defied the spirit of the existing agreement to advance the firm’s legal monopoly. This would challenge a presentation of relationships in the regulatory space simply as capture, since the regulators (in this case, Minister) are not unwilling participants in the incumbent’s games. Rather, they are shown to support the firm where their interests can be met through cooperation and withdrawing

¹⁴⁵ Section 15 of the Domestic Mobile Spectrum (Cable and Wireless Jamaica Limited) Licence 2000.

¹⁴⁶ For instance, Sections 77 and 78 of the Telecoms Act reflect the stipulation for staged liberalization in the HoA. Protection from bypass also features in a number of sections (9, 51, 63 and 78). Section 82 also notes that the firm will not pay for its spectrum license.

¹⁴⁷ Interviews: OUR Advisory Board Member (1998-2000), London, June 19, 2000; Former staff and advisor of C&WJ, Kingston, January 6, 2005 and November 20, 2006.

this support, where it was not in its interest. Thus, as economic motivations had driven privatisation in the 1980s, a decade later, these resurfaced as a motivator for liberalisation.¹⁴⁸

Additionally, while the main features of Jamaican telecoms after 1999 resembled GATS specifications,¹⁴⁹ it has also been suggested that the government had simply used the GATS to justify a position that it had intended to take.¹⁵⁰ The most significant point however, is that the whole incident demonstrated the tactics taken by a government department as it tried to gain support for reforms, particularly when dealing with a deeply entrenched and powerful incumbent firm with the incentives and power to withhold support or at least, frustrate reforms. As the Minister later commented: “We worked very closely with C&W and some people would say too close ...but the aim was to achieve competition” (Interview: then Minister of Telecoms, Kingston, Jamaica January 6, 2005).

2.3.4 Empowering the Regulator

Following from concerns that it did not have the capacity to regulate the incumbent effectively (Section 2.2), the OUR also came in for attention under the new regime. The OUR was emboldened to play more of a role in the sector, allowing it to take over from the FTC. As such, it received a significant boost to its power under the 2000 Act [Section 42 (2)], which gave it the mandate to set standards by which C&WJ could be held to account.¹⁵¹ Assistance in designing the structure and content of the new regime was provided by UK based consultants and academics through DFID (Department for International Development). A member of OFTEL’s staff was also on loan to the OUR (OUR-CA 2000: 6). Thus, the OUR had been able to tap into the resources and expertise of regulators in other countries thus, allowing it the capacity to regulate the sector while allowing it time to build up internal capacity. Such exchange of best practice and resources is particularly, useful in the developmental years of the

¹⁴⁸ According to figures released by the US Bureau of Inter-American Affairs in 1998, Jamaica’s debt stood at over \$3.4 billion US while debt servicing represented 58.2% of the total government budget by 2000. The unemployment rate in 1996 stood at 16.2% and 16% in 2000 (US Department of State 1998; 2001).

¹⁴⁹ See note 116.

¹⁵⁰ Interviews: OUR staff, June 29, 2001 and former Digicel Consultant and C&WJ staff, January 7, 2005 Kingston, Jamaica

¹⁵¹ Underscored in the Amended OUR Act of 2000 (OUR 2001: 6).

IRA, especially where it does not have the luxury of time to get itself rooted before it needs to undertake major episodes of reform.

Nonetheless, the OUR's activities were still somewhat constrained under the new regime, since deviations from the Act would have given way to C&WJ invoking its right to compensation, further lessening the possibility of the state departing from the Agreement. The OUR and the Minister therefore, eventually made decisions that made it appear as if they were simply protecting the firm against competition. For example, after the passing of the 2000 Act, an entrant's (InfoChannel) request for a license to provide Voice-Over-Internet and other services was turned down, though it had received a similar licence prior to the Act.¹⁵² This move may be interpreted as evidence of the state's desire to avoid the risk of activating the incumbent's compensation rights and in so doing fulfil its promise to do all that it could to prevent bypass. Thus, as shown here regulatory reform does not mean an automatic loss of power for incumbent firms. What it may do is force the incumbent to reconsider the ways in which it expresses its power and how it utilises this power to secure an advantage in its regulatory space (which is also its market).

Furthermore, attempts by the OUR to have regular contact with C&WJ on matters relating to customer service was met with little response in the early years after liberalisation (OUR 2001: 8). As it noted: C&WJ,

demonstrated a lesser inclination to support this level of interchange. The OUR is therefore, not sure that C&WJ views the Regulator's intervention on behalf of customers with the same degree of urgency and importance as is the case with the other two regulated utilities.¹⁵³

(OUR 2001: 8)

In other instances, the incumbent has also gone over the OUR's head to deal directly with complainants even after cases had been lodged with the Consumer Affairs Department (CAD) of the OUR (OUR 2001: 8). This demonstrates C&WJ's continued unwillingness to recognise the regulator's jurisdiction over it.

¹⁵² Infochannel brought a case against the OUR and Minister in 2001. The original High Court ruling was made in Infochannel's favour in 2002, but was overturned in 2003 (Observer 2003a).

¹⁵³ That is, electricity and water.

In an attempt at self-regulation (again to circumvent the authority of the IRA), the incumbent initiated its own scheme for measuring service standard in February 2001. This was embodied in a Customer Service Charter that came into effect in March 2001 and this pledged certain timelines for responding to customer demands for repairs and new services. This it argued was in keeping with its desire and willingness to provide guarantees for service quality (C&W plc in OUR 2001: 41). Ironically, though this may also be seen as an attempt by the firm to move ahead of the OUR in order to design a set of standards regarding breaches that it knew it could live with as opposed to allowing the OUR to design a scheme which would be more onerous for it. These guarantees were at the outset being made independent of any direction from the government or the OUR. Whatever the case, this move by the firm shows the power of regulatory reform in nudging incumbents towards making changes and commitments, which they would not have made under monopoly. Here the regulated firm appears to have been competing with the regulator to design sector rules before the regulator had a chance to design its own measures.

While noting the benefits of the scheme was still criticised as suffering, “from certain shortcomings that renders it substantially inadequate to ensure a quality of service comparable to world benchmarks associated with the best...” (OUR 2001: 41). Particularly, the C&WJ devised scheme was inadequate in as much as it ignored some features seen to be important indicators of service quality.¹⁵⁴ Additionally, insufficient publicity and discussion had preceded its launch and the OUR had not been consulted on its design (ibid). There was also no external judge of good practice with the firm itself deciding when standards had been breached. That is, under the scheme, the Incumbent was also not legally mandated to make any reports to the OUR on its attainment of these standards. It also retained the power to decide the level of compensation for breaches and when this would be made (OUR 2001: 42) and no allowance for external enforcement.

Some of the firm’s activities, including making appeals to the Minister over the OUR’s

¹⁵⁴ These included an absence of instructions relating to the firm’s technicians visiting customer premises and standards and specifications on dial tone delays (OUR 2001: 42).

head also frustrated the OUR's work and its ability to obtain transparency in the sector.¹⁵⁵ Thus, even while liberalisation has occurred and the state/firm dynamics have changed, the incumbent has still acknowledged the functionality of the ministerial relationship and has sought to engage in tactics of the past to get its way in the regulatory space.

The firm's delay tactics have also had implications for the OUR and the time taken to achieve objectives such as accounting separation (Section 30 [2], Telecoms Act). Six years into liberalisation, C&WJ was criticised for its slow pace in separating its accounts and complained that it was unable to provide information on its accounting practices in the time required. This was due to costs involved in complying with this requirement even while former managers affirmed that C&WJ could in fact obtain this without difficulty (Twomey 2005: 3-4).¹⁵⁶ It also noted that such disclosures could see it releasing sensitive market information. By 2005, competitors complained that the playing field was not level, accusing the incumbent of illegal cross-subsidisation and the OUR of not doing enough to prevent abuse from the incumbent (Twomey, 2005:3; Interviews: Heads of two small telecoms firms, Kingston, Jamaica: June 2005). Demonstrated here is the firm's continued use of its position of dominance, size and control over information to frustrate the attainment of regulatory goals. This in turn, has implications for the OUR's ability to assess the degree of compliance from C&WJ or to identify instances of abuse.¹⁵⁷

But even while it sometimes chose to ignore the regulator, it also recognised the utility of this actor in ensuring that entrants stuck to the terms of the HoA. Thus, as competition got underway, the incumbent also grew to appreciate the virtues of regulation, particularly where this meant it was being protected against abuse. Thus, as bypass continued to eat into the firm's revenues in 2001 it also stepped up its efforts to police the sector, pointing out instances of

¹⁵⁵ Interview: Former OUR Staff, July 16, 2002. The OUR has been able to withstand pressure from the Minister and incumbent, as well as Digicel thanks to the diligence of its first Director-General.

¹⁵⁶ On the other hand, authors such as Baldwin, McVoy and Steinfield maintain that holding separate accounts for many different products, which share the same facilities as well as same staff is difficult to achieve (1996: 319-320).

¹⁵⁷ This drew complaints from competitors that the OUR was not doing enough to prevent abuse from C&WJ. For instance in 2002, Digicel argued that the "OUR is under some false impression that international investors like Digicel can be penalised by the schizophrenic changing attempts at the rules of the game and give even further advantage to the incumbent C&W" (O'Brien 2002: 6).

abuse to the SMA and OUR (See, C&WJ-AR 2001: 7).

For instance in 2002, the band at which Digicel was initially allowed to set rates (for calls made from fixed lines to its mobile network) changed (Thompson 2002a). Nevertheless, Digicel failed to reduce prices in line with the decrease. It was the incumbent who finally brought the OUR up to date on this, resulting in a downward revision of Digicel's rates in 2002, a point, which drew concerns from Digicel about the OUR's objectivity.¹⁵⁸ The incumbent's actions here (as well as the emphasis it placed on preventing bypass) also suggest the ways in which a dominant regulated firm can inadvertently direct the regulator's agenda. A review was in the incumbent's benefit since the changes recommended by the OUR would potentially affect the revenue of its biggest competitor. Here, the incumbent also acts as a regulator (and ally to the IRA) policing the market to ensure compliance. Additionally, it also regulates the regulator ensuring that the IRA is responsive to developments in the market, a strategy similar to that employed by the Irish incumbent (see Chapter three).

Ultimately, the Jamaican regulatory space may be characterised by complex and shifting relationships. Such a reality may in turn make the business of responsive regulation a very difficult task for any regulator which may run the risk of appearing to be captured by a regulated firm (in this case C&WJ) even where it is in fact, acting honourably. Thus, while a small regulator may benefit from enlisting the support of actors in the regulatory space, questions may arise about its impartiality and objectivity when the supportive actor happens to be the dominant player itself.

2.3.5 The Role of New Entrants

The impact of private capital in dictating the nature of reforms is not to be downplayed either. However, as in the Irish case, the slow pace in which competition unfolded served to extend the

¹⁵⁸ This prompted Digicel's Chief Operating Officer to comment, "they (OUR) just take Cable and Wireless information and say they can't share it with us because it's confidential" (Thompson 2002a). This is not to suggest that entrants such as Digicel have been more forthcoming. Indeed, as Digicel has increased, it too has begun employing some of the tactics employed by C&WJ in preventing entry - see Observer (2008).

firm's power. Thus, while two cellular licences were granted in 1999, these did not come on stream till 2001, giving the firm some time to adjust before competition.¹⁵⁹ Nevertheless, from 2001 entrants such as Digicel have served to peck at the incumbent's power and influence in mobile telephony and Internet services. International support for the development of competition also came from the WB (through its private arm, the International Finance Corporation (IFC), which bought an eight percent stake in what was to become the firm's biggest competitor Digicel in 2002.¹⁶⁰ These also utilised the Court to challenge the incumbent's power and the 1999 regime.¹⁶¹ So whereas there were no firms powerful enough to challenge the incumbent's power in 1988, the situation had changed by 2000 with more actors willing to challenge the incumbent.

Since 1999, the prospect and then reality of competition were to nudge C&WJ towards acknowledging the need to readjust its operations and increase its ability to function more successfully in a liberalised environment. These reforms were mainly related to the firm's operations and internal organisation, demonstrating the effect of reforms in the structure and rules of the regulatory space on the internal operations of regulated firms and former monopolists, an argument, which is examined in Chapters four and five.

In such a climate customer care was to play a bigger role in the firm's strategy. For example the recognition that competition was imminent saw C&WJ, by 1998, stepping up its drive to broaden its customer base, increasing the issuing of telephone lines to customers. The rate at which the firm engaged in this task was described by the OUR as being, "quite dramatic when compared to prior periods" (OUR 2001: 10). Its feverish effort to deliver landlines was also matched by efforts to increase access to mobile phones. This marked an attempt by the firm to increase its customer base ahead of liberalisation by addressing one of the more severe and longstanding complaints in the sector access.¹⁶² Indeed, this strategy had proven somewhat

¹⁵⁹ Digicel has been able to provide an effective counterweight to the incumbent's influence. The other two operators have had little impact in the sector.

¹⁶⁰ Observer (2002).

¹⁶¹ See note 152.

¹⁶² Nonetheless, unmet demand remains significant, at over 100,000 in 2005 (Ellington 2005).

successful in assisting the firm to cope with changes given that it was able to expand its customer base in this area and offset some of the losses from other sources by 2002 (see C&WJ-AR 2002: 5).

Like the Irish incumbent, C&WJ's sustained dominance was not all its doing. Rather, it has also benefited from the misfortune of its competitors. For instance, a decision to establish a USO levy (US\$0.02 and US\$0.03 for mobile and fixed lines) on all incoming international calls in 2005 had the effect of driving operators out of the market (C&WJ-AR 2005: 16). As the firm with the USO, C&WJ has benefited from this. Further, while a fixed line operator had entered the market (Gotel) its low coverage and small customer base have not been a challenge to C&WJ (see Brown 2004: 29). The issue of economy of scale has also surfaced in the mobile market. The odds for success are also stacked against the entrants by the different licence agreements that have been issued in the mobile market. For instance, while C&WJ was not required to make any payments for the use of scarce spectrum resources, entrants were required to make such payments, which totalled around US\$92.5 million by 2004 (Ibid). Additionally, the licences of the two entrants included specifications for network expansion to cover 90% of the island over a five-year period as well as conditions preventing them from building an alternative infrastructure for incoming and outgoing international calls (Brown, 2003: 3).¹⁶³ As such, they were forced to continue to use the incumbent's infrastructure therefore, guaranteeing the firm sustained income and relevance in the sector.¹⁶⁴

That is not to say that C&WJ has benefited completely from the reforms. While registering increased revenues since the commencement of liberalisation, its profits have nonetheless declined.¹⁶⁵ Additionally, in former years it only had to negotiate settlement rates with international firms. C&WJ has also accepted that it had yet to get fully accustomed to

¹⁶³ Beyond this though, the incumbent could also argue that it had already underwritten the cost for the formation of the spectrum authority, already had the capacity to ensure coverage across the island and as such these requirements were not essential as a preconditions for its operations.

¹⁶⁴ Nevertheless, one of these entrants, Digicel has seen immense success in the mobile market outperforming C&WJ within its first few months of operations in the mobile market, even while charging higher rates for its service.

¹⁶⁵ For instance, C&WJ received 35% less net profit in 2002 than it did in 2001 (Thompson 2003). Nevertheless, by 2007 the firm had seen 10% increase in overall revenue (Collister, 2007)

competition (See Collister 2006). Further, with wireless broadband and mobile emerging as alternatives to landlines, the relevance of the incumbent's network and hence its dominance at the centre of the regulatory space may also decrease in the future,¹⁶⁶ a point which may also explain its efforts since 2005 to reinvigorate its fixed line business (see Chapter four).

However, "if you say that day one of liberalisation is the start of time then incumbents start with some natural advantages."¹⁶⁷ This relates to its ownership over the fixed network its resources and size, which have allowed it to buttress itself against some of the threats brought on by liberalisation. This statement is even more pertinent when the incumbent's role in designing the HoA and Telecoms Act 2000 are considered. Additionally, the firm is always on the 'tender list', which helps it remain competitive (Interview: former senior member of the regulatory team at C&W plc, London, March 26, 2007). The firm remains the only full service provider and the fixed-line provider of choice on the island. That is, it provides "a broad range of communication services and information (programming) access" (Baldwin, McVoy and Steinfield 1996:3) to businesses such as the Sandals chain and Scotiabank in mobile and data service provision, areas that have seen the most active competition.¹⁶⁸ Up to March 2006, 76 licenses had been granted for providing Internet services. However, the incumbent remains the dominant provider in these areas (ECTEL 2006: 2).

Nonetheless, these threats to its profitability and dominance were to provide the rationale for C&WJ to turn inwards to initiate a number of far-reaching initiatives to restructure and modernise its internal organisation and orientation to respond more effectively to the changes in its operational space, which will be discussed in Chapter four. As such, industry reform came to be as much about changes the incumbent made internally as it was about the readjustments in the rules and relationships in its regulatory space, as discussed here. The result has been a host of internal reforms, which mark the incumbent under competition as distinct from the incumbent under monopoly. The firm's success in responding to regulatory reform has therefore not all been about antagonism, confrontation or attempts at capture, but through

¹⁶⁶ Interview: Senior Member of Regulatory Team at C&W plc, London, February 22, 2007.

¹⁶⁷ Ibid.

¹⁶⁸ See Gordon (2008); and Gleaner (2008).

undertakings aimed at improving its service, reforming its ethos and structure. A similar argument will be made in Chapter five on Ireland.

2.4 Discussion

This final Section aims to discuss more directly the incumbent's response to reform and the main factors affecting its response.

2.4.1 The Incumbent's Response to Changes in its Regulatory Space

In the 80s to mid-90s the incumbent's power was expressed through its close relationship with the government and line minister. By using its ties and influence with this actor, the incumbent was able to secure support firstly for enhancing its power in the 1980s and then for maintaining the status quo as seen in its efforts to get the government's pledge to extend its power in the 90s. In such a state, the incumbent was active in encouraging further changes in sector regulation, providing that it was aimed at advancing its claims, suggesting that it was not against sector reform - just where it threatened its power.

This closed relationship was to evolve in the late 1990s with the relationship between firm and state becoming more open, especially as the regulatory space became more populated and election brought a change in the minister/regulator. Following from this, the loss of influence over the minister witnessed the emergence of an adversarial stance between the two. The establishment of the IRA did little to upset the balance of power, given its inability to command the incumbent's attention and the time it took to become functional. This was to improve by 2000 with advancement in the IRA's power, illustrating the importance of equipping regulators with sufficient power to carry out their tasks and command respect from the incumbent. This point finds resonance later in the Irish case, where the IRA's failure to punish Eircom's non-compliance threatened the regulator's credibility.

Where it fails to control sector rules and its ability to influence policy makers and regulators is compromised, the firm will choose other means of protecting its market. Thus, as seen in the 1998-2002 period, it became more diverse in its strategies, moving more towards

using its control and ownership of the fixed network to frustrate competition and regulation. The regulator and entrant's reliance on capacity and information from the incumbent has also been in the incumbent's favour. For example, Grindle and Thomas observed that, "the availability of information and access to it has long been associated with power".¹⁶⁹ Through its possession of information and the fixed network, the incumbent has been able to exercise undue influence on the rate of change and competition (for example, withholding information on capacity and accounts) and at times the progress made by other players even after they had entered the market. These are also points, which help to explain C&WJ's sustained relevance and power in Jamaican telecoms, though it has been less successful in maintaining its dominance than the Irish incumbent.

An important strategy here was to include the use of the courts as a means of postponing or delaying reform. Chapter three shows this as also being the case with the Irish incumbent. As the sector became more transparent and as more players entered the market, the incumbent turned to the courts as a means of asserting its dominance and clarifying sector rules. This is as opposed to the former practice of appealing directly to the line Minister. This is not to suggest, however, that its choice of tactics was linear, since it was known to have tried to circumvent the IRA by appealing to the minister even after liberalisation. However, its turn to the Courts indicate a decrease in the firm's informal power and influence over the state, with cordial relationships becoming more formal and rule-based.

As the certainty of reform became clear, the incumbent then regrouped, adopting a conciliatory approach while attempting to negotiate an agreement that would see it dictating the timing and shape of reform (as seen in the HoA and its resemblance with the 2000 Act). The effort to be more conciliatory with regulators, especially after the antagonism of the late 90s, suggests that the firm also adapted similar strategies to those used by regulators in 'life cycle' approaches (Bernstein 1955; also Lodge 2002: 16). Namely, where the regulator is argued to become more conciliatory, seeking 'friendly arrangements' after an initial period of antagonism with the regulated firm (leading to capture), it is the firm who in this case gravitates from

¹⁶⁹ Grindle and Thomas (1991: 45).

antagonism to support and greater compliance with the regulator as it aimed to support the latter's task of preventing bypass.

Nonetheless, the negotiations in 1998 and the resulting agreements and legislation all serve to indicate the firm's strength in the sector. The privileges it received have helped it to adjust gradually to reform, while offering even greater protections (e.g. against bypass) than during its monopoly. The gains secured here have been important in helping it to cope with reform. Its ability to adapt or embrace regulation and reform has been key in helping it withstand losses. Its mix of responses has ranged from punitive and formal (e.g. going to court to block change) to more conciliatory (agreeing to reform and retracting court case) in order to achieve its goals allowing it to adjust to changing demands. Demonstrated here is the degree of flexibility, which exists in the firm's strategies to cope with change. Here the firm's efforts evolved from trying to prevent entry, to attempting to engineer legislative reform as a means of protecting its privileges, then attempting to prevent legislative reform as a way of delaying competition, its turn to the courts, and the use of its incumbency to frustrate competition. As will be shown in section two, its tactics were also to involve a number of changes which saw it reorienting its organisation and orientation to become a more effective, responsive and efficient operator.

Its response and its position as the incumbent have ensured that the incumbent remains one of the key actors in telecoms. Its size and history have also helped it to remain a powerful actor who is still able to trade on its experience and longevity, still winning contracts from some of the biggest multinationals in the country. Collectively its resources (size, name, ownership, experience, wealth and overall value) have helped it to respond to change successfully. Finally, its sustained dominance has also resulted from the fact that its competitors, for the most part, are smaller operators who do not possess its wealth and resources. Nonetheless, it is shown that where another large operator enters the market it may be able to compete with the incumbent (as in the mobile market). Interestingly, as suggested by an employee of the OUR, it is now Digicel that has attempted to influence the minister in order to secure more favourable terms in the sector. Thus, as it has gained dominance, it has adopted strategies similar to those utilised by the

incumbent, e.g., blocking connections to its network and attempting to access ties and contacts formerly used by the incumbent to influence regulation. Following from this, it is suggested that the findings from this case may be able to yield insight into the strategies and tools that can be used by regulators when dealing with incumbents and more generally, large dominant firms.

2.4.2 Drivers of Change: Determinants of Incumbent's Behaviour

This section aims to identify the main actors/drivers that influence the incumbent's behaviour in the regulatory space and make a case for the relevance of such information in regulation. These will include international forces of regulation (e.g. institutions and states), customers, entrants and market pressures. It is proposed that knowledge of such actors may be useful for regulators, particularly in small resource-constrained settings (e.g., in small or developing countries) highlighting the forces that may be brought to bear in regulating large, well-resourced actors such as incumbent telecoms firms.

Of importance here is the role of international institutions, large developed states and the motivation and blueprints they provide for states to encourage and support reform. Included here are multilateral institutions such as the IMF and WTO. These have had the effect of offering the rationale, credibility and legitimacy to the state and IRA in their attempt to regulate and reform Jamaican telecoms. As will be shown in Chapter three, the effect of external rules and regulations is also demonstrated as having a significant role in the Irish case. Thus, when the Jamaican government found it difficult to secure support from C&WJ and faced with a lengthy court battle, it turned to the UK and US to place pressure on C&WJ, thus opening the way for reform. The FCC Benchmark Order also offered the Jamaican state the backing and rationale for changing the structure of local telecoms. Likewise the principles of the GATS (for example, transparency and liberalisation) have also played out in local reform. Support has not only come through advice, but through funding that has helped to increase competitive pressures on the incumbent.

While the state's response is local it however comes within a particular international

context, which has varying degrees of influence on its activities, on the timing and features of the reform agenda. The classic work of DiMaggio and Powell (1991) and the political transfer literature also support the role of international institutions and dominant states (here, the WB, IMF, US and UK) as forces for reform at the local level.¹⁷⁰ As indicated in Chapter one, much has already been written about these and it is not intended that these be reviewed here. The point is that external factors have a significant impact on the ability of local incumbents to operate in the local regulatory space offering an avenue through which regulators (IRA and state) who face credibility or capacity issues can seek support to enforce difficult regulatory policies.

Highlighted too is the fact that the dispersion of regulation may adversely affect the credibility of the IRA, with implications for its legitimacy and standing in the regulatory space. For instance, the dispersion of responsibility for regulation arguably saw the incumbent ignoring the OUR, preferring to relate directly with the minister. On the other hand, the case also illustrates that there can be a place for split regulation, particularly in the early phase of the IRA's existence, or where it suffers from capacity or resource gaps. Thus, the FTC was useful in regulating the incumbent until the OUR could become active. Further, as the powers of the IRA were advanced, legitimacy grew. With this came readjustment in the incumbent's attitude to the OUR; they no longer viewed it as simply a threat, but more as an ally in reducing abuse. Thus, the OUR's standing was to increase as the minister's presence became less obvious.

Perhaps the bloc that has featured less in this discussion is the public/customers. This group did not feature significantly in the regulatory space or the firm's strategies in the sector in the 1980's and some periods in the 1990s. Influence has generally been erratic and expressed through the political cycle as opposed to directly on the incumbent as in the mid 90s when its disapproval forced government to suspend attempts to extend C&WJ's privileges. That is, "there are limits to how much governments feel able to deny voters what they want" (Stopford, et al., 1991: 159). While influence may be muted prior to, or during regulatory reform, Chapters four and five, demonstrate that this quickly shifts as the threat of competition becomes more

¹⁷⁰ Also see Rose (1993); Dolowitz and Marsh (2000, 1996); James and Lodge (2001); Braithwaite and Drahos (2000). Lodge and Stirton (2002: 6-8) discuss international influence in the Jamaican context; while Payne (2000) examines the influence of the US on politics and economy in the Caribbean.

real for an incumbent and particularly after liberalisation. Here, shifting consumer allegiances were to become important drivers of the Irish and Jamaican incumbents' behaviour, arguably in ways that could not be secured by the IRA. This is so, given the incumbent's penchant for challenging the IRA and the fact that the core of the post-reform regime had already been concluded between firm and state in the Jamaican case, leaving fewer issues for the regulator to contemplate. Following from this, it can be noted that the role of consumers in influencing the incumbent's activities may become more pronounced during particular periods, e.g., during an election, or where competition exists. Here, the movement of policy was tagged to the developments in politics, which dictated what action was acceptable at different points in this study. Indeed a consideration of the role of politics or the electoral cycles on regulation and policy change is not unique to this context but as will be demonstrated also played a similar role in Ireland.

Additionally, another set of factors affecting the incumbent's behaviour in the regulatory space was its competitors/entrants. While the set-up of regulation was not conducive to the participation of third parties in the 80s to early 90s, would be entrants were to begin forcing their way into the regulatory space from the mid 90s. Their desire to enter the sector also helped government to become more aware of the possibilities for renewal by allowing liberalisation. Competition enabled by technology and regulatory reform has also had some bearing on the incumbent's activities and position in the sector. Most notably, with the entry of competition and the implied threats to the firm's market power, the incumbent was forced to make a number of improvements to its service and operations.

Important too is the role of the regulator, FTC and ministers in determining the level of power and influence that the incumbent is able to exercise over the sector. Whereas the state and minister may have appeared to be weak prior to the mid 90's this had changed by the mid 1990s thanks to the entrance of a pro-reform minister. The emergence of the sector regulator and the FTC, though initially weak, has also been shown to constrain the incumbent's behaviour. What the regulators (minister and IRAs) have done is to provide the legislation and institutions to change the incumbent's power in the sector.

However, it has nonetheless, been shown that the impact of these groups has, at times, been mixed, given the dominance of the firm and the level of resources and relevance it has for Jamaican telecoms. As such, the regulators have thus, utilised the other drivers, particularly, international influence and unleashed competitive pressures which ultimately, helped to change the incumbent's motivations, in so doing driving a process of reform that the incumbent was unable to stop.

2.4.3 Implications of Findings

Arguably, these findings on how incumbents in developing countries such as Jamaica have responded to reform can yield important insights into regulatory design, the strategies that can be adopted by regulators when dealing with huge incumbents and ultimately, how to achieve responsive regulation. As will also be shown in the Irish case, the findings are important, not only for developing countries, but also for small states faced with gaps in regulatory capacity. This is important, since regulation, not only in telecoms but other areas of economic life, has much to do with conditioning the behaviour of actors. Where regulators are able to anticipate the response of large actors with the resources to impede reform, then measures can be built into the design process, which anticipate and as such, militate against the effects of efforts to frustrate regulatory reform. For instance, where the strength and legitimacy of the IRA has implications for the success and credibility of reform, then it is important to equip this body with the power and resources it needs to command attention and compliance. The Jamaican case suggests that where this is not the case, then a large well-resourced actor like the incumbent will take advantage of loopholes to abuse or frustrate the activities of the regulator.

The case for the importance of such knowledge and how they can inform strategy and design of regulation may also be seen in the turn to courts for redress. Importantly, this occurred as informal ties and the state/firm collegiality was compromised. Thus, where capture, or appeals to politicians are made difficult, the regulated firms may turn more to the courts to seek redress. However, this may slow down reform and frustrate regulation, especially where the courts are slow or costly. It therefore means that an efficient appeals process that can be

accessed by all actors is important, especially in preventing this from becoming another tool for incumbents to exercise their dominance and frustrate competition.

Additionally, the findings also indicate the importance of the insertion of third party interests in bringing more balance and transparency to regulation. Here, the dyad evolved into a more dynamic structure as consumers became more vocal, when entrants and industry regulators emerged in the market. Extending the boundaries of the regulatory space may help to reduce the strain on regulators (e.g. having to ensure that the incumbent improves network capacity, given that consumers may exercise their choice and switch to the best operator). The regulator may also impose measures, such as disclosures, on the incumbent to raise transparency and allow consumers to make more informed choices. This is not clear-cut, since consumers may still not be willing to switch operators. Thus, responsiveness in a developing context may mean heightening the involvement of stakeholders, with the regulatory space becoming trans-national. Indeed, this is a significant point given the trans-national nature of the incumbents. As noted in Chapter one, this is also the case for incumbents in large developed countries, which have begun moving beyond their locale.

This also has lessons for how regulators in small developing countries or those facing resource constraints can directly modify the balance of power or power constellation in its favour by bringing different actors into the regulatory arena, particularly where the regulated firm is a large, resource-rich MNC and the regulator a small resource-constrained actor. In this case, the insertion of international interests served to bolster the position of the state and IRA in their bid to reform the sector, thus, breaking the deadlock with the incumbent forcing the latter to support reform. National regulators can therefore borrow legitimacy and capacity from international institutions to enhance the effectiveness of regulation locally. Exploring the regulatory space in this way can also help to reduce the ability of the incumbent to capture the regulator.

The chapter indicates a role for a consideration of personalities and ideology on the effectiveness of regulation. As argued above, the change in the individual in the role of the regulator/minister was important in restraining the incumbent's power, paving the way for

liberalisation. Thus, where capture is a concern in regulation the findings also indicate how regulation can be improved and the balance of power re-oriented through periodic shifts in those who occupy key offices within the regulatory space e.g. ministers, or head of the IRA. Thus, achieving responsive regulation, is not only about regulators choosing the right mix of strategies but may also be about changing the regulator to match the changing demands of the regulatory environment.

Some of the incumbent's strategies may appear to support claims of regulatory capture (e.g. its influence over the HoA). However, the presentation goes beyond capture in three ways. Firstly, as argued, there is sufficient ground for questioning the extent to which incidents could be interpreted as capture, given that the state's actions were also dictated by economic and political concerns, which could be met by reaching an agreement with the firm. For instance, the state's decision to give more shares to C&WJ and later to change legislation to clarify and extend the latter's powers was not just in response to the firm's prompting. Rather, it was more of a win-win situation for a government, which had already reduced its ownership and sought to get a higher value for its shares.

Secondly, and following from the above, the findings illustrate the accommodations, which small states sometimes engage in order to secure support for reforms at the sector level with implications at the macro level. Securing support for regulation may mean granting incentives which may appear as evidence of capture on the surface but which may also be interpreted as government's attempt to ensure support for reforms especially, where the balance of power arguably lies in the regulated firm's corner. In such cases the regulator may have no 'tat' for the firm's 'tit', or (as will also be shown in the Irish case) may be so weak as to be ineffective in changing the incumbent's behaviour. The make-up of the regulatory space may therefore, negate certain strategies from the regulator. In other words, the extent to which 'responsive regulation' is achieved, the mix of strategies that can constitute a responsive or smart approach may be context specific, a point also accepted by Ayres and Braithwaite (1992: 5). Thus, in the case of small (developing, or resource-constrained) countries such as Jamaica and Ireland, the ultimate threat of sanctions or licence revocation may not be employed, given

the value of that firm to the economy and further growth of the sector. Lodge and Stirton make a similar point, noting the importance of such accommodation in ensuring “the legitimacy of the reforms” (2002: 19). Where the regulated firm is a large, well-endowed actor, whose operations hold implications for the economy, bargaining and negotiating may prove more effective since the size of the market and the firm’s relevance may preclude threats such as licence retraction.

Thirdly, rather than capture, these findings help to assess the strategies and tactics employed by incumbents where capture has been made problematic. Thus the turn to the courts and even attempts to ignore the IRA may be indicative of a lack of capture. As such, the chapter demonstrates some limitations to utilising capture theory as an explanation for dominant firm behaviour and the extent to which this helps to understand regulation.

It also argued that an awareness of the actors affecting the incumbent’s behaviour (the role they play and how to use them) is important in determining the success of regulation and the degree of compliance from incumbents. Consequently, attention to the different change drivers may also have implications for the regulatory strategies adopted at different points in the reform process and which drivers can be co-opted, and when to secure desired behaviour from the incumbent. For instance, the presentation demonstrates the ways in which regulators in small settings can bolster local regulatory capacity by buying in or borrowing capacity from regulators in more advanced settings. This includes the loan of regulators from other national regulators. Further, where the barrier to entry and competition is legal then the choice of regulatory strategy may be to change the rules and laws governing the sector as in 1999. In other cases, where the barrier may be one of insufficient information or access then the regulatory strategy may be to increase the amount of information available to the regulator and entrants.

2.5 Conclusion

What this study has done through the presentation of the Jamaican experience of telecoms reform is to suggest the techniques and resources that incumbents utilise in protecting their dominance and occupation at the centre of the regulatory space.

The presentation has demonstrated how a large dominant incumbent firm responds to threats firstly as a rule making force in the absence of a formal regulator and later as a chameleon in search of ways of maintaining its dominance. Here its activities evolve from an attempt to take control of telecoms, utilising the courts and informal alliances with policy makers and regulators to assert and protect its power.

As threats become more obvious it seeks to prevent change but where reform becomes an inevitability it then seeks to shape and control the reform process to minimise losses and risks while allowing itself greater use of its incumbency to deal with operating in a new regulatory space. As the threat of competition becomes more real, its response becomes more akin to that described by economists with more emphasis on anti-competitive practices aimed at preventing entry. As will be argued in Chapters four and five, another of the firm's strategy includes its attempts to reduce the size of the space available to competitors.

Thus, the incumbent has certain natural advantages, for instance, it starts with the entire customer base and the infrastructure. It has been able to leverage these as well as its other resources (its size, status as a multinational and capacity vis-à-vis the government and its competitors) to give itself a head start in a now competitive regime. International firms such as Digicel have however, managed to provide a credible threat to C&WJ. However, it remains difficult for small players to enter the market and compete effectively. This is most evident where the new entrant is not a multinational but a local firm with considerably less technological, financial and experiential capacity. Its status and position as incumbent have helped it to secure a number of gains at the start of the new regime in 1999 and these have been instrumental in giving it the foundation to maintain its dominance, as well as to undertake such initiatives as would be necessary to ensure its sustained dominance for some time to come.

As suggested in the opening chapter, incumbents are not simply policy takers but also act to shape rules and regulation. Following from this, the firm depicted has been able to utilise its power and influence to affect the content of reform as seen in the HoA and the extent to which this document established the foundation for the post 1999 regime.

Finally, it is argued that knowledge of the way firms respond to change and the

issues/actors, which influence their behaviour, can advance regulatory strategies and choices, highlighting the ways in which regulators can heighten compliance and responsiveness of regulation. Another aim has been to highlight the various actors that influence the incumbent's behaviour. These include international and local actors who are able to influence the incumbent's attitude and choices. Nevertheless, the value of regulatory reform and regulation cannot be downplayed. That is, this work has operated with a view that regulation is not only carried out by IRA's or governments. In fact, these actors have been shown, at times, to be ineffective in the face of a strong, dominant actor such as the incumbent. Other sources of regulatory pressure (e.g. competitive pressure, or international influence) have been shown to be key in conditioning the behaviour of dominant incumbents.

CHAPTER THREE

EIRCOM'S RESPONSE TO REFORM IN THE REGULATORY SPACE

3.0 Introduction

The previous chapter demonstrated the ways in which the Jamaican incumbent, C&WJ responded to regulatory reform. This has seen the firm first attempting to prevent reform utilising ties with policy makers to extend its exclusivity. However, as change in the form of liberalisation, competition and an independent sector regulator became more certain, C&WJ then turned its attention to delaying reform while increasing its effort to chart the path of any future change. As demonstrated in Chapter two (also Chapter six), a large incumbent who is able to negotiate from its position of dominance is sometimes able to determine the nature of the reform agenda (doing so in ways that do not necessarily support straight forward arguments of firm capture). Its response also involved the use of the Courts particularly as a means of reducing risks, achieving clarity in the regulatory space, and challenging the authority of regulators, a strategy, which heightened as the rules and structure of the market, became more uncertain. These moves also included anti-competitive practices, such as those covered in the competition literature (e.g. preventing entry).

The incumbent's response is therefore, presented as being diverse and is not simply about whether to comply with rules and regulations, especially where compliance is made difficult by the existence of vague or ill-constructed rules and regulatory uncertainties. This case therefore, helps to advance an explanation for the continued dominance of incumbents and the challenges that they pose to regulation especially given the fluidity in their behaviour and tactics. However, it is agreed that awareness of how incumbents respond to change can inform more responsive and proactive regulation and information on ways in which the regulator can seek to condition the behaviour of the incumbent. Such knowledge can prove useful in times of reform, since the activities of incumbents, or former monopolies, are important to the success of any new regime, given their size, information, experience and resources.

As will be shown in this chapter, these strategies are similar to those used by the Irish incumbent, Eircom. However, whereas the activities in the Jamaican case have been carried out largely by the incumbent, this case demonstrates even more that the resistance to reform is not always from the incumbent but from other key industry players, including the government, political parties, and unions who act to shield the incumbent from the pressures of reform.¹⁷¹ It is argued that this may be due to the extent of external pressure in driving the internal reform agenda, particularly, up to 1997. Where there is lack of internal support, successful reform and effective regulation may ultimately be distorted. As such, the present chapter demonstrates the difficulties of obtaining regulatory reform where there is lack of significant political support. The Irish experience therefore, offers an opportunity to view the ways in which (external) regional regulation interfaces with local institutional contexts. Additionally, the chapter demonstrates that while regulators, as shown in Chapter two, have a number of tools to regulate the firm, the latter also has its arsenal of strategies to cope with changes in its operational and regulatory space.

The chapter will be organised as follows: Section 3.1 gives an outline of the major developments of Irish telecoms as a way of setting the context for discussing Eircom's response in Section 3.2. This is followed by a discussion and analysis of the main findings in Section 3.3, which seeks to address the ways in which the firm responds to change. The chapter closes with a conclusion in Section 3.4.

3.1 Emergence of the Irish Incumbent Eircom: 1800-1989

The earliest beginning of telecommunications in Ireland is one of private ownership of the first telecommunications exchange in 1880.¹⁷² However, State control and ownership were to become more politically and economically feasible by the end of the 1800s, leading to the state negotiating with the private monopoly provider in 1905 to take over the network. Increased government involvement was also motivated by a view of private enterprise as being profit-

¹⁷¹ Also see Chapter seven.

¹⁷² Hall (1993: especially, 48-65 and 89-105).

oriented and generally unwilling to proceed with the rate of investment needed to improve access, especially in rural areas.¹⁷³ As will be seen, this view was to resurface in the 1980s and 1990s, particularly among those (including the incumbent) questioning the viability of reform in the shape of privatisation and competition. Following these negotiations, the NTC agreed to cede its assets to the state when its licence ended in 1911. The company then became a state-owned entity run by the Postmaster-General and answerable to the minister for Posts. Thus began the long period of administration and regulation of telecommunications by the Post Office (PO).¹⁷⁴

Government take over did not translate into a non-problematic or speedy development of the sector instead network expansion progressed slowly.¹⁷⁵ Telecommunications was still not viewed as an area of great necessity; it occupied the lower rung when compared with more politically sensitive issues in the budget. As such, an unwillingness to fund projects as well as lack of expertise, also underpinned the PO's inability to improve or modernise telecommunications infrastructure.¹⁷⁶

By the 1980s however, revenues within the sector had improved, making telecoms one of the most dynamic and important sectors in the Republic. Nevertheless, continued underinvestment and underperformance continued up to the 80s with Burnham describing telecoms as the "most-pressing infrastructure problem" faced by the government during this period (2003: 542). Such recognition helped to engender a spirit of reform within the sector.

Even so, this did not extend to support for liberalisation and privatisation (Hall, 1993:197). The prospect of privatisation did not appeal particularly to the majority of Eircom's employees and some politicians, e.g. Labour party (Hall 1993: 11). With significant complaints coming to the government about the firm's service quality and costs, the government's decision

¹⁷³ This was also influenced by the growing relevance of the telephone to the country especially its potential in war time, the potential for abuse and the increasing complaints regarding service quality.

¹⁷⁴ Described by Hall as the, "physical nerve-centre" for telecommunications during this period (1993:42).

¹⁷⁵ This was seen for instance in the protracted inability to meet demand for lines. For example, unmet demand stood at 6,700 in 1953, 10,600 in 1958, 16,500 in 1963, 34,000 in 1973 and by 1978 was 63,000 (Hall 1993: 58).

¹⁷⁶ Hall gives a more detailed discussion of these and other issues affecting sector development prior to the 80s (1993: especially, 48-65 and 89-105).

was 'not to disrupt the status quo' by privatising but to make slight changes to its status and Eircom on the other hand jealously guarded its status as a state-owned company (Burnham 2003: 544). Rather, by 1984, telecoms were divested partially from the Department of Post and Telegraph becoming a state-owned enterprise with the title *Bord Telecom Eireann* (hereafter Eircom).¹⁷⁷ The 1983 Postal and Telecommunications Services Act facilitated this move, marking the end of a 71-year union between post and telecommunications. By 1987 Eircom was reregistered as a public company. Thus, was created the Company that was to dominate Irish telecoms. It was the power and control granted to this firm that reform in the 90s aimed to unlock.

Regulation came in the form of submissions made by the Chief Executive before the Oireachtas Committee on State-Sponsored Bodies. An Ombudsman also had some jurisdiction over the sector handling disputes between individual customers in the 80s and 90s. But this regulation was not permanent and only cursory. For instance, Section 6 of the 1983 Act noted that the Ombudsman's Office could only make recommendations relating to the firm and the sector, since its decisions were non-binding. Furthermore, it could not take legal action against the incumbent (Section 5 (1) (a)). Provision had also been made (1983 Telecommunications Act, Section: 48) for the establishment of a group (the User's Council) to advise the minister on customer views. This had not been formed up to 1989. As such, with government acting as owner and regulator, and with little representation from other groups, the relationship between the two remained closed, with little challenge to the firm's power.

Unlike the Jamaican incumbent Eircom's monopoly over the sector in the 1980s was not intended to be exclusive, as it did not include equipment used on customers' premises.¹⁷⁸ In establishing the duties and obligations of the incumbent the Act gave the firm immunity from any action being brought against it for losses due to the Company's failure to provide or maintain telephone lines (Section 88 (1) [A, B and C]). In so doing the Act removed any legal measures in the way of forcing Eircom to maintain certain levels of service standard. As will be

¹⁷⁷ This was only to become Eircom in 1999. However, the more recent title will be used throughout this work.

¹⁷⁸ See Section 87(1), 1983 Post and Telecommunications Act.

demonstrated in the next section, this failing would be addressed by the introduction of competition in 1998, making a case for the importance of regulatory reform as a means of creating the incentives and space in which the incumbent would be motivated to make overall improvements in its operation and service.

The relationship between the firm and state, particularly in the 80s was closed. The Minister was said to be in charge of policy matters relating to the sector while the day-to-day management of the Company was left up to the Board and its managers (Interview: senior staff, Eircom, Dublin, November 10, 2003). The management who inherited the Company in 1983 had managed to form a close partnership with the state where the former was recognised for having brought a firm, fraught by losses and industrial disputes in the 70s into a stable profit making company of the late 80s (Burnham 2003: 542-544). This association was not often stretched to include new comers to the firm; especially those who chose not to accept the rules and norms within the Company. As such internal divisions marred the activities of the Company: some had more access to key decision-makers than others. Thus, when Brendan Hynes, became Company manager in 1992 he sought to reform the relationship between firm and state and even those within the Company itself as he felt relationships were too informal with little paper trail for the Company's decisions, resulting in the Board appealing to the minister to have the chair removed.¹⁷⁹ They also took issue with what they deemed to be his supposed anti-public enterprise stance, a point that the leader of one political party took as a mark against the chair.¹⁸⁰ The whole incident indicated the extent of political support given to the firm. Whereas CWJ spoke with one voice, Eircom was more internally segmented; with different factions having varying levels of access and influence over the direction of company and sector policy, a point, which will be dealt with in Chapter seven.

Even though this facilitated entry, Eircom remained the dominant player with all value-added network service providers (VANS) leasing its lines and no competition in long distance

¹⁷⁹ Gallagher (1992c).

¹⁸⁰ Gallagher (1992b). The chair was of the view that the firm was too willing to base its success on past achievements instead of preparing for the future (Ibid.). This change had come after two other chairs had been removed. In fact, issues of unwillingness to change and misuse of power were to however, see the company with four different Chairs in the space of 15 months by the end of 1992.

service. The firm's control over the latter was also important since like C&WJ it could continue cross-subsiding local rates from the profitable international market (MacMahon 1995: 301). As the biggest telecoms operator, the firm's success was vital to the economy, a fact, which was to help it to win support from the state.¹⁸¹ It also was to play an important role in increasing the nation's attractiveness as an investment hub, promoting Ireland as a European base. The Company was important given the contributions it made to the state's budget and the jobs it brought into the economy.¹⁸² Allowance was made under section 110 (5) of the 1983 Act, for the Minister to impose duties on the incumbent in accordance with obligations of its licences. Under this provision, the Company was to make significant contributions to the exchequer. In 1992 for example, the state received a total of (IR) £41 million from Eircom in dividend payments and taxes and (IR) £35 million in 1991 (Murdoch 1992). By 2001 the firm was paying €138 million in corporate tax to the state (Eircom Annual Report 2001: 42). Payments were made regardless of the level of profit (or loss) received by the firm in any year. In this way, the Irish incumbent had less operational freedom when compared with C&WJ, in terms of its control over revenues. This may also help to explain the apparent lack of commitment to privatising the firm since there would have been some difficulty in tying such an obligation to a privately owned company. The Company was also viewed as a tool for buttressing the economy from instability and unpredictability. Its title as the *Irish Telecoms Company* (Telecom Eireann), and the fact that state owned enterprises (SOEs), such as Eircom were viewed as, "symbols of an independent and proud economy", help to indicate the sentimentality associated with the firm (O'Toole 1992: 14).¹⁸³ These realities were to see the incumbent having more political support

¹⁸¹ For example, faced with high interest rates in 1993 and the devaluation of the Irish Pound against its main trading partner, the UK, Eircom was requested to reduce telephone rates for businesses. Additionally, whereas prior to its conversion, Eircom operated at losses of around £100 million annually by 1992 its annual turnover was £780 million with a profit of £90 million (Gallagher 1992a: S12).

¹⁸² For instance, Eircom was the largest employer during the 80s and 90s and this meant that it remained one of the most important companies in Ireland (Burnham 2003: 543).

¹⁸³ This shares some similarity to the "national champions" concept that was developed mainly in the 1960s in relation to the close link between state and industry in France where the tradition is one of strong government intervention in industry. Here companies were formed based mainly on the needs of the state and to carry the country's flag globally. In turn, protection and funding were provided by the state and these also performed functions similar to those carried out by the state, thus acting like state agencies in a manner similar to that depicted in the regulatory space approach. See, for example Hayward (1995: 5); McArthur and Scott (1969); Verdin and Van Heck (2001), and Vernon (1974).

and relevance to the Irish economy when compared to its competitors; points, which set the context for the state's attempts to protect the firm from further competition in the late 80s and 90s.¹⁸⁴ As such, while a number of other SOE's were privatised, the state clung to Eircom.¹⁸⁵ The basis of its continued dominance included its status, knowledge, finance and experience, assets, which were to help maintain the incumbent's dominance (Interview: Former Telecoms Minister, Dublin, November 11, 2003). These ensured that Eircom's position at the centre of telecommunications operation and policy remained intact in the 80s and 90s.

3.2 Reform of Irish Telecoms: 1990 - 2007

Nevertheless, with increasing attention on utilities and competition in the European Union (EU),¹⁸⁶ the firm's power was to come under threat from 1990. This came through a number of Directives, which provided much of the momentum and direction for the reform of Irish telecoms.¹⁸⁷ By 1996, Directives emerging from the Commission had made it clear that member states should undertake measures to liberalise their telecom markets completely by 1998.¹⁸⁸ Services outside voice telephony were to be opened from July 1996. States were also given up to nine months after January 1996 to ensure compliance with instructions to liberalise access to

¹⁸⁴ As such, the profitability of the Company means that it is seen as a "jewel in the crown of the semi-state sector" (Sweeny 1993: 6).

¹⁸⁵ Ibid

¹⁸⁶ See Graham (2000: 118). Additionally, the literature on EU regulation is expansive. The aim here is not to review these but simply to acknowledge their existence to the extent that they relate to the present discussion.

¹⁸⁷ The push within the EU began mainly in the 80s and was aimed at preparing member states for the single market. The rules pertaining to telecoms were outlined in a 1987 Green paper, which called for liberalisation of a number of telecoms services including, the supply of terminal and network equipment and access to national networks. The operations of national telecoms and voice services (which, accounted for around 90% of telecoms revenues) were excluded (see Carroll 1993). Guidelines here have included, Council Directive 92/44/EEC, of 5 June 1992 on the application of open network provision to leased lines. <http://ec.europa.eu/archives/ISPO/infosoc/legreg/docs/9244eec.html>; Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets. Official Journal L 074, 22/03/1996 pages: 13-24. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0019:EN:HTML>. Accessed: August 14, 2008; Directive 2002/22/EC of the European Parliament and of the Council of 7, March 2002 on Universal Service and User's Rights relating to electronic communications networks and services (Universal Service Directive) which sets out the parameters and measures for universal service provision; European Communities (Electronic Communications and Network Services) Universal Service and User's Rights) Regulation 2003, SI. No. 308, 2003. Even more relevant for the current discussion is Directive 90/338/EEC and specifically, article 2(2), which required Eircom to give up its exclusive right over the provision of voice telephony on January 1, 1998.

¹⁸⁸ Ibid.

cable television networks that needed to conduct operations in areas of telecoms already liberalised. Nevertheless, discussions on privatisation remained politically charged up to the mid 1990s with implications for the stability of coalition governments during these years (see Gallagher 1993b; Kelly and O'Regan 1993c).

By 1993, competition was to grow in the international market, with companies such as BT and ESAT Telecom (a local company) offering international services to businesses.¹⁸⁹ Nonetheless, the unwillingness to privatise Eircom and to seek an extension to its monopoly indicated the government's sustained protection of Eircom. Furthermore, in 1994, the State had required all entrants to those areas of the market that were open to pledge that they would interconnect to the incumbent's network and would not offer voice telephony (Massey and Shortall 1999: 3-4).

For most of the 80s and certainly up to the early 1990s, the incumbent did not appear to be keen on the idea of competition. The approach it took was to highlight the negative effects that competition may have on the sector, noting, that competition would result in higher prices, to allow it to compete (see Gallagher 1992b). Thus, on the eve of rate increases for residential consumers in 1993, it warned that this was to be expected- not because of its monopoly, but from liberalisation and competition from international competitors.¹⁹⁰ Acknowledging the inevitability of regulatory reform, however, Eircom, as did C&WJ, argued for a gradual introduction of liberalisation as being in the nation's best interest. No longer was the argument against privatisation and regulatory reform but against a 'gung-ho attitude' in the adoption and implementation of such initiatives.¹⁹¹ As will be argued later, this was to evolve into Eircom's attempts to frustrate regulation and competition, as seen in its relations with the IRA and entrants discussed later in this chapter.

¹⁸⁹ Dalby (1993a).

¹⁹⁰ Hogan and O'Halloran (1993).

¹⁹¹ Ibid.

3.2.1 Derogation and Competition Delayed

Nonetheless, the trend was to shift gradually by the mid 90s, with increasing support for sector reforms, as businesses and consumers began calling for curtailment of the incumbent's dominance as a route to reducing prices, especially for business.¹⁹² As noted, this came about as a part of a larger EU programme of liberalisation and privatisation that had begun from the 1990s demonstrating the effect of international/regional regulation at that level.

The EU's influence did not go unchallenged, however. Thus, despite such indicators of change the signals from the state regarding its true understanding and direction for the sector were quite mixed.¹⁹³ While professing its intent to enforce competition, Massey suggests that the government's actions have not always been in line with the zealous fervour found in such policy statements (2002: 7). In 1996, for example, Eircom was allowed to purchase majority ownership in the country's largest cable television company, Cablelink, even while dialogue on sector reform was ongoing, both nationally and regionally. In fact, it was the government that lobbied the EU (on Eircom's behalf) to allow such a move.¹⁹⁴ What this did was to reduce the possibility of competition, given Eircom's increased dominance in this market. So while the EU was aiming to achieve liberalisation, the Irish state was making moves, which were to go against the very idea of an open market, with Eircom extending its coverage over key segments of the sector.

However, this was not the only way in which the government seemed undecided on its precise direction as it related to telecoms. Seizing upon allowances in Directive 90/338/EEC, Ireland made known its intention to request derogation from the requirement to liberalise

¹⁹² See, Dalby (1993a). Business groups believed that private ownership would free-up government revenue for job creation and debt reduction. See IT (1992: 12). Also see Burnham (2003: 537-556).

¹⁹³ The state's hesitation to break up the firm's monopoly in the 1990s occurred even in the face of recommendations from within the country for change. Between 1991 and 1993 various reports, (e.g. Culliton 1992) had been produced recommending competition, reduction of telephone rates, rebalancing and greater efficiency throughout the telecoms sector. While the state was keen on initiating rebalancing it was not as speedy in meeting the deadlines set by the latter report to have competition and lower prices in the sector. In hesitating to implement these aspects of the reports, the state succeeded in demonstrating its unwillingness to assume the task of breaking up Eircom's monopoly.

¹⁹⁴ Interview: Representative of an industry group, IBEC (Dublin November 7, 2003). Another interviewee also noted that it was customary for the firm to assist the Government in preparing its position papers to the EU through the consultation process (Interview: Former Comreg staff, Dublin, November 7, 2003).

telecoms for 5 years. The reasoning here was that some states needed more time to prepare for competition.¹⁹⁵

Thus, whereas in this case the government had gone out of its way to protect the incumbent, the Jamaican incumbent had to actively lobby its government to act on its behalf by the mid 1990s. The Irish firm's response to reform is therefore, deeply linked to that of the state with the pressure for regulatory reform coming more from an external source.

In seizing upon the only concessions given to member states, the Government was ensuring that entrants would remain dependent on Eircom's network for an extended period. According to the government its response was precipitated by what it felt to be the need to 'buy time' (IT 1993a: 6). This move was intended to have allowed the Company to position itself to be in the lead when competition was finally introduced. In so doing, the government increased the possibility of Eircom's future dominance by buying the monopoly some time to augment its position within the sector before full competition was introduced.¹⁹⁶ There was also political support for this move with unions the head of the CWU, David Begg, urging government from 1993 to ensure that the country's peripheral position within the EC was taken into consideration when determining the timing of liberalisation (Gallagher 1993c: 9).¹⁹⁷ Thus, "with good motivation to protect Eircom" the government had decided to go ahead and request derogation" (Interview: Senior Official in Eircom, November 10, 2003, Dublin).

But as argued by interviewees, the decision not to introduce competition as early as possible was to have the opposite effect, in that the motivation to make the necessary changes to reduce costs and increase efficiency was missing, propagating the inertia of the past.¹⁹⁸ As will be shown in Chapter five, the incumbent's tactics after this period were more focused on

¹⁹⁵ See, IT 1993a. Derogation was obtained in December 1996 up to January 2000 under the Commission Decision of 27.XI.1996 concerning the additional implementation periods requested by Ireland for the implementation of Commission Directives 90/388/EEC and 96/2/EC "as regards full competition in the telecommunications markets (C[96]3342)."

¹⁹⁶ The possibility of derogation also helped the state in its bid to form a Strategic Alliance with KPN of Holland and the Swedish firm, Telia. By extending the period under which the firm could extract monopoly profits then Eircom would seem more attractive to investors (Interview: Senior official at Eircom, Dublin, November 10, 2003; Chari and McMahon 2003: 37).

¹⁹⁷ Interview: Senior civil servant within line Ministry, Dublin, November 5, 2003.

¹⁹⁸ Interviews: Senior Official in Eircom, Dublin, November 10, 2003; Former minister for the telecoms sector 1997-2002, November 11, 2003.

extending its portfolio in the sector as opposed to more persistently addressing issues of efficiency and effectiveness. The state therefore went beyond the Jamaican government in its bid to protect Eircom from competition, indicating the dangers of obtaining regulatory compliance where the regulator is a supranational body and where the State does not have a similar ideology or motivation for regulatory reform.

One interviewee cited both this incident and the cable link affair as two very clear-cut examples of incidents of collusion between firm and state or to be more precise, “examples of a dominant firm capturing government’s agenda”.¹⁹⁹ However, in commenting on the request for derogation, senior staff within Eircom noted “there was an unwillingness of government to throw Eircom to the competitive winds...it was more self interest on the part of the state than saying we need to protect Eircom necessarily” (Interview: Dublin, November 10, 2003). It may however, have been the case that the government’s action was driven more by political expedience, namely a desire to support the unions, the majority of Eircom’s employees and political parties who were not supportive of competition than by senior managers within the firm.²⁰⁰ Indeed, Eircom’s chairman had been known to express support for privatisation and competition since the 80s²⁰¹ as the government was known for making decisions based on political expedience.²⁰² The lesson here is that the incumbents are not necessarily monoliths but may be internally segmented. This has important implications for how its choices in responding to change and regulations in its regulatory space. As shown here, some interests may be more dominant than others and may in turn be able to form alliances with actors in the regulatory space, including government regulators, to distort the intentions of regulatory reform. The source of Eircom’s dominance was therefore, not only due to its legal status in the sense of possessing sole rights to the provision of certain services or through its size. Rather, State policies and activities have at times (whether directly or indirectly) had the effect of cementing and extending the incumbent’s power.

¹⁹⁹ Interview: Representative of an industry group, IBEC (Dublin November 7, 2003)

²⁰⁰ See Hall (1993: 11).

²⁰¹ See, Gallagher (1992d).

²⁰² Gallagher (Ibid).

3.2.2 Privatisation and Liberalisation of Irish Telecoms

While the fixed network remained closed, competition was to begin in mobile service when the door was opened for the selection of a second operator to compete with Eircom's mobile arm, Eircell, in 1995. ESAT Digiphone, which commenced operations in 1996, won this. The entry of this player was not to pose much threat to the incumbent's position. The introduction of competition in this area was still not done wholeheartedly. For instance, the government had faced threats of being taken before the European Court to force it to implement EC directives aimed at increasing competition, indicating a lack of support for competition.²⁰³ No records suggest that such action was undertaken. However, this does indicate the extent of the government's unwillingness to challenge Eircom's dominance. This point also makes a case for viewing external regulation and regulatory institutions as a tool for achieving national reforms. EU directives and threats of court action have been used in nudging the Irish state and incumbent towards having a competitive regime through regulatory reforms.

Privatisation, which seemed to be a taboo in the 80s was becoming more palatable, though full market liberalisation was still not as accepted at the start of this period.²⁰⁴ The first step towards privatisation of Eircom followed shortly with the sale of 20% of Eircom to a Scandinavian group in 1997 after negotiations, which had begun in 1995.²⁰⁵

This was carried further in 1999, with the Scandinavian group gaining an additional 15% and the firm changing its name from Telecom Eirann to Eircom.²⁰⁶ Ownership of Eircom was to change yet again in November 2001 when it was purchased by Valentia Telecommunications Ltd.²⁰⁷ Thus, full privatisation was finally achieved. Employees managed to secure equity in the Company increasing their ownership from 15% in 1999 to 30% by 2001. Industry reform was not only about the change in rules in the incumbent's operational space, but

²⁰³ As occurred when the government refused to change what was viewed as the incumbent's repressive pricing plan and failure to implement EC Directive 90.3 88, which permitted private competition in telecoms. See Kelly and O'Regan (1993a); Carroll (1993).

²⁰⁴ See Massey and Shortall (1999: 4); Keena (2008).

²⁰⁵ These were Royal KPN NV (KPN) from the Netherlands and Telia, from Sweden.

²⁰⁶ Hastings (2003: 152) and "Eircom (2000a). The changing pattern of ownership and the impact this had on the firm is discussed in more detail in Chapter seven.

²⁰⁷ See ODTR (2001e).

also about the internal reordering, which took place in response to these external impulses. This theme is examined in more detail in Chapters six and seven. Additional privatisation was however, to come within a larger context of sector reform, which marked a transition in support for market forces. This change was helped by the election in 1997 of a pro-reform coalition.²⁰⁸ This was comprised of Fianna Fail and the Progressive Democrats. Both parties were more sympathetic to reforms than previous coalitions, which included Labour and Democratic Left. Thus, as in the Jamaican case, the electoral cycle is shown as a critical element in the timing of reform. As such the derogation was to end prematurely when it was decided that full competition would be introduced by the end of 1998. As such, the country immediately sat about preparing itself to meet the initial EU deadline of December 1998. All in all Massey affirms that “the decisions to bring forward the full liberalisation of telecommunications and order the sale of Cablelink... would appear to represent an ad hoc response to a particular situation rather than a major shift in Government policy” (2002: 11). The decision to liberalise earlier than planned also came amidst concerns that the Company was not advancing at the rate of its competitors in neighbouring countries. There were further concerns about the potential loss of foreign direct investment (Ibid).²⁰⁹ As such, the government’s attempt to protect the firm and allow it time to advance its network to meet competition proved unsuccessful.

The Company also had to divest itself of its cable television business, Cablelink.²¹⁰ Even while competition had existed in the mobile market since 1996 with a second licence being issued to Meteor in 1998, the incumbent’s operations still dominated the market.²¹¹ By 2001, this continued dominance prompted Comreg to force the firm from the market with a pledge not to re-enter this segment of the market for a period of three years from 2000 (Eircom

²⁰⁸ Interview: Former Minister, Dublin, November 11, 2003.

²⁰⁹ Irish telecoms was to have been among the worst in terms of prices and quality (IT 1993c: 6).

²¹⁰ Cablelink was sold in July 1999 to NTL for £535 million with the new owner pledging to develop its broadband network to compete directly with Eircom by delivering faster and more efficient telephony, Internet and digital TV (ODTR 1999: 16-17). Eircom was also made to give up the various subsidiaries owned by Cablelink (Eircom 2000: 38, 52).

²¹¹ In 2001 Eircell was estimated to control 60% of the mobile market (See BW 2001).

Annual Report 2001: 52).²¹² This was purchased by Vodafone (Eircom Annual Report, 2001: 9). Eircom had also been determined to be the carrier with the Strategic Market Power (SMP) and had been mandated to meet certain universal service obligations (USO) befitting this title.²¹³ Thus, over a short period, Eircom was to see itself undergoing a number of changes in its ownership, size and structure. Reorientation in the rules and regulation of its operational space, collectively posed a threat to the incumbent's size, profits, market share and hence, power and dominance.

This came amidst complaints about the need for further investments and the reduction of Eircom's debt. Indeed, it has been argued that the Scandinavian investors had also influenced the request for derogation by asking the Irish government to extend the length of time in which the firm would operate as a monopoly by four years. During this time other operators would be prevented from entering the market, allowing additional time for infrastructural and service improvements (Chari and McMahon 2003: 37).

As is shown here and later in this chapter, the role played by the EU has served to bring another dimension to discussions of regulation and the constraints on incumbents in much the same way that the role of the WTO and the US have influenced Jamaican telecoms and the extent to which the incumbent has been able to exercise its dominance (albeit the external actor in this case exists at the regional level). Both cases demonstrate the effect of the internationalisation of regulation and the role of supranational institutions in driving states towards reforms even where local motivation may be lacking. In so doing, these cases illustrate the dynamics between external legislation and local contexts and the challenges and complexities faced when these collide. As such, the development of the telecommunications industry in Ireland has been influenced significantly by its membership within the European

²¹² Eircom had managed to increase its profile in the mobile market with earnings from this segment accounting for 20% of overall revenues in 1999 (Eircom 2000c).

²¹³ That is in accordance with European Communities (Electronic Communications and Network Services) Universal Service and User's Rights) Regulation 2003, SI. No. 308, 2003. Its obligations include provision of fixed line, payphones and directory services as well as the maintenance of public telephones and extending access to rural Ireland (Comreg 2006: 3). Section 10 of the Regulation also requires Eircom to publish performance indicators relating to this status.

Community and the directives flowing from this source. These have helped to provide the motivation and model for developments in the Republic.

So strong has been the influence from this source that it has been concluded that the whole process of regulatory reform in Ireland would not have progressed so speedily and to such an extent had it been left up to the country's politicians.²¹⁴ What the EU did was to supplant national and political will with a regional desire and drive for modernisation. Thus, while one former chairman had noted in 1992 that the firm was unwilling to face the future, the onset of competition legislation from the EU meant that ready or not, both firm and state would have eventually had to contend with full competition at some point in the future (Gallagher 1992f).

3.2.3 The Incumbent and the Independent Regulator

The change in the incumbent's circumstance was perhaps most graphically seen in the changes in the regulatory institutions over the years. Thus, a key aspect of reform has been in the modification in relationships and structure of Irish telecoms, similar to that witnessed in Chapter two.

Since the first set of reforms in 1983, sector regulation was handed to the line minister who made the rules by which the sector was governed, laying the foundation for the close association between firm and state. Licensing functions were the sole purview of the line Minister. With little external intervention the firm was able to secure rate increases considered by consumers to be excessive.²¹⁵ The close personal ties between the two also meant that interaction was at times less structured and informal, especially in terms of reporting relationships (Gallagher 1992c).²¹⁶ In fact, despite the intention of giving the Company more

²¹⁴ Interview: Senior civil servant, line Ministry, Dublin, November 5, 2003.

²¹⁵ Kelly and O'Regan 1993b.

²¹⁶ An OECD report on Irish telecoms has also commented on the culture of close ties between politicians and businesses (2001a: 52).

independence under the 1983 reforms, there were times when the role of politician/owner and management became blurred leading to accusations of corruption.²¹⁷

An important development from the negotiation for privatisation in 1995 was the government's pledge to move towards the establishment of a permanent regulator. This came as an attempt to achieve more independence and transparency in the firm's relations with the state. By 1997, an important institution was added to the mix when the independent sector regulator (Office of the Director for Telecommunications Regulation and from 2002 Comreg) came into being.²¹⁸ Up to this, and arguably even after, the Minister's office and the firm remained at the centre of the sector. Responsibility for sector regulation was removed from direct ministerial control. Thus, for the first time, an independent regulatory agency for utilities had been appointed representing a breach in the incumbent/state dyad.²¹⁹ The ODTR was charged with implementing the reform programme within the context of EU Directives. Its mandate covered all forms of transmission networks, their regulation and licensing.²²⁰ By 2000 discussions were underway once more on the drafting of a new Communications Bill aimed at revamping and clarifying the institutional arrangements for the regulation of telecoms and related industries. This move was prompted by the failings of the institutional arrangements designed to keep the incumbent in line. The new Bill was enacted in April 2002 and created a new regulatory body known as the Communications Regulator (Comreg).²²¹ The effect of this legislation and the other major features of the telecoms regime in Ireland between 1982 and 2002 were to change the relationship between the firm and government from what it had been for close to a hundred years while reforming the entire operational environment of the Company.

²¹⁷ See Maher (1992: 14).

²¹⁸ Section 2, Telecommunications Miscellaneous Provisions Act of 1996.

²¹⁹ As noted by the firm, "absence of a clearly stated and well "policed" regulatory environment is not in the interest of any player in the market place" (TE 1998:15).

²²⁰ The 1983 Postal and Telecommunications Act supplies the construct for the Regulator's duties along with the 1926 Wireless Telephony Act and amendments in the Telecommunications (Miscellaneous Provisions) Act, 1996. These responsibilities have been transferred to ComReg under the 2002 Act. The Regulator is able to fund its activities from fees charged for its activities. Excess monies are paid into the Central Fund in accordance with Section 30(7) of the Communication Regulation Act 2002.

²²¹ This is the title that will be used for the remainder of this paper.

While the 1983 Act had allowed for the establishment of an advisory group to the minister, it was not until 1993, however, with unsettlement among customers about the firm's service and poor customer relations²²² that the Minister for Communications decided to establish a Telecommunications Advisory Group as intended in 1984.²²³ This was also formed in the face of complaints about the level of rate increases awarded to Eircom. The Group was 10 years in coming and was seen to be of little use in ensuring that Eircom was monitored effectively.²²⁴ Indeed, one of the first notable moves in this year was its decision to refer Eircom (then TE) to the competition directorate in the European Commission in a move meant to flex its muscles (TE-AR 1998: 15).

The Regulator has been key in monitoring the sector since liberalisation. It has been instrumental in laying down the guidelines for the incumbent's conduct. In so doing, it has helped to bring more openness, thereby removing some of the 'murkiness' involved in governments involvement in processes such as the granting of licences (Interview: Reporter at the *Irish Times*, Dublin November 10, 2003). These covered the quality and delivery of service as well as the timing.²²⁵ With the establishment of an independent regulator, came a change in relations and privileges, which the Company had previously enjoyed. Tied to this was the requirement to become more formalistic in relations with various actors and in its reporting and record keeping practices. This is visibly seen in the regulator's stipulations for Eircom to design its own Service Level Agreement outlining the standards it would uphold with its clients (ODTR, 2001d). It has also been able to build relationships within the telecoms industry gaining consensus around key indicators through publications on the performance of operators in

²²² See Office of the Ombudsman 1998.

²²³ Kelly and O'Regan (1993b). Its main task was to advise the Minister on the effects of rate increases on customers and monitor their application.

²²⁴ As a Fine Gael Spokesman went on to state, "I have no doubt but that all places on it will be reserved for loyal supporters of the coalition government (Fianna Fail and the Labour Party), and that it will be totally under the thumb of the Minister and will have no independent statutory basis" (in Kelly and O'Regan 1993a).

²²⁵ These included stipulations that companies design their own Service Level Agreements indicating the standards that clients could expect. See ODTR (2001d; 2002b and 2002c). By 2006, the Regulator was again proposing new targets given what it saw as a need for improvement in Eircom's installation time and repair of reported faults (Comreg 2006: 3).

relation to agreed standards.²²⁶ In so doing, Comreg also elicited the help of the public in regulation by raising awareness of sector standards and prices, hence influencing their ability to make informed decisions about operators (See ODTR 2002b: 1-5).

The publication of objective standards also aimed to increase transparency and information; in so doing they elicited the support of actors such as entrants and customers in monitoring the incumbent against formal standards. As seen in the Jamaican case, this constitutes one way in which a young or resource constrained IRA can heighten its reach and effectiveness (i.e. by enlisting the support of others). Here, greater information flux, through disclosures from the firm and IRA may be argued to have helped to increase the size of the regulatory space by allowing more actors (customers and entrants) to have a role in monitoring the activities of the incumbent.

Comreg has also guided the incumbent's action by issuing various directives concerning activities such as the pricing of its products. In 2001 the regulator issued the incumbent with a series of directions concerning the pricing of its wholesale ADSL product, which it believed to be potentially discriminatory. In issuing the direction concerning this matter, the regulator also stipulated a time frame in which the firm had to respond to these directions, failing which the launch date for its product could be affected (ODTR 2001b: 1). The firm's exercise of power has therefore, not been without some constraint with the Regulator providing one of the main points of control over Eircom. Hence, threats also played a part in the arsenal of regulatory techniques employed by the Regulator when dealing with Eircom. Thus, its regulatory power has not necessarily been shown in punitive form but rather, through its advice and ability to establish ex ante standards and measures by which operators are guided and monitored.

The IRA has therefore marked a significant addition to the sector. The incumbent's activities have therefore been influenced by the shifting direction of rules and structure of the regulatory space, highlighting the importance of regulatory reform and the IRA's activities in shaping the incumbent's activities. For instance, in accordance with the regulator's prescriptions

²²⁶ For example, its Measuring Licensed Operator Performance (MLOP) programme was designed with the aim of establishing indicators by which powerful fixed line operators (Eircom) were to be judged.

for separate accounting in 2000, Eircom turned its attention to overhauling its accounting practices.²²⁷ This is not to suggest that Eircom simply complied with the regulator's directions. Since this was not before it made various submissions, which noted the difficulty and cost that was involved in such an effort. This was used by the firm as a rationale for requesting additional time in which to allow it to prepare its accounts and procedures to comply with the regulator's demands. Thus, Eircom was able to gain additional time for adjusting its operations in line with industry regulation without being penalised and as in this case extend its time of operation under a regime, which allowed it more freedom in the organisation and use of its accounts. The firm even went on to suggest that it had difficulty meeting all of Comreg's accounting requirements, given the risk that such disclosures would force it to give up commercially sensitive information.²²⁸

As such, the incumbent's response involved tactics of delay and where it complied with the regulator's rulings, it sometimes sought to set the pace for its compliance, in so doing buying itself additional time to comply with Comreg's directions. The incumbent's response may also have been determined by awareness of Comreg's limitations in forcing it to comply. As such, the incumbent has not always been forthcoming as Comreg noted in 2001 after Eircom failed to publish requested information on its pricing structure. According to Comreg, "despite extensive contacts, Eircom has to date failed to satisfy the Regulator that their proposed wholesale prices are cost oriented and non-discriminatory" (ODTR 2001b). One interviewee described these tactics of delay and challenge as Eircom's attempt to direct the regulatory agenda. In the end, such activities served to frustrate the regulator and its ability to carry out its task effectively.

Prior to privatisation and liberalisation, a contractual relationship existed between firm and state. Liberalisation had seen another contractual relationship being formed. However, whereas the previous relationship was more collegial, the latter has been marked more by conflict and tension, particularly during the first years of reform. With increased uncertainty and

²²⁷ See (ODTR 2000c).

²²⁸ Ibid.

operational risks from industry reform, the regulator/regulated relationship is therefore, shown to become more contentious. This may have been exacerbated by the 'newness' of the IRA, which (as the actor responsible for redesigning and monitoring sector rules) could be seen as representing one of the most significant threats to Eircom's hold over the sector. Additionally, the imperative of reform, particularly, in the mid 1990s to early 2002 meant that as the incumbent and the operator with the SMP, Eircom's operations were subjected to closer scrutiny than other operators.²²⁹ Regulation, thus, appeared as a bilateral relationship between Eircom and Comreg with observers noting that Comreg appeared to have interpreted, "telecoms regulation essentially [as] regulation of the incumbent".²³⁰ To some extent, this relationship has been unavoidable, given the regulator's need for information on Eircom's (and by extension, the nation's) capacity, particularly at the start of liberalisation. Eircom did not always welcome this close association. What was seen as frequent requests from Comreg saw Eircom complaining that it was not being given sufficient time to respond to such requests and to prepare responses to consultation papers.²³¹ The Comreg's reliance on the incumbent ensured that Eircom remained at the centre of the regulatory space and was a key point of reference on matters relating to the development of Irish telecoms.

Even so, Eircom has at times also displayed duplicity in its relations with regulators moving from confrontation to support, drawing one interviewee to comment that Eircom was in no way "The victim of regulation". As he went on to note, these episodes only served to highlight Eircom's tactic of adopting "strategic incompetence" when faced with regulations, which it was unhappy with (Interview: Senior figure with a mobile operator in Dublin,

²²⁹ There is some merit to this given that measures developed by Comreg have seen more attention being placed on the incumbent than other operators. For instance, the MLOP looks at the major fixed line operators with Eircom remaining the dominant of these operators. Thus, where two of the major concerns of such a programme covers, the "provision of public payphones by Eircom... supply of regulated services from the operator with Significant Market Power (*Eircom*)", then the incumbent becomes one of the main targets of regulation (ODTR 2002b).

²³⁰ Interviews: Senior staff at Eircom, Dublin, November 10, 2003; CWU, Dublin, October 30, 2003. On the other hand, their statements need also to be taken in the context of the keen interest of these two organisations in ensuring the success of the firm and in maintaining its operational freedom.

²³¹ Ibid.

November 11, 2003).²³² Whereas it did sometimes frustrate Comreg's effort it also at times sought to be more conciliatory emphasising the similarities between its aims and those of the Comreg's, particularly after liberalisation.²³³ The suggestion here is that as reform becomes a reality and the rules clarifying the new regime become more precise, the incumbent may become less antagonistic towards the regulator, especially as the uncertainties in its market decrease. This change of tactic may also be seen as an indication that the incumbent no longer views the regulator in an antagonistic light given its recognition that reform had not detracted from its power as originally anticipated.²³⁴

It has also been suggested that the pace of reforms in 1998 may have reduced the time in which the state and Regulators could prepare for liberalisation, with matters of transparency not being adequately addressed (See Massey 2002: 9).²³⁵ The regulator's ability to direct Eircom's activities had also been compromised by a lack of effective power. This had been the case prior to and after liberalisation. Prior to the formation of the IRA, a *Competition Authority* also oversaw operations in the sector.²³⁶ However, its attempt to direct Eircom's activities was

²³² The firm noted that this was an error (Interview: Former staff of Eircom and Comreg, Dublin, November 7, 2003). It was also accused of selling services below cost to customers in 2002.

²³³ As Eircom noted, both wanted to improve the quality, delivery and overall efficiency of the sector and "we have huge information that Comreg needs" (Interview: Senior Eircom Official, Dublin, November 10, 2003).

²³⁴ As shown later in this and Chapter five, Eircom has emerged from the reform process with its status as the Irish telecoms firm intact.

²³⁵ For instance, the state has been criticised for not setting up sufficient measures to protect consumer's post-liberalisation (Interview: Reporter, Irish Times, Dublin, November 10, 2003). Customers were directed to lodge complaints with operators such as Eircom, even while it had been accused of being "arbitrary and unjust" when dealing with complaints prior to liberalisation. Comreg also echoed the inadequacy of its complaints procedure in 2002 (Comreg 2002: 2). There has also been a tendency to favour producers over consumers in consultations and access to the policy-making mechanisms of the state (See OECD 2001a: 86). This is not to imply that all producers have the same level of access. Indeed, small operators have argued against the bias towards the larger operators (predominantly the incumbent) within the market (Interviews: Dublin, November 6 and 12, 2003). Massey (2002: 4-9) also suggests that the speed with which the Competition Act was accepted in the Oireachtas in 2002 was also influenced by the approach of a general election, again demonstrating the role of politics on the timing of reform both in Jamaica and Ireland.

²³⁶ Other sources of regulation included *The Fair Trading Commission*, which was created under the 1953 legislation on competition, *The Restrictive Trade Practices Act of 1953*. It was responsible for investigating anticompetitive practices and making recommendations to the Minister. This was replaced by a 1991 Competition Act, creating the Competition Authority. Its content was guided by Articles 85 and 86 of the Treaty of Rome (Treaty of Amsterdam Articles 81 and 82), that is, [1991] OJ C233/2, [1991] 4 CMLR 946. These prohibited anti-competitive practices, collusion and abuse of dominance. Also, see Graham (2000: 118-127).

made difficult by lack of political support and inadequate legislative power.²³⁷ The minister was also authorised to initiate court proceedings against acts of anti-competitiveness, but as Massey notes, this had never been done (Massey 2002: 4).²³⁸ As such, Eircom's power, particularly in the years leading up to privatisation, went largely unchecked. Attempts by the Authority to bring action against businesses such as Eircom, were not even supported by the Government. One instance was to witness the Authority being recommended to "stick to its knitting" after it attempted to take action against Eircom for anti-competitive practices (Massey 2002: 7). As such, weak capacity was to be an issue in Comreg's ability to monitor Eircom as it had been for the OUR in Jamaica, demonstrating the constraints, which can sometimes be faced by regulators in small states in carrying out their tasks. These gaps have had negative consequences for the regulator's ability to manage the incumbent's behaviour in the sector. According to one former employee of Comreg and Eircom, "the power that the regulator has and the legislation [has not] been up to scratch..." Subsequently, the legislation, "...hasn't been strong enough to impose the regulator's will on the incumbent" (Interview: Dublin, November 7, 2003).

3.2.4 The Use of the Courts

The regulators in Jamaica and Ireland took some time to commence operations. In both cases the entry of the regulator and liberalisation were to mark a significant transition in the way the incumbent responded to regulation. However, whereas in Jamaica, the use of the Courts was first marked by the breakdown in relations between the firm and state, in the Irish case, this was heralded by loopholes in Comreg's Act.²³⁹ The act of challenging the regulator's decisions usually resulted in the suspension or delay of the ruling until clarification came from the

²³⁷ The Competition Authority's effectiveness was limited in the years prior to the creation of Comreg given its inability to conduct investigations and take action against abusers. The Court decided if a firm had engaged in an anticompetitive practice and the level of fines for such action. The 1991 Competition Act was, for example keen on keeping the scope of the Authority to its minimum as increased powers would ultimately require a level of manpower, which could not be provided (See Massey 2002).

²³⁸ The Competition Authority's Act was finally amended allowing it to initiate civil proceedings (Section 7, Competition (Amendment) Act, 1996). Breaches were also made prosecutable through fines or imprisonment (Sections 2 and 3).

²³⁹ OECD (2001a: 95-97).

courts.²⁴⁰ For instance in 2000, Eircom brought an action against Comreg for its decision to force Eircom to modify the length of time it would take to deliver leased lines to entrants.²⁴¹ Implementation was then postponed with Eircom being able to delay compliance until the case had been resolved. This tactic was compounded by the technicality of telecoms regulation, which limited the speed with which a court, that was already slow, could make decisions.²⁴² Such moves gave Eircom more time and room to manoeuvre before the actual introduction of regulatory orders. Thus as noted by one interviewee, Eircom has used the court system:

[to] perfection; the [court] cases delay the [regulator's] decisions coming through... And what they do, they'll take the cases [to court] for a certain length of time and then the case would be dropped. But it would be a year down the road ... the original decision hadn't been able to be implemented and what happens is that at that stage it is too late, sometimes. That's been a very key tactic that it's used... it basically held up the whole [regulation] process.²⁴³

Thus, as in the Jamaican case, the expansion of the regulatory space was to witness the incumbent turning more to the court and not to politicians to assert its dominance, with the judiciary being used to frustrate regulation, delaying entry and hence, the progress of competition. A year later Eircom had also brought action against Comreg's decision to increase the number of services covered by the incumbent's Reference Interconnection Offer, again delaying its implementation (ODTR 2000b: 6). Eircom's activities frustrated the regulator's efforts, compelling the latter to think twice about making changes not supported by Eircom. The firm's defence centred on the fact that while it brought six cases against the regulator (up to 2003) none of these had ever been concluded in Court.²⁴⁴ Furthermore, "at the end of the day we have to do things to protect our company against unreasonable intervention by the regulators" (Interview: Senior official, Eircom, Dublin, November 10, 2003). Nevertheless, such actions may have affected sector stability and certainty for regulation and entrants.

²⁴⁰ Ibid.

²⁴¹ Eircom (2000d)

²⁴² Interview: Reporter, Irish Times, Dublin, November 10, 2003. It has also been noted that Judges still need to become more familiar with telecoms a point which may also slow the pace in which cases have been concluded (See OECD 2001b: 67).

²⁴³ Ibid.

²⁴⁴ As occurred when Eircom settled out of Court in 2002 on a case it had brought against Comreg's proposal for Local Loop unbundling and the prices for interconnection (ODTR 2002a: 1).

This form of response was to become a feature of relations between firm and regulator. As such, regulatory reform can inadvertently provide perverse incentives for strong, well-resourced firms, such as incumbents to reduce the effectiveness of regulation by taking advantage of omissions and shortcomings in rules and regulations. Thus, where there are players with more knowledge and expertise of the market then there is potentially more scope for such a player to recognise legislative gaps and to possess the resources to take advantage of such omissions. Such actions may keep the regulator on the defensive, forcing it to spend its time protecting itself and rationalising its actions. In so doing, the incumbent can inadvertently find itself dictating the IRA's agenda at any given point as well as its success in addressing issues on its agenda. Such difficulties make the business of regulatory design even more important, since the strength of the rules that are designed at this point will be important in charting the course for the incumbent's actions and how it relates with regulators and competitors. As seen in the Irish case, the incumbent has been able to benefit from loopholes in industry regulation, which has allowed it to dictate the pace at which transparency and competition can be achieved and ultimately, affect the prospects of its competitors. This can be done in ways that do not necessarily support capture, since the regulator is not acting on Eircom's behalf.

However, while the incumbents in the cases examined in this and the previous chapter are shown as challenging the regulator's authority, the chapters in Part two demonstrate that as the certainty of competition and liberalisation is brought home to the incumbent, it will turn its attention inward to focus on adjusting to reform through organisational reorientation as opposed to attempting to challenge regulators and entrants.

Legislation in March 2000 removed such perverse incentives in the regulatory system since the appeals process could no longer prevent the enactment of a regulatory decision. The 2002 Communications Bill further improved upon this by setting specific timelines within which applications for review should be made. It also specified that the public interest and the legal sanctity of decisions should be considered by firms rather than the individual strength of regulatory rulings when deciding whether to challenge Comreg (OECD 2001a: 97). The use of the courts therefore lessened after the more turbulent years 1999-2003, which marked the

regulators efforts to facilitate entry. This reduction also suggests a decrease in antagonism between Comreg and Eircom and the level of uncertainty experienced by the incumbent firm as it settled more into competition. However, this remains one of the ways that Eircom has ensured it remains a force, checking the regulator's activities in the sector. In 2005, for instance, Comreg was forced to take Eircom to Court for its failure to comply with a 2004 *Market Requirements Document* (MRD), which outlined requests from access seekers concerning the unbundling of the local loop.²⁴⁵ In this case, the incumbent came out even more emboldened by the Court's ruling that the firm had a right to appeal Comreg's decisions - notwithstanding that this was after a second round of appeals that engendered concerns about the prospects of companies seeking access to the local loop. In another case: 2003 was to see Eircom bringing Comreg before the high Court for the latter's decision to introduce a flat fee for access to the fixed network. Comreg expressed its disappointment at the incumbent's action as it felt this would affect entrants (RTE 2003). This form of challenge was to continue as recent as 2008 with the firm promising to challenge Comreg's decision for it to reduce monthly charges for its leased lines (Collins 2008). As one competitor noted, "legal action only results in uncertainty and this is bad for consumers and bad for competition" (Collins 2008).

The incumbent's antagonism and attempts to challenge the regulator is, to some extent, understandable given that Comreg's mandate was to implement the reform programme within the context of EU Directives. As the harbinger of change (competition, liberalisation, disruption of the existing status quo and the agent responsible for overseeing reform) the Regulator represented one of the greatest threats to Eircom. Hence, its challenge may be seen as an attempt to question the integrity and competence of the Regulator's office as a means of reducing the IRA's ability to regulate the sector. The presentation therefore goes beyond capture to indicate

²⁴⁵ Eircom appealed against the Court's ruling to comply with the conditions under the MRD refusing to comply even after Comreg gained a second enforcement order. Eircom's point of contention surrounded what it saw as deficiencies in the MRD as to the precise nature of Comreg's request and Comreg's failure to allow it to analyse and make appeals against the MRD. See *Eircom Ltd. v. Commission for Communications Regulations* [2006] IEHC 138 (29 July 2005) and Examiner (2005).

one of the ways in which regulated firms relate to regulators and how they attempt to direct regulation, where capture is precluded by regulatory reform.²⁴⁶

3.2.5 The Incumbent and Entrants

The firm has also benefited from the actions of other players in the market (e.g. government and entrants) that have helped it to stay ahead of the field.²⁴⁷ That is, it has been the recipient of some good fortune suggesting that its sustained dominance has not only been about how it has responded to reform; given its grounding in the market as the incumbent, it has been able to take advantage of the mishaps of entrants. For instance, the cost of investing in alternative infrastructure has meant that its dominance in areas as the provision of fixed voice services to businesses and residences remains intact.²⁴⁸ As will be argued in Chapter five, much of the achievements are due to the reorientation in the way the incumbent re-organised for competition.

Competition has also not progressed to the point initially anticipated, another point which has benefited Eircom. For instance, the cost of leasing lines from the incumbent had proven burdensome for some operators, leading to their demise.²⁴⁹ Additionally, the OECD has for instance, described the licensing as “onerous, complex and costly” (2001a: 95), a point, which again adds to the number of obstacles faced by entrants. Thus as the incumbent, Eircom has been best placed to benefit from the difficulties faced by entrants and the loopholes in regulation.

²⁴⁶ Eircom’s challenge before the High Court in 2003 saw Comreg pledging to protect the integrity of its procedures and to ‘vigorously contest’ Eircom’s challenge, suggesting that it viewed the firm’s activities as a challenge to its authority and competence. See, RTE (2003).

²⁴⁷ The speed with which the decision to end derogation was made and rules passed had also served to decrease the time in which competitors could prepare themselves to compete with Eircom, slowing the development of competition. As argued above, it also reduced the regulator’s preparation time.

²⁴⁸ For instance, after two years of competition in 2000, 78% of local calls made by SMEs were through Eircom, 71% of national calls and 69% of international traffic was done through Eircom. After a year, these figures had increased to 79%, 78% and 78%, consecutively.

²⁴⁹ See Pognatchnik (2006). The cost of access was to remain high up to 2008 with Comreg requesting Eircom reduce its price from €8.41 to €2.94 per line per month (Collins 2008). In 2006 an operator was forced out of the sector due to its inability to pay Eircom for leased capacity, with Eircom cutting service to the 40,000 customers on the entrants network.

It has also gained from the actions of its competitors against each other, which have at times postponed full competition in some areas of the market. For example, the duopoly in the cellular market was to go on for 18 months after the granting of the third licence, as the company who lost out in the bid challenged the regulator's decision before the Courts.²⁵⁰ Eircom was inadvertently given more time to operate without much challenge so that by 2001 Comreg was forced to exclude Eircom from this market for fear that its presence was preventing further growth in the area (Eircom Annual Report, 2001: 52).²⁵¹ Thus, fostering a competitive market may require a regulator to do more than simply liberalise a market since liberalisation does not automatically equate to competition, as the presence of a dominant player may be enough to dissuade competition

3.2.6 Anti-competitive Practice as a Response to Reform

The slow pace in moving forward with the reform agenda in the 90s served to prolong the power and relevance of the incumbent. Since liberalisation, the slow pace in rolling out services such as broadband and developing an alternative network, plus the onerous licensing process have meant that Eircom remains an actor with power and force vis-à-vis other actors, including the regulator. Furthermore, by the time the sector was fully opened Eircom had more regulatory capacity than its competitors.²⁵² Having this capacity meant that the firm was able to show up at more meetings and make more contribution to discussions on regulation than its competitors.²⁵³ Eircom was, "such a dominant force in the country...that they still tended to swamp any competitors that came in" (Interview: former Telecoms Minister, Dublin, November 11, 2003). This is yet to change, since by 2006 the firm had (after intense restructuring – see Chapters five and seven) once more become a public company and re-entered the mobile market.²⁵⁴

²⁵⁰ See Keena (2008).

²⁵¹ The incumbent's absence did not lead to expansion of the number of operators.

²⁵² Interviews: Senior civil servant, line Ministry, Dublin, November 5, 2003; Mobile operator, Dublin, November 12, 2003.

²⁵³ Interview: Entrant in the mobile market, Dublin, November 12, 2003.

²⁵⁴ Eircom Annual Report (2006: 234); TI (2006).

But while Eircom has benefited from failures in regulatory design and the actions of politicians and entrants, the incumbent has not always played the role of a willing or honourable participant in the regulatory space. Its actions here go beyond that related to regulators (as described earlier) to its relationship and activities with its competitors. Thus, as far as it concerns relationships in the sector, that between regulated firms (incumbents and entrants) and not only that between the IRA and regulated firm is important, since this is sometimes where the effectiveness of rules aimed at encouraging entry and access and fair play can be addressed. This is similar to the Jamaican incumbent's delay in granting access to its network, which resulted in competitors being unable to carry out their business, in turn illustrating the credibility and capacity gaps faced by regulators (See Chapter two).

Prior to the late 1990s, Eircom emphasised the dangers that full competition could bring for the country and consumers.²⁵⁵ By the late 90s however, this tactic had moved to warnings against wholesale adoption of European models of telecoms reform.²⁵⁶ Eircom had also urged caution as it related to the pace at which local loop unbundling could take place given the expense and resources involved.²⁵⁷ As illustrated above, this was to become one of the areas that tested the relationship between the firm and regulator, with the former sometimes choosing not to acquiesce to demands for information on its capacity. Such actions have in turn had implications in its relationship with entrants, since Comreg's inability to secure compliance here meant the operations of entrants, were compromised. For instance, one of the concerns at the start of competition was the slow delivery of leased lines and connection to Eircom's circuits, which in mid 1999 was recognised to be a significant problem for entrants, forcing Comreg to design a strategy for addressing this instance of regulatory failure.²⁵⁸ Further, in 1999 concerns were raised by entrants about Eircom's operations with the incumbent's size and coverage being viewed as a concern for entrants demanding Comreg pay special attention to preventing cross-subsidisation and achieving separate accounting in Eircom (ODTR 1999: 16).

²⁵⁵ As argued in Section 3.2.1.

²⁵⁶ Interview: Senior official in Eircom, Dublin, November 10, 2003.

²⁵⁷ Ibid.

²⁵⁸ ODTR (2000a). One strategy was to increase the level of fines that Eircom had to pay for failing to meet expectations.

Eircom has also been accused of setting prices, which are not cost oriented in the sale of its products and services, such as wholesale ADSL²⁵⁹ products, to entrants (ODTR 2001b). In other instances, Eircom was accused of discriminatory practices in routing Carrier Pre-Selection Service (CPS) in 2001. This came after complaints from Other Licensed Operators (OLOs), including ESAT, prompting an investigation by Comreg (See ODTR 2001a). Comreg later cleared the company, but this raised questions about its operations and particularly around the need for separation between its wholesale and retail business (see ODTR 2001b). Indeed, as recent as 2005, Comreg and Eircom were back in the courts over Comreg's attempt to achieve further rebalancing and its concern that the incumbent's refusal to comply would cause, "serious economic and/or operational problems" for other companies.²⁶⁰ Such incidents demonstrate the limitations of regulation in obtaining compliance from such dominant, entrenched actors in the regulatory space.²⁶¹ Thus, the firm had a natural advantage thanks to its incumbency and did not hesitate to use this position to its advantage, delaying the growth of competition in the market.²⁶²

This is not to suggest that Eircom has not been adversely affected by reform.²⁶³ However, the internal reforms (See Chapter five) undergone since liberalisation have helped it reduce price and increase quality to the extent that 82 of every 100 users who switched operators in 2005-6 chose Eircom (Eircom Annual Report, 2006: 4). It remains the most visible

²⁵⁹ Such tactics were not new given that Cablelink made similar accusations in 1993, making it difficult for this firm to compete prior to its acquisition by Eircom (Oneill 1993: 7).

²⁶⁰ See 245.

²⁶¹ Resulting in a court case: *Eircom Ltd. v. Commission for Communications Regulations [2006] IEHC 138 (29 July 2005)*.

²⁶² The overall importance of the firm for the development of the sector may also have emboldened Eircom in its acts of defiance. One of the growing concerns of Irish government since 2000 has been the need to increase the nation's broadband capacity (ODTR 2001d: 1). As a small country, Ireland's remarkable growth since the 1980s has been due largely to its ability to pull foreign investments mainly from countries such as the US - See Schware and Hume (1996: 6-7). However, the nation's broadband capacity, at the start of the century, was one of the worst in Europe (ODTR 2001d: 5). Eircom was recognised as the Company with the resources and experience to make improvements (Interview: Senior official in the line Ministry, Dublin, November 5, 2003). As such, it could assist the government to meet EU requirements for cheaper broadband while making the country a more attractive one for investors. And so Eircom's sustained relevance comes from the fact that it still has a stranglehold over the telecoms market and as such, it remains a vital component of any government policy aimed at achieving reforms in the sector whether it is to fulfil national or EU policy guidelines.

²⁶³ For example, while remaining the dominant player in 2003, the Company commanded 55% of telecom revenues - and 38% where mobile communications is included (CWU July 2003b).

operator in the market. Its takeover of the mobile operator Meteor in 2005 meant that the latter now had capital to invest and was to see a 50% jump (10-15%) in market share by 2006 (Eircom Annual Report 2006: 5). This will be shown in the chapters in Part two, which demonstrate the effect of regulatory reform and regulation on the internal structure of incumbent firms. Both incumbents are shown searching for the most effective way to restructure their internal orientation in order to find the best fit between the shifting structure of their operational/regulatory space and their internal structure.

3.3 Discussion

This final section discusses the main findings on how the Irish incumbent has responded to industry reform and the various factors, which influence its actions. The incumbent's action, in this case, closely resembles that of the Jamaican incumbent, in so doing, carrying through the theme that incumbents/former monopolies are not static, one-dimensional actors, since they too are able to respond to changing rules in the regulatory space. It is this capacity that has enabled them to remain powerful actors in a post-regulatory reform era.

3.3.1 Incumbent's Response to Changes in its Regulatory Space

The chapter has shown that as the operational space and threats in this space have changed, the incumbent has responded in a number of ways. Thus, at the start of the period under study, Eircom sought to protect its market by attempting to prevent reforms, which would compromise its dominance. This was accomplished through its ties with politicians and the lack of wide support for reform. Thus, whereas in the Jamaican case, the firm actively lobbied the state to act on its behalf, the Irish state has been keener to act for Eircom even where the senior managers at the firm did not necessarily request such protection. The difference here may be explained by the fact that the government in Ireland was not only the regulator, but also owner of the national monopoly. A discussion on the incumbent firm's response in this case, is therefore as much about how a national government responds to external regulation, particularly where there is not much local support for reforms. Here, the late 80s to early 90s were to see the firm warning

against the introduction of competition, highlighting the negative effects that this would have on the country (including higher prices).

As the inevitability of reform became apparent (thanks to various EU Directives), the firm argued against speedy adoption of reform. Thus, as the Jamaican incumbent, Eircom sought to delay the introduction of competition, in a move meant to allow it more time to prepare itself for reform while extending the period in which it could operate under its former status. However, its activities were to take on another form, thanks to the entry of the IRA in the late 1990s. With this actor came greater transparency and openness as well as confrontation between the incumbent and the IRA, making the regulatory space more contentious than ever before. Eircom has since set itself against the industry regulator, directly challenging its authority at various points since 1999.

Eircom's desire to pit itself against Comreg may be explained in various ways. Firstly, the timing of entry in the Irish market is important. That is, it was created just before full liberalisation and privatisation. As such, its birth would appear to have heralded the emergence of a whole new structure and a host of new rules and regulations, which threatened Eircom's operations and relations. Thus, as in Jamaica, the independent regulator in both cases emerged around the same period (1997) and could understandably be seen as representing the coming shift in the sector. As such, it is understandable that the incumbents in both cases would have seen the regulators as the harbingers of change and as an embodiment of the threats, which they were to face to their dominance, hence their persistence in challenging the regulators in either case (this is with good reason, since the sector regulators were charged with overseeing the reform programme).

Secondly, the regulator's ability to carry out its responsibilities, as well as, the legitimacy and confidence with which it is able to do so will be determined by how effective it is asserting its position vis-à-vis the incumbent, particularly at the start of the reform process. Much of the confrontation and uncertainty between the incumbent in this case has been seen in the early years of reform. Thus, up to 2003, Eircom had brought a total of six cases against Comreg. This pattern of challenging the regulator was also demonstrated in the Jamaican case.

The incumbent's challenge in both cases can be interpreted as a questioning of the incumbent's legitimacy and place in the sector. Much of this challenge has, therefore been through the courts. However, the dependence on Eircom for information and support has also given the incumbents extra power in this relationship (that is not to suggest that the regulators have been captured or are powerless). As such, their response has also involved attempts to frustrate and delay the activities of the regulator in enabling competition and market entry with both involved in withholding or delaying meeting requests made by the regulators. As seen in this chapter, the incumbent has also used the courts as a means of delaying the introduction of industry regulation.

These challenges may be seen as a questioning of the strength and legitimacy of Comreg and as such, a challenge to the regulator's ability and competence and may be understandable to some extent given the fact that the IRAs in both cases were excluded from some of the major negotiations for industry reform.²⁶⁴ Following from this, the Irish case serves to highlight the dangers of hasty reform and the importance of designing robust rules and regulations as a foundation for the regulator's ability to carry out its responsibilities officially. The strength of such legislation, especially at the start of the reform process, is important in dictating the level of success or failure of the reform agenda as rules are implemented and the new regime takes its form. Additionally, the dangers of not equipping regulators with sufficient power and resources to demand respect and secure compliance from their charges stand out as another key lesson from the findings. A similar point can be made for the Jamaican case, especially in light of the unwillingness of that incumbent even to recognise the existence of the sector regulator in its first years; a step which it was able to take, thanks also to gaps in the IRA's founding legislation.

But while such challenges may be viewed as a threat to the regulator's ability, such actions may also help to heighten the transparency and efficiency of regulation. That is, these may force regulators to ensure it is more proficient and rules more robust, thus, indicating ways in which the regulated firm (in this case incumbents) also act to monitor the regulator and its

²⁶⁴ See note 137.

effectiveness. The roles of *regulated/regulator* are therefore, shown as fluid, with each group acting to check the power of the other.

The presentation also helps to indicate the ways in which regulation and its reform can be made more responsive to the context, that is, via constant adjustment and environmental conditioning as rules are designed or modified based on developments in the regulatory space. Therefore, as it became obvious that the court was being used to delay the regulator and competition, the rules were updated to remove such incentives for abuse as was done in 2002. Likewise, the 2000 Telecoms Act in Jamaica was important in plugging gaps in the OUR's founding legislation. On the other hand, it is also shown that even where rules may be well designed, they may still not realise their goals. In this case, the Court was still used as a means to frustrate regulation, thus dictating the limits of regulation and its reform.

Here, as in Jamaica, the use of the Courts appeared as the IRA's became operational and relationships formalised. This trend also emerged as the relationship between the firm and state became more open. The lesson here is that as relations become more open and transparent (symbolised in the emergence of the IRA) the incumbent in turn modifies its response, given the loss of access to politicians. In such an event, the court thus becomes the base from which the incumbent can maintain its control and presence in the sector. Given the resources and capacity possessed by Eircom (and C&WJ) it has been able to exercise this option more than other operators. Additionally, the slow pace at which proceedings go through the courts has meant that only firms with sufficient resources and time (such as the incumbent) have been willing to use this route. Thus, as the rules of the game change, the incumbent too is able to rethink its response and challenge regulation. Whether in monopoly or liberalisation, the incumbent is able to find ways to challenge regulation, making a case for the relevance of these findings. That is, where regulators can anticipate and understand the ways that incumbents respond to regulation before hand, they may be better placed to decide when and what strategy to utilise in order to secure compliance. Thus, where the incumbent is deeply entrenched, as in Eircom, more time would have been given in the early phase to allow for unbundling before liberalisation.

Likewise, as seen in the Jamaican case, an awareness of points of access and influences on the incumbent is useful in overcoming resistance from such actors.

Where the incumbent is unable to prevent reform and entry, it can make it difficult for entrants to compete successfully. This is seen for instance, in the pricing of products. Indeed, this marked one of the final phases in the incumbent's response to reform and is conditioned by a realisation that reform is a reality as well as an awakening to the fact that their ability to respond to reform is as much about its orientation and organisational capacity as it is about its ability to influence regulations, delay competition or call upon the support of other actors in the regulatory space. Additionally, the firm has also been subjected to various operational restrictions, which have challenged its role and position and in so doing, brought some change in the sector. This is seen for instance, in the change in bilateral relationship between state and firm and in the emergence of a triangular relationship (firm, government and regulator) in the late 90s. This has since expanded to include entrants and, as will be shown in Chapter five, a more dynamic role for customers.

Thus, while the incumbent was forced to exit certain areas of the market, particularly in the first few years of liberalisation, it has nonetheless remained an indomitable force in the sector. As has been shown its size and capacity have meant that in some instances, other smaller firms have been unable to compete especially where they are unable to meet the costs of interconnecting to the incumbent's network or to lay out alternative infrastructure. As such, sustained dominance is not only about the ability of incumbents (in this case) to reform and respond to change, but also the result of natural selection where smaller firms have been unable to keep up with competition. Furthermore, while the break-up of the incumbent was achieved in some areas (having lost its mobile and cable TV operations) the firm has also been allowed to re-enter the mobile market while unbundling has yet to be achieved, suggesting that rather than the disintegration that had been the aim, the incumbent is actually re-integrating and old arrangements are returning, with the re-nationalisation of Eircom. Such activities may ultimately heighten concerns around transparency and openness. The Jamaican incumbent also remains dominant in the fixed network, a position it will maintain for some time to come.

The presentation therefore, indicates ways in which incumbents respond to change and act to shape their operational space, particularly at the height of regulatory flux. In so doing, the chapter considers one of the areas that has been neglected in the literature on regulatory reform, i.e., why are incumbent firms still dominant actors in spite of reforms that have inherently challenged their positions at the head of telecoms. The firm's dominance has largely been based on its relevance to the Irish economy before reform and this has continued through the post-reform era. Importantly, the sustained dominance of this incumbent is largely linked to a number of factors related to the way it has responded to industry reform. Much of this involves skills, resources and sheer size of the incumbent. Beyond this it has benefited from the actions of the state as well as competitors. The lesson here is that the incumbent is not simply a taker of regulation but has been actively involved in influencing the course of reform and how it is regulated. In so doing, the incumbent has developed its responses and strategies for regulating itself, the regulator and the market in much the same way as the regulator develops its own list of measures to deliver more *responsive regulation*. Knowledge of such strategies can be important for regulators and policy makers when they are seeking to reconfigure regulatory regimes.

3.3.2 Drivers of Incumbent Response

This next section is aimed at discussing some of the main factors and agents influencing the incumbent's behaviour within the regulatory space, highlighting how these can inform regulatory choice, ending with an attempt to highlight the impact of this information.

Among the key factors shaping the incumbent's behaviour in both Chapters two and three have been the role of regulatory reform and the regulators (IRAs and government) in nudging large dominant incumbents towards making changes necessary for advancing efficiency, quality and effectiveness in their respective sectors. Thus, even where the extent to which competition exists can be challenged and where specific institutional concerns (e.g. economies of scale) may dictate the level of competition which small markets such as those of Ireland and Jamaica can accommodate, the threat of competition (facilitated by liberalization

and instruments such as RIO) is shown in these cases as being sufficient to achieve regulatory goals such as, increased transparency and overall increase in performance. Importantly, given the size and reach of the incumbents in such small states, overall sectoral performance (for instance, issues of standards, access and quality) may be more about the performance of the incumbent and the level of improvements that it is able to undertake than necessarily about the extent to which competition exists in a market.

What regulatory reform has done is to provide the incentives for incumbents to make the improvements necessary for increasing their performance, and by so doing the overall performance of the market. Following from this, the vibrancy of competition will also be determined differently in different contexts. Thus, for Ireland and Jamaica, a vibrant market does not preclude a dominant actor nor does it mean a host of providers must exist for the same service. Hence, as demonstrated in the Jamaican case, the mobile sector may be seen as highly competitive with the incumbent C&WJ and Digicel battling for market share and the struggle between the two being mediated by the existence of a third provider.²⁶⁵ Whereas this may not be an indication of a competitive market in a larger context such as the UK or US, as will be shown in Chapters four and five, customers in both countries have benefited from increased value, choice and lower prices even while some have chosen to exercise their choice by returning to the incumbent.

Regulatory reform (i.e. privatisation and liberalisation) and the activities of industry regulators as they seek to implement, monitor and enforce telecoms rules and regulation are presented as important in determining incumbent behaviour. Thus, much of the incumbent's activities have been in response to, or an attempt to comply with Comreg's prescriptions. These have helped in shaping the existing telecoms regime. These can be seen in Eircom's exit from the mobile market and the various service level agreements, as well as information that it has had to provide on its capacity and performance.

²⁶⁵ By 2008 four mobile operators existed with the last entrant battling with Digicel (now the dominant mobile operator) to gain access to its network (Observer 2008).

As it concerned the government more directly, this actor has over the two decades under study, assisted the incumbent in prolonging its dominance in the face of EU push for change either through its unwillingness or lack of haste in implementing various policies in the sector. As shown, government policy has not traditionally favoured disintegration of the incumbent or any move that could hurt its dominance. Ironically, nearly a decade after reform the incumbent has returned to government ownership and has begun re-integrating. On the face of it, the government's action in protecting the incumbent from competition may be understood as an instance of capture by the firm. However, this reasoning is less pertinent when the government's actions are taken in light of the importance of Eircom's monopoly for the economy. These areas represented the mammoth portion of earnings in the sector. The significance of Eircom's earnings and the government's role as owner up to 2001, meant it had an incentive to protect Eircom from threats to its dominance.

Indeed, there may be more ground to argue the 80s and 90s as an instance of a state capturing an incumbent especially since the incumbent (i.e. managers) did not request some of the protections and interventions made by the government on its behalf. Further, as will be shown in Chapters five and seven, it was not until the full departure of the state from the firm as owner that the incumbent initiated the most extensive internal reordering of its operations and structure. Thus, in this case, the government has more often than not been an enabler, helping the incumbent to maintain its dominance rather than necessarily, acting as a constraint to the incumbent.

But where the state has not always been willing to curb the incumbent's behaviour, external actors such as the EU have stepped in to provide the motivation, which has sometimes been lacking nationally. As shown in Chapter two, external actors are able to influence local regulation, where national desire or will is absent. Critics such as, Graham (2000: 118-127), Thatcher (1997), Scott (1996), are among those who have highlighted the role of the EU and its directives in shaping reforms in telecoms at the national level. The aim has not been to redo this work, but simply to illustrate the impact that these have had on the incumbent. As such, the findings here substantiate those of the critics, from an Irish experience, emphasising the impact

that these have had on the position of the incumbent specifically in supplanting local will as well as offering a template (via EU directives) for reform. In the Jamaican case, the WTO GATS Agreement and even the US have been influential in breaking the incumbent's hold over local telecoms.

However, external intervention was welcomed in Jamaica helping to fortify local regulators (Industry regulator and the Jamaican Government); thereby offering increased legitimacy and leverage against a large dominant trans-national incumbent. This source has however, been less welcomed in Ireland. Nonetheless, both countries have used the threat of action from an external actor to secure compliance from their incumbents, indicating the role of external/international agents of regulation where national regulators are unable to secure desired behaviour from their incumbents (or as in the case of Ireland, from the government itself). As such, international agents of regulation may be useful in offering regulators alternative regulatory strategies or additional leverage for modifying the behaviour of large dominant firms, such as the incumbents examined in this work. Both cases illustrate the dynamics and effects of external sources of regulation and how these play out in a national context. External actors are therefore shown as having a role in heightening compliance and modifying the behaviour of incumbents in particular markets.

But whereas the Jamaican government had a desire to reform the sector and sought to elicit the support of external actors in securing compliance from the incumbent, the Irish government appeared to have had less of an appetite for reform, most notably before 1997. The momentum for reform in Ireland was more from the EU with less buy-in from the government as it sought to protect the incumbent.

As in the Jamaica case, market pressures also come into play when considering the factors affecting the incumbent's behaviour and hence, the options that regulators have in regulating incumbents. As noted, some of the incumbent's activities have been informed by the threat of competition and the uncertainties that it faced. For instance, the threat of competition has seen Eircom engaging in anti-competitive practices aimed at increasing the difficulties for entrants. It has also spurred it into increasing its service and competitiveness in order to win

back and maintain its customer base. The impact of this is however, to be made more obvious in Chapters four and five.

It is argued that regulation and its reform may be viewed as among the most important factors driving the incumbent's behaviour (including the role of the EU). It could be argued that the pressures are not independent of regulatory reform and the activities of the IRA since the latter have been important in opening the door for customers and competitors to have a greater impact on the incumbents. Regulators are therefore able to influence incumbent's behaviour by modifying rules and incentives and restructuring the regulatory space to include more actors and competitors, who in turn place pressure on the firm.

However, not all the firm's behaviour has been about compliance or a desire to make the regulator's job easy. The many efforts made by the incumbent to frustrate the regulator suggest that Eircom has not always made the regulator's job easy. That is, the findings suggest that the activities of the regulator have been shown to be important in directing the activities of the incumbent. Nevertheless, there does exist some limitation on the impact of rules and regulatory reform since these are not always sufficient in engendering a more competitive market (e.g. in the local loop and the mobile market). Rather, persistent monitoring by the regulator to identify abuse, which may not necessarily come in the form of direct or obvious anticompetitive practice by the incumbent, must follow liberalisation. Further, as shown in the Irish case, the very presence of the incumbent in a particular segment of the market (as in the mobile market) may be enough to prevent entry, even where the rules allow entry. As such, responsive regulation may mean retracting the incumbent's licence to operate in particular segments of the market for a specific period (as was the case for Ireland) or indefinitely.

On the other hand, lack of competition (e.g. due to unwillingness to invest) is something that the regulator has less control over. Whereas it can apply rules, which will affect the incumbent's operations and market structure in order to create an ideal environment for competition, investors may still be unwilling or unable to enter the market (even with the incumbent's exit). As seen in the Irish mobile market, the incumbent's presence may not in fact be a deterrent to entry, since no operator entered the market after its mobile licence was

rescinded. Alternatively, preventing Eircom from re-entering the market for three years may have been too short a time to allow the build up of sufficient levels of confidence from potential entrants. However, as has also been argued, the costs involved in the licensing process may also have acted as a disincentive to entry. A solution may require action that goes beyond the activities of the regulator. For example, a specific response may be to offer financial incentives to entrants. For instance, the greatest threat to the Jamaican incumbent has come from Digicel, who received some funding from the WB.

Finally, these findings are important for a number of reasons. They show that it is not just the firm/regulator relationship that is important in determining the success of reform and the incumbent's behaviour. Rather, other factors such as the incumbent/entrant and incumbent/state relationship are also important. Following from this, pressure not only comes from the regulator, as in IRA, but others – here external actors. This suggests how far regulation and its reform can help to explain incumbent firm behaviour. As argued here, regulation is shown as an essential driver of incumbent firm behaviour, even if much of the latter's time is spent fighting this influence. Perhaps though, the fact that the incumbents in both cases have been eager (Eircom more than C&WJ) to challenge this actor is indicative of which actor incumbents view to be among (even) the greatest threat to its dominance.

Nonetheless, where the regulator is unable to carry out its task effectively given capacity or legislative gaps, then it can utilise these other drivers in carrying out its tasks. As such, it can be argued that what regulators need to do in dealing with incumbents is to understand how the different drivers and issues affect how they operate and how regulatory strategies can in turn be informed by the existence of such drivers. For instance, some of these (e.g. regulatory inputs and reforms) can be controlled by the regulator, while others (e.g. ordinary market pressures) may be uncontrollable. Where the regulator is faced with non-compliance, it may impose fines or prevent the incumbent (regulated firm) from implementing certain upgrades in the market as the Irish regulator has done.

On the other hand, while rules have been introduced to encourage competition, the market has failed to develop as expected given the existence of other factors, which the

regulator is unable to control. For instance, it is unable to force investors to enter the market though it can create the incentives to encourage entry. Indeed, the regulator's knowledge of these drivers may also prove instrumental in securing compliance, since it can appeal to external regulators and oversight institutions such as the EU for support. The ability to appeal to third parties in regulating the incumbent is also important in reducing strain or lack of capacity and legitimacy for a small operator. Borrowing support and legitimacy from regional regulatory institutions, such as the EU, therefore helps to reduce the cost and strain on the resources of local regulators.

A similar point has already been made for the Jamaican case. However, whereas Ireland benefited from its membership in the EU, accessing legislative blueprints and the enforcement powers of this actor (as a last resort in the compliance regime), Jamaica had to benefit more from the support of states such as the US and UK. This point may be indicative of the lack of presence of the local regional governance institution CARICOM (the Caribbean Community) when compared to the EU (see Payne and Sutton 2007; and Payne 1981 for a discussion of CARICOM and of the issues that have hampered the union since its formation in the late 1970s). This suggests that small states may in fact benefit from joint regional approaches which may help to lower the cost and increase the legitimacy of local regulation.

Such strategies can also prove important for withstanding regulatory capture. In fact, the ongoing battle between a firm and IRA may be indicative of the firm's failure and the regulator's success in avoiding capture. Further, even for those areas over which it has less control, the regulator can still create the conditions or incentives for the market and players to move in a particular direction even though it cannot actually force the incumbent or other actors to actually take its bait (for example, pulling the incumbent's licence in a particular segment of the market).

Finally, the chapter shows that the firm influences as much as it is influenced by regulation, affecting the timing and success of rules. This point hints at the complexity of the regulator's tasks as well as a reason for the incumbent's sustained dominance. Thus, regulation, as the regulated firm, can be a shifting target with the regulated firm (incumbent) shifting its

strategies and response in line with the regulator's activities. Indeed, such a reality would make responsive regulation a difficult task for any regulator, regardless of location or size.

3.4 Conclusion

The drivers or factors affecting the incumbent's behaviour have been shown to include external regulatory institutions including the WTO, the EU and its various directives. External influences also include countries such as the US, which dictate trends and patterns, which are followed by small and developing countries. In both cases, the regulators borrowed legitimacy, expertise and skills from external sources to bolster their legitimacy at home. Other drivers include competitive pressures provided by entrants and the threat of (and actual) competition. Regulation and its reform as well as the embodiment of these processes (IRAs) have also been shown as having a significant impact on the activities of the incumbents, with these setting the context and conditions which allowed for entry and competitive pressures to be brought to bear on the incumbent.

Both Chapters two and three have also highlighted the limitations of some of these drivers. For instance, not all of the incumbent's behaviour can be interpreted as an act of compliance with regulation, a point, which suggests some limitation to the extent to which regulation, itself can be successful or can modify the dominance of such actors. This helps to shed light on the continued dominance and success of incumbents and former monopolies after the introduction of reforms, which were aimed at modifying their control and positions of dominance.

The chapter also sought to make an argument for knowing how incumbents respond to reform and the ways in which their behaviour can be conditioned and compliance heightened, particularly when the object of regulation is a large, dominant, resource rich incumbent and the regulator a small resource constrained actor or where local will for limiting this actor is absent. Both the incumbents are therefore, shown as initiating similar strategies over periods which covered the years leading up to and after the implementation of much of the reform agenda.

Thus, there has been some change in the tactics used by Eircom (and C&WJ) in asserting and protecting its influence vis-à-vis other stakeholders as it moved from the prospect to the reality of reform. Thus, both are shown as attempting to warn against the possible adverse results of competition, then attempting to delay industry reform. However, as the firm recognises the inevitability of reform, it then seeks to direct the content of the reform process calling for a staged approach to liberalisation. The introduction of the independent sector regulator heralds a new phase in relations within the sector with this actor emerging as the main challenge and embodiment of the threats to be faced by the incumbent. Subsequently, the incumbent seeks out this actor challenging its authority and legitimacy, a practice, which heightens as the uncertainties and reconstruction of the sector is enhanced. This also involves the increased use of the courts to challenge the regulator's legitimacy and rulings, as a means of frustrating the activities of other actors. Additionally, this helps to seek clarity in regulation, demonstrate its strength and protect its dominance. These activities increase as the uncertainty and threats are perceived to increase. As will be shown in Chapters four and five, these then evolve into the incumbent's search for an organisational structure that would best equip it to operate in a changing operational environment. Therefore, its re-focus on internal structure can be seen as an attempt to enhance its responsiveness to the developments in its operational space as opposed to focusing solely on trying to control the actors and developments in this space. It has been able to accomplish much of these because of its position of dominance, its size and resources, all features of its incumbency and points, which are helpful in explaining the sustained dominance of incumbents after reform. Beyond these, it has also benefited from the protections received from government as well as from deficiencies in its competitors and IRA.

Additionally, Chapters two and three have collectively indicated that knowledge of the actors and issues affecting the incumbent's behaviour is therefore, an important way of strengthening local regulatory institutions, heightening the legitimacy and transparency of regulation, ensuring compliance, and for providing the motivation for governments to initiate reforms even where there is no political will. The presentation, particularly in Chapter two also makes a strong case for a consideration of individual states such as the UK in discussions on

global regulation and the impact that these have in directing national agendas in neighbouring countries. In the Jamaican case, international influence offered an opportunity for blame shifting, since the government could call on the agreements made with external multilateral agencies and its need to comply with rulings from states such as the US, as rationale for reform at the national level.

CHAPTER FOUR

EMBRACING REGULATION: INTERNAL REORDERING AS A RESPONSE TO REGULATORY REFORM IN C&WJ

4.0 Introduction

The firm's response to regulatory reform has been both internal and external. In the case of the latter, the previous chapters depicted the tactics and manoeuvres of incumbent firms in Jamaica and Ireland to proactively deal with the advancements in their operational space – advancements brought about by regulatory reform. Emphasis was on the modifications in its relationships, including those with line ministers, the independent regulator and competitors. The chapters depicted the ways in which regulators in small countries can increase their capacity and tools for regulating large dominant firms by increasing the size of the regulatory space as well as the compromises, which they sometimes employ in regulating such actors. Whereas the Jamaican case demonstrated the role of a powerful resource-rich firm against a small developing country, the Irish experience was more about how political forces can act to protect the incumbent (which also increases the role of customers). Additionally, the Irish case particularly illustrated the way changes in regulation lead to incumbents, identifying new arenas for demonstrating its dominance through the legal system.

However, the firm's response to reform is not only external, but may also be internal – organizational – as it attempts to reorder itself to remain successful in an operational space which increasingly became more competitive. Likewise, the internal response to modifications to be discussed in this chapter were about the firm's ambition to modernise as well as its obligation to comply with regulation with the pressure of competition (which also increases the role of customers) providing further drive for change.

As such, this and the following chapter depict the attempts of incumbents, C&WJ and Eircom, as they embrace, or internalise reform as a way of coping with changes in their operational environment from within. The focus on internal reform is essentially about going beyond the image of the firm as a monolith viewing it inside out. In other words, regulatory reform is not only about changes in the relationships and rules in the regulatory space. It has

also seen the reordering of structure, personnel, internal governance and ethos within the regulated incumbent.

More immediately here, attention will be placed on the developments within the Jamaican incumbent from the 1990s to the present. However, greater focus will be on the main period of regulatory reform 1997-2003 and beyond. This is the case for a number of reasons. Prior to this period the firm's internal activities were not so much about responding to changes in regulation since it was the main provider and as noted in Chapter two had little regulatory restraint from the state. Additionally, though bypass was an issue for the firm, competition was not yet a major factor in so far as state policy prior to the mid 1990s did not appear to support such a notion. As noted by Dunn and Gooden, the decision to form a new telecoms Act, following the uproar around the firm's attempt to enhance its exclusivity in the early 90s, suggested that, "no significant changes in the direction of competition and further liberalization [were] expected in this new legislation".²⁶⁶

Furthermore, it was not till the late 90s with the change in the Minister and ideology²⁶⁷ that the threat of competition took on new meaning for C&WJ. It is, therefore, in these later years that the firm took more strategic and decisive steps to reform itself internally in order to deal with the changes, which had begun to take place in the telecoms market. Finally, and even more importantly, it is during this period that it faced its most serious threats.

The chapter highlights the strategies that the firm has adopted internally in its response to regulatory reform. It shows how changes in the regulatory environment spurred C&WJ to reform its structure, size, the quality and quantity of its personnel and services, modifying its internal processes to heighten its ability to relate to its customers. Importantly, too while the chapter depicts how these changes and the need to comply with the regulator's directions

²⁶⁶ Dunn and Gooden (1996: 4). This was to be put on hold, only taking on new vigour in 1999 resulting in the 2000 Telecommunications Act.

²⁶⁷ The government had begun to change its view of its role in the economy much in the same way that other countries such as the UK and US in the 80s and 90s had stepped back from providing certain services directly. The new public management literature, for example, gives some insight into this ideological shift in government. See for example, Osborne and Gaebler (1992); Rhodes (1994; 1997); Lane (2000); Kettl (2000); Pollitt and Bouckaert (2000). This shift was also demonstrated in government's industrial policies (see for example, GoJ 1996).

resulted in modification of the firm's *modus operandi* it also shows how its activities were informed by a deeper advancement within the firm of the views and ideology governing or validating its operations. Beyond these practical lessons, the presentation also adds to the literature on regulation through its depiction of how industry reform can bring on a modernising impulse within a former monopolist and thus, how regulators can encourage incumbents to improve value and choice for customers by introducing and legitimising competitive pressure via regulatory reform on incumbents. The chapter closes with a discussion of the findings and conclusion.

These findings are important in so far as they depict the choices and options available to incumbent firms as they attempt to cope with the shifting rules, relations and other changes, which constitute a threat to, established market positions. In so doing, it offers an insight into the activities of former monopolists as they attempt to become leaner and more efficient in an environment of shifting rules and pressures. Ultimately, the power of such insights is their usefulness in informing the design of regulatory reform strategies and institutional mechanisms to anticipate and address the pressures that may come from dealing with dominant incumbents. The findings also advance an understanding of incumbency and of the creative strategies which these actors adopt when they have failed to prevent change, prevent entry or where capture of regulators is not feasible. Thus, in spite of its size a large dominant incumbent is able to utilise its assets (size, expertise and wealth) to reform itself in line with modifications in its regulatory space. Through these, it has been able to maintain its significance.

4.1 Organisational Reform as a Response to Industry Change

Having failed to prevent telecoms reform, faced with the threat of competition and loss of power as well as other external threats to its position by 1999, Cable and Wireless was forced to find new ways of operating in a redesigned space. The increased openness and transparency achieved through the establishment of new institutions (the OUR, the 2000 Act and other regulatory guidelines governing behaviour) also limited the ways in which C&WJ, had in the past, expressed its power in the sector. As such, certain unilateral decisions that had been seen

before were less the norm while it was to become increasingly less likely that the firm could count on politicians to simply change rules in its favour.²⁶⁸ Growing consumer disenchantment with the level of access, coverage, reliability and price by the end of the 1990s²⁶⁹ and the potential loss of profits were also to nudge C&WJ to rethink its organisation and operational ethos.

It has been aided in this endeavour given the experience and resources it possesses. That is, like other incumbents C&WJ is also a large firm with expansive resources and capacity.²⁷⁰ These have enabled it to initiate a number of changes in its operations and organisation that might not have been manageable in a smaller firm with less financial resources, skills and capacity. The three-year period before full liberalisation, also allowed the firm the time to make certain adjustments to prepare it for full competition by 2003. Thus, the firm's position as an incumbent allowed it some room to manoeuvre, in taking the necessary steps to move its operations forward. All in all, it is not so much about whether or not these strategies or ways of dealing with industry reform were necessarily unique given that these may in one form or another embody tactics that may be employed by other firms. Rather, in the context of Jamaican telecoms and the experience of incumbents (former monopolies), the extent and pace at which these modifications were undertaken was innovative. These reforms marked the extent to which the incumbent had shifted in its attitude and approach on how to maintain its position in the market as well as how to deal with impending threats in its regulatory space. Following from this, visibility, not just in telecoms, but also in the wider communications sector, has become more of a competitive advantage.

The prospect and reality of competition ignited a competitive impulse within the incumbent, nudging it towards acknowledging the need for a different type of action, one that would endow it to function more successfully in a liberalised environment. The resources and capacity it possessed as an incumbent and the additional time it had been awarded due to this

²⁶⁸ As had been the case when it had persuaded the government to expand its exclusivity over the sector under the old regime.

²⁶⁹ See Brown (2003: 3).

²⁷⁰ See Section 1.3.

status, allowed the firm to make important adjustments to its operations. The remainder of this chapter is dedicated to discussing these reforms. It concludes with an analysis and summary of the main arguments. But firstly, a brief review of C&WJ's internal/organisational operations prior to reform will be undertaken in order to allow for a full appreciation of the internal reforms, which the firm has undertaken mainly since 1999 and how these have marked C&WJ the monopoly from C&WJ the incumbent.

4.1.1 The State of C&W's Operations Prior to Reform

An outline of the incumbent's operations prior to reform helps to advance the case of industry change as an instigator for internal reform marking this period an important juncture in which the firm was forced to reckon with problems that had been glossed over during its monopoly years.

Prior to liberalization, the Company had various problems with its service, which was beset by frequent unplanned and unexplained breaks, a failing, which even the incumbent was willing to accept (C&WJ-AR 1998: 6). One complaint concerned the firm's slow pace in meeting requests for landlines. For instance, in 1990, the number of installed lines was 88,000 while unmet demand was almost the same as for the installed base (Noguera 1996: 5). An annual report from the OUR's consumer affairs department noted other problems faced by the firm. These included:

[S]everal substantial issues of concern, also including billing matters, that had caused customer discontent in the just completed year [that is, 1999]. These included *disconnections, unavailability of service, unscheduled interruption of service* and *community-wide issues* the most frequent of which was poor signalling related to its mobile phone service.

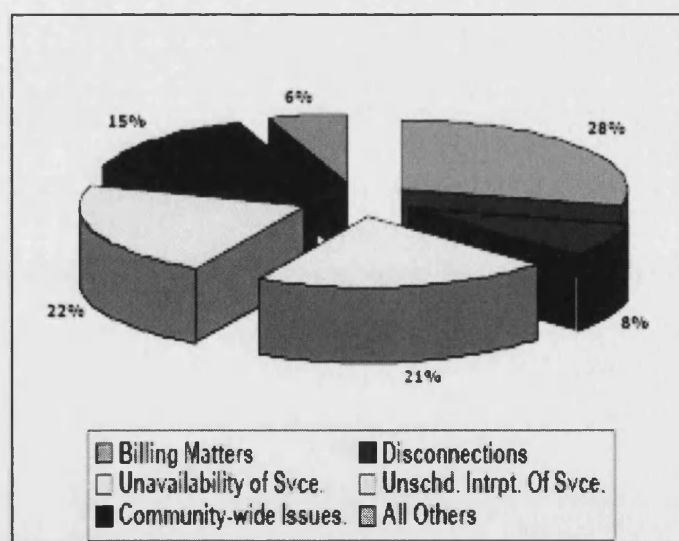
(OUR-CA 2000: 20)

These were compounded by problems of unmet demand; poor service also extended to mobile services where credit requirements, the high costs for handsets, and the tariff regime²⁷¹ meant

²⁷¹ This was based on a 'Receiving Party Pay' principle, which meant that the owner of the handset would pay for all incoming calls.

poorer customers were also denied access (Brown 2003: 4). It was estimated that at the start of the liberalisation process C&WJ had over 200,000 outstanding requests for line rentals (Interview: Senior official, C&WJ, Jamaica, March 20, 2007). Figure 4.1 gives further indication of the nature of complaints. For instance, in the 1999-2000 reporting year, the OUR noted that 21% of complaints concerned the unavailability of service, with unscheduled interruptions receiving 22%; billing complaints were the most frequently reported issue (28%). Overall, complaints about C&WJ's mobile service constituted around 22% of the total number of complaints reported against the firm (OUR-CA 2000: 20). Frustration with the slow pace in addressing these issues has since been given as an explanation for the rush to take up the services of its main competitor, Digicel when competition began in 2001.²⁷²

Figure 4.1: C&WJ Distribution of Customer Concerns – 1999/2000



Source: *Annual Report* (OUR-CA 2000: 20).

Customer dissatisfaction went beyond simply being a concern of its existing customer base. As one interviewee observed, telecoms and utilities in general tended to be an emotive

²⁷² Interview: Senior executive at C&WJ, Kingston, March 20, 2007. This happened even where the incumbent's rates were lower than Digicel's.

issue for citizens.²⁷³ The number of complaints reaching the various regulators on the cusp of reform underlined the extent of dissatisfaction against the firm vis-à-vis other service providers.²⁷⁴ This marked what was becoming an intense love-hate relationship between the Company and the public. And so, even though the sector had grown after privatisation the social outcomes of the first stage of reforms had still not been met.²⁷⁵

Issues that the firm had failed to deal with successfully prior to reform were thus, to become more pronounced (for example access to fixed lines) by the end of the 1990s to early 2000, as reform made these issues more pertinent. This was especially so since customers could now go elsewhere to meet their needs.

4.1.2 Network and Infrastructure Upgrades

Following from the above, one of the first areas to be addressed by the firm was the level of access to telephone lines. With the recognition that competition was around the corner, the firm had, from 1996, significantly stepped up its drive to increase its customer base by moving ahead with the issuing of telephone lines to customers.²⁷⁶ This is seen in the figures for 1996-1998 in Figure 4.2, where though experiencing a steady increase over the years, this period was to see rapid growth in the number of lines installed. Though the pace slowed in 1999 and 2000 this was to pick up once again in 2001. Here its installation rate increased by over 100% as it sought to increase its customer base. The rate at which the firm engaged in this task was even noted by the OUR, who described its efforts here as being, “quite dramatic compared to prior periods” (OUR 2001: 10).²⁷⁷

²⁷³ Interview: Current Manager of C&WJ Foundation who also has 30 years experience with the incumbent, Kingston, Jamaica, March 21 2007.

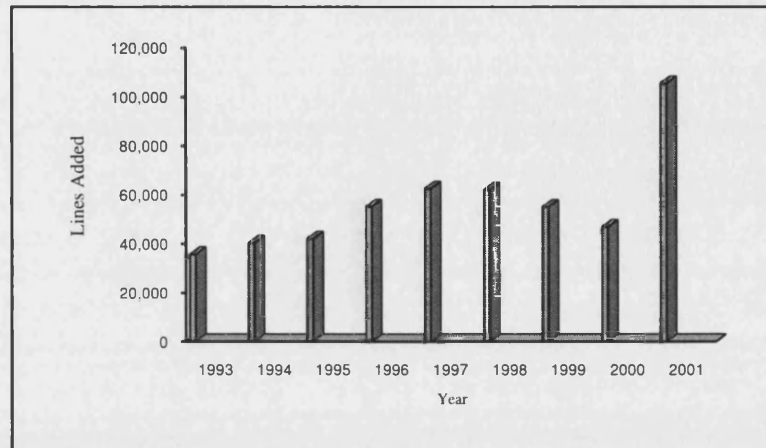
²⁷⁴ The majority of complaints lodged with the FTC against utilities companies in 1999 were also made against the incumbent (see OUR 2001: 9-11).

²⁷⁵ See notes 92 and 93. This was visible in the low level of teledensity on the island.

²⁷⁶ Thus, the suggestion is not that the attempts to improve infrastructure and service were completely new. Rather, the pace and extent of these moves only increased with the push provided by reform, indicating the value of liberalisation as a strategy for forcing reforms in large dominant firms.

²⁷⁷ The decline in these years could be explained by the increasing uncertainties in the telecoms market and the conflict between the minister and the firm, which also began in 1998. This shows the possible effect that market uncertainties and conflict between regulator and their charges can have on the latter's willingness to commit to future outlays in the respective industry. Furthermore, this decline may also be

Figure 4.2: Increase in the Number of Main Lines 1993-2001



Source: C&WJ (Various Annual Reports 1998-2001).

But in spite of this increase, since 1998 telephone access remained unchanged. Indeed, the obligation to increase the number of main lines was one of the pledges the firm had made to the government in Section 7 of the 1999 HoA. The incumbent failed to deliver on its promise instead reinterpreting its obligations to fit more closely with its desire to focus more on the area where it felt it needed to enhance capacity and competitiveness even more, its mobile service (Twomey 2005: 7). Thus, while increasing its offering of telephone lines the firm also adopted the strategy of simultaneously extending coverage of mobile services as a way of meeting the unmet demand in fixed landlines (C&WJ-AR 1998: 12; Twomey 2005: 7). This shift marked the firm's attempt to bolster its coverage in mobile services, given that this was to be the area in which it would first experience significant competition.

Thus, attempts to realise improvements in service standard and quality since the late 1990s were to see network improvement becoming a more central feature in the firm's operation. Consequently, it installed six new cellular sites in the main city of Kingston and surrounding areas while two new sites were installed in Montego Bay, the second city between

put down to the shifting emphasis in the firm as emphasis on upgrading its mobile infrastructure may have also caused some of the shifts in the level of fixed lines installed.

1997 and 1998. New switches were installed to bolster capacity across the island.²⁷⁸ It also began transforming its network from an analogue to digital system in 1998 to increase the reliability of its mobile service (C&WJ-AR 1998: 5 and 6).²⁷⁹ Emphasis was therefore, placed not only on increasing coverage but also on advancing technology and capacity (Green 2004) with Erickson Latin America being commissioned in 2000 to assist it in its bid to improve and expand the mobile network (C&WJ-AR 2001: 10).²⁸⁰ A fibre-optic ring was also built around the island, while the international satellite system was upgraded (C&WJ-AR 2000: 5, 10). These steps were to ensure that the Company's network was more robust and efficient.

Rewards were to come from these efforts as it witnessed growth in take-up in these areas, which helped to offset some of the costs of its restructuring exercise as well as help ease the overall effect of income loss from the renegotiation of the international settlement rates.²⁸¹ Thus, taking advantage of the potential for growth and augmenting revenues lost from the opening up of the sector the firm began to enhance its broadband capacity by commissioning a high-speed access node in order to increase efficiency and use of the Internet (C&WJ-AR 1999: 5). The Asymmetric Digital Subscriber Line (ADSL) network was also expanded to increase availability across the Island. This offering was to become one of the firm's more popular services (C&WJ-AR 1999: 12). Improvements in the Internet and data segments of its operations brought a 100% increase in revenues in these areas by 2002 while its mobile operations also brought increased earnings in that same reporting year (C&WJ-AR 2002: 5). The process for making collect calls locally was also simplified through automations. International roaming and wireless Internet access were also introduced in 2000 (C&WJ-AR 1999: 6).

²⁷⁸ Continued improvements in C&WJ's mobile network were to see it attaining a 47% improvement in the quality of its voice channel by 2002 and a 57% improvement in cell sites across the island (C&WJ-AR 2002: 6).

²⁷⁹ With 100% of the network digitalized in December 2000 (C&WJ-AR 2001: 6).

²⁸⁰ Green (2004).

²⁸¹ Indeed, the continuing losses from international call settlement had provided an incentive for C&WJ to step into gear to improve its network competence and competitiveness in the local market. See the company's annual report for 2002 (C&WJ-AR 2005: 5).

The growth of technology in the communications field was to have a marked impact on the firm's ability to modernise its operations.²⁸² For instance, this was to allow C&WJ to reduce its holdings, department size and personnel, given that it no longer needed the extensive equipment and space it used under monopoly (Interview: Senior executive, C&WJ, March 20, 2007). However, while the technology made some of the improvements practical and easier it is the reality that many of these developments in communications technology were not new and had been used to justify reform in other countries (such as the UK) over a decade earlier. It is suggested here that it was the reality of regulatory reform, which saw the firm's circumstances changing enough to make it mindful of the need to utilise the existing technology to enhance its business.

The drive for greater capacity and more advanced infrastructure also saw the firm stepping up investments as shown in Figure 4.3.²⁸³ Nonetheless, in spite of the increases witnessed over the years, spending had declined briefly in 1998, then rising slowly in 1999 (Figure 4.3). Interestingly, this decline also matched the years during which the firm arguably experienced its greatest uncertainty, given the growing contention between itself and government. However, expenditure was to take off rapidly again in 2000 when it began making much more serious attempts at improving its infrastructure and performance and then again in 2002 after a brief decline in 2001.²⁸⁴ This dip in investments also indicates the impact of uncertainties and turbulence in the regulatory space on incumbents. Namely, it may choose to reduce investments in the sector, especially at the height of such uncertainties until it receives some clarity or certainty as to the prospects of its operations. This again indicates the importance of accommodation and conciliation from regulators when dealing with entrenched actors. Beyond this, the increase in expenditure is significant in demonstrating the seriousness with which the firm viewed its need to prepare for competition. This allowed C&WJ to address

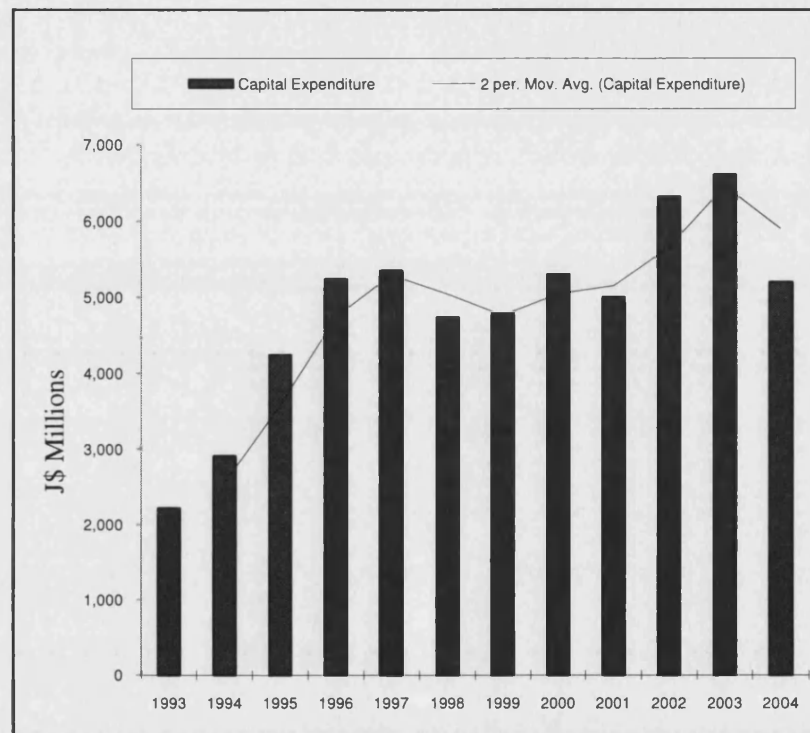
²⁸² For a discussion of some of these developments since the 1980s and their impact on the communications sector, see Hall (1993: 78-85).

²⁸³ For instance, capital spent was to move from around US\$70 million to US\$100 million by 1999 (Brown 2003: 3).

²⁸⁴ See note 276. The fortunes of the firm's main shareholder (C&W plc) had been adversely affected by the failures in other areas of its global business forcing retrenchment and a re-examination of its operations (note 433).

some of the main concerns with its mobile service (discussed earlier) with much of the investment being in this area (C&WJ-AR 1999: 12).²⁸⁵

Figure 4.3: Trend in C&WJ's Capital Expenditure 1993-2004 (J\$Million)



Source: Compiled from various C&WJ Annual Reports 1992-2003.

This increased spending on infrastructure for its mobile service also suggests the extent to which the firm had been behind in efforts to deliver this service at acceptable levels. Indeed, this is corroborated by members both within the local and head office of the C&W Group who noted in various interviews that the commercial focus in the 90s had not been on mobile services but rather on Internet.²⁸⁶ As such, the level of investment that had been necessary to keep the firm's service at an expected level had not been forthcoming. However, faced with the

²⁸⁵ C&WJ was therefore, intent on using its three-year grace period to enhance its competitiveness ahead of the introduction of full competition.

²⁸⁶ Interviews: Former senior staff at C&WJ, Jamaica, November 20, 2006; July 27, 2004; senior executive at C&WJ, Jamaica, March 20, 2007; present and former members of the senior regulatory team at C&W plc, London, February 22, 2007; March 26, 2007.

prospect of competition in cellular telephony at the end of 1999, the firm began increasing access to mobile telephones (see C&WJ-AR 1998: 5). By 2000 it had been noted that the firm's initiatives to raise its stakes in this area had seen it giving more access than its infrastructure could support (OUR 2001: 10). Ironically, the frequent disruptions in service caused by this haste were only to help in nudging more customers to its competitor's network when they did begin operating in 2000 and 2001. And so, by the end of 2001, the firm had been "caught out" by the pace at which competition had taken off in this segment of the market.²⁸⁷ Network improvements, therefore, marked an attempt by the firm to increase service and customer base ahead of full liberalisation in 2003. By addressing some of the more severe and longstanding complaints in the sector (e.g. access), the incumbent aimed to repair its image of being unresponsive and slow.

This section has shown how the threat of competition provided the push for C&WJ to initiate moves to improve its network. As shown in Figure 4.3, the majority of this increase was carried out up to 2003 when full competition began, again indicating the value of the extra three years in allowing the firm to prepare for competition.

4.1.3 Service Diversification and Improvements in Customer Care

The increased attention to infrastructure and network quality were seen as a means of increasing revenue options as the firm sought to diversify its operations away from a strict focus on traditional fixed services. The network improvements described above thus, not only related to service quality, but also allowed for an expansion in the number of activities, which could be accommodated on the firm's infrastructure. These improvements also related to the firm's ability to expand its services as well as to improve customer satisfaction. Through these improvements in infrastructure C&WJ signalled one of the more significant criteria for success

²⁸⁷ The provision of service to rural communities had also been an issue over the years and as such, this was one of the areas in which the firm sought to expand its service (C&WJ-AR 2001: 7).

in the new environment - customer satisfaction.²⁸⁸ Its customer service ethos has subsequently undergone considerable amendments as it attempts to pacify the public and its customers.

As noted earlier, one of the more prominent complaints against the firm was its level of customer service; a problem, which, as shown in Chapter three, also plagued Eircom.²⁸⁹ More emphasis has subsequently been placed on achieving greater quality in customer care and service options as a means of enhancing the C&WJ brand. This has seen customer service becoming a more essential aspect of the firm's operations from as early as 1997, when it stepped up outreach programmes aimed at improving the way it was perceived by the public.²⁹⁰

As noted by a representative of the firm,

the only way we can stay ahead in markets...is through effective sales and marketing and really understanding [that] it is the relationship with the customer which is key to everything...it may sound a little cliché to say that but it is true.²⁹¹

One of the key responses to the move away from its network has been to focus more on improving the quality and variety of its services (Interview: Market Researcher, C&WJ, Kingston, Jamaica, March 22, 2007). An articulation of its customer service approach was the introduction of different price plans to suit a variety of usage patterns, this in an attempt to increase products and payment options for its clients. This was reasoned as a move to lighten the impact of rebalancing on customers (C&WJ-AR 1999: 4 and 5). These include the low user payment plans, which were designed to accommodate different categories of customers, in both landline and mobile services. The Low-User Package introduced in 1999 saw a 50% reduction in line rental rate for customers on this plan (C&WJ 1999: 5). This was extended by 2001, at which point a total of seven cellular payment plans were in existence contrasting with the one

²⁸⁸ As one of its chairs noted in 2002, "our success will be based on our determination to maintain our long-term customer value propositioning" (C&WJ-AR 2002: 4).

²⁸⁹ Also see C&WJ-AR 1998: 6.

²⁹⁰ This programme was extended in 1998 across the island and saw managers and other company officials actively locating themselves in public spaces to talk to the public and introduce the firm's products. See C&WJ-AR 1998:11-12.

²⁹¹ Interview: senior member of regulatory team at C&W plc, London, February 22, 2007.

which existed prior to 1999.²⁹² These have seen customers having more choice as well as opportunities for reducing call charges based on their usage.²⁹³

Flexibility has not only been attained in service packages and charges but also in the area of bill payment. As such, an automated bill payment scheme (Easi-pay) was introduced in 2001. Through this scheme customers have been able to pay telephone bills over the phone (C&WJ-AR 2002: 7). More online payment schemes have also been introduced. The number of payment points has been increased while there was also a move to per second billing for mobile calls in 2002, moving away from per minute charging. Its main competitor, Digicel, had in fact adopted this approach first, indicating the direct effect of competition on the firm's strategies (Thompson 2002b). In accordance with Johnstone's observation on dominant firms in industrial restructuring, C&WJ also began partnering with other businesses to carry out its operations more efficiently (1999: 380). For example, circa 1998, the firm joined with local banking institutions and businesses in order to allow customers to pay telephone bills through the latter's branches (C&WJ-AR 1998: 6; 1999: 6). Direct debiting was also introduced in that same period. These moves were significant in reducing the time customers spent queuing in the firm's branches while allowing it to close some of its offices across the island (and reduce operational costs) (C&WJ-AR 1999: 12). In other instances, existing spaces within which the firm interacted with the public were improved to give a more friendly face to the public (Ibid). Thus, customers were now to play a more significant role in C&WJ's operations, with more effort being focused on increasing customer satisfaction.

Whereas service provision under the old regime was premised simply on C&WJ maintaining an "efficient" telephone service with not much direction as to what this meant the firm has since liberalisation, been keen on making specific guarantees to its customers. Its

²⁹² See OUR (2001: 26).

²⁹³ This attention to customer care also had another practical motivation. One former employee of the company noted for instance, that the first year of rebalancing had seen the average customer bill moving from around J\$1,000 to around J\$3,000 with an increase in disconnections in 2000 (Interview: Former employee of C&WJ, Kingston, Jamaica, June, 2001). It was therefore, in the firm's interest to ensure customers were offered more ways of managing their usage, reducing the extent to which the firm would be hit by non-payment. Additionally, the growing availability of mobile service as an alternative to landlines provided incentives to seek ways of reducing the risk of customers giving up their landlines and switching to competitors' network.

service level agreements have been among the improvements made.²⁹⁴ Such promises have subsequently seen the incumbent offering the most competitive rates to its mobile customers (Interview: Market Researcher C&WJ, March 22, 2007). Further, in a gesture, which also indicated the reorientation in the firm's operational ethos, services that had previously been offered freely, were now to incur a fee. These included directory assistance, which for the first time in 2002 saw customers paying J\$10, this as the firm moved towards finding ways of improving its resources given losses from the decline of its international profits (see note 134).²⁹⁵

Whereas complaints of poor service or abuse of dominance against the Company had increased in the late 90s, these had been reduced by the first year of liberalization. For example, of the major utilities (including, water and electricity) regulated by the OUR, 41.7% or 647 complaints were registered against the firm at the end of March 1999. By March of the following year this had been reduced to a third (324), with this reducing even further to 27% or 206 in 2001 (OUR 2001: 9-11). This can be construed as tangible evidence that the Company had adopted better management practices successfully strengthening its customer orientation profile. In this way it has proved that it is able to make modifications to suit the specifications of any market – closed or open. The impact of regulatory reform in opening the way for competition, which allowed a greater role for customers, can be seen. Arguably, the desire to become more competitive and the threat of customer retreat provided even more motivation for service improvement than any direct instruction on customer service may have had on the incumbent.

Its efforts to increase the quality and variety of service saw it advancing its ownership over important areas in the sector. However, increases were more strategic than in the case of the Irish incumbent where expansion was more wide-scale and counter-intuitive to the efforts to reduce costs and increase efficiency (See Chapter five). As such, C&WJ's undertakings and advances were more measured and fewer in this instance. One of these moves to expand its

²⁹⁴ See note 86.

²⁹⁵ Thompson (2002a).

operations and spread its tentacles throughout the sector was its decision to extend its control over Jamaica Digiport International (JDI), taking full ownership of this subsidiary in 1999 (see C&WJ-AR 1999: 34; 2000: 24).²⁹⁶ Extending its ownership over this Company was thus, to see the incumbent controlling one of the main gateways for competition on the island, further increasing dependence on C&WJ's network.

These have also helped to introduce more flexibility in the incumbent's processes, particularly in the way it interfaces with clients. In so doing, it has been able to position itself in the market as a dominant force in spite of the introduction of rules, which challenged its security and privileges to an end. These also have had the effect of improving customer service. The emphasis on quality and variety ultimately related to the desire to increase its competitiveness with regulatory reform having paved the way for this new emphasis.

The reforms discussed so far were largely related to network or infrastructural improvements. Others relate to improvements in service options and customer care, suggesting that incumbents can be responsive and are able to adapt to change. The discussion further shows the ways in which C&WJ adjusts to reform, namely by addressing areas of its operations that it had been less willing to update prior to industry reform. These include its capacity and the introduction of more choice in its offerings. In so doing, the sections have also shown the effect of the reform of industry rules and structure as incentives for an incumbent to improve its network and services in a way it had not been willing to do in the past - neither at such rapid pace nor to the extent described.

4.2 Organisational Restructuring

There are also those strategies, which relate more specifically to the incumbent's organisational structure (e.g. personnel, management) as well as its image. These make the case for considering large regulated firms as flexible, adaptable actors in the regulatory space. Like the efforts described above the reforms to be discussed were aimed at improving services,

²⁹⁶ See OECD (2003: 9). This had been established to provide information-based services such as data entry and telemarketing to businesses, particularly free zones and offshore firms operating on the island (C&WJ-AR 2007; ToJ 1988: 4).

introducing more variety and competitiveness and in the end help the incumbent to deal with change. But whereas these former efforts related mainly to network and service the reforms in this case were more generally aimed at addressing issues relating to management, organisational responsiveness, cost reduction, reshaping the operational culture with downsizing and out-sourcing becoming important strategies.²⁹⁷

To respond to the poor customer service affecting the firm and as a way of preparing itself for competition, C&WJ initiated steps to improve its interface with its customers from 1998. This involved some amount of internal reorganisation and restructuring implicit in the creation of a Customer Service Division in 1998. The firm was to quickly realise gains from this revitalized approach to customer service. By the end of that year for example, it had succeeded in reducing the time it took for customers to pay bills moving from an average of 45 to 10 minutes.²⁹⁸ This was achieved in nearly 90% of its business offices (C&WJ-AR 1998: 6). By the end of the following reporting year, this had been reduced to approximately 6 minutes (C&WJ-AR 1999: 5). A call centre was also built in order to shrink its response time to customer queries (C&WJ-AR 1998: 6). A second call centre was commissioned in 2000 resulting in a bigger and more centralised customer care unit (C&WJ-AR 2000: 5). The aim was to reduce the time and increase the ease of conducting business. C&WJ subsequently realised an increase in its response speed after it managed to reach a 98% answer rate to calls coming into the Centre with 90% of these being answered in 20 seconds or less (C&WJ-AR 1999: 12).

Information and knowledge of the market also took on a new role in the firm's operations as it sought to increase capacity to gather and assess market information to guide its operations. The Integrated Communications Services Division which was created between 1998-1999 was for instance, charged with coordinating activities in data and new media services such as, email and Internet (C&WJ-AR 1999: 4).²⁹⁹ A Business Intelligence Unit was also

²⁹⁷ Much of this has been covered in the New Public Management literature (see note 267). This, in much the same as governments have been said to have trimmed down and shifted their tactics for managing and governing economies in the 80s and 90s.

²⁹⁸ This was still not enough to prevent complaints, as shown in Figure 4.1.

²⁹⁹ The retail functions of this division were later given to the Retail Services Division in 2000 (C&WJ-AR 2001: 6).

established to monitor the evolving needs of the market. The unit gathered and monitored customer information through the use of tools such as surveys. These focused on getting feedback on the firm's products, brand awareness and perceptions relating to the firm (C&WJ-AR 2001: 7). Here C&WJ sought to minimise risks through increased forecasting and assessment of its operational space with market research becoming a more prominent feature of its operations (Interview: market researcher at C&WJ, March 21, 2007). In particular, this allowed it to access information to aid the design of its programmes in a more calculating way, increase its ability to forecast demand and assess the effectiveness of advertising campaigns (Ibid.).

This improved form of engagement with the public was extended through the addition of focus groups and seminars, which have helped it to increase the visibility of its products and services (C&WJ-AR 2002: 6). As such, the value of information and the way the company actually collects this information has changed in recent years. While making it more difficult for the firm to control what was happening in the market, these efforts increased the need to collect market data as a means of managing and controlling emerging risks using these data to inform the way it organised and resourced itself in a post-reform era.

Organisational restructuring was to continue into 2000 with the creation of a number of departments and teams at the end of that year. These all represented the streamlining of various departments and the amalgamation of various tasks that had formerly spanned a number of different departments, representing the downsizing that Johnstone highlighted as a response to reform (1999: 380). These departments included firstly, a Network Services Division (NSD) with responsibility for coordinating engineering functions within the organisation. Through this the firm began transforming its network to improve its IP (Internet Protocol) and data base services. A Customer Support Group was also formed within this Division, its responsibility extending over all 'customer-facing' activities within the NSD. This group was charged with giving more focused attention to satisfying customer needs (C&WJ-AR 2001: 5).

A significant aspect of the firm's new customer-focused regime was the establishment of a Retail Services Division in 2000, created to improve relations between the firm and its

clients. Among its responsibilities was the development of new standards and services that could be delivered by the firm, while consolidating retail activities previously disparate (C&WJ-AR 2001). Finally, a *Risk Management and Revenue Assurance Group* was established in 2000. This would effectively serve as a revenue protection body, securing the firm's assets and business operations against potential threats or uncertainties. This helped C&WJ to reduce its size and streamline by reducing its holdings in fixed assets acquired in previous years. For example, as the company sought to reduce its property, the value of leased assets moved from J\$19,781 million in 1999 to J\$14,967 million in 2000 (C&WJ-AR 2000: 29). Indeed, these measures represented the increased uncertainty of operating in a post-monopoly era and the incumbent's attempt to exercise some control over these by increasing its ability to monitor developments in the market and ensure that its operations evolved accordingly.

4.2.1 Increase in Internal Regulatory Capacity

Whereas the firm had ignored the OUR in its early years, its relationship with this actor and with regulation was to change significantly from 2000. This change was to be mirrored not just in its increased dealings with this actor as seen in Chapter two but importantly in the firm's internal reorientation as well. As such, one of the most significant additions to C&WJ's structure and personnel in 2000 was the establishment of a Legal, Regulatory and Policy Division (LRPD) (C&WJ-AR 2001: 7). The Division was to, "proactively participate in deliberations on Government policy matters that may have an impact, directly or indirectly, on C&WJ's operations" (C&WJ-AR 2001: 5). As suggested in Chapter three, the Irish incumbent in maintaining its visibility in the sector has also adopted a similar tactic. This adds strength to the argument suggesting that the firm has now placed more stake on the strength of legal persuasion as opposed to informality and direct routes to the minister.

Prior to regulatory reform the firm could be said to have been a more "engineering led business".³⁰⁰ Thus, even though the firm had a corporate lawyer prior to 1998, there had not been much emphasis on enlarging this capacity internally prior to liberalisation since expertise

³⁰⁰ Interview: Senior Regulatory staff at C&W plc, London, February 22, 2007.

could be hired from outside the firm (Interview: senior executive at C&WJ, Kingston, March 20, 2007). Legal and regulatory affairs were thus, not necessarily seen as an important part of the firm's strategic planning. Legal and regulatory affairs only came in for attention where necessary. However, the establishment of this division marked recognition of the increasing relevance of legal and regulatory expertise.³⁰¹ With the move towards regulatory reform, this area became one of the "number one value driving issue" with which the firm had to contend from the late 1990s.³⁰²

Thus, the LRPD has emerged as a result of a number of movements in the telecoms sector. The establishment of this Division has been influenced by the renegotiation of sector rules and subsequently, a greater degree of oversight since the late 1990s. These have meant that regulation has taken on a new value within the firm's operations. So from having one lawyer on staff, the incumbent has since taken on approximately nine lawyers in the LRPD with additional capacity still being secured externally.³⁰³ The LRPD was charged with participating in discussions affecting policy, directly or indirectly and ensuring that the firm keeps up with the increasing legal requirements brought on from regulatory reform (C&WJ-AR 2001: 5).

The firm's future is also now more dependent on the quality of its regulatory team. So much so, that the head of the regulatory division not just in C&WJ but the wider C&W group is now a part of the senior management team (Interview: Senior Regulatory staff, C&W plc, London February 22, 2007). As a consequence, the firm is now "armed to the teeth" with technical and regulatory expertise to provide effective oversight of the firm's businesses and monitor the rules in the sector (Interview: Senior executive, C&WJ, Kingston, March 20, 2007). Regulation has since become one of the top priorities in the firm moving from being a side issue, buried under other departments to having its own place within the firm's organizational structure.

³⁰¹ This was substantiated by the then minister for telecoms, who also noted that there had been a shift away from a focus on technology, to the legal arrangements governing the sector (Interview: then Minister of telecoms, Kingston, Jamaica, January 6, 2005).

³⁰² Interview: Former member of the senior regulatory team at C&W plc, March 26, 2007.

³⁰³ As will be shown in Chapter six C&WJ has also benefited from skills in the regulatory expertise of its head office in London.

Demonstrated here was the increasing relevance that the external environment was having in re-ordering the firm's priorities and outlook, internally. As the number of rules and claims on the firm have increased, so too has the firm's requirement of legal and technical expertise. The firm has had to relate to more actors, including the regulator and entrants as well as, draw up agreements (e.g. RIO) by which entrants will access its network. The culture within the company has, therefore, changed with gentlemen's agreement being replaced by legally binding documents. Furthermore, increase in the size of the legal and regulatory Department is also related to the number of legal challenges, which have increased against the Company over the years and as it also challenged others including the government.³⁰⁴ As such, the need to comply with regulation has necessitated the increase in internal legal and regulatory expertise as much as this has been about the firm's ability to police the sector to ensure that the activities of entrants do not contravene the legal rights and privileges which C&WJ has as the incumbent (e.g. bypass).

This expansion may at first glance appear inconsistent when placed against the continued downsizing exercises of the firm given that numbers are being increased even while overall personnel size is being reduced. More than that though, is the demonstration of the firm's will in shifting the balance in internal skills and capacity away from areas that are archaic or that have been muted by competition. Instead, regulatory reform has necessitated new skills and competencies in areas such as regulation and marketing indicating the shifting demands and preoccupation within the firm.³⁰⁵

This heightened preoccupation with regulation and regulatory reform is also demonstrated in the Company's annual reports. These underscored the modifications in the reality of the firm's approach and preoccupation over the years. Policy and regulation and the

³⁰⁴ These have been discussed in Chapter two.

³⁰⁵ The heightened relevance of legal and technical expertise has not only been felt by C&WJ but on other actors as well with smaller operators viewing the incumbent's capacity here as a threat. Nonetheless, as has been shown others such as Infocannel, though small, have been willing to make a show of strength in this department. However, the significant difficulty in all these is that C&WJ has been able to retain a full time and sizeable legal team. Up to 2005, its competitor, Digicel had one person who was in charge of regulatory affairs though it was also willing and able to outsource what legal and technical expertise it needed (Interview: Head of regulation at Digicel, Kingston, Jamaica 2005).

impact of these on the firm were ignored in former reports. Since 1998, however there has been growing coverage of the subjects.³⁰⁶ The change in the firm, consequently seen in its reporting mimics the evolution in the national debate taking place in the sector, again demonstrating the impact of the external changes on the firm's internal mission and organisation. As such, the reports have been keen to point out the impact that the changing regulatory regime both nationally and internationally were having on its relations with regulators as well as the impact of these on internal structure and capabilities (C&WJ-AR 1998: 5).

4.2.2 Personnel Reforms

Further, with the creation of new Departments at the end of 2000 and ongoing restructuring, the firm has managed to reduce its staff complement in order to reduce its overall costs and improve efficiency, even while increasing numbers in areas such as regulation. Thanks to a number of redundancies during the main adjustment years of 1999-2002, staff numbers declined by 1,100 (Table 4.1).

However, as the figures show, this type of modification did not end there, as personnel size was further revised downwards by 450 in 2004, as the firm continued to experience uncertainty. The continued downward movement of personnel corresponds with the firm's search for an appropriate staff compliment to maximise efficiency and savings as will also be seen in Ireland. Overall, the firm has moved from employing over 4,500 prior to liberalisation, to 3,207 in 2001, 1,694 in 2005 and 1,300 in 2007 (C&WJ-AR 2001: 23; 2005: 30; Interview: Senior executive at C&WJ, Kingston, Jamaica, March 20, 2007; Edwards 2001).

³⁰⁶ See for example, C&WJ 1998; 2000.

Table 4.1: Staff Reduction in C&WJ 1998-2004

Year	Redundancy
1999	230
2000	*
2001	297
2002	608
2003	60
2004	450

Source: C&WJ Annual Reports 1999-2004 and *Jamaica Gleaner* February 18, 2004.

Key: * Figures unavailable.

A fundamental component of the downsizing programme has been the turn towards contracting or outsourcing, especially of those services that were not necessarily directly related to telecoms provision.³⁰⁷ Since 2000, more activities that had been carried out in-house were to be hived off, including the wiring of customer premises (C&WJ-AR 2001: 7). Much of its fleet of vehicles was also sold and its garage department slashed (Interview: Senior executive at C&WJ-AR, March 20, 2007). Contracting out allowed the firm to continue reducing the number of processes and tasks carried out in house, simultaneously lessening the need to sustain the number of staff that it had under monopoly. In so doing, it could concentrate on those activities more essential to its operations and competitiveness.

Through the firm's intervention, staff made redundant was later retained by some of the new companies to whom the incumbent had out sourced its services (C&WJ-AR 2001: 7). The approach to downsizing was governed by the desire to lessen dislocation among staff that had been made redundant. But even with the reduction in the size of its staff, C&WJ remains one of

³⁰⁷ Interview: Senior executive, C&WJ, Kingston, Jamaica, March 20, 2007.

the largest employers on the island (Interview: Senior executive at C&WJ, Kingston, Jamaica, March 20, 2007).³⁰⁸

The effect of the uncertainties since the beginning of sector reform is not only depicted in the downward movement of staff and contracting out but is also mirrored in the pattern of changes in the firm's senior management (Table 4.2). From 1991-1998, C&WJ had the same chairman in the form of Mayer Matalon, the man credited for having successfully negotiated for the government in 1987 (Interview: Former senior staff at C&WJ, January 6, 2005). But then as shown in table 4.2, the position of Company chair was to change a total of four times from 1998 to 2000.

Table 4.2: Company Chairmen of C&WJ

Chair	From	To
Mayer Matalon	1989	1998
Carl Grivner	1998	1999
Donald Reed	1999	2000
Robert Lerwill	2000	2003
Leonardo de Barros	2003	2006
Rodney Davis	2006	2007
Phil Green	2007	Present

Source: C&WJ Annual Reports 1998 – 2007.

The composition of the firm's Directors was also to change frequently due to retirement, terminations and resignations between 1998 and 2002 (see Table 4.3).³⁰⁹ The number of Directorial posts also declined from an average of 14 prior to 2000 to about 10 since representing the further reduction in size.

³⁰⁸ Indeed, in a population of 2.7 million 1,300 direct jobs as well as indirect employment through out-sourcing makes the firm a significant contributor to the Jamaican economy.

³⁰⁹ Also see Observer (2001a; 2001b); and even later – Observer (20003b; 2003c).

Table 4.3: Number of Directors Serving C&WJ 1997-2006

Period	Number of Directors	Number of Resignations
1997-1998	14	3
1998-1999	15	5
1999-2000	14	6
2000-2001	10	1
2001-2002	9	0
2002-2003	10	2
2003-2004	10	1
2004-2005	10	2
2005-2006	11	2

Source: C&WJ Annual Reports 1998-2005.

The resignations from the board in the 1998-99 and 1999-2000 period underscored the internal turbulence the firm had experienced during these years as it attempted to remodel itself in the face of threats to its position and also as it sought to locate the skills and competencies that would help it to move forward. Again 1998-2000 (Table 4.3) reflected the difficulties faced by the incumbent in the regulatory space. As noted by one interviewee, the firm had not always been successful in getting the right mix of leadership and staff quality in the period immediately following liberalisation (Interview: Senior executive, C&WJ, Kingston, March 20, 2007). The levelling off in the post 2000 period (Table 4.3) suggests that the firm was beginning to get this balance right. The change in senior management was therefore, informed by the need to secure the experiences and individuals more aware of the need for change and competition in order to assist C&WJ to shrug off its monopoly outlook (Ibid.).

This point is also substantiated in changes in the skills set of its senior team over these years. One of the first and more obvious shifts, and one that has been dealt with in more detail in this chapter, was the growth of its in house cadre of legal and regulatory expertise with this eventually gaining prominence by being placed in a separate department. The background of its senior staff has become more varied, with personnel not necessarily from a telecommunications

or engineering background.³¹⁰ Rather, skills, such as sales and marketing, areas outside the traditional focus of the company have become more important (Interview: Senior executive, C&WJ, Kingston, Jamaica, March 20, 2007).

This shift in preoccupation was made even more explicit when three members of the management team who had been with the company since its early years, were replaced in 2001.³¹¹ This was done in order to facilitate the entry of individuals with more specific experience and skill in customer care, marketing and sales. Such a practice was in line with the reorientation in the firm's strategies, specifically its view of customer service and skilful marketing as areas of competitive advantage over newcomers in a post-liberalised regime. This trend was not always supported universally throughout the ranks of senior management.³¹² Consequently, the team leading the firm in 1998 was not the same that emerged when the liberalisation process was completed in 2003 with a total of 11 leaving the incumbent between 1998-2000 (Table 4.3).³¹³ These have been among the more obvious alterations in the make-up of skills and competencies since reform, as C&WJ seeks to "create a better alignment between the market segments that are emerging and the relevant expertise available within the organisation" (C&WJ-AR 2002: 6).

Restructuring in the early years of adjustment not only modified management structure in terms of skills but also saw a reduction in hierarchy (C&WJ-AR 1999: 5). This process was extended through to 2002 when, through downsizing and convergence, the firm had six senior managers, whereas in 1998 there were nine. This was again to climb³¹⁴ but even so, this indicated a constant search for the right skills and organisational structure to meet the needs of the firm and to equip it to face the uncertainties brought on by operating in a space characterised by a mix of new rules, actors and customs. It is within this context as well that some positions

³¹⁰ This was revealed from a review of the skills and experiences of most of its existing board members and senior executives. See C&WJ-AR (2006 : 6-11).

³¹¹ See note 309.

³¹² Ibid.

³¹³ Only one of the senior management team members with the company in the early 1990s was still on hand in 2006 (C&WJ-AR 1997-2006; corroborated by an interview with a senior executive from C&WJ Kingston, March 20, 2007).

³¹⁴ C&WJ-AR (1998-2006).

had experienced frequent shifts throughout the main reform years (1998-2002) as shown in Tables 4.2 and 4.3. Even more, whereas company management and board members have been mainly foreign nationals, this has shifted since 1999 with more nationals heading up such posts.³¹⁵

As hierarchy has diminished, emphasis on results and delivery has also heightened with managers having more responsibility for performance. Thus, with the frightening pace at which its main competitor, Digicel entered the market in 2001 and with the realisation that it lacked sufficient capacity to compete effectively, C&WJ took the decisive step of firing the head of its mobile arm (Simpson 2001).³¹⁶ Such a move stood out even more in light of the sustained underperformance in this area over the years.³¹⁷ Quality had therefore, taken on new significance for the firm. Not only was Digicel making great strides in this market, but take-up in this area also suggested that this was where C&WJ would be waging its most serious battle for dominance. It is within this context that the very rare measure of letting a manager go under such circumstances was taken. This practice has become less unique since 2001 as more individuals entered and exited the firm - as demonstrated in the changes in senior management structure (see Tables 4.2 and 4.3). The result has been a greater degree of accountability and responsibility for meeting set targets (C&WJ-AR 2001: 7). Thus, as new individuals took over the position of company chair, these were also removed or replaced based on their performance, again demonstrating the increasing results-oriented approach adopted by the firm.

Readjustment therefore, had not only been about staff cut but also about addressing the quality and skills of its personnel. This retooling was to take place not only among senior management as specific efforts were made to retool and retrain staff. Training has been guided by the need to build a more informed and knowledgeable staff, particularly in the area of customer relations (C&WJ-AR 1998: 6). This again was allied to C&WJ's efforts to improve

³¹⁵ Around 100 foreign nationals had made up the senior management team in former years; by 2007 this had been reduced to approximately 15 (Collister 2007).

³¹⁶ This decision had come the weekend after its mobile services had crashed causing major embarrassment for the firm especially in the face of its campaign to lure customers away from Digicel (Simpson 2001).

³¹⁷ Users of its mobile services had been experiencing poor quality and expensive service for years with mobile phones being marketed as a luxury item (Interview: Senior executive, C&WJ, March 20, 2007).

customer service by enhancing staff's ability to respond quicker to customer requests and bill payment. The Learning and Development (L&D) team has been instrumental in this regard. Through this team human resource development has taken on a new dimension as C&WJ sought to enhance skills and competencies (C&WJ-AR 2006: 7).

Other measures included the introduction of a *Crew Activity Management* software, which enabled the firm to coordinate and place its technicians in the field. Through this it has secured improvements in the responsiveness of its technicians. New equipment was also introduced to enhance the responsiveness and accuracy of their decisions (C&WJ-AR 2002: 7). These also illustrate the growing use of technology to assist the incumbent to become more responsive and the increasing attention to customer care.

4.2.3 Brand Renewal

Over the years, the firm has tended to play a positive role in the country, thanks to its benevolence. In this way, it also acted as a partner with the government by assisting it in carrying out some of its responsibilities to govern the country (Interview: Head of C&WJ Foundation, Kingston, Jamaica, March 22, 2007).³¹⁸ These acts of benevolence and the firm's long history in Jamaica and the rest of the Caribbean had seen it developing the image of a paternal figure throughout the region.³¹⁹

This legacy has however, not all been positive.³²⁰ By the end of the 1990s the firm found itself having to grapple with the perception that it was an archaic structure that was not able to contend with modern times (Interview: Market Researcher, C&WJ, Kingston, March 21, 2007). Indeed, this had been one of the issues that had seen a swell of support against the firm. These perceptions had led some observers to describe the firm as a "damaged brand",

³¹⁸ Assistance has covered areas such as sports and education. In fact a former head of C&W once noted in a speech, that C&W was the biggest corporate citizen in the West Indies having made significant contributions to islands such as Jamaica over the years (in Hope 2001).

³¹⁹ This image is best described by a former chair who noted of C&WJ, "...We have been here for well over one hundred years, been a major enabler for economic activity and growth; played a major role in the development of the social fabric through the strong belief in our corporate social responsibility and are committed to being here now and in the future." See Hope (2001).

³²⁰ Specifically, its poor customer service and low network quality in its mobile service already outlined in this chapter.

particularly given the early losses it incurred in mobile services and its level of unpopularity in the late 90s to early 2000.³²¹ These legacy issues were to follow the firm into liberalisation and, ultimately, affected views on the quality of the C&W brand.³²² It did not help either, that the firm had at this point appeared to be fighting against the opening up of Jamaican telecoms, an act which served to do some damage to the firm's image on the island (Interview: Then Minister of Telecoms, Kingston, January 6, 2005).³²³

Thus, one of the most significant issues with which the incumbent has had to contend has been the need to change the image it inherited from its years as a monopoly, especially when faced with entrants who had no such history. This therefore, emerged as one of the more significant areas in which the C&WJ has shown that as a large incumbent firm, it is capable of accepting change and even more of changing itself swiftly after years of lethargy. Further, the moves to be discussed in this section also demonstrate that not all of its activities are directly related to the regulator's instructions, but a desire to remain current.

One of the first moves towards revamping its image involved the firm changing its name from Telecommunications of Jamaica to its more recent incarnation – C&WJ.³²⁴ The decision to adopt the C&W title for all its operations around the globe in 1998 was seen as a positive move from a marketing standpoint.³²⁵ That is, C&WJ was recognised as a global brand with an established presence in telecoms, a point, which was viewed as an advantage in an age where more new firms were emerging more rapidly thanks to the developments in communications technology. As it later observed in its annual report, success was to be defined by its ability to shift “the attitudes and cultures towards the business expressed by staff, customers and business partners” (C&WJ-AR 2006: 14).

While acknowledging the importance and longevity of the C&W brand, the firm was forced to go even further in revamping its image as a way of attracting customers. This was to

³²¹ Interview: Deputy Director-General of the OUR, London, 2003.

³²² Interview: Senior executive at C&WJ, Kingston, Jamaica March 20, 2007. This was not helped by the difficulties being experienced in the parent company at that time (see Chapter six).

³²³ See Chapter two.

³²⁴ C&WJ-AR (1998: 4).

³²⁵ Interview: Former senior member of regulatory staff at C&W plc, London, March 26, 2007.

take place most visibly in the re-profiling of its mobile operations, one of the places where it faced the most serious threats and where quality and service had been an issue. Thus mobile operations were re-branded under a new name - '*B-mobile*' as it sought to step away from the negative image of the past.³²⁶ The company colour for this segment was also changed.³²⁷ Indeed, some of the moves here could be linked to the requirement to maintain separate accounts as laid out under the 1999 regime.³²⁸ However, the extent of the re-branding went beyond regulatory requirements, possibly suggesting that this was not simply about compliance but also an attempt to distance this area of its operations from the negative aspects of the C&WJ legacy.³²⁹

Re-branding did not end with the firm's mobile operations but was extended to the remainder of the firm though not to the full extent seen with '*B-mobile*'. Specifically, corporate philanthropy became a more strategic aspect of the firm's operations with increased donations being made by the firm.³³⁰ In a move to institutionalise this area of its business, the C&WJ Foundation was established in 2003 as a way of bringing more organised and strategic focus to the firm's benevolence.³³¹ This represented the firm's attempt at formalizing this practice of gift giving while using corporate social responsibility as a tool for changing perceptions and heightening its profile on the island. This came through an acknowledgement that it had not always underscored the full extent of its involvement in Jamaican society.³³²

Brand loyalty has also become more critical since reform has meant it is no longer the "only kid on the block".³³³ Activities have also been focused on its attempts at capturing allegiances and sympathy, not of the OUR/regulator, as may have been the case prior to the late

³²⁶ Interview: Senior executive, C&WJ, Kingston, March 20, 2007.

³²⁷ This was changed from the customary blue to yellow-green, marking a deviation from the trademark colour sported by the Company.

³²⁸ But as noted in Chapter two, the firm had yet to do so up to 2005.

³²⁹ These moves were therefore, influenced by a recognised need for "something new" and in keeping with the demands of the local market". Interview: Senior member of regulatory team at C&W plc, London February 22, 2007.

³³⁰ For instance, in 2002, this had reached J\$45 million, representing a 50% increase over the previous year (C&WJ-AR 2002: 8).

³³¹ Interview: Manager, C&WJ Foundation, Kingston, March 21, 2007.

³³² Ibid. The Foundation's activities are wide-ranging, but its main emphasis has been in education, offering free computers and Internet to all Government-aided schools on the Island with some of these being updated to broadband since 2005 (C&WJFoundation 2006: 1; C&WJ-AR 2006:61).

³³³ Interview: Manager, C&WJ Foundation, Kingston, March 21, 2007. Also see C&WJ-AR 2000: 5.

90s, but now more about appeasing clients and the public. The establishment of the C&WJ Foundation noted in this section was one way that it has sought to build this loyalty.

The use of advertising and marketing has also been key in its bid to change its image and coordinate its response to reform.³³⁴ This has emerged from the realisation that the strength of its future performance lay in its ability to appeal to younger users, especially in mobile communications.³³⁵ The extent of its advertising and marketing was to be stepped up as the intensity of competition increased from 2001.³³⁶ From 1998 C&WJ had acknowledged that, “one of the activities that the company encourages is the introduction of our services to the younger generation, as early as possible” (C&WJ-AR: 12). However, it was not till the entry of competition that its efforts in this area gained momentum.

Fixed services were increasingly to come in for attention after 2002 and attention to the mobile network and competition in this area had seen less attention being placed on this area of activity after 1999.³³⁷ Indeed, the value of this area had declined rapidly over the years with the number of fixed lines being far outstripped by mobile subscription.³³⁸ Ironically, where liberalisation has been touted as a means of increasing access to telephones, this has arguably not been the case here where the emphasis on mobile competition has seen declining take-up

³³⁴ Advertising has thus increased as the firm aims to sensitise the public to its range of products (Williams 2004). Around 2001 mid-way the liberalisation process, the firm waged an advertising campaign reminding Jamaica of the contribution it had made to the country over the years. The video laid out its vision for the future, suggesting the benefits that were to accrue to the country and citizens through their continued support and C&WJ's success. The emphasis placed on the *Let's Keep in Touch* campaign can be gleaned from the quality of the video produced, which won a national award in that same year (C&WJ-AR 2001: 12). The Company's annual report describes the video as featuring “heart-warming images of caring, togetherness and communication among persons from all walks of life, [which] has enjoyed immense popularity with Jamaicans locally and overseas” (C&WJ-AR 2001:11).

³³⁵ See Williams (2004).

³³⁶ Only Digicel is able to command as much attention. Its ability to buy more airtime than other entrants and its knowledge of and how to utilise the popular culture to increase its visibility were an advantage. This was marked by more frequent use of figures from popular culture in their advertising campaigns. Not only did the firm hire these entertainers for individual marketing events but it also began tying some into long-term contracts as spokespersons for the firm. Indeed, this struggle for prominence through sponsorship was to lead to one of the more serious squabbles between Digicel and C&WJ. As each sought to stamp its mark on West Indies cricket individual players were signed up to deals with each operator, which prevented them from accepting any endorsements by the other operator. This was a difficult position given that even while one operator had signed individual players, the other was overall sponsor of the West Indies cricket team leading to a series of claims and counter claims between the two sponsors (Naraine 2003; see C&WJ 2004).

³³⁷ See Twomey (2003: 7).

³³⁸ By 2003 the number of mobile subscribers was nearly 1.5 million in a population of around 2.5 while there were only 450,000 fixed lines (Brown 2003: 5).

and a lowering in the level of teledensity on the island (even as regional averages continued to rise).³³⁹ This indicates a failure in regulatory design and the limits of industry reform where little incentives exist to encourage investments in all areas of the sector.³⁴⁰ In this instance, at least, liberalisation appears to have had a regressive effect on the telecommunications sector. For instance, it has introduced measures to give users more control over their monthly expenditure, with door-to-door sales tactics being introduced to target customers.³⁴¹ There has also been more variety in the mode of communication with customers, as well as an ongoing search for different approaches and techniques for keeping existing customers and attracting new ones.³⁴²

With advertising and market research taking on more significance over the years the firm has been able to heighten its visibility in the telecoms market after the early battering suffered at the hands of Digicel (Interview: Market Researcher C&WJ, 22 March 2007). Through these means the Company was able to make itself appear to be more dynamic and understanding of the communications needs of a population that was increasingly aware of choices and quality of services it could access. Pronouncements of the demise of 'brand 'C&WJ' may therefore have been a bit premature at the time.

Key to the firm's response in this area has been its size and resources, which have allowed it to engage in the level of marketing that other operators in the market have not been able to match. Digicel has been the only one to come close to or match its dominance in this regard. Even so, the incumbent's knowledge of the culture and relations within the society has enhanced its ability to coordinate its response to sector reform and to make appeals to the nation's sentiments. This has been demonstrated in the firm's use of popular entertainers and

³³⁹ Local teledensity had peaked at 19.8 % in 2000. Main stations in service also witnessed declines since liberalisation receiving a 13.2% reduction in 2002 (436, 890) over 2001 (487, 729) (WB 2005: 46).

³⁴⁰ Ibid.

³⁴¹ C&WJ-AR 2006: 12; 27. These moves saw the introduction of a prepaid service for home phones. C&WJ also returned its attention to its fixed network adding over 28,000 new fixed lines in 2006 (See C&WJ 2006-AR: 12).

³⁴² For example, music, athletics and golf have been used to appeal to different category of users from young people, to businessmen. Gifts and 'give-aways' have also formed a part of this strategy to build brand loyalty (Interview: Market Researcher at C&WJ March 22, 2007).

athletes in its campaign as well as its references to its years of operations and benevolence.³⁴³

Given the strength of the firm's marketing and brand, the presence of other operators besides Digicel has not been as visible in the sector, hence its continued success.³⁴⁴

The effect of industry change on the firm's brand and image has been visible in the way it communicates with the public and shareholders as seen in a review of the formatting of its annual reports from 1988-2007. Prior to 1998, when the firm's position was still intact, the reporting style tended to be more formal with little or no emphasis or coverage of entrepreneurial activities outside the firm's operations. This was to change by 1998 when the reporting style in its annual report began to include a focus on the firm's largesse and gifts throughout the country.³⁴⁵ In an effort to increase the visibility and 'human face' of the firm, it also began including pictures of its managers and other representatives interfacing with the public. It is perhaps not pure coincidence that this change in tone and format came about in the late 1990s, at a time of increasing uncertainty in the telecoms market and during its most turbulent relations with the state.³⁴⁶ Subsequent reports have continued to highlight this 'softer side' thus, demonstrating the effect that competition and sector reform have had on the firm over the years.

Attempts to re-brand its image were also matched by further modifications in the incumbent's language and approach to its customers. Thus, phrases such as "relationship management" and ambitions of "exceeding customers' expectations", were to become more obvious in its discourse (C&WJ-AR 2001: 5).³⁴⁷ It was also in 2002 amidst fierce competition

³⁴³ See for example, C&WJ-AR 2001.

³⁴⁴ C&WJ has therefore been able to overcome the more negative images from its past with its own research on the success of its strategies showing heightened sensitivity and awareness of its services and the C&WJ brand (Interview: Researcher at C&WJ, March 22, 2007).

³⁴⁵ As the firm began emphasising its role as a model corporate citizen, pictorial highlights emphasising its good relations with the public and its many donations in areas such as, education and sports also became more of a feature.

³⁴⁶ It is worthy of note also that this revamping was also heralded by a re-branding of the local firm from 'Telecommunications of Jamaica' to 'Cable and Wireless Jamaica Limited' in February 1998 as C&W Plc sought to unify its operations around the world. See Cable and Wireless Jamaica Limited (1998: 10).

³⁴⁷ This is similar to efforts of incumbents such as, Deutsche Telekom, who faced with liberalization and losing market share in the 1999 into the new millennium found itself closely managing the kind of information that came from the organization. So much so, that it was eventually accused of eavesdropping when it attempted to monitor calls between its staff and the media given fears that sensitive information was being leaked (BBC 2008).

from Digicel and its effort to reshape its profile and operations that the incumbent more obviously began to affirm its role as a 'corporate citizen' in the published annual reports (See C&WJ-AR 2002: 5).

4.3 Embracing Regulation: Internal Reordering as a Response to Industry Reform

The previous sections have demonstrated that reforming the rules and structure of the telecommunications sector not only leads to changes in the regulatory space, or environment within which firms operate, but is also responsible for changes within the internal organisation and structure of incumbent firms. This has occurred as the incumbent attempts to adjust internally to meet the challenges brought on by the upheavals in its operational environment. Changes in the rules, structure and motivations within the regulatory space meant established patterns, structures and ethos within the firm also became outmoded. Thus as industry reform became more of a reality, C&WJ began a process of re-orientation or co-evolution to enable it to become more efficient, responsive and economic. In this way the incumbent is shown embracing regulation, not in the sense of capture; rather this is more in line with the presentation in this chapter, namely, C&WJ's internalisation of regulatory principles and the extent to which it has used regulatory reform to drive improvements in its operations.

The effect of industry reform on the capacity and structure of the firm was very visible in the new departments created but mostly so in the emergence of a department solely dedicated to regulation. As will be shown in the next chapter, the experience here stands out from those in Ireland, where that incumbent sought to extend its size and ownership as an immediate response to reform. Indeed, the development of capacity in this area is directly linked to a number of developments in the regulatory space and in the firm's experience with other actors in the sector, indicating the effect of the external operational environment on the internal organisation and structure of the regulated actor. C&WJ's experience and history of legal challenges being waged against agreements that it had concluded with the government may have nudged it to develop internal legal and regulatory capacity. Failure to secure explicit legal boundaries around its rights in 1988 had resulted in challenge to its authority. The failure to ensure that its

exclusivity had been confirmed in the mid-1990s instead of simply accepting a gentleman's agreement on the matter suggests a second reason for the emphasis on developing its own internal regulatory capacity. Additionally, the culture that emerged on the eve of liberalisation was more confrontational with the cordiality that had been witnessed between firm and state receding. This was to be replaced with mistrust on both sides. Thus, the move towards greater emphasis on technical and legal regulation may be seen as indicative of this situation in which gentlemen's agreements were less the norm and less trust existed among the main parties.

Further, as more operators entered the operational space more cases have been brought against the firm and likewise, it has also had to resort to the courts, a point which helps to understand the growing internal regulatory capacity. Given the extent of C&WJ's involvement in designing the new regime (through the HoA), it has had a lot to gain from ensuring proper policing and that breaches did not occur, hence the need to police the activities not only of entrants but also those of the industry regulator. Collectively, these have given the incumbent a reason for developing its own regulatory capacity, indicating the extent to which reforms in the external regulatory space has affected its internal organisation and motivation.

The distance placed between the firm and the state by privatisation and regulatory reform have seen the incumbent building a more competent technical and regulatory team internally that is more aware of the formal rules of the game. As such it is now more adept at dealing with an independent regulator and is more focused on tracking and monitoring developments in the sector specifically to assess their relevance and implications for its operations. In this sense, the incumbent is even more proactive than in former years as it seeks to keep abreast of its rights and privileges under the new regime. Furthermore, the advancement here is truly indicative of a cultural shift under the new regime where informality and cordiality have been replaced by legal and technical intelligence, transparency and accountability in relations.

The reforms were also to raise certain issues relating to governance at a number of levels within C&WJ. The first point related to its internal organisation and management as seen in the reduction of layers to reduce some of the hierarchy in the firm. Linked to this was the

decision to give individual managers more autonomy and responsibility for results and performance. Indeed, at times this meant replacing senior staff who had been with the firm from the 1980s with “outsiders” who were less set in a culture and mindset that had come with operating in a monopoly. These new comers to the firm were from more varied backgrounds outside the telecoms field, but that had gained prominence since industry reform.

Internalisation may be demonstrated in a number of ways highlighted in the findings. Overall, C&WJ has been motivated by the recognition that it could no longer simply rely on its name or history to gain customers or engender brand loyalty, particularly since its relations with the public and ministry had taken a turn for the worst. Even more, with the growing indication that liberalisation would be introduced in the sector at the end of the 1990s, C&WJ realised it had to do more about addressing those aspects of its service that had been problematic in the past. These internal modifications have included the introduction of new payment packages, increased access to products and service offerings, new departments and skills. These changes emerged as the company continued to restructure itself to become more efficient and responsive to the requirements of competing in a new environment with even more demands. These improvements have seen C&WJ being marked out for the increases it had achieved in its efficiency and for improvements in rationalising personnel.³⁴⁸

These internal modifications were also to have an external impact in so far as they affected relations between the firm and actors in its operational space, including clients. Thus, according to a market researcher with the Company, the firm has been able to change its image from that of a “stodgy” to a more “hip” firm (Interview: C&WJ 22 March 2007, Kingston Jamaica). Chapters two and three showed that of the main actors affecting the incumbent’s behaviour in the regulatory space, customers were among the least. However, as it regards the incumbent’s internal drive, this was to become one of the most important drivers in Jamaica as in Ireland, as will be shown in Chapter five. As Hancher and Moran have observed, consumers are able to determine which competitor has been successful through choice (1989: 201). This

³⁴⁸ Gleaner (2003).

has served ultimately, to increase the value of consumers as determinants of incumbent firm strategies and behaviour in the post-reform era.

This process of internalisation is also seen in its emphasis on customer service. So not only did the firm change in terms of its structure and ethos but also the way in which it communicated with and utilised consumers and the public. As demonstrated for example, in its re-branding and the changing tone of its advertising campaign, C&WJ had gradually begun to converse with the public on a new level, viewing customer service as more integral to its survival and ability to plan and forecast future needs and trends in the market. By finding new ways to engage with clients, gauging customer satisfaction and market needs it could avoid the surprises it met in the first year of competition in mobile telephony where customers left for its competitors even where prices in the latter were more expensive. Events here went beyond the dictates of regulatory policy, demonstrating the effect of actors and relationships outside that of the regulator-regulatee dyad as a motivator for the incumbent firm's behaviour. The value placed on customer care and marketing suggested that the firm was moving away from the problems it had been known for under monopoly to becoming more responsive and adaptable.

However, its survival was about more than simply addressing complaints such as access to telephone lines and service quality. As shown in this chapter the incumbent has been more willing to initiate meaningful changes in its operations, focusing more resources on managing its internal modernisation programme. The change in the internal structure, rules and response of the firm were to be seen, for instance, in its establishment of new departments. Key here has been its emphasis on hiring specific skills to buttress its internal regulatory capacity. Thus whereas Souter (1994: 44) suggested that regulatory reform may compromise the quality of training given the attention to costs, this has not necessarily been the case here. Rather, emphasis was placed on increasing the quality and experience of staff, importantly with the firm seeking these outside of the communications sector. Attention was placed more on increasing training and capacity in those areas (e.g. sales, customer service and marketing) that took on new significance with competition and increasing consumer demand.

The effect of regulation may also be seen in attempts to place some distance between itself and its mobile operations. However, as argued, the extent of these activities were not required by the OUR. This incident illustrates the limits of regulation in two ways. Firstly, there are limits to the extent that industry regulations are able to condition the behaviour of regulated firms. The separation required here was more about separating accounts as opposed to such structural separation. As noted in Chapter two, the firm has been less willing to comply with this requirement. Secondly (and relatedly) not all the incumbent's activities are a direct response to regulation by the IRA. That is, this move indicated an internal recognition of what was needed to increase its operations in the mobile market.

All is not lost for IRAs however. Firstly, such information and awareness can help regulators to identify those instances (e.g. those described here) where its intervention may have little effect in order to devise alternative strategies for reaching the regulated firm. This is where knowledge of the factors affecting incumbents' motivations and operations (as outlined in Chapters two and three) may prove useful in obtaining the end that direct regulation by an IRA may be unable to obtain. In such cases, the tactic may be to unleash the forces that would provide incentives for firms to adopt change. Thus, as seen here, changes in rules allowed for competitive pressure (from entrants) and consumer choice to have a greater role in pushing internal reforms that have benefited the overall market, arguably more so than a requirement simply to invest or improve service might have done. Nonetheless, this makes it difficult to separate regulation from such market pressures in accounting for firm behaviour, given the role of regulation in opening the gates and legitimising processes such as entry. Responsive regulation is therefore not about IRAs going it alone or doing things directly, but about creating an enabling environment in which other processes and actors can condition the behaviour of large dominant firms, especially where resources and balance of power may not permit the IRA/government to directly challenge the firm successfully. This follows from the assertion in Chapter one, that regulation is also carried out by actors other than the state and IRA and that the relationship between the incumbent and other actors in the regulatory space is also important in considering how firms respond to regulation and change.

Furthermore, the findings go beyond the competition and compliance literatures to suggest that a response to competition is not only about pricing and preventing entry, but also about the efforts to respond at the level of organisational change and human resource adjustments, not capture. These considerations are much more than simply a question of compliance or not. The message was that service was in fact improved and more responsive to customer needs; not old, slow and unresponsive; hence, its ability to remain relevant post regulatory reform.

As a lesson for regulators, the findings illustrate the importance of good relations between regulators and regulated firms. Thus, compliance is not only about whether rules are weak or strong but also the extent of cordiality, which may exist between the two. As seen in Figures 4.2 and 4.3, investments dipped in 1998 and 1999, while increase in lines also dipped significantly in 1999 with both periods representing some of the more turbulent years in the firm's relationship with the government. This had also been the case in 1961, when then owners of the JTC had refused to invest in the sector until the terms of its licence had been concluded (Spiller and Sampson 1996: 47-48). Where regulation and its reform are fraught with uncertainties and contention, this may prove a disincentive for further investment. It is therefore not surprising that the firm began increasing its investment after industry structure had been worked out. This may also explain the government's emphasis on protecting incumbent's market and willingness to give seemingly liberal terms (as shown in Chapter 2).

4.4 Summary and Conclusion

"Liberalisation is now in [C&WJ's] rear view mirror" as it has now begun to move forward with its business strategy.³⁴⁹ However, the onset of liberalisation and competition promulgated by regulatory reform continues to be a defining episode in C&WJ's history given its significance in shaping its present and future. The threats brought on by industry reform forced the incumbent to devise a strategy that involved it changing from within as opposed to simply seeking to modify the rules and policies in the regulatory space. A complete cultural and

³⁴⁹ Interview: senior member of regulatory team, C&W plc, February 22, 2007.

operational shift has subsequently, taken place throughout the entire firm, in line with changes in its operational space. Focusing on the incumbent firm in this crucial period of reform is useful in understanding the impulses and pressures it faced as well as its strategies and tactics in moving forward to maintain its relevance.

In summation, a number of lessons or themes emerge from the presentation of the internal strategies adopted by the incumbent as it seeks to adjust to reform. The main story is about how regulatory reform stimulates change in former monopolists and incumbent telecoms firms. Within this realm, five main approaches or tactics have stood out. Firstly, and one of the more significant strategies was the increasing emphasis on growing legal and regulatory capacity. Secondly was the simultaneous increase of attention to advertising, sales, branding and market research as the firm sought to step up its public relations machinery to increase its visibility and profile in the sector. Third, was its attempt to increase its network capacity and the quality of its infrastructure. The approach to customers and customer service, which became more strategic and focused marked a fourth and related visible change in the firm's approach. Finally, the emphasis on reducing size and scope (as seen in the reduction of the size of its personnel, ending free directory assistance and outsourcing, even while attempting to assert its position in newer telecom services (IT and mobile), marks the fifth pattern observed in the firm's response.

The firm's tactics were not necessarily strictly about cutting its scope willy-nilly but rather about taking a more strategic approach by increasing its presence in more profit-generating areas, while stepping back from some of its undertakings in its former incarnation as a monopolist (e.g. wiring customers' premises and divesting itself of certain assets).

As it concerns regulatory design, the findings illustrate the importance of engineering reforms in rules and legislation and how these can lead to more successful regulatory results. That is, by unleashing the force of competition by giving consumers a greater role in the regulatory space through choice, the IRA/government has been able to indirectly spur behaviour modification in the incumbent that has resulted in benefit for consumers. This indicates ways in which regulators can create certain incentives and increase value for consumers. Following from

the above, the findings illustrate the processes of co-evolution, which take place between the firm and its regulatory space, mainly with environmental changes (i.e. evolution in the rules, structure and make-up of the regulatory space) acting as the decisive driver in spurring organisational and behavioural change.

Internal reform is therefore, seen as another coping or response mechanism adopted by incumbents when faced with changes in their operational space. Thus validating the worth of regulatory reform in re-orienting the motives and ethos of monopolies and increasing transparency in the regulatory space. Such a principle has value beyond the present discussion on telecommunications to its larger application on how to shape behaviour in other areas of economic and social life.

Finally, it is not so much that these tactics, or those to be discussed in the Irish case, are unique to the incumbent firm, or about whether it has ever adopted every strategy discussed. The point here is that the pace and breadth of these reform are unique in such firms and that these came about as a result of industry reform, which brought about the opening up of the telecoms sector. The next chapter considers similar issues as it relates to the Irish incumbent, Eircom, albeit that these developments, in the case of Eircom, have come about in a round-about fashion. The important point here is that the developments in both cases had a fairly similar end, in spite of regional and developmental differences.

CHAPTER FIVE

EMBRACING REGULATION: INTERNAL REORDERING AS A RESPONSE TO REGULATORY REFORM IN EIRCOM

5.0 Introduction

The following chapter discusses the ways in which the Irish incumbent, Eircom sought to prepare itself for industry reform in the late 1990s. It also examines the strategies used by the firm to adjust to reform particularly in the years after full privatisation in 1999, bringing forward the discussion from Chapter four on the Jamaican incumbent.

As with the previous chapter, the present discussion shows that, faced with significant modifications in the rules and structure of their markets, regulated incumbent firms will look inward to restructure their internal organisation to meet the challenges posed by these market shifts as a way of heightening their competitiveness and ability to monitor and track developments in the sector. Particularly, this is where the firm's ability to directly influence and shape the content of sector rules and policy is reduced. Like the previous chapter, the analysis also invites a more complex view of regulated incumbents and the ways in which they respond to change.

As in Chapter four, the Irish case depicts the ways in which incumbent telecom firms have managed to maintain their dominance in the face of increased risks and unpredictability wrought by regulatory reform. In this way, it advances the story of regulatory reform beyond the focus on public policy, beyond the point where new legislation was passed and beyond the focus on independent regulatory agencies to consider how regulatory change is internalised by the incumbent. Here, the *impact* of policy and legislation enacted to secure industry reform, and *how* these have unfolded in the firm's operations are the significant items of interest. In so doing, the particular ways in which incumbents have managed to hold on to a significant share of the market in the face of these threats becomes clearer.

The chapter is organised along the lines of Chapter four. As such, attention is placed, firstly, on describing the nature of the incumbent's operations prior to reform as a way of setting

the context for considering the ways in which regulatory reform have affected the firm. The chapter closes with a discussion and summary of the main findings.

5.1 Internal Response to Industry Change

Redrafting of rules and relationships in the regulatory space has been crucial in nudging Eircom towards reforming its operations and rethinking its strategies. Collectively, the reforms presented here have been hailed as being unlikely had it not been for the changes that had been attained in the telecoms regime mainly since 1997 (Interview: Senior official, Eircom, Dublin, November 10, 2003). These include privatisation, liberalisation and the establishment of an independent regulatory body.

5.1.1 The State of Eircom's Operations Prior to Reform

The improvements to be discussed in this chapter were important for a number of reasons. Like the Jamaican incumbent, the relationship with customers was not always ideal prior to regulatory reform. For instance, customer satisfaction had also been affected by inaccuracies in the firm's billing practices.³⁵⁰ Problems here related to faults in its equipment. For instance, metering and cabling errors saw call charges from some customers showing up on other users' accounts.³⁵¹ Prior to reform, criticisms were also levelled at the way in which consumer complaints had been handled. Its approach here was simply described as 'unsympathetic' (see for instance, Yeates 1993).

Like the Jamaican incumbent, Eircom also faced an inability to meet the demand for its service, given the backlog in filling line applications.³⁵² This practice went against the spirit of the 1992 EC directive on telecommunications.³⁵³ Though no specific time was given within this

³⁵⁰ As occurred when a customer received a bill for (Irish) £15,000 for usage from October 1985 to March 1986 but was unable to get a response to complaints lodged with the firm. The matter was eventually resolved through the help of the Ombudsman who noted that the individual's pattern of usage did not suggest that the customer's bill could be that high (Office of the Ombudsman 1994).

³⁵¹ Office of the Ombudsman (1995).

³⁵² Office of the Ombudsman (1998).

³⁵³ Regulation 4 (2), "European Communities (Telecommunications Services) Regulations, 1992", S.I. No. 45 of 1992.

Directive, it nonetheless noted that requests for leased lines, should be fulfilled within a “reasonable period” and Eircom’s delay was viewed as going against this principle. In other instances, the firm would cancel line applications with little information to clients about the reasons for such action.³⁵⁴ Customer service was therefore, not one of Eircom’s strong features.

A series of scandals surrounding management’s use of official power was to further irk the sensibilities of customers. These scandals often related to issues of accountability of managers and state officials responsible for the Company.³⁵⁵

Additionally, problems of overstaffing, the political sensitivity affecting the level of fees that could be charged for its service and inadequate financing all combined to threaten Eircom’s ability to finance operations during its years of public ownership (Gallagher 1992e: 12; Murdoch 1993: 14). For instance, it was expected to develop the country’s telecoms network up to 2000, while it was also expected to make contributions from its annual income to the state (Dalby 1993a: 14).

Improvements were also limited by failure to grant the firm’s request for investment capital. Furthermore, it received only 27% of the total amount requested for investment from the state in 1993 (Ibid). The Company subsequently, had to borrow to make investments in the sector. But its status as an SOE also meant that limits were placed on such borrowing (TE-AR 1998: 4-5). Section 27 of the 1983 Post and Telegraph Act, for instance, stipulated that the firm had to secure consent from the Minister of Finance and its line minister before it could borrow funds. The amount to be borrowed also had to be set by the MOF and Minister with responsibility for the sector. This led to concerns about the pace of developments within the incumbent and hence, the state of the country’s telecoms sector.

Further, while Eircom’s management had been successful in carrying it through the 80s after telecoms had been divested from the post office it was obvious by the 1990s that Eircom could no longer simply rely upon its achievements of the past (Gallagher 1992b: 12). Rather, it now had to go out of its way to initiate reforms that would help it to become more competitive.

³⁵⁴ Office of the Ombudsman (1999).

³⁵⁵ (See Gallagher 1993d; Gallagher 1993e; O’Brien 1991).

Among these improvements were those relating to the quality of its products as well as those aimed at improving client interface.

Thus, as in the Jamaican case, the Irish incumbent in the immediate years before regulatory reform found itself suffering from a legacy of poor customer service and tardiness in the delivery of telephone lines. Consequently, the company was described as being a “mess” during the first year or two after sector liberalisation.³⁵⁶ By the mid-1990s, the firm was being criticised by citizens and groups, such as the Confederation of Irish Industry,³⁵⁷ for its lack of responsiveness, efficiency and innovation, making it more advantageous politically to speak about reforming the firm and changing its relations with the state.

In the end, regulatory reform, in the form of privatisation, competition, new rules and the accompanying uncertainty to the firm’s established position were to provide the motivation and rationale for Eircom to make necessary adjustments to update its culture, organisation and modus operandi. As one interviewee noted of these changes, “(a)ll of a sudden, the culture at Eircom had to respond to dramatic challenges it did not have before”.³⁵⁸ Regulatory reform has therefore been instrumental in providing the impetus for Eircom to reform its organisation and operations. Importantly, much of these had begun from 1997 - prior to liberalisation given that like C&WJ, Eircom had managed to secure an extension to its monopoly in order to prepare itself for industry reform.

5.1.2 Effect of Regulatory Reforms on Eircom’s Size and Scope

C&WJ had responded to reform by reducing its size and updating its infrastructure and service. As will be revealed in this section this has been the ultimate end of the Irish incumbent, Eircom, albeit arriving here in a more schizophrenic fashion. As reforms brought more uncertainty in the sector, the firm sought to identify a new line of defence. With this in mind it firstly sought to increase its activities and relevance in the sector by increasing the number of areas in which it

³⁵⁶ Interview: Reporter, Irish Times, Dublin, November 10, 2003.

³⁵⁷ As noted earlier, such groups believed that freeing up the firm to private hands would free-up government revenue for investments in job creating schemes and reducing the national debt. See IT (1992).

³⁵⁸ Interview: Senior Official, Eircom, Dublin, November 10, 2003.

operated, as it attempted to envelope the sector. The second and third strategies were a direct result of this first, since its attempt to increase coverage was to simultaneously result in an increase in the incidence of partnerships and alliances and finally in the number of holdings and subsidiaries owned by the firm. These steps marked Eircom's attempt to advance its power and control via an increase in its size and scope.

The first set of internal reforms was aimed at enhancing its coverage over the breadth of the sector by advancing its range of services. As Eircom sought to reposition itself in 1998 when full liberalisation was to become effective, it began to place more emphasis on advancing fixed line business in order to offset the declining use of this service. This it achieved by taking advantage of improvements in communications technology and the increasing demand for more advanced services facilitated by such developments.³⁵⁹ With this in mind, Eircom commissioned Ericsson to assist it in enhancing its switching technology. This was done in January 2000, at a cost of £10 million and again served to signal the shifting views on how the company saw its future role and sustainability in the sector. As the then CEO of Eircom, Alfie Kane put it, "there is no doubt but that our business is changing considerably and is moving away from being primarily voice centric to being data centric."³⁶⁰ Such attempts to advance capacity and competence in data, Internet and media services were meant to allow it to reposition itself to take advantage of opportunities in these areas. Its coverage also increased into telecom related activities such as Internet consultancy, website development, e-commerce and security and monitoring services as well as software development.³⁶¹

The second type of activity aimed at increasing its size and scope relates to Eircom's attempt to increase its capacity and plug gaps in its competence via strategic alliances with other companies in the sector. Nevertheless, this tactic was not new and had, in the past, culminated in the first bout of partnership with the KPN/Telia group in 1997. Such arrangements were amplified from 1997 into 1998. These included its 1998 alliance with AT&T through their subsidiary, Unisource (TE-AR 1998: 17). Eircom also took advantage of its position as owner

³⁵⁹ Eircom (2001e).

³⁶⁰ ODTR (2001d: 1).

³⁶¹ See for instance, Eircom Annual Report (1998; 17; 2000: 70; 2001: 25).

of the fixed network entering into IRU (Indefeasible Rights of Use) contracts, which allowed it to trade capacity on its cable network with other operators, helping it to secure even more partners (Eircom 2000: 76; 2001: 44). These alliances were crucial to Eircom since they allowed it to extend its reach over the sector. Partnerships with international telecoms firms permitted access to a 'global platform', which helped in enhancing Eircom's service to multinationals based in the country (TE-AR 1998: 17). Indeed, the firm's position at the centre of the market meant that it was an attractive partner for some operators wishing to enter the sector, since they could trade capacity as opposed to compete directly with the incumbent. Such a move, inadvertently allowed Eircom not only to monitor the activities of new entrants but also to reduce the number of operators with whom it would be in direct competition.

Prior to 1998 the Company was able to spread its tentacles to all areas of the sector by forming strategic alliances or creating subsidiary operations.³⁶² These activities took place in service areas enabled by what was then considered to be emerging technologies, including the Internet and mobile telephony where Eircom even owned firms that were competing against each other. For example, Eircom established EirPac (Public Packet Switched Data Network Service) in 1984 to handle value-added services such as email and information retrieval and it also owned Eirtrade, the provider of Electronic Data Interchange services (Hall 1993: 81). So, unlike the Jamaican incumbent, the firm was always willing to take advantage of the developments in communications technology preferring to saturate and control emerging sectors rather than leave room open for competition.³⁶³ Other acquisitions and start-ups included DASSNET (Data and Special Services Network), which was formed to manage Eircom's digital private circuit network (Hall 1993: 82). Cablelink was also formed to offer services in cable television on Eircom's behalf.

Indeed, the firm's joint ventures also spanned the research field as with one of its subsidiaries, Broadcom Eireann Research Limited. This division assisted the firm in building

³⁶² According to the Economist Intelligence Unit's 1996-97 Country Profile of Ireland, the firm was involved in 18 other companies conducting business in related areas. It managed to accomplish this feat by having different degrees of ownership and control of these companies (EIU 1997: 25).

³⁶³ However, this is not to imply that its willingness to take up new opportunities was at an ideal level.

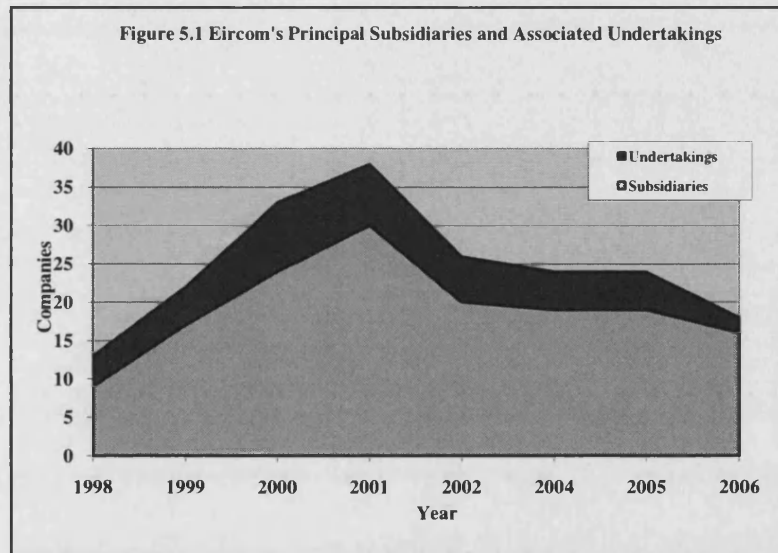
expertise and competence in monitoring and assessing local market developments. Its 45% share in this firm indicated its long-term support and interest in research and development, an area which, as shown in Chapter four, had also taken on new significance since liberalisation (Eircom Annual Report 2001: 10). One of the aims of research was to track trends and developments, which could be used to inform the firm's activities in what was becoming an increasingly chaotic market. Again, demonstrated here, is the increasing relevance of market research as a means of heightening the firm's knowledge and responsiveness in the telecoms market. In so doing, it also had the opportunity to monitor the activities of its competitors, an activity which was not so much of importance under the old regime since it operated for the most part as a monopolist and where its proximity to policy makers meant that it would have been able to directly inform the policy agenda. In so doing, the firm could reduce risks and have more informed policies.

Joint ventures were not simply about expansion of size and scope since these have also been about cost reduction. That is, some of these schemes allowed the firm the option of bolstering its capacity without necessarily having to spend vast amounts to secure alternative capability. In 2000 it initiated a number of heads of agreements with other firms in order to enter contractual and out-sourcing arrangements with them. These commercial joint ventures represented one way in which competition had forced an emphasis on cost reduction and the need to find more efficient ways of doing business. In effect, cost reduction had been one of the firm's primary imperatives since it was privatised partially in 1997 and strategic alliances allowed it to bolster capacity and size without adding greatly to operational costs.³⁶⁴

A third and related response was its effort to increase its number of holdings and subsidiaries, which also came partly as a result of its attempt to enhance its capacity through strategic alliances. Acquisitions in that first year of privatisation included, "100% of Atlas Limited, 100% of Lan Communications Limited, 100% of Western Cellular Limited, 100% of

³⁶⁴ This was important since one former chair had accused the company of having the most overhead of any other telecoms firm (Gallagher 1992d: 12). Indeed, within this first year the firm had managed to achieve a 10% reduction in operating costs as a portion of its turnover ratio (from 50% to 40%) a feat that was also helped by staff cuts. See Eircom (2000c).

Talk to Me Limited, and an increase in the Group's interest in Person to Person Limited (from 25% to 51%)“ (Eircom 2000: 70). It also owned companies such as, Irish Telecommunications Investments Plc and Phonewatch Limited a security and monitoring system for home and businesses (Eircom 2000: 63). The firm's acquisitions were therefore to increase during this period. This climb is shown in Figure 5.1 below which gives an idea of Eircom's principal subsidiaries and business ventures in recent years. Of immediate relevance is the rapid increase in the number of subsidiaries up to 2001.



Source: Eircom's Annual Reports 1998 – 2006

Thus, as the reconfiguration of the content and structure of the telecoms sector got underway, Eircom also increased its number of acquisitions helping it to sustain its profile over the breadth of Irish telecoms. In this sense the developments in Eircom in the first three years of reform significantly diverge from the experiences of C&WJ in its first years of reform. That is, Eircom's immediate response was to expand and extend, while C&WJ immediately downsized, indicating the diverging rationales guiding each actor.

The story has not been one of unbridled expansion and acquisition, however. For instance, while acquiring more entities up to 2001, reconstruction of sector rules and the need to

foster competition in areas such as, mobile and cable television meant that the firm had to give up some areas of its activities at the regulator's behest.³⁶⁵ But even here, this decision simply represented the firm's attempt to comply with Comreg's (then ODTR) direction and not necessarily out of an internal desire to recede from this area of the market. Given the incumbent's expansionary impulse, it is debatable if it would have divested itself of these operations on its own. As it made clear in 1999 – one year into liberalisation – it intended to address the challenges (including competition and pressure on its position in the market) brought by liberalisation in order to:

ensure Eircom maintains its position as Ireland's leading communications supplier. This will include a strong focus on new ways to grow our business, improve productivity levels and enhance the range of products and services to customers
(ODTR 1999: 15).

As such, the expansionary policy described in this section marked Eircom's intent to fulfil this pledge with the decision to reduce its size in certain areas being more about the need to fuel competition given Eircom's dominance in these areas.

Furthermore, the retrenchment from the peak of 2001 (Figure 5.1 above) suggests that the firm may have in fact been a little over ambitious in the number of operations and services it had taken on since 1998. As such, it had by 2001 begun to backtrack on this expansionary policy reducing its undertakings and giving up some of its national and international acquisitions and multimedia services (Eircom Annual Report 2001: 9).³⁶⁶ Retrenchment in these areas was meant to allow the firm to focus more on maintaining dominance in its main areas of operation, particularly fixed services. In this sense, divestment of services, such as mobile and cable TV, allowed Eircom to focus its attention more on increasing value in its core business.

This marked a move away from the all-encompassing approach that had accompanied name

³⁶⁵ This point helps to demonstrate the direct influence of the regulator in attempting to curb Eircom's control over the sector. As noted in Chapter three, the firm's first foray into this area in the early 1990s had already been seen as potentially anti-competitive, in that it did not promote diverse ownership of the communications industry.

³⁶⁶ Among these were: *Ebeon*, a website and e-commerce firm; *Nua*, an Internet consultancy firm and *Viasec* - resellers of security products. The latter was closed in 2001. Its business in Northern Ireland and the UK was also cut back (Annual Report 2001: 25). *Flexicom*, which offered card-processing solutions in various currencies, was also demerged.

change in 1999. Closing subsidiaries meant skills and capacity could be freed to concentrate on areas such as improving its fixed line offerings to businesses and residential customers. Proceeds from these sales allowed Eircom to cut debts that it had been acquiring over the years (Eircom Annual Report 2001: 31). As such by 2003, the firm had made significant progress in remodelling itself becoming a leaner and more efficient operator where its success would be based on its level of efficiency and competitiveness in *specific* areas of the market, not its ability to offer service in every segment of the market.

This decrease continued and by 2004 Eircom's undertakings and subsidiaries had dropped to 24 from a high of 38 in 2001, decreasing further in 2005, reaching 18 in 2006.³⁶⁷ This later pattern suggests a serious rethink of the fervent acquisitions of the early years of adjusting to regulatory reform and a changed operational environment. Indeed, Eircom has itself acknowledged that some of these tactics might not have been the best. As a senior figure noted, "a lot of things happened during that post.com boom period which, in hindsight, might not have been the best options in terms of the commercial future of the company..." (Interview: Dublin, November 2003). Thus, while recognising the value of developments in the regulatory space, retrenchment here was also affected by recession in the telecoms sector at the start of the new century (Ibid.). In this case, developments were about the effect of international pressures on the incumbent's internal operations forcing it to reduce its size and costs. In this way, the IRA's regulation can also coincide with other issues or actors to drive internal change in large dominant incumbents.

Beyond this explanation, its policy of attempting to increase ownership as a response to regulatory reform may also suggest that the firm had not quite managed to overcome its monopolistic tendencies of the past where size and reach were seen as the basis for success and dominance in the sector. The shift in the telecoms regime was eventually to bring more awareness to the need to also improve performance and service as a means for market success. As Eircom's chairman noted in an annual report produced on the cusp of full liberalisation,

³⁶⁷ (Eircom Annual Report 2001: 47-50; 2002: 43-45; 2004: 103-104; 2006: 112-113).

“(our) future in a fully open marketplace will be highly influenced by the quality of the service we offer to our customers” (TE-AR 1998: 17).

5.1.3 Improvements in Service Quality and Customer Care

An important part of the firm’s restructuring concerned its efforts to improve service quality as well as its relationship with the public and customers. Reforms have therefore, forced Eircom, to place more priority on improving its network and services while raising the profile of its customers as key determinants of its performance in a competitive regime. The new emphasis on customer care is explicit in statements such as that of the Company Chairman in 2005 (Ibid.). Its attention to customer service was demonstrated in the use of consumer panels and the adoption of an integrated measurement system (IMS) aimed at monitoring satisfaction levels among its users. This system was meant to be a regular and ongoing feature of the firm’s self-assessment process (TE-AR 1998: 17). Through these the incumbent has been able to heighten its ability to gauge user perception about its performance with such information then being used to inform future activities, another strategy reminiscent of C&WJ.

A hallmark of this new approach was the incumbent’s attempts to increase the relevance and attractiveness of its services, even attempting to make a direct link between Company and government policy (Interview: Senior official, Eircom, Dublin, November 2003). It was able to increase its client base by reaching a wider cross-section of audience, including children and young adults. New services were, therefore, developed specifically with this segment of its users in mind.³⁶⁸ Additionally, Eircom pledged IR£10 million in 1998 to a campaign to make information technology more an integral feature of the primary and secondary schools in the country.³⁶⁹ Thus, in the second instance the firm ensured that its activities complimented the

³⁶⁸ In April 2000, for instance, the firm introduced a calling card and an accompanying (Carry a Call Card) campaign aimed at children. According to the firm, its campaign aimed to, “create awareness amongst young people of the importance of having a call card in order to keep in touch with their parents when the need arises.” (Eircom 2000c).

³⁶⁹ The Company also followed up this emphasis within schools introducing the concept through information packs and posters to principals. Community Liaison Officers (with the police - Garda Síochána) also assisted the firm’s campaign by including information on the card in their safety presentations to schools (Ibid).

state's intention to increase awareness and the use of information technology in schools (Eircom Annual Report 1998: 21).³⁷⁰ Eircom strategically linked its mission here with that of the government, identifying linkages between public and Company policy.

It also heightened its emphasis on other customers – including its business and residential clients. As it related to its business clients, Eircom sought to increase its profile as a more business-oriented firm in order to gain leverage in what was one of the more competitive areas of its fixed line operations. This has been achieved through the introduction of more flexible billing strategies and pricing plans for different businesses.³⁷¹ Schemes such as, “Circle of Friends” and its *three Options* packages (Options 15, 30 and 50) also saw residential customers receiving discounts for calling bespoke numbers. The result was greater choice for clients in the way they were billed and paid for services. Eircom also sought to increase the ease with which customers were able to switch between these options thereby increasing the ‘exit’ mechanisms available to clients. Thus, by 2000 customers were able to receive specially tailored billing plans based on individual usage.³⁷² As with the Jamaican incumbent, Eircom therefore, changed its approach to customers with its strategies now being more closely informed by a desire to increase value to customers. Here, the threat of reform, as well as the actuality of this reform has provided the incentives for Eircom to review its approach to customers.

As a result of this flexibility some customers were able to receive reductions in their call charges- one of the major gains that has been credited with regulatory reform (Interview: Senior official, Eircom, Dublin, November 10, 2003). This view has been substantiated by other observers of Irish telecoms who have noted that much of the innovations described here may not have been made by the firm had it not been for competition (Interview: Reporter, Irish Times, Dublin, November 10, 2003). These were to result in overall reduction in telephone prices.³⁷³

³⁷⁰ Also see TE-AR (1998: 19-21).

³⁷¹ Eircom (2000h). Schemes for small and medium sized business, such as the Optimiser Discount Programme implemented in 2000 allowed for pricing that was more closely aligned with individual usage patterns.

³⁷² Eircom (2000i).

³⁷³ As an example of the reductions under the firm's discount plans, a customer signing up to Option 502 would realise overall reductions of 4% in local daytime calls; 39% in national daytime calls; 39% in

This was also the case with international call charges particularly to the US where rates moved from IR£1.12 in 1993 to 0.24p in 1998 (TE-AR 1998: 15). Table 5.1 further illustrates the level of Eircom's rates in 2000, at which point international calls were as low as 12 pence per minute. Furthermore, whereas there was only one flat rate in 1993 and 1998, by 2000 this had been segmented into day, evening and weekend rates (Table 5.1). However, not all this reduction has been due to the firm's benevolence or efficiency savings. Rather, rebalancing and readjustment of international settlement rates also help to explain these reductions (as with the Jamaican case).³⁷⁴

Table 5.1: Movement in Eircom's Prices (for Calls to US and Canada) 2000

	<i>Old price per min</i>	<i>New price per min</i>	<i>Reduction</i>
<i>Day</i>	23p	15p	-34.7%
<i>Evening</i>	20p	12p	-39.9%
<i>Weekend</i>	17p	12p	-29.3%

Source: Eircom (2000f).

Traditional services that had been provided prior to industry reform also came up for review. These included Directory Enquiries. Here the technology platform in call centres was advanced with the quality of staff manning these operations also being improved through retraining. As with the cost reduction strategies discussed above, efforts here were not in vain, translating into evident gains for the firm. For instance, directory enquiries experienced a subsequent growth of 18% and a six second reduction in the average answer speed for calls

national evening calls; 25% in all international calls; of 8% for calls from fixed to mobile lines within Ireland; and up to 350 minutes call credit for evenings *and* weekends. See, Eircom (2000i).

³⁷⁴ The firm itself hinted at this when it observed that there had been significant reductions in overseas rates, particularly in 1998 (TE 1998: 15). This occurred the year after the 1997 Benchmark Resettlement Order.

made to this service.³⁷⁵ Furthermore, a survey of customers in 2000 found that 85% were satisfied with this service.³⁷⁶

Crucial among the improvements to existing or more traditional services were those relating to its fixed line business. This was to become the firm's mainstay after the Industry regulator had forced it to divest itself of its mobile operations and cable business by 2002. As seen earlier, the firm had, by this time, also rethought its policy of outright acquisitions and expansion in favour of a more measured program of de-mergers and retrenchment, divesting itself of assets acquired in the first years of operating in a liberalised market. Thus, by 2002, it also began consolidating its business more around its fixed line business, which had always been (but even more so now), the firm's main area of operation. Thus, furthering its bid to modernise its infrastructure, the firm took the decision to begin building its fixed wireless access technology after being awarded a wireless licence by the regulator in 2000. In the end the incumbent has been able to expend much more energy and focus than the Jamaican incumbent in developing the fixed line network to the extent where it remains the dominant operator in spite of competition (Eircom Annual Report 2006: 4). Through this the firm could introduce more wireless voice, ISDN (Integrated Services Digital Network) and Internet at a greater speed. Such expansion would allow the incumbent greater coverage with improved quality. Importantly too, this would also help to advance access among rural communities.³⁷⁷

Collectively, the investments and injection of new skills and capacity discussed above were not in vain. An examination of select indicators a year or so after liberalisation (see Table 5.2) indicates that industry reform which brought new rules, relationships, structures and ownership patterns might have been one of the better things to have happened to the incumbent. Indeed, a review of these key indicators would suggest that regulatory reform has in fact led to a growth in the size of the overall communications market and that as the incumbent, Eircom has in fact benefited significantly from this increase. The figures here show that the biggest growth areas were in the newer services of Internet and mobile telephony, which realised increases of

³⁷⁵ Eircom (2000j); GoI (1980). *The Ombudsman Act 1980, No. 26 of 1980* (Accessed 29/01/07).

³⁷⁶ Ibid.

³⁷⁷ Eircom (2000k).

175% and 62%. Likewise, Eircom's profits also rose by 18% in that year though its revenues had only increased by ten per cent. Though it was to take a tumble in 2002 profit was back up by 39% in the 2003/2004 operating year (Eircom Annual Report 2004: 10).

Table 5.2 Selected Performance Indicators of Eircom One year Into Competition

<i>Internet Traffic</i>	<i>Mobile Customers</i>	<i>Internet Customers</i>	<i>Fixed Line Customers</i>	<i>Revenues</i>	<i>Profit</i>
300% ↑	62% ↑	175% ↑	3% ↑	10% ↑	18% ↑

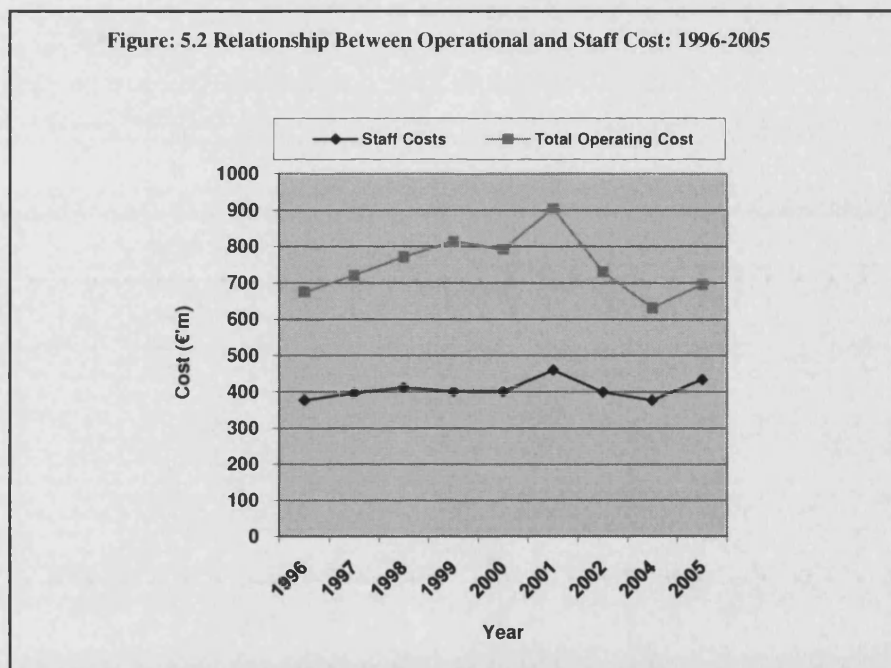
Source: Eircom (2000c).

The years immediately preceding full liberalisation had seen the firm increasing its number of holdings in the sector. This may be seen as Eircom's way of increasing its coverage and ability to monitor and control developments by lessening the scope for others to compete with it. This expansionary impulse was to increase significantly in the first three years of liberalisation. The above discussion demonstrated this impact on the firm's size and scope but this impact was also to be felt more directly on human resources and particularly, on the number and quality of its personnel.

5.1.4 Personnel Reforms

[Eircom's] ability to compete successfully in the future will depend crucially on the commitment of the people who work in the company, and on their ability to become truly customer driven. It is the people, rather than the technology that will determine our future success.
(TE-AR 1998: 23)

As with the Jamaican incumbent, another area that came in for attention was the size of the staff that had been sustained throughout monopoly. Overstaffing had been recognised as one of the firm's most serious problems from the 80s and this did not change into the 90s with staff costs representing a significant portion of overall operating costs as shown in Figure 5.2.³⁷⁸



Source: Eircom's Annual Reports, 1996-2005

Consequently, during these years and up to the time of its full privatisation in 1999 the firm's role as the largest employer meant that it remained one of the most important companies in Ireland (Burnham 2003: 543).³⁷⁹ The importance of this point taken in the context of the high unemployment rates of the 1980s and 1990s made discussions on the size of the firm's personnel (and privatisation) politically charged.³⁸⁰ These views on the firm's role were to

³⁷⁸ 21,000 staff in 1979, 19,000 in 1984 and 12,700 in 1993 (Gallagher 1993a: 7).

³⁷⁹ Ibid.

³⁸⁰ For instance, between 1983 and 1988 unemployment stood at 16.4%. In 1991, for example, job losses had surpassed the number of jobs created in the country. While in 1992 it stood at around 283,000. See Caniffe (1992); Taylor (1993b).

continue into regulatory reform (see Chapter seven) affecting the levels of efficiency and change realised in the first few years of regulatory reform.³⁸¹

As such, political support for substantial reduction in the number of staff employed by the Company was not strong. Opposition from these sources had been a significant hindrance to the firm's ability to attain operational efficiency prior to liberalisation as commercial decisions had at times been adversely affected by the need to maintain employee numbers and other political considerations (shown earlier).³⁸²

But even while decreases had been realised, over the years, the staff count remained high with opposition to drastic cuts remaining up to the late 1990s. It was not till 1997, with the move to partially privatise the firm, that the staff complement fell to its lowest ever when it reached 10,995 (as seen in Figure 5.3). This was to fall once again in 1998 as the new owners sought to modernise the company. Even where this figure represented the gradual downward movement in numbers over the years, 1998 still stands out as a significant juncture in the firm's history since it marked the lowest number that the firm had been able to attain up to that point. The decrease also coincided with the decision to fully liberalise the telecoms market and represented the success of the senior management in winning employee agreement for reforms that were necessary in assisting the firm to face competition successfully. Significant too is the fact that this juncture came at the point where the firm concluded an Employee Share Ownership Plan (ESOP) (also in that same year) in which employees were to be given shares for their agreement to assist the organisation in meeting certain targets.³⁸³ The conclusion of this agreement served to indicate the internal bargaining, which regulated firms undergo in order to

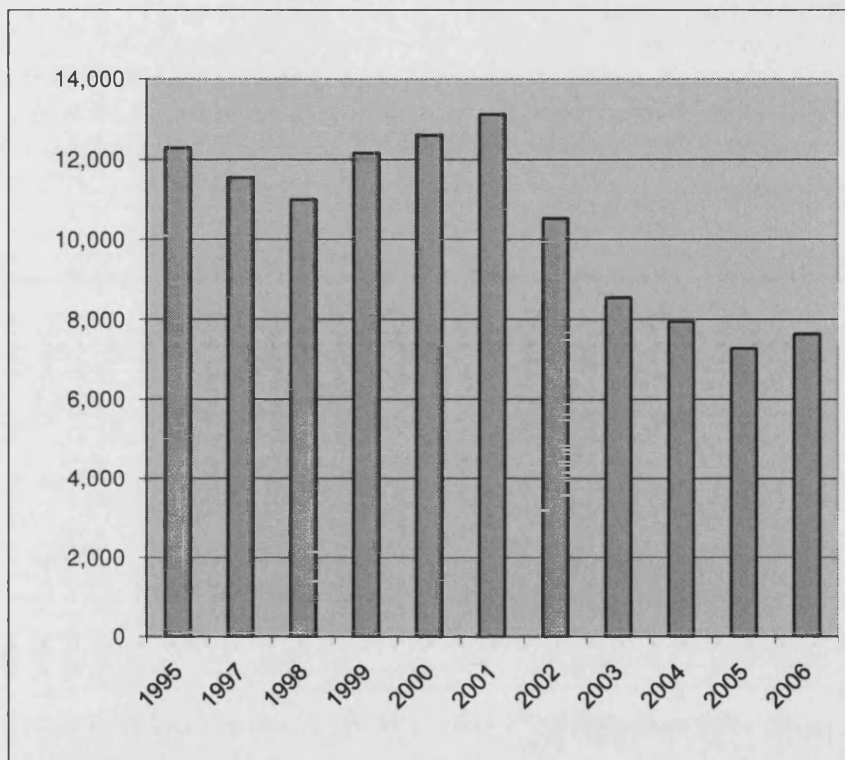
³⁸¹ As noted in Chapter three, the firm faced dissent from employees as well as political and union opposition on the extent to which market principles, such as privatisation and job cuts could be introduced. Indeed, one political party (Labour) had seen the government's continued ownership of key industries such as telecoms as a necessity in helping to provide employment for the population (Nally 1992: 6).

³⁸² As noted by Murdoch, "Telecom's problem is that it is controlled by the Government of the day and subject to political decisions rather than commercial ones" (1993: 14). For example, concern over the number of persons that it had to keep in occupation had seen claims that Eircom's investments in areas such as telemarketing in the 90s was simply to allow it to increase employee numbers. It was instead felt that such investment would have been better spent improving the existing telecoms infrastructure (Gallagher 1993f: 7). Nevertheless, some reduction had been attained over the years.

³⁸³ See TE (1999: 137-138).

secure the internal support for innovations necessary to change its operations to cope with the reconfiguration of its regulatory space.³⁸⁴

Figure 5.3: Trends in Eircom's Headcount 1995-2006



Source: Compiled from Eircom's Annual Reports 1998-2006.

In this way, the move towards downsizing was influenced by a recognition that it needed to reduce its staff. Privatisation nonetheless, helped pave the way for the firm to make the adjustments it needed to reduce its size, providing a route to which this could be obtained smoothly. Thus, through the ESOP, Eircom could undertake the immediate adjustments needed for updating its operations. These included redundancies, which took place in 1998, allowing the firm to achieve such a milestone in personnel size (Hastings 2003: 152). It also allowed Eircom to offer an Employee Share Ownership Trust, which allowed the firm to make

³⁸⁴ This is a theme which underscores the discussions to follow in Chapter seven

substantial changes to its compensation and work practices that were thought to be more advantageous commercially. These included a reduction in overtime and the introduction of a more flexible workday (TE-AR 1998: 18). In noting the many achievements of the firm for that year, including a 5% reduction in its cost to turn over ratio, the Chairman noted in his contribution to the 1997-1998 Annual Report that,

even more significantly for the future, we concluded a partnership deal with the coalition of unions in Telecom Eireann, which will allow us to accelerate and complete the necessary transformation in every aspect of how we operate... on which we can together build a fully competitive environment.

(TE-AR 1998: 9)

Indeed, in the 1997-1998 reporting year Eircom had taken the decision to remove its bonus schemes which together with staff reductions had brought around IR£45 million in savings (TE-AR 1998: 11). Yet again, in spite of these achievements there remained some acknowledgement that the size of the Company's personnel was in fact beyond that needed to be efficient and as such, more action was needed to reduce numbers and improve productivity.³⁸⁵ This remained one of the more delicate issues, which Eircom had to handle after 1998. However, the firm's response in these initial years was confounding in so far as its actions did not suggest that it necessarily accepted downsizing as a route to greater competitiveness or cost efficiency as might have been suggested above.

Indeed, numbers were to climb significantly from 1999-2001 stretching beyond the immediate pre-monopoly years. The increase may be related to the firm's attempt in the first phase of market reform to increase its coverage and reach over the entire telecoms sector. In so doing, it could monitor and take more control of the developments in the sector through advanced ownership and, control. This is as opposed to utilising its proximity and relations with

³⁸⁵ Indeed, even Eircom recognised that the reductions it had managed to achieve from the 1980s to early 1990s were still not enough but nonetheless, there was not enough of a motivation to achieve more reductions in staff figures. See Murdoch (1993:14). This sentiment was reiterated even after privatisation and liberalisation (Interview: Reporter, *Irish Times*, Dublin, November 10, 2003).

ministers and policy makers, as may have been the preference prior to privatisation and the entry of an independent regulator.

Following from privatisation and liberalisation, Eircom quickly leaped into action increasing the size of its portfolio, as shown earlier. Thus, ironically, its response to these new challenges represented a reversal in the general trend as it started adding to the size of its personnel. As the number of holdings and ventures under the Eircom plc. brand increased so did the size of its workforce, hence, explaining the sudden change in the direction of the movement in Figure 5.3 from 1997-2001. In one instance, 286 new staff were taken on to man a scheme to increase the number of payment options for small and medium-sized businesses.³⁸⁶

Table 5.3 also gives a closer look at personnel movement in the first four years of liberalisation. The increases noted here were to take place even after its cable television business; Eircable was discontinued at the regulator's behest in 2000 (Eircom 2000: 81).³⁸⁷ Even more, while realising redundancies of 740 in 1997, an additional 350 specialists were taken on while others were placed throughout the Plc's operations (TE-AR 1998: 11). Indeed, the areas in which new staff was taken on suggests the changing emphasis of the firm and where it believed it most needed to bolster capacity to increase competitiveness. Many were placed in the firm's mobile operations and charged with manning the increasing sales and marketing, activities that had taken on new significance since competition (as in the Jamaican case).³⁸⁸ Fixed services, which accounted for many of these new activities and its mobile operations were also, to account for the increase.³⁸⁹

³⁸⁶ Eircom (2000h).

³⁸⁷ This had previously employed 270 persons.

³⁸⁸ The firm's re-entry into the mobile market in 2006 also explains the rise in staff in the same period in Figure 5.3.

³⁸⁹ See notes 366 and 347.

Table 5.3 Eircom's Personnel Structure

<i>Date</i>	<i>Mobile</i>	<i>Fixed Line and other Communications</i>	<i>Cable</i>	<i>Total</i>
1999	570	11,323	270	12,163
2000	917	11,689	-	12,606
2001	1,528	11,593	-	13,121
2002	191	10,338	-	10,529

Source: *Eircom's Annual Reports (2000-2006)*.

The increase in staff also suggests that some of the reductions that had been attained under the ESOP were to some extent purely cosmetic since those whom were laid off from one department were simply redeployed to other areas within the Company (TE-AR 1998: 13). Included here were some of the 3,500 staff that was to be removed over the three-year period from 2000.³⁹⁰ This juggling was to become more a feature of the firm's operations in the immediate post reform era resulting in, "significant movement of employees within the Company and subsidiaries" (Eircom Annual Report 2001: 51).³⁹¹

This emphasis on redeployment may be related to the initial fear of liberalisation and its potential impact on employment among staff, unions and some politicians (raised in Chapter three). Following from this, the sensitivity of this issue was recognised by the firm's management who also wanted to maintain employee support for the restructuring it wanted to undertake internally. Redeployment and not only outright redundancy was important during these early adjustment years. This was managed by a Resource Business Unit established specifically to manage the whole personnel restructuring process and importantly, to address fears relating to downsizing.

However, the imperative of reforms was accelerated when by 2001, 20% of the market had gone to competitors and prices had generally been reduced by approximately 18%.³⁹² In spite of the 26% increase in overall revenues in the fixed, mobile and broadcasting segments of the telecoms market between September 2000 and December 2001, the firm now had to share

³⁹⁰ Eircom (2000c).

³⁹¹ This was also the case for example, in 2000 and 2002 when the firm divested itself of Eircable and then Eircell (see Eircom Annual Reports 2000-3).

³⁹² See ODTR (2001d: 1).

this increase with other operators providing an incentive for it to make the kind of changes, which to an extent, which had been resisted for so long.³⁹³ Thus, with a larger group of service providers and the prospect of even more entering the market, the firm had to do more to cut costs and reduce the potential negative effect of such changes on its income and dominance. Figure 5.2 further indicates the close relationship between the firm's operational and staff costs. Thus, while the relationship deviated slightly in 1999, there has generally been a close relationship between the two. For instance, where staff numbers reached a climax in 2001 this trend was replicated in its operating costs making an even stronger argument for the firm to place more attention to this aspect of its operations if it were to move forward successfully.³⁹⁴

Following from this, Eircom committed itself to a three-year programme of intensive restructuring in order to re-position itself in the market in March 2000 (Eircom 2000: 53). A significant aim of this restructuring was to reduce its overall cost base by March 2003 while increasing its competitiveness. A total of €412 Million was committed towards this programme in 2000 (Ibid). Through this programme a reduction of 3,500 in employee numbers was to be achieved (Eircom 2000: 53).

An important aspect of Eircom's cost containment was therefore, related to the number of staff it hired. As argued above, the firm had been unable to reduce this to an optimum in the first three-years of reform with increases actually being realised. Added to this was its continuous acquisitions and expansion up to 2001, which further saw operating costs increasing. In fact, total operating costs had gone from €801 million in 2000 to €905 by 2001. It was not till the major reforms of 2002 that this figure plummeted to €731 million as it began selling some of its operations. Further efforts, including staff reductions contributed to 2% reduction in operating costs in 2003 (Eircom Annual Report 2004).

The upward trend in employment was halted by 2002 when overall figures had again begun to decrease. This was achieved when Eircom began reducing its holdings and operations

³⁹³ Ibid.

³⁹⁴ Thus, even whereas other factors may also account for the rise given the proportion of the increase in the operational costs vis-à-vis staff costs in 2001, it is still the case that there is still visibly a close relationship between the two.

including, the de-merger of its mobile business (in Figure 5.3 above). The more recent trend of staff reduction began with the firm moving fully into private hands at the end of 2001 (See Eircom Annual Report 2006: 4). The suggestion here is that ownership does matter for the firm's performance and the way it responded to regulatory reform. As such, with the further removal of political constraints on the firm it was thus able to reform personnel structure in order to reduce costs and heighten its performance. These measures were also affected by the continuing decline in the firm's revenues and share value as well as the losses incurred from competition.³⁹⁵ On the other hand, re-nationalisation in 2004 did not halt the downward movement of staff. One possible explanation here is that the government had by then woken up to the need to maintain the reforms that had been initiated by the private partners from 2002.³⁹⁶

Attention to human resources not only focused on attaining the right level in staff size but also to quality and training. As such, further changes adopted by the firm included a greater emphasis on training and expertise as well as the redrafting of its organisational chart. As it related to skills, one of the sources for accessing expertise was through the first set of private partners acquired in 1997, the KPN and Telia group. This strategic alliance was used to introduce a wider pool of resources needed to make certain changes in the quality of its personnel (TE-AR 1998: 17). One of the resources accessed through this network was the experience and staff with knowledge operating in a competitive regime (Ibid). Other specific areas of skills improvement related to staff operating traditional services such as directory assistance. These were retrained while this department was restructured in 2000 to increase productivity. Attention to skills and competencies within the firm, therefore, complemented the improvements made in enhancing service options and network quality, as in Jamaica.

The review of skills and structure was also extended to the senior management team through the redrafting of management competencies. Again, the strategic alliance was to prove useful with managers and board members with specific business and retail experience being

³⁹⁵ Murray (2004).

³⁹⁶ Indeed, the improvements that were made between 2002-2004 helped to lay the foundation for the Company's future and by 2006 investors were able to receive a 62% return on their 2004 purchase (Eircom Annual Report 2006: 4). Also see Chapter seven for an expansion of this discussion.

loaned to the Company from 1997.³⁹⁷ Whereas it was felt that the management which existed under state ownership was unresponsive and hesitant in embracing change, the move was made in the late 1990s to replace these with individuals believed to have a better understanding of the demands of operating in a competitive environment (Interview: former telecoms minister, Dublin, November 11, 2003; also see for example, TE-AR 1998: 17).³⁹⁸ Senior management was therefore restructured from 1997 as the firm sought to secure the competence to oversee its restructuring its operations. New management thus, came in when the sector seemed poised for further liberalisation by 1997. By the time the reforms were actually introduced the management had had a head start in cementing the company's position at the centre of the sector by initiating certain moves which were to help it to modernise some of its processes and approach (even while these were aimed at increasing market coverage and resulted in size in increased size and scope).

Greater emphasis was also placed on remuneration at the management level with increased links between performance and salary. As noted by a Company chairman, "a critical ingredient in achieving success is having the right management team properly focused on a clear set of business objectives."³⁹⁹ Salary increase was, therefore, seen as an important strategy for attracting greater expertise and encouraging the level of performance the incumbent felt was necessary for its growth.⁴⁰⁰ For instance, collectively, executive board members received a remuneration package of €2,210,989 with salary payments amounting to €689,737 in 2000. By 2001, this had been reduced to €1,331,442 and €512,696, respectively (Eircom Annual Report 2001: 5).

However by 2004, the total remuneration package had grown significantly with the executive team receiving over €5,706 million. While a review of the annual reports for this period does suggest that the greater number of Directors and board members may explain the

³⁹⁷ Staff from partners headed up these business units within the Company, namely, its corporate business unit, the enterprise business unit and business process development, suggesting again where the firm had lacked certain skills (TE-AR 1998: 17).

³⁹⁸ Indeed a Price Waterhouse report had from the early 1990s noted the need for a restructuring of the senior management team (Maher 1992).

³⁹⁹ Eircom (2000c).

⁴⁰⁰ Ibid.

increase, this loses significance when the share of the full figure is examined. That is, one person - the chief executive was to have a majority share of €5,606,215 of the full figure in 2004 compared to €1,224,185 in 2001. Again this illustrates the primacy placed on remuneration as an incentive for increased performance and results. Increases here were seen as a reward for bringing the Company throughout the turbulent period of privatisation back to nationalisation in 2004 (Eircom Annual Report 2004: 47 and 2001: 5).

Finally, as with the reforms in its personnel, privatisation was to free the firm from state restrictions on its ability to secure funds and how it utilised such investment.⁴⁰¹ The firm could now seek the financing it needed to make the investments necessary for improving its infrastructure. Additionally, under public ownership the government had from time to time required Eircom to pay over dividends to the state outside of its regular tax payments.⁴⁰² Private ownership also removed the state's claims to the firm's profits and the risks of the company's income being diverted to bolster the state's budget.⁴⁰³

5.1.5 Re-branding

Like the Jamaican incumbent, Eircom found itself having to deal with 'legacy issues' at the start of reform. A significant pillar of its response was to be its attempts to rescue of its image from some of the battering and negative perceptions it had inherited over the years. A key plank to this strategy was the change of names, which took place in 1999 resulting in what was then Bord Telecom Eireann Plc becoming Eircom Plc. Thus, like the Jamaican incumbent this case shows the full extent to which incumbents have been willing to go to redesign themselves to face change. It also suggests the importance of image and perceptions in the way the incumbent

⁴⁰¹ Ibid.

⁴⁰² See for example, Murdoch 1992.

⁴⁰³ As noted earlier the firm had to pay over these dividends regardless of its level of profit forcing the firm to borrow to invest in the sector. However, it had prior to privatisation taken the decision to stop these payments, as it needed to invest in infrastructural growth. The cessation of this practice as well as the firm's ability to raise new capital from its partial privatisation had seen borrowing being reduced significantly over the years. In fact, whereas net borrowing stood at around IR£950m in 1994; IR£700m in 1996; it had by 1998 fallen drastically to IR£172m (TE 1998: 4). Nonetheless, even while the firm had ceased its payment in the early 90s its continued status as a public company meant that up to 1998 the state could impose its claims to its profits. Privatisation was to officially remove this claim and the risk that it could be employed in the future.

is able to respond to change and likewise the extent that it is willing to go to change this image. In such cases, the ability to change this image may be considered a competitive advantage for the firm.

The choice of names was practical, signalling its move away from traditional telephony to more modern forms of communication. As the firm noted in its Annual Report of 2000 this move was meant to emphasise, “to the market place the shift which ha(d) taken place within our business, from a telephone company to a communications company” (Eircom 2000: 38). In other words, emphasis was no longer narrowly on traditional forms of communication - the telephone - but had now transcended more recent forms of modern communication, including mobile telephony and the Internet. The name change was also symbolic and may be understood as a direct attempt to break from the stigma attached to its former status as a government owned monopoly. It was thus made a new Company, not only in ownership and *modus operandi* but also in name. To date, Eircom remains the most recognisable company in the market.

Furthermore, Eircom’s donations and philanthropic endeavours have been key in helping to raise its profile and strengthen its brand. However, its activities here have been governed by internal demands for restructuring. Thus, faced with continued uncertainties during its restructuring in the 2003-2004 reporting period the firm began stripping back its brand support and sponsorship activities as a way of reducing costs. These were once again taken on as the firm became more settled after the benefits of restructuring since 2002 started to be felt throughout the Company. These were seen in increased earnings and market growth.⁴⁰⁴

Attempts to change its image and appear as a more responsive operator may also be seen in the changing emphases in its Annual Reports. Thus, Eircom has also begun emphasising its corporate social responsibility in much the same way as the Jamaican incumbent, highlighting the many ways in which it is contributing to the environment health and well-being of both its staff and communities (see for example, Eircom Annual Report 2006: 19-29). This area has thus moved from being an addendum on health and safety in the Director’s report (see

⁴⁰⁴ See Eircom Annual Report (2006: 19, 28-29).

for instance, Annual Report 1999: 15) to being a central feature of reports from 2005 (see Annual Report 2005: 15-23).

As such, moves to secure its future did not stop at name change but were accentuated by actual modifications in practices and ideology governing operations. The shifts in Eircom's strategies in the post-reform period marked a search for the most suitable means of reorienting its operations to face the new and emerging threats unleashed by regulatory reform. These strategies therefore, differentiated between the large, slow to respond, incumbent, which existed before liberalisation to the now more responsive actor post reform. The switching tactics in the early years therefore, help to mark this incumbent as an actor who is capable of changing as well as being influenced by other forces such as competition and a desire to appease customers. As will be shown in the following two chapters, the internal interests, which exist in the firm, have also influenced its tactics and strategies.

Thus, as established throughout this chapter, the Irish telecoms incumbent, Eircom, has rapidly undergone enormous adjustments in its commercial orientation. These gains have come at a price since Eircom has had to increase its level of investment in the sector to bolster its capacity. Thus, with the focused effort to increase service and infrastructure capital expenditure was to witness an increase of 28% from 1999 to 2000, just a year into full liberalisation.⁴⁰⁵ In 2004, these internal changes had seen Eircom being hailed as, "one of the most vigorously re-structured and re-shaped Irish enterprises at the start of the 21st century".⁴⁰⁶ By the end of the 2006 reporting year, Eircom's share value had risen by 62%.⁴⁰⁷ Furthermore, the firm had both the capital and size to withstand attacks on its dominance and influence (Interview: former line minister, Dublin, November 11, 2003). These have afforded it time to modernise its procedures.

5.2 Embracing Regulation: Internal Response to Regulatory Reform

Industry reform has, therefore, had a profound effect on the incumbent's internal organisation, operations and its overall ethos. Regulatory reform is thus, shown as presenting the incentives

⁴⁰⁵ Eircom (2000c). This had also increased by 22% over the previous year in 1999 (TE 1999: 2).

⁴⁰⁶ Eircom (2004).

⁴⁰⁷ See note 52.

for incumbents (and former monopolies) such as the two discussed in this study to make improvements in their operations which given their size and reach also equates to an improvement in overall quality and access in the national telecoms network. Where the incumbent is unable to prevent an unfavourable revision in the rules affecting its status then as demonstrated in Chapters four and five, it will turn its attention to improving its operations and capability to compete as a means of reducing the risks of losing its market share and overall presence in the market.

In such, cases, its incumbency affords it a head start in establishing itself in a reformed market given its history, knowledge and experience, capacity and resource when compared to other operators. These have allowed the incumbent's to undergo important internal adjustments. This may be seen in the measures adopted by Eircom within the last decade and specifically, since liberalisation in 1998. Reform has forced Eircom to become more customer focused, to improve the quality and speed of its service, while cutting service charges, staff and costs. These are in a similar vein to the reforms initiated by the Jamaican incumbent as it too sought to deal with the changes in the rules and structure of its operational environment. Similarly, the reforms suggest that regulatory reform is not simply about behaviour and structural change as it relates to the regulatory space. Rather, this is also about how incumbents – the main objects of regulation in the pre- and post-reform period – internalise the external changes using these as motivation for internal modernisation, demonstrating the impact of changing rules and structure in the regulatory space as a route to securing internal reforms in regulated firms. This is important since change here will have an external effect in so far as this can lead to efficiency gains, service improvement, choice and lower prices in the wider sector.

Among the shifts in Eircom's ethos is its attitude to customers. Client relations have moved to a priority position in Eircom's operations and so too has market research and sales. As demonstrated in the chapter, one of the first moves was to change its name indicating the importance of such moves in signalling a break from the negative aspects of its legacy as a monopolist. These measures demonstrate the shifts that have taken place in the incumbent's

priorities, customer service, efficiency and network capacity becoming more important with changes initiated to fulfil these new demands.

Faced with growing uncertainties and heightened risks resulting from the changing rules and structure of its operational space, the incumbent also sought to maintain its dominance and central position by attempting to increase its ability to monitor and control the telecoms sector. Thus, the activities initiated by both of the incumbents were largely similar and were arguably aimed at re-ordering their internal environments and increasing their competitiveness as a means of controlling the risks and uncertainties faced in their operational space. However, there were some differences in the response.

For instance, where both sought to reduce risks and uncertainties by making their environments more predictable the attempt to replicate itself throughout the market (in the form of subsidiaries and partnerships) was more significant for Eircom than C&WJ. Thus, for Eircom managing its future and controlling risks meant trying to gain as many partnerships and subsidiaries, in so doing creating alliances to saturate the market, increase its scope and ability to monitor the sector. The increase here is also directly related to the firm's attempt to sustain its dominance by increasing the number of areas and operations under its management. This marked a shift from its previous strategy of simply trying to keep rules and structure from changing in order to prevent attacks on its monopoly privileges. Instead, it now tried to use its first mover advantage (presented by its position as the incumbent, owner of the fixed network and brand awareness) to extend itself into all the areas of the sector (see Lieberman and Montgomery (1988; 1998) for a discussion of advantages and disadvantages of first mover status). Here one form of dominance – legal monopoly – was being replaced by another – physical size and breadth, a point which highlights the complexities which regulators sometimes face in regulating the activities of a large incumbent which uses its capacity and size to maintain its dominance and in so doing, reduce the level of competition which may exist in a

market.⁴⁰⁸ Whereas, Eircom felt that increasing its size through the market would reduce entry and competition whereas C&WJ was more focused on advancing its poorly developed mobile operations against a rapidly growing Digicel. For C&WJ, this was also about the development of in-house regulatory capacity as a means of increasing its ability to monitor activities in the sector.

Faced with such strategies from the regulated firm who possess the capacity to extend itself over a sector (in so doing reduce entry) an IRA or government regulator may need to introduce measures to restrict the areas in which the incumbent can operate, as did Comreg when it forced Eircom out of the mobile and cable television markets. Ironically, Eircom may have benefited from being forced from the markets, since it allowed the firm to focus more on improving quality in the fixed network and Internet. C&WJ on the other hand, found itself having to dedicate much of its time to competing in the mobile market.

These developments serve to highlight the tensions between the various interests and claims on the firm's operations as it sought to balance the push from changes in its regulatory space with the dictates of its staff and unions. As such, whereas C&WJ had more freedom and clearer lines of power (C&W plc.) it may have been able to instigate the reforms outlined in Chapter four much easier than Eircom was able to do in the first years of reform. In this sense, at least, while reform (i.e. privatisation) allowed for internal adjustments such as the ESOP, the strength of the employee/union bloc, the involvement of government as shareholder may have muted the extent to which Eircom was able to streamline its operations up to 2002 and 2004. For instance, the strength of employees and the intersection with the government owners meant Eircom could not shed labour as desired in the first three years. In so doing, the firm was simply continuing in the way it had throughout the 80s and 90s, albeit at a more pronounced pace. During these early adjustment years recognition of the need for cost reduction and greater efficiency had yet to become as intense a desire for the firm's owners. However, it was not till the balance of power shifted once more that the more far-reaching changes were made in

⁴⁰⁸ For instance, Chapter three has shown how the prices which some small operators have to pay for leasing capacity over Eircom's network and the cost of investing in alternative capacity has forced some actors out of the telecoms market.

addressing size, costs and efficiency within the company. This suggests some limit to regulatory reform in explaining the internal motivations of incumbents. Further, it is not being proposed that every initiative within the incumbent will be driven directly by an initiative from the IRA. Rather, reform is shown as forcing incumbents such as Eircom to rethink its internal organisation and how, this is oriented towards success in the regulatory/operational space.

These reforms have been hailed as having been made possible by regulatory reform in so much as changing rules, ownership, industry structure and the development of new institutions within the sector provided the levers for change within the firm. Thus, whereas Eircom was formerly described as being:

vastly overstaffed, its equipment was antiquated, its service was erratic, and its charges for both domestic and international calls were among the highest in Europe... Even more ominously, foreign investor's complaints had become more severe, as such users compared service in Ireland with that obtainable elsewhere in the EU. Factories had extreme difficulty in keeping telex lines open to their customers and to their home offices, charges were excessive, and billing was chaotic

(Burnham 2003: 543)

The internal modifications since liberalisation have ensured that by 2007 such claims were no longer valid.

5.5 Conclusion

The intent in the two chapters in this section has been to demonstrate the change and movement brought firstly, by the prospect and then reality of industry change. As such, the approach has been to establish a trajectory, which follows the firms from positions of dominance and monopoly to a phase of incumbency highlighting and explaining the efforts they make to sustain this dominance. This follows from Chapters two and three, which demonstrated the tactics employed in dealing with change in the regulatory space.

This experience demonstrates that faced with a changed operational environment, an incumbent firm will seek to change its orientation and structure in order to evolve with this new operational environment. Even more, where it is unable to control the rules in its operational

sphere, it is forced to turn inwards to attempt to remodel itself in order to control for the risks and uncertainties which it faces from the reconfiguration of the sector rules by which it operates. These internal modifications in turn have an external effect in so far as they help the incumbent to change the way it operates, advancing its relationship with clients and its ability to cope with complaints and increased regulation.

Finally, as indicated in Chapter four, the reforms outlined are not necessarily unique. This is most certainly the case for moves such as those to reduce the cost base and to improve service quality. However, it is suggested here that these reforms are all the more pertinent in a study of incumbency and incumbent's response to industry change given the position and history of these actors in the telecoms field. These are for the most part former monopolies whom may have been seen as unresponsive and static. Furthermore, the resources possessed by these actors have been important in allowing them to time in which to modernise their operations. This is not only in the fact that they were both able to negotiate with government to delay reform. This is also the case in the fact that their size, wealth and experience acted as a cushion to assist them to search for and adopt measures to allow them to operate more efficiently.

The incumbents have now undergone significant changes, which were thought to be against their nature and having done so, have managed to retain their dominance given their ability to adapt to change. As in Eircom's case these include tendencies for overstaffing, having inflated prices, being wasteful and having poor quality (Burnham 2003: 542). As such, the presentation here is not just that of any firm but the story of former monopolies, now incumbents and the effect that changes in sector rules and governance has on them internally.

Additionally, the timing and extent of the responses adopted by these firms also sets them apart from others. Here, reforms have mainly taken place after actual legislative change, which brought about the wider changes in the rules and structure of the telecoms sector. This has been the result in the two cases examined in this work. Thus, even where some of the initiatives may not all be new or innovative, the vigour with which they were undertaken after regulatory reform again suggests the impact of this period on both the Irish and Jamaican

incumbent firms' activities. The prospect or certainty of such change has also been demonstrated as motivation for incumbents to begin shifting from their monopoly mindsets.

Its tactics and strategies here closely resemble those of the Jamaican incumbent's response. Here, after years of comfort and protecting their position at the helm of telecoms both found themselves unable to prevent the tide of change, which was engulfing the telecoms sector. Failure to prevent restructuring the operational space in both instances nudged the incumbents towards considering the restructuring of their internal operations and organisation more seriously. As this occurred change management was to become more significant in both cases and can be seen in the many measures adopted to modify structure and organisation as well as those aimed at increasing the incumbents' ability to monitor developments in its regulatory space.

Eircom has begun to expand once more, having returned to the mobile market since 2006. Following from this, it may be argued that reform forced the firm to pay attention to increasing efficiency and service quality, introducing more of a competitive spirit in its monopoly mindset while affording it temporary freedom from political control to streamline its operations (i.e. 2000-2004) for greater competitiveness. Thus, Eircom's return to the mobile market may indicate that it has already surpassed the worst of reform while the continued reforms in Jamaica (e.g. change in managers) may suggest that this incumbent is still seeking the right fit between its organisation and resources and market requirements. As mentioned elsewhere too, the competition experienced by C&WJ has been more vibrant with the firm being caught off-guard in its mobile market at the start of competition.

The case of regulatory reform also demonstrates the diverse interests, which exists in the firm and the way that these interests, particularly those of the employees and their unions have been able to access key industry players to ensure gains from the reform process. As such, the chapter makes a case for considering the role of internal interest groups within incumbent firms and the way this diversity plays out on the choices and options available to incumbents as they seek to respond to regulatory reform. This opens the way for a more dynamic view of these actors, one which acknowledges that they are not necessarily monoliths; and which recognises

the diverse interests and players within this actor, thus helping to advance an understanding of regulatory reform and the way that incumbents respond to the changes occurring around them. As such, the coming chapters will be dedicated to addressing these issues and how they have played out in the Jamaican and Irish context.

CHAPTER SIX

INTERNAL ORGANISATION AND ITS EFFECT ON C&WJ'S RESPONSE TO REGULATORY REFORM

6.0 Introduction

The discussion in the previous chapters sought to bring more focus on how the Jamaican and Irish incumbents responded to regulatory reform. In so doing, they sought to highlight how the strategies, governing ethos and activities have progressed in response to modifications in the rules and structure of the telecommunications sector in Jamaica and Ireland. The transformative effect of pressures such as competition, enabled and institutionalised through regulatory reform coupled with changing expectations from consumers were pivotal in nudging the incumbents and former monopolists towards making improvements in their service, reorienting operational priorities and expanding infrastructure. The transformation in the incumbent's relationships in the regulatory space particularly with the IRA, government and competitors has also been emphasised.

In spite of the similarities between Ireland and Jamaica, the Jamaican case of telecommunications reform and particularly, an examination of the incumbent firm's response is also revealing in what it says about incumbent firms that are components of a large multinational and how they respond to changes in local operational spaces. The present chapter therefore, challenges the notion of incumbents and regulated firms more generally, as monoliths. The negotiations for the major phase of reform in the late 1990s are therefore, warrant a more focused consideration for a number of reasons. Firstly, the following depicts a situation in which a formerly cohesive unit - the incumbent - becomes segmented more obviously into the local and parent company. Here the Company's voice becomes broken into different tones and messages with significant impact on how the local incumbent and the head office approached industry reform and crucially, how these affected the strategies of local regulators.

Secondly, the chapter illustrates the incumbent's strategic use of its segmented structure as a multinational to play the international arm against the local as a method of gaining an

advantage in negotiations. Here C&WJ more obviously becomes differentiated between C&W plc (London) and the local management playing off competing messages against local regulators.

Third and lastly, the analysis shows how the varying skills, experience and knowledge of each body were used to secure C&WJ's (and hence, C&W Plc's) overall advantage in the reform process. As balance of power switched between each location the firm was willing to play to certain views in its diverse bases in Jamaica and London in order to strengthen its hand in local negotiations for industry reform and later to utilise the resources available through its network of sister companies to adjust to reform. As such, this case helps to indicate the variety of responses available to incumbents when faced with changes in their regulatory space. Here its geographically dispersed structure and location within a global network of companies helped to empower the incumbent firm in its relations with the industry regulators (IRA and Minister) and others within a small country setting, indicating the extent to which the internal organisation can affect the level of compliance from incumbents.

But while the findings have implications for the nature of incumbency, this also has implications for regulators in small countries faced with securing change in a market dominated by large MNCs. Namely, as the firm's structure offers it access to certain resources, likewise these can be utilised by regulators to achieve compliance.

6.1 Internal Organisation and C&WJ's Response to Reform

Over the years C&WJ has adopted a number of different governance models. These have helped to define the relationship between C&WJ and its head office in London.⁴⁰⁹ C&W plc has thus, over the years had various levels of ownership over the Jamaican company since its privatisation in 1987 when it gained 21% of the newly amalgamated company, TOJ (Stirton and Lodge 2002: 3; also in Wint 1996). By 1999 it owned around 89% of Company shares (C&WJ 1999: 36). The increase in ownership had come about from the government's pledge to reduce

⁴⁰⁹ Interview: Past and present heads of the regulatory team at C&W plc, London, February 23, 2007; March 26, 2007.

its hand in the Company overtime, as a condition of the privatisation agreement of 1987 (Wint 1996: 56). But even while C&W plc was the dominant owner of C&WJ (then TOJ), and had final responsibility for C&WJ, the local management still had much autonomy over operations and management in the 80s and the early 1990s. So while having a split in its ownership structure, the firm nonetheless operated for the most part as a single entity with the government dealing with the company as a unit.⁴¹⁰

This was to change however, as part of an ongoing effort within the MNC to reconfigure its global operations. However, on the eve of major reforms the decision was made by the then head of C&W plc to bring the global operations closer under the parent company's brand in 1998 (C&WJ 1998: 4). With this, TOJ became C&WJ. This also saw more focus on the role of the Jamaican operation in the context of the MNC's global network.⁴¹¹ The decision was made in 2001 to include the Jamaican operations under the Caribbean operations (C&W West Indies - C&WWI) and as the largest country and telecoms market in the English-speaking region, C&WJ was to continue to be a leading figure within the region. This was changed once again when continuous search for the most effective and efficient mode of organisation saw C&WJ being moved even closer to the central body in the UK, after the removal of the C&WWI which saw the Jamaican management reporting directly to the team in London. Thus even while C&W always had ultimate responsibility for C&WJ, this move was to visibly indicate the closer union between the local and international arm of the firm.

Thus, the general trend over the years has tended to be towards an even closer alliance between the head and local operations. The irony here was that this attempt at closer oversight was to lead to divisions emerging in the incumbent, as well as between C&WJ and its majority shareholder.⁴¹² These divisions were to become more obvious even while taking on a new character from 1998 as the growing disenchantment between C&WJ and the Jamaican

⁴¹⁰ Recall that the independent regulator, OUR did not appear on the scene till 1997 and even then did not feature much in the firm's purview until after liberalisation had begun.

⁴¹¹ Interview: Former member of C&W plc's legal and regulatory team, London, March 26, 2007. This concerned discussions on whether Jamaica should be included in the rest of the region, lead the region or be a stand alone entity

⁴¹² On the other hand, increasing tension may have been likely if the local managers felt their power was being usurped.

government became apparent. As noted in Chapter two, this was marked by the entrance of a pro-reform minister in 1996. This shifting mood was demonstrated more visibly in the Court case between firm and state and the antagonistic stance taken by C&WJ towards sector reform.⁴¹³ Here, governance relations between the local incumbent and its head office were to change significantly with events in Jamaica (its largest Caribbean business and gateway into the rest of the region) increasing in relevance to C&W plc's future on the island and the region .

As will be shown below this episode was firstly to see a clear split in the tactics and approaches of the local versus its head office as the Jamaican government sought to open the telecoms sector to competition. This division was later to be mended as the messages from the company became more united and C&WJ and its shareholders began speaking with one voice. This came as the Jamaican operations were seen to be a forerunner to future happenings in C&W plc operations in the Caribbean and as efforts were made to use its multinational status as leverage in local telecoms.

6.1.1 From Monolith to External vs. Internal Management

The first sign of an internal split appeared in 1998 as the minister issued the VSAT licences to new operators as it sought to begin the process of opening the sector. As argued in Chapter two, this move constituted a direct threat to the legality of C&WJ's monopoly. As noted by a representative from the firm, the differences between the head and local office appeared to have been based on whether or not liberalisation was sensible for the Company and in particular, the timing of the reforms.⁴¹⁴ The differences in how the firm should approach change was mainly about the senior management and major share holders with employees and their unions having little input in the discussions. Indeed, this was one of the major points of difference between the Irish and Jamaican case, with staff featuring much less in the latter.

⁴¹³ See note 129.

⁴¹⁴ Interview: Senior executive, C&WJ, Jamaica, March 20, 2007.

Likewise, the OUR was to have little or no role in the actual negotiations for reform.⁴¹⁵ As such, the Minister fulfilled the role of regulator as was the case prior to the formation of the OUR. The minister's decision to grant the licences had come after C&WJ had made a commitment to increase its investments in building up the local telecoms infrastructure.⁴¹⁶ The local management believed that it would be given the time to recoup these investments. Figure 4.3 demonstrates that the incumbent had in fact delivered on its promise with significant increases in its investment between 1995 and 1997. There was an expectation within the government that the firm would also continue to increase investments; even while it was threatening to break C&WJ's monopoly. The firm's position was not that liberalisation was not going to occur eventually since this had by then appeared inevitable.

The top management of C&WJ felt the Minister's action in opening the sector to competition to be unfair given that it had met this request for investments in infrastructure while requisite measures were not being taken to ensure that it could recoup its expenditure. Rather, the local management felt the Company needed more time to position itself to face competition and so wanted more time to prepare itself for change (Ibid). The minister's refusal to retract the licences and the subsequent action brought by C&WJ were the result (Interview: senior manager, C&WJ, March 20, 2007). This was to see the local office being branded as anti-competitive with both C&WJ and the government in a stalemate.⁴¹⁷

The options open to the government was to deal with the Head office who appeared to be more conciliatory or adopt a more confrontational approach – as implied in C&WJ's stance. However, faced with the prospect of an extended and costly court battle, the government chose to do the former with the London office agreeing to support the government's efforts to open the local telecoms market.⁴¹⁸ The apparent hesitation and stubbornness within the local arm saw

⁴¹⁵ See further discussion in Chapter 2.

⁴¹⁶ Interview: Senior executive, C&WJ, Jamaica, March 20, 2007.

⁴¹⁷ The Company CEO was also credited with the breakdown in discussions, given what was seen as his confrontational stance. For instance, one interviewee described his period in charge of the Company in the late 90s as "one of fighting and wrestling and trying to find ways to be difficult, even if the inevitable was viewed" (Interview: Industry commentator, Kingston Jamaica January 7, 2005). Negotiations may not have been advanced by what was seen as his "bullish confidence" (Edwards 2001).

⁴¹⁸ The HoA as outlined in Chapter 2 was the result of this support.

the Minister and his negotiating team conversing directly with the staff at the head offices in London above the head of the local leadership at C&WJ (Interview: former C&WJ staff, Kingston, Jamaica, November 20, 2006; also in Stirton and Lodge 2002: 7). C&W was also encouraged to find a balance when the Jamaican Government also made an appeal to the British government (Interview: then Minister, Kingston, Jamaica, January 6, 2005; Wint 2005: 330). A team from London also came to the island to negotiate the structure of the new regime directly with the Minister and his team.

The move by the state to make an application over the head of the local offices to have a satisfactory and speedy reform within local telecoms, therefore, marked an effort of strategising by the state. The experience here also illustrates the difficulties faced by small states in regulating large well-resourced firms who are part of a large MNC. While highlighting the difficulties it also suggests how such states can secure compliance from such firms, again suggesting a case for viewing external actors as important behaviour shapers in large firms. Here, the government's choice of regulatory strategy shows the value of an awareness of the actors and issues which can affect the activities of regulated incumbent firms and how these can be brought into the mix of regulatory strategies to increase the likelihood of obtaining compliance from regulated companies.⁴¹⁹ This is the case particularly where they are dealing with firms whose command of resources can rival that of a small developing state and where the continued support of that firm is important to the overall economy. This appeal was important given that the Jamaican state was not in a position to pay fees that countries, such as Hong Kong, had paid C&W plc as compensation for premature termination of its licences.⁴²⁰ Additionally, the state's success in getting the firm to agree to liberalise within three years is in fact a point worthy of note given that countries such as Lithuania had only managed to get their

⁴¹⁹ See Foga and Newman (2001: 11-12). The negotiations were hailed as a success and an example of how small states can negotiate reforms.

⁴²⁰ Interview with then Minister, Kingston, Jamaica, January 6, 2005. The 1988 Licences had stipulated that the state would have had to compensate the incumbent in the event that it revoked the firm's licence (E.g. see 22[1] of the Telecommunications of Jamaica Limited (Wireless Telephony) Special licence, 1988 and the Telecommunications of Jamaica Limited (Telex and Teleprinter Services) Special Licence, 1988). As such, there was a legal basis for the firm to require such payments from the state since, liberalisation and competition would have necessitated the incumbent giving up some of its extensive privileges as guaranteed under these licences.

incumbents to agree to staged reforms within a seven-year period (Foga and Newman 2001: 11).

This left the local leadership at C&WJ feeling as if the head office had “usurped” its authority and had failed to support it in its attempt to protect the firm’s long term interests (Interview: a senior executive, C&WJ, Kingston, Jamaica. March 20, 2007).⁴²¹ This may have been understandable given that the local management had thought they were doing what the head office would have wanted, again given the freedom which they had exercised over management and which had helped secure the firm’s position among the most profitable in the MNC’s network of companies.⁴²² However, as has been observed, the local management may have been a bit over-zealous or strict in their interpretation of C&W plc.’s wishes in this regard.⁴²³ On the face of it, this marked a clear divergence in the strategies of the incumbent as the MNC indicating the impact of such split governance structures in allowing regulators points of entry to influence and direct the behaviour of the whole.

As has been suggested too, the incumbent’s tactics may also have been more calculating; playing up the difference in views more than was the case.⁴²⁴ As noted by a former member of the regulatory team at C&W plc, the focus at the centre was on how best the firm could undergo liberalisation while negotiating for conditions which would allow it the right incentives to invest in the sector (Interview: London, March 26, 2007).⁴²⁵ Indeed, by the mid 1990s there had already been some acceptance of the impending reality of liberalisation. Whereas the local arm saw this as a more distant event, C&W plc appeared to have

⁴²¹ Indeed, the then CEO had been credited with taking the Company to the level of being one of the most profitable in the global operations (Jackson 2003). With this in mind it was felt that the local firm would have been given more support and leeway by C&W plc. (Interview: former employee, C&WJ, January 6, 2005; November 20, 2006, Kingston, Jamaica).

⁴²² Ibid.

⁴²³ Interview: Then Minister of telecoms, Kingston, Jamaica, January 6, 2005.

⁴²⁴ Interview: Former senior staff at C&WJ (who also acted as an adviser to the government on telecoms related matters) Kingston, Jamaica, January 6, 2005.

⁴²⁵ Former episodes of license negotiations between C&WJ and the states had indicated the importance of having sufficient negotiating skills during this period in order to secure the best terms possible. For instance, the renegotiation of the firm’s license in 1968 which created Jamintel had seen C&WJ emerging from that episode with the value of its shares severely devalued and though inflation grew it received no corresponding increase in the price for international calls with its fixed assets subsequently dropping in value (Spiller and Sampson 1996: 64-65). Secondly, its shortsightedness in negotiating the terms of its new 1998 license on the foundation of an outdated legislation has already been mentioned in chapter two.

acknowledged this reality much earlier.⁴²⁶ As such, their effort was spent, not on preventing liberalisation but rather on devising the best way of achieving reform while reducing the potential risks that such a situation would bring for its operations in Jamaica.⁴²⁷ The concern was therefore, about getting the most from regulatory reform not preventing it.⁴²⁸

The government has subsequently been described as being pragmatic in its approach to negotiations and industry reform.⁴²⁹ However, its readiness to negotiate and its pragmatism can also be understood in the context of the delays and confrontation it was having with the local leadership and wanted to get going with plans to open the sector. Inadvertently, this may have strengthened the hand of the head office when the government did make an appeal directly to London for support. As one commentator suggested, the whole affair was one-sided given that the government lacked sufficient expertise to negotiate on an even footing.⁴³⁰ Thus, the differences were used to increase its bargaining power with the government by appearing to be more willing to concede than the local office.⁴³¹

Further, the fear of the negotiations breaking down constituted a “big stick” against the government’s negotiating team who were eager to move forward with the liberalisation process (Interview: former senior executive of C&WJ, January 6, 2005).⁴³² C&W plc therefore, appeared to be more willing to engage in negotiations with the Jamaican government. Hence, it was seen to be more amicable and more understanding of the desire of the Jamaican state to

⁴²⁶ Their experience of regulatory reform in the UK, and other countries such as Hong Kong would have ensured awareness of international trends and developments in the area, which were pointing towards liberalisation as a growing reality globally.

⁴²⁷ Interview: Former senior member of C&W plc’s legal and regulatory team, London, March 26, 2007.

⁴²⁸ Interview: Senior executive of C&WJ, Kingston March 20, 2007.

⁴²⁹ Interview: Former senior member of the legal and regulatory team, C&W plc, London, March 26, 2007. Also see discussion on the 1999 agreement in Chapter 2.

⁴³⁰ Interview: Former senior staff at C&WJ (who also acted as an adviser to the government on telecoms related matters) Kingston, Jamaica, January 6, 2005.

⁴³¹ The resources possessed by the regulator (in this case the minister) proved to be insufficient in coaxing the firm to comply with its decision to liberalise telecoms. The firm in turn saw itself as a match for the government recognising where it had an upper hand, in terms of its willingness to frustrate the reform process by taking the government to court. The slow pace in which decisions could go through the Jamaican courts and the willingness of the judiciary to rule against the government has already been documented elsewhere.

⁴³² This may in fact have seen the government once again being taken on in the Court and having to pay C&WJ for breaching agreements and then to buy the firm out of its licence in order to introduce further competition.

open the sector to competition.⁴³³ Thus, as regulators are able to appeal to external actors for local regulatory support, regulated firms are able to call on the resources, available through their split structure, as leverage over local regulators. Whatever the case, the evidence does indicate that the formal agreement was the result of negotiations with a head office staffed by a team which was much more experienced in negotiating and drawing up such agreements with governments around the world.⁴³⁴ This is not implying however, that the local managers played no role in structuring the new regime.⁴³⁵ However, it was the expertise of the London staff that had the decisive influence in directing the steps of the local office. This team worked directly with C&WJ, guiding it on how to handle negotiations and liberalisation through an in-house legal and regulatory consultancy.⁴³⁶ This team was the result of collective knowledge gathered by the London office over the years through its experience of negotiating similar reforms elsewhere in its global operations. As such, there was some basis for the incumbent to offer this kind of assistance to the state given that it had in fact, experienced regulatory reform in other territories.

Furthermore, the partnership that the state and firm had engaged in for over a century meant that there was more to the relationship than simply that of regulator and firm.⁴³⁷ Thus, C&W could say, “look, here is how its worked in other countries...” with the understanding that the state could borrow from examples of reform in the plc.’s operations, or not.⁴³⁸ In this way, the Jamaican government was able to benefit from C&W’s experience in other parts of the world. Thus, responsive regulation in particular contexts may also mean borrowing regulatory capacity from the regulated firm itself.⁴³⁹

⁴³³ Interview: Former C&W Staff, Kingston, Jamaica, November 20, 2006.

⁴³⁴ Interview: Former adviser to the OUR at the London Business School, June 19, 2002.

⁴³⁵ In fact, the most senior member of the Jamaican team was promoted to a top position at C&W Plc in London in 2004. His promotion was taken as a sign of his success in bringing the local firm through the rough period of negotiation and readjustment leading up to full liberalisation having taken over from the head who had presided over the firm during the turbulence of the 1998-1999 period (Observer 2004).

⁴³⁶ Interview: Former senior member of regulatory and legal affairs team at C&W plc, London, March 26, 2007.

⁴³⁷ Ibid.

⁴³⁸ Ibid.

⁴³⁹ That is, by laying down a set of terms in the Heads of Agreement, which the government had to recognise in any new legislation relating to telecoms. At the time this new legislation was the Telecoms Act of 2000. The strong influence of the London team also gives further weight to views that the

This helped to demonstrate how the incumbent was able to utilise apparent differences between the managers and majority shareholders and the geographically dispersed structure to secure an advantage over industry regulators playing competing messages to strengthen the overall position of the company in negotiating for reform. So given its resources, the state regulator's task of getting the firm to comply with the decision to liberalise was made difficult as the firm saw itself as a match for the government recognising where it had the upper hand in terms of its willingness to hold up the liberalisation process in the courts. The case also illustrates the ways in which a small state is able to secure compliance from large, well-resourced firms.⁴⁴⁰ That is, by making appeals to external actors (in this case, the majority shareholders in London as well as the UK government) to lobby C&W heads on its behalf, suggesting a place for international actors in explaining the behaviour and pressures faced by large powerful incumbents.

This incident was however, not the only manifestation of divergence in views between senior managers on the path the firm should take in dealing with reform. For instance, some of the more senior management whom had been with the company since its inception in 1988 did not support the reorientation along the lines described in Chapter four.⁴⁴¹ For instance, the reforms in the skills and background of senior personnel were among those issues affecting internal relations. These did not see how the new tactics such as, moving away from the engineering focus of the firm to hiring individuals with little or no experience in the sector could advance the firm's aim of increased competitiveness. Indeed, these differences in views did contribute to some unsettlement in the firm as it sought to adjust to competition. This unsettlement was to cool around a more unified view of the way forward as much of the senior executive and management team who were against the firm's strategies were gradually replaced.

government was overwhelmed by the shareholders in London, resulting in the incumbent having undue influence over the negotiation and legislative process.

⁴⁴⁰ The firm was also a significant contributor to national development where receipts to the government totalled around J\$4 billion annually. The firm was also a significant employer and one of the largest companies in the country (C&WJ-AR 2005: 6). As such, its operations and good relations between the firm and state were also important to the state as much as it was for the company itself.

⁴⁴¹ See Observer (2001a; 2001b).

The majority of these had been with the company since its inception.⁴⁴²

6.1.2 Even Closer ties Between C&W and C&WJ: Post 1999

By the end of the 1990s, the Jamaican operations were to become more closely integrated into the C&W global network with internal governance becoming more of a prerogative for international shareholders who exercised closer oversight over local operations. As such, there was, “a shift overtime as to who was in the driving seat” (Interview: former member of C&W plc’s legal and regulatory team, London, March 26, 2007). Closer alliance meant that by the time the HoA was signed and liberalisation of the sector commenced in 1999, the differences within the firm had begun to diminish. The departure of individuals less keen on the path that the firm had taken also lessened the potential for internal organisational divergences. Internal governance and management therefore, became more unified around a desire to improve and modernise to face competition.

This was to be the result of a closer relationship among the different interests, namely those of the shareholders and managers. Since the start of the negotiating process at the end of 1998 to present, there has been a shift in the balance in the relationship and reporting structure between the local firm and the head company. Ultimately, this balance slid more and more away from local managers with the head office, taking a more decisive hand in C&WJ’s affairs. As noted by one interviewee there was need for a trade off between the management of operations in the local firm and the benefits to be had from linking closer into the wider C&W group (Former member of the senior legal and regulatory team at C&W plc, London March 26, 2007). Here, the stress was on how best to manage the reform process in order to allow C&WJ and hence C&W plc to secure maximum gains; this as opposed to allowing the government to go forward to reform the sector without their input. The point also helps to explain the decision to take a more decisive role in local operations by bringing the local firm closer under the management of the head office in London (C&WJ 1998: 4).

⁴⁴² Ibid.

The significance of the events in Jamaica for C&W is not to be underestimated. Prior to 1998, closeness between C&WJ and C&W was visible mainly in the form of the latter's shares. The threat of market reform was however, to change this as the value of C&WJ in the MNC network increased. On one hand, C&WJ's value lies in the lessons they held for the corporate body's approach to reform elsewhere in the Caribbean and for the future prospects of the Group (Collister 2007).⁴⁴³ The Jamaican operation was the first among its fourteen in the Caribbean to be liberalised. Developments in the country were therefore, being watched very closely by governments in the remaining islands.⁴⁴⁴ As such, the Jamaican arm:

has had to be right at the leading edge of transforming the company from being an incumbent exclusively licensed telco into a ... competitive telco operating in a competitive market place.⁴⁴⁵

C&WJ therefore, remains a model and test ground for the C&W group for how best to cope with operating in a new market environment. Hence, the close attention and support which the Jamaican incumbent received from its majority shareholder in London in helping it to deal with liberalisation and the government's attempt to change the terms and conditions of its licence. This relevance extends beyond the country where the firm currently operates in 33 countries (Ibid). As such, lessons picked up from the Jamaican experience were considered to be useful in helping the firm to deal with regulatory reform in the remaining Caribbean islands in which it operated as a monopoly (Interview: senior member of regulatory team, C&W plc. London, February 22, 2007). With the Jamaican operations carrying the lead in the Caribbean,

⁴⁴³ Indeed, the island offered the base for any other firm wanting to break into the telecoms market in the English-speaking Caribbean. In fact, this had been one of the specific advantages of the geographic location of the island, which had appealed to early entrepreneurs who had also used Jamaica as a central point of connection. For instance, according to the Chairman of Digicel, "Jamaica has set the pace for the entire region to follow and the other islands are following suit because of the tremendous example set by Jamaica". The firm also suggested that Jamaica would become the base of its hub in the Caribbean (Observer 2002).

⁴⁴⁴ For instance, islands such as, Barbados also adopted a phased approach to liberalisation. See the FT (2001).

⁴⁴⁵ Interview: senior member of regulatory team, C&W plc. London, February 22, 2007; also see Collister 2007.

happenings in the local firm in the late to early 1990s and (even at present) were particularly relevant to the C&W brand and its success across the whole of its business.⁴⁴⁶

On the other hand, the Caribbean region remains one of the most significant, commercially. Again, the Jamaican operations remain the largest, thus having the greatest impact on the consolidated results of the C&W group. For instance, C&WJ has in the past accounted for up to around 40-45% of the total profits for the entire Caribbean region (Interview: senior Executive, C&WJ, Kingston March 20, 2007).⁴⁴⁷ Thus, the new regime has seen C&WJ becoming more closely associated with the C&W plc brand. This has been achieved not only via name change but also through the greater relevance of the Jamaican and regional operations to the fortunes of the parent company and overall group results.

With the re-branding of the individual entities within the C&W group globally and the conclusion of the negotiations for the new regime locally, C&WJ now has closer ties with its counterparts around the region, including Panama and the rest of the world. The relevance of C&WJ to the performance and continued survival of C&W has meant that the former is also more closely watched by the parent Company. The location of the incumbent within a larger group of companies and its relevance within this group are therefore, shown as being important for the level of support it has received in areas such as, industry reform and the build of regulatory capacity. This support has continued as the incumbent and its largest shareholders continue to search for ways of adjusting to market changes both locally and globally.⁴⁴⁸ It is within this context as well, that one can understand the seriousness with which the head office viewed the happenings in Jamaica.

⁴⁴⁶ Indeed, the losses sustained by the home company had forced it to recede from some of the businesses and acquisitions it had made at the height of the Internet boom. Businesses in the US were thus discarded while it also began downsizing in its various operations globally, including in the UK. For instance, a report from *European Communications (EuroComms)* noted that by 2003 1,300 staff had been made redundant in Europe and the US. Another 2,200 were due to be axed from these locations in 2003. In the UK a further, over 1,500 were to be made redundant over an 18 month period from 2003 (EuroComms 2003).

⁴⁴⁷ This relevance has only increased with the Jamaican operations taking the lead in Cable and Wireless International's overall growth in earnings in the 2006/7 reporting year experiencing a 47% rise in mobile customers (Gleaner 2007).

⁴⁴⁸ For instance, the firm's annual board meeting was held in Jamaica in 2007, the first time since 1999 that this had been held outside of the UK, this as the majority shareholder sought to mobilise and indicate its backing of C&WJ (Collister 2007).

Even more significant for the present discussion is the type of resources that the incumbent has been able to utilise through this new and closer relationship, which has helped it in facing the new threats and pressures in its regulatory space. The new relationship has brought with it greater possibilities for the firm in terms of opening the door to a network through which it can access the skills and competencies to assist it in a new operational environment where competition, transparency and accountability are more important. For instance, the investment in infrastructure has seen capacity enhancement in the area of e-commerce where locally based Data networks and Internet Protocol were upgraded and linked to C&W plc's global network. Thus, while C&W plc's operations across the Caribbean region had been seen as separate entity with each island taking control over its business, this approach was also to change with the ongoing search for improvements. Here the firm began utilising its sister operations across the region to enhance its competitiveness. This was visible in its Pan-Caribbean Online Services Division, which used resources across the region to bring web hosting, e-commerce, content distribution, etc. into the Island. While the Island's customer contact centres offered services to other islands including the Turks and Calicos Islands (C&WJ-AR 2002: 7). As a part of a regional and global network the firm's strategy was to leverage its resources across the region through greater centralisation and coordination, thus, taking strategic advantage of its size and global network. As noted by one senior member of the C&W plc team in London, this has been one of the important benefits to accrue from the being linked closer into the C&W network (Interview: February 22, 2007).

This has also been seen in the practice of lending managerial capacity and skills from other areas of the Group to assist the local office in related areas. For instance, the senior regulatory team from the London office had helped to bolster regulatory capacity locally by assisting C&WJ in various negotiations with the Regulator's office (Interview with former head of the regulatory team at C&W, March 26, 2007). These were for instance, aimed at shaping some of the new rules and structures for the sector on the cusp of reform including, those establishing suitable caps on prices (Ibid). This is in keeping with Lodge and Stirton's proposition that, "the ability to draw on expertise internationally allows for professionalisation,

increasing regulatory capacity vis-à-vis the international resources of trans-national companies” (2002: 8). Additionally, by borrowing from the head office C&WJ was given the time to train and develop its own expertise in house.

Closer alignment into the C&W network has also afforded C&WJ access to a pool of staff with the experience of operating in a competitive environment and negotiating with governments for regime change in other territories. As such, C&WJ was to witness a number of staff from the main office and other countries joining it at various points throughout its restructuring from 1998.⁴⁴⁹ The last four of the five chairmen that the firm has had since 1998 have for example been from other parts of the Plc’s empire (as seen from a review of C&W’s Annual Reports 1998-2006).⁴⁵⁰ Further, being a part of this wider network has seen the adoption of similar procedures and contracts among the Group’s units. For instance, the C&W group now has a single purchasing agreement, reducing the time and necessity to negotiate individual terms with clients.⁴⁵¹ Through these means, the demands on the attention and resources of C&WJ are reduced while simultaneously its capacity and expertise was continually being advanced through opportunities to trade best practice with its sister companies. It has also been able to monitor developments in the telecoms sector more closely. Thus, as more players have entered the market C&WJ has taken to regulating the sector, thanks to the capacity in its Legal and Regulatory Department.⁴⁵²

6.2 Discussion: Internal Organisation and Governance and the Incumbent’s Response to Change

The analysis has been aimed at demonstrating that incumbent firms are not monoliths. It has also aimed to address how they respond to industry change and how their internal structure and organisation can assist them in responding to changes in its operational or regulatory space. Three important arguments have emerged from the presentation.

⁴⁴⁹ Interview: Senior regulatory staff at C&W plc, London, February 22, 2007; Former head of regulatory affairs at C&W plc, London, March 26, 2007.

⁴⁵⁰ This is quite a change given that the firm had but one chairman for over a decade when Mayer Matalon resigned in 1998 (C&WJ-AR 1998: 7).

⁴⁵¹ Interview: Senior member of the regulatory team in C&W plc, London, February 22, 2007.

⁴⁵² Even helping the regulator to monitor the activities of its competitors. See Thompson (2002a); and Chapter 2.

On the first level, the presentation has been about a geographically dispersed incumbent firm operating within two contexts, locally and internationally. The discussion also suggests the value of a consideration of incumbents and former monopolies, which acknowledges the varying interests and stakeholders, which exists within this entity. It also suggests that differences here will also have a role to play in understanding the regulated firm's choice of tactics and strategies when dealing with change.

The main interests at play in the Jamaican incumbent were those of the senior managers and the majority shareholder (C&W plc) with employees and other shareholders having little or no presence in terms of directing company policy. As will be presented in the next chapter, this was the opposite for Ireland where employees were influential in dictating the pace of reform not only within the firm but also in the wider telecoms sector. The independent regulator - the OUR – also had little role in the main negotiations for sector reform. As regulatory reform loomed on the incumbent's horizon, this was to give rise to a number of issues, which served to dispel the image of C&WJ as a monolith.⁴⁵³

The period of uncertainty and plural views on the way the firm should proceed represented a jostling for authority and power between senior management in C&WJ and C&W plc. On the other hand, it has also been noted that the differences between the local and overseas management may not have been as deep as it would appear but that these may have been utilised by the firm to its advantage. In such a case, the presentation also demonstrates how large geographically dispersed regulated incumbents are able to use their structure to their advantage when dealing with local regulators. On the other hand, this experience also has a lesson for regulators. That is the difference in the messages emerging from the firm may have allowed the regulator (in this case the Minister) to breach the firm's defence by appealing to the parent company and government regulators in the head office. This move had the effect of breaking the stalemate that had emerged between the regulators and local management. Herein

⁴⁵³ It could also be said that these differences had existed prior to this period but had been less visible. Indeed, the firm's structure had always been dispersed since privatisation. As has been argued here, however, the key point is the way in which these became more obviously differentiated under the pressure of industry reform, again highlighting the complexities, which may exist within regulated firms - complexities which regulators must consider when designing and implementing regulatory policy.

lies a wider lesson for regulators, particularly those in small resource-poor countries, on how to break the power or secure support when dealing with large incumbents who are linked into a larger international network. That is, where compliance is not forthcoming from the local arm then appeals can be made to a more powerful actor in within the MNC network in order to secure support for local reforms. This kind of intervention was not necessary in former years where both firm and state had a more cordial relationship and where the former minister had shared similar views with management on how the sector should be organised and managed. The findings here substantiate those of Chapter two.

However, as divergences in views on the timing and path to reform existed in the early period, these were quickly dispelled through organisational and personnel restructuring by the end of the 1990s. This was achieved through rebranding of the firm under the C&W brand signalling that the balance of power would be shifting to London. The response here occurred not only within C&WJ but also within the wider group of companies as C&W sought to adjust to face globally changing principles and procedures in telecoms. In this way, regulatory reform was not just a local phenomenon with local impact. Rather, it was to have a ripple effect on the sister operations and those of the parent company as the impact of reforms in Jamaica spread outwards to the rest of the Caribbean where local events were being watched keenly by other governments and potential competitors. Here the threat of regulatory reform saw the balance of power shifting at various periods throughout C&WJ's operations and attempts to respond to industry change. This is demonstrated for instance, in the changes in the corporate governance models adopted within the group over the years in response to the changing local and global operational environment. In the end, organisational reform throughout phased liberalisation to present has seen the firm once again, speaking with one voice and regrouping around shared strategies.⁴⁵⁴

On a second level, the case suggests how a firm's structure and location within a MNC network allowed access to resources and experience, which rivalled that possessed by the

⁴⁵⁴ But even so, the geographically dispersed nature of the firm was still used to C&WJ's advantage. Regulatory expertise could thus be secured from its sister company and its head office in London.

regulator and government.⁴⁵⁵ This case depicts the effects regulatory reform can have on governance structures and relationships within regulated incumbents who are internally segmented given their location within a large multinational network. In this case, the segmentation was mainly among shareholders and managers (between the head company and its satellite) who had disparate views on the path the firm should take in addressing the changing space within which it existed. By acknowledging the role of the internal structure and the organisation of C&WJ as an incumbent with ownership and management split between London and Jamaica, the presentation adds to the argument made in the opening chapter – that is, incumbents are not monoliths.

Its status as an MNC proved an advantage to C&WJ in its search for ways in which to adjust to reform and to deal with regulators. Its sister and parent companies allowed the incumbent to increase its arsenal of skills and talents, which it called upon when necessary. This is not to say that other companies are not able to gain required skills and talents to cope with reform.⁴⁵⁶ Rather, the suggestion here is that where such resources are available as they were in the case of C&WJ, then they potentially constitute another level of support and defence for incumbents when faced with threats to its dominance, particularly when (as in this case) the incumbent is also operating in a small developing country.⁴⁵⁷

The incumbent's advantage here is that it was (and still is) able to utilise its network to access required competence and best practices, negotiating capacity, technical skills and knowledge of how to deal with governments which it can then store in house for the benefit of the overall group. C&WJ has at different points called on these resources to assist its operations in Jamaica. For instance, its use of purchasing agreements from sister companies in other territories has allowed it access to tried and tested documents that it can utilise in its dealings

⁴⁵⁵ This point also adds weight to Braithwaite's point that the networked resources of corporate bodies may rival those possessed by state regulators in the developing world (2006: 891; also see note 44 in chapter 1).

⁴⁵⁶ As has been seen in the case of Digicel, its access to resources and expertise for breaking the monopoly in Ireland and operating in a competitive telecoms regime may have been instrumental in helping it to become the most successful rival to C&WJ in the Caribbean.

⁴⁵⁷ This may more often be the case than the other way around given the likelihood that the head office and locus of operations of the MNC may be located in a developed and not a developing country or smaller developed country.

with competitors locally. Thus, the multiple demands on C&WJ's in-house resources are reduced while allowing it to focus on other activities such as monitoring the activities of its competitors and the regulators.

However, it was mainly in the area of legal and regulatory expertise that the use of the MNC network was to prove useful. Having experienced regulatory reform in other territories, C&WJ was able to benefit from the experience of the wider group. As presented here (as well as in Chapter 2) this team assisted the incumbent not only in its relations with competitors but also with other industry players such as the regulator and Minister as the incumbent ended up assisting the state in designing rules and in governing the sector.

This move has also had important consequences for the ability of the local firm to leverage skills and resources needed to assist its operations locally. For instance, it has been able to maintain access to the inner circle of regulation given its expertise in operating in competitive regimes and has also been able to import agreements and advice developed in other locations to assist in its dealings with actors in its regulatory space.

The final level of analysis is related to the two main points noted above. That is, the Jamaican case of telecoms reform helps to shed light on how large incumbent firms who are part of an MNC are able to utilise their structure and size as leverage not only in negotiations for sector reform but also to access a network of expertise and resources which then helps it in adjusting to reform. The result is that the firm is able to call upon a wealth of talent and information, which may rival that possessed by a small state. But even more importantly for the incumbent, this structure may inadvertently allow it to play off competing messages between the different levels of management to its advantage. Thus, while the real extent of internal differences within C&W and C&WJ's management remains contested, there is nonetheless the suggestion that by the time the actual negotiations for reform had begun, the appearance of differences may have ultimately strengthened C&W - the MNC's - hand against a government who was happy to finally be receiving support for its liberalisation policy. From then, C&WJ was placed in a position where it could negotiate for a set of conditions more advantageous to

its future success in a competitive regime. In so doing, the incumbent has been able to maintain its presence at the helm of the local market – in this case, the Jamaican telecoms.

Further, the experience and knowledge possessed by the firm vis-à-vis a small country with little experience of regulatory reform, technical expertise or knowledge of telecoms and a desire to achieve a swift liberalisation may have weakened the state's hand in the negotiations for sector reform. As such, C&WJ was able to take the upper hand in the discussions. Thus, where a small government such as that in Jamaica may not have been able to command the huge amount of expertise that the firm possessed given limits in resources, and whereas other local telecoms operators did not have the scope or access to a network of resources and global expertise, the firm has had somewhat of an advantage over others. As has been shown in this and other chapters on this actor, it has not been shy in utilising these when its position of dominance has come under threat.

Such insights help to give an account for the sustained dominance of incumbent telecoms firms in spite of reforms meant to allow for competition and to reduce their stranglehold over telecoms. In so doing, it takes the discussion on regulatory reform away from viewing the incumbent firm as a monolithic structure simply complying with the directions of regulators to seeing it as a more dynamic, complex entity within the whole debate on regulation.

These findings in turn, have important implications for regulation. Namely, while the findings highlight the complexity of the regulator's task, it also indicates the ways in which regulators can develop strategies that are responsive to the regulatory context. Thus, as the firm could call on its network, regulators in this case have been shown making attempts to co-opt, or enter, this network as a means of gaining support for local regulation as well as to secure regulatory capacity. This is the case even where it may mean using the incumbent's own resources. In some ways this may be counter-intuitive, however, the OUR and minister have been shown successfully utilising this strategy in Jamaican telecoms.

Finally, the measures undertaken by the incumbent, including the involvement of the MNC, have been driven by a desire to reform and bolstering internal capacity as a means of coping with the threats it faced from regulatory reform. Perhaps more so than the measures

discussed in Chapter four, these have been more directly driven by the IRA and state regulators. This indicates the value of legislative reform in recreating the rules and behaviour of dominant firms. As shown too, some of the firm's activities had also been driven by the wider trends toward reform in telecoms, which threatened both the local incumbent and its parent company. As it concerns this order of relevance, global market pressure (as opposed to the OUR or minister) have played a role in C&W's, and hence C&WJ's, response. Thus, where national regulators are able to keep abreast of global developments and trends, they may be able to be timelier in their actions; and in so doing, increase the chance of success and heightened legitimacy in regulation. Other drivers here include the firm's senior managers. However, their influence, though important in challenging the regulator, has since become more muted, with the closer integration between local and head office.

6.3 Conclusion

The presentation here has been aimed at moving away from a preoccupation of the firm as a monolith and a non-malleable actor arguing that there exists a number of interests and groups within this actor that have an impact on the way it operates in the sector, the way it responds to regulators and how it adjusts to change. This offers another level of analysis on how redrafting the procedures and structures within telecoms affected the incumbent operator and how its internal organisation affected the way it, in turn, faced reform. This has been demonstrated in the firm's use of its MNC status to gain leverage in its dealings with regulators, the tensions and conflicts that emerged as the different interests and stakeholders diverged on the path the firm should take in responding to change and the way the firm's size within the regulatory space vis-à-vis the state, gave it an advantage in responding to change.

The case illustrates the importance of internal structure and governance in regulated incumbents at three levels. Namely, it highlights how an incumbent firm who is geographically dispersed firm – an MNC – responds to change. Secondly, it illustrates how industry reform can threaten the internal balance and governance relationships within the regulated firm. Periods of regulatory flux may offer an opportunity for key interests, such as managers and shareholders to

attempt to remodel an organisation along a desired path. This can either work for or against the regulator and policy makers by rendering the regulatory task more complex or by offering regulators points of influence where it can seek support from sympathetic interest groups within the regulated firm. On a third level, the chapter also shows the difficulties which a large dominant, well-resourced firm pose to regulation as well as, how regulators can in turn utilise such resources in securing change. Collectively, the presentation shows that far from being single monolithic structures incumbent firms are complex actors. This complexity can potentially make the regulator's task more difficult and less about simply making and implementing rules within a sterile context but where compliance is about coming up with creative approaches to gain support for its position, particularly so in a small developing country faced with resource issues.

Finally, while the case illustrates the difficulties faced by small states in attaining compliance from large dominant actors, it also offers solution in terms of illustrating *how* such states can in turn overcome some of these difficulties that may be faced because of size or resources. Regulation and regulatory change is therefore presented as a much more complex process where the regulator may have to make appeals to a variety of interests within the regulated entity in order to gain support for its position. Secondly, the state can overcome deadlock between regulator and regulated in a situation of power imbalance by appealing to a third party, in this case, the British government. Here again regulation is seen neither as a bilateral nor even as a simply localised activity. This 'other' also includes supposedly more powerful and influential governments who are able to nudge large home based MNCS towards complying with regulators and rules in smaller states.

CHAPTER SEVEN

INTERNAL ORGANISATION AND ITS EFFECT ON EIRCOM'S RESPONSE TO REGULATORY REFORM

7.0 Introduction

Accounts of regulatory reform have tended to ignore the impact that such change has had on the regulated incumbent firm, beyond a simple acknowledgement that this actor now experiences competition and greater regulation. The complexity that exists in such actors and the ways in which they respond to change at an organisational level are also ignored, leading to an inability to fully account for the continuing dominance of these firms. As with the previous, this chapter aims to address these issues by assessing the effect that change in the regulatory space can have on the internal balance and organisation of a dominant regulated entity – the telecoms incumbent – and how it responds to such changes. Like its Jamaican counterpart, the Irish incumbent was to move further away from the appearance of a monolith, to becoming more segmented, as the pressure and then reality of regime reform became more pronounced. This was partly due to the change in ownership but even more importantly, the result of the segregation of the monolith into disparate interest groups as the period of regulatory flux saw a struggle for authority and influence over the way the firm should respond to change.

Whereas the Jamaican case was more about shareholders (C&W plc. and local management) the Irish case suggests the need for a consideration of the role of another group of internal stakeholders, unions and employees, in debates on regulatory reform and the effect on the regulated entity and its attitude to regulation and industry change. Here dominant interests within the company, namely the employees represented by their unions were able to leverage support from political elites to gain access and then to strengthen its hand in internal discussions on the direction of the firm. In so doing, the company was able to impose its will on the change process influencing the redesign of the telecoms regime and the firm's choice of strategies for adjusting to change. The chapter also shows how reorganisation of internal balance of power broke the union's hold, facilitating the far-reaching rationalisation programme discussed in Chapter five. More generally, the chapter illustrates the effect of systemic change on the internal

balance and organisation of a seemingly monolithic regulated entity. Consequently, it is shown that regulation is not only carried by actors in the regulatory space, but also by those within the regulated entity, not necessarily in the way covered in descriptions of self-regulation. That is, the source of regulatory pressure is not the monolithic structure or industry, but individual interests within the incumbent.

The discussion will be arranged as follows: Section 7.1 highlights the changing organisation and re-orientation in the firm's ownership and governance structure from the 1990s, showing how those changes allowed for different strategies and response. The effect of reforms in segmenting the firm into more clearly defined interests is also highlighted. This sets the context for Section 7.2, which will focus particularly, on the activities of the employees through their unions and their relevance to the firm's strategies. The paper then closes with a discussion in Section 7.3 and conclusion in Section 7.4.

7.1 Changing Ownership of Eircom

Unlike the Jamaican incumbent, Eircom began life as Telecom Eireann, a fully owned government entity, when it was demerged from the government owned Post and Telegraphs Company in 1982.

Since then it has undergone shifts in its ownership a number of times. In the first place, it had moved from being owned by the government to a state of partial privatisation in 1997 when shares (20%) were bought by KPN and Telia (O'Mahony 1998).⁴⁵⁸ Ownership was later extended with further privatisation in 1999 with KPN/Telia increasing their share in the Company by a further 15% (held jointly in a new entity, Comsource) and staff gaining shares (14.9%) in the firm. By 2001, however, KPN had sold its 21% stake through a secondary offering. Telia had the remaining 14% and it too stepped out of the market (Annual Report 2001: 52).⁴⁵⁹ Again, this shifted at the end of 2001 when a new set of partners were found and the Company's assets were transposed into a new holding company, Valentia

⁴⁵⁸ See note 196.

⁴⁵⁹ This decision had been made from 1999 when Telia merged with another telecoms firm (Telenor) with KPN also deciding to leave to refocus on the Eastern European market (ODTR 1999: 6).

Telecommunications Limited, when the Valentia Group emerged as the new majority owners. This last move was also to see the employees increasing their equity by 15% (Eircom Annual Report 2002: 5, 49).⁴⁶⁰ During this time the firm went from being a public registered to a private liability company in 2002 marking the first substantial legal change in the firm's status.

The early ownership and governance patterns were to gradually lead to the emergence of a number of strong interest groups within the Company that at times rivalled each other for the right to hold the reins over Company policy. These included the unions, senior management, and the different private owners with the government being thrown into the mix. Finally, the firm was to return to public ownership in 2004, again marking a new phase in internal relations. As such, the changing governance structure was to be reflected in the changing tactics and approach employed by the Eircom in coping with industry reform. Thus, while one interviewee asserted that it was monopoly, not ownership that was the issue in the firm's performance prior to liberalisation, it was clear that this had changed by 1997 when Eircom experienced its first bout of privatisation.⁴⁶¹

As shown in previous chapters (especially, Chapter five) privatisation in 1997 and later in 1999 was to allow Eircom to make more investments in advancing the local telecom infrastructure, improve overall service quality and introduce more strategic management of its business. However, having achieved some reforms up to 2001, it was to become evident that governance was still an issue as the balance of power (unions supported by government owners) swung against the private investors and managers making certain adjustments, particularly those that would threaten the numbers employed by the firm, difficult to accomplish.⁴⁶² So at a point where the firm needed to make specific changes to increase efficiency it was unable to do so quite to the extent desired given an ownership structure, which included the government and staff who appeared to be willing to support reforms, so long as it did not involve a reduction in personnel (see Figure 5.3). Thus, by the end of 2000 the firm found itself still dealing with

⁴⁶⁰ See ODTR 2001e.

⁴⁶¹ Interview: Senior Staff, Eircom, Dublin, November 10, 2003.

⁴⁶² Ibid. Also, importance of Eircom as a significant employer within the Irish context meant that efforts at reducing its labour force were not seen as good for industrial or political relations (see note 182).

issues of cost, efficiency and an over-staffed entity, in the face of growing competition and threats.⁴⁶³ This prompted another bout of reforms in the firm's governance structure in 2001 as government stepped out of the triad and a new set of private investors emerged. It was only then that the firm was able to make the most drastic and far-reaching adjustments as it sought to contend with the new operational environment. This involved allowing the turn-around from the expansionary agenda that had been pursued mainly since 1999 when the employees joined the firm as shareholders.⁴⁶⁴ Ownership was shown to be important to the way the firm responded to change.

However, it was not just ownership, in and of itself, but a particular type of governance that mattered. Public ownership and political control appeared to have been constraints to the firm's performance. Here, the staff had been able to gain leverage for their position on issues such as redundancies, through their access to key political figures and prior to 2001, the support they secured from the government through its role as part owners of Eircom.⁴⁶⁵ Thus, Eircom's response in 1999-2001 was far more erratic and in some ways counter-intuitive to their need to reduce costs and increase effectiveness. This is seen for instance, in the case with the increase in personnel and acquisitions between 1998 and 2001 (Figure 5.1). Eircom's response during these early years has, in fact, been put down to the role played by employees who gained shares in the Company in 1999 and their influence on politicians (Ibid). Thus, as demonstrated here, internal interests in the form of employee owners played a role in determining how the incumbent responded to reform. Importantly, these moves were not in response to the IRA's prompting, but determined more by the interests of the partners.

It is not surprising that the more far-reaching and coherent period of internal reorganisation took place mainly after 2001 when there was less political influence in the partnership and the employees lost their allies. The suggestion here is that the employees, their unions and politicians had a significant impact on how the Irish incumbent adjusted to reform.

⁴⁶³ Threats here included the global slowdown in the telecommunications industry at the start of the Century. Such, threats offered credible challenge to union resistance against retrenchment in the firm's size and scope.

⁴⁶⁴ These included a reduction in the number of holdings and staff. See Figures 5.1 and 5.3.

⁴⁶⁵ Interview: Reporter, Irish Times, Dublin, November 10, 2003.

Thus, whereas the Jamaican incumbent was geographically segmented and this played an important role in the way the regulator dealt with the firm in seeking compliance, this was less the case in Ireland.

With the exit of the state and the realisation that more drastic reforms were needed, the unions were more willing to accept more extensive reforms after liberalisation and privatisation.⁴⁶⁶ Success and competitiveness, therefore, came to be more about service quality, customer care, cost reduction and seeking more actively to engage with regulation and less about scope and size.⁴⁶⁷ In this sense, liberalisation appears to have gone against the predictions of sceptics who had expected the worst from reform.⁴⁶⁸ As shown above Eircom and its clients generally seemed to have benefited from change in its ownership, having been freed from some of the political constraints it faced under its previous owners.⁴⁶⁹

7.2 The Role of Employees and Unions in Eircom's Operations

Integral to this discussion on internal governance is the role that has been played by the employees and their union. This case therefore, presents these actors as important and influential stakeholders in regulation and the firm's attitude and ability to accept and adjust to change. The following section seeks to demonstrate the relevance of internal interests and governance on the way the incumbent firm deals with change, the constraints which these may place on the firm and in turn, on industry regulators. This is done by highlighting the role of employee and union power and how these have emerged as a dominant force within Irish telecoms. This makes a case for a consideration of internal interests and the role of such actors in regulatory reform – actors who have traditionally been less considered in such processes.

The emphasis here is on the role played by key interests or blocs within regulated firms and how these can act to constrain (or enable) the incumbent's response to regulation and its

⁴⁶⁶ See note 460.

⁴⁶⁷ As shown in the improvements secured since 2003 (see Chapters three and five).

⁴⁶⁸ See O'Toole (1992); Hall (1993:11). Nonetheless, the situation here was not unique but represented the change that had been occurring globally around issues such as how to protect the public interest.

⁴⁶⁹ The importance of the agreement has also been backed up in a report by a company chair in 2000 (Eircom 2000c). Indeed, by 2004 the firm had reduced prices for communications services by 50% since 1997 (Eircom Annual Report 2004: 10).

reform. Thus, the firm's activities may not be directed solely by the IRA, but also by internal motivations. Nevertheless, to the extent that the regulator is able to provide an environment in which drivers such as competitive pressures can affect the incumbent's motivations then regulation can provide a key rationale for incumbent firm behaviour.

Already the role of employees and their impact on Eircom's strategies and options have been intimated in previous sections of this chapter. The aim here is to tie this together more pointedly making a more direct argument for considering the role of employees and their unions potentially as key actors in a discussion on telecoms reform and the way incumbents have responded to such reforms.⁴⁷⁰

7.2.1 Empowering Stakeholders: The Basis of Employee and Union Power

The role of employees and unions lies in the particular governance culture of the country itself. Labour relations in Ireland are such that unions and employees have been powerful, given the emphasis on partnership, consensus, and participation in national planning and industrial relations (See, for example Taylor 2002: 1-8). Authors such as Roche and Cradden have highlighted the effect of this in areas such as wage negotiations (2003: 76). This has helped to strengthen the hand of employees and their unions, making them more influential as actors and participants in debates on industry reform, certainly when compared with employees in C&WJ.

This experience of partnership was to become a more institutionalised feature of the Irish economic and social landscape, when in 1987 government developed formal partnerships involving unions and employees. These tripartite arrangements have been viewed as key to the nation's development (Boylan 2002: 9-27; Wallace 2002: 12); hence the possibility for unions and employees to have such a significant role in Ireland, but not in Jamaica. Additionally, this

⁴⁷⁰ The level of power held by staff was not a new phenomenon. Indeed, attempts by one of the firm's chairmen to overhaul the company in the early 1990s led to staff and board members interceding directly with the minister who, siding with the staff, discharged the chair from his duties (Gallagher 1992e: 12). Key among the improvements desired by this chair was a reduction of staff within the firm, which stood at around 18,000 in 1992. Even while numbers were being reduced gradually, employees were against the intensity of changes recommended. These also included calls for heightened accountability and professionalism within the firm.

point helps to provide a context for considering the role of employees and unions in the incumbent telecoms firm and as key actors in regulatory reform in Ireland.⁴⁷¹

Other points outside this specific institutional feature also help to explain employee influence. These will be introduced here but outlined in more detail throughout this section. Firstly, as members of the voting public and from 1999, part owners of the firm, the employees and the unions had the power to command the attention of policymakers and decision takers and as such, could advocate on behalf of the Company.⁴⁷² Following from this, their activities could affect the pace at which industry reform took place as in the 1970s (Ibid.). Secondly, as representatives of Eircom's employees, unions such as, the Communications Workers Union (CWU)⁴⁷³ and IMPACT⁴⁷⁴ had a direct interest in maintaining the dominance and profitability of the Company. Finally, as workers whose efficiency and support would affect the performance of the firm and the sector, Eircom's staff and their representatives (unions) have had a degree of influence in the sector.

7.2.2 The Exercise of Employee and Union Power

The position the unions took on reforms has shifted over the years between the 1980s to present. During this time, their response has moved from being one of outright opposition to a

⁴⁷¹ Hence, the willingness to partner with the unions and the difference between Ireland and Jamaica in this instance can be explained by this particular feature of Irish political culture. As such, industry reform may not occur in the same way in all countries since the institutions and endowment differ. Likewise, the power held by stakeholders may vary and may be expressed differently as access (formal or informal) to outlets for expression and participation may diverge. For instance, corporatist and neo-corporatist arrangements allow for the participation of interests groups such as industry and consumers in government (Grant 1995 and 1993; Genther 1990; Cox and O'Sullivan 1988; Cawson 1986; for a discussion on this point at the level of regional government see Greenwood, Grote and Ronit 1992). In a similar way, actors who are privileged in regulatory debates may vary from place to place, depending on the particular ideology.

⁴⁷² Already, the effect that this group could have on the sector and Company had been experienced when industrial action in the late 70s led to widescale review of the sector and ultimately, the restructuring of the Post and Telegraph Department. See Burnham (2003: 542-544).

⁴⁷³ CWU is one of the more notable Unions in Ireland. In all it represents 16,000 individuals involved in the communications sector (CWU 2003b). It also represents workers in Eircom's competitors (See CWU 2003c). The CWU acted on the behalf of a specific category of the firm's employees – mid-level and junior workers who made up the majority of the Company (Interview: Head of regulatory affairs at the CWU, Dublin, November 6, 2003). Much of the employee power and influence over the firm has been located in and expressed through this union.

⁴⁷⁴ The Irish Municipal Public and Civil Trade Union (IMPACT) represented many public servants across a number of state-owned companies in Ireland. As such, this group was particularly important during the years where the state had ownership in the firm. However, it was not as dominant as the CWU.

willingness to consider how they could benefit from change and finally, to acceptance of change. This has taken place as reform moved from a possibility to an impending reality. Thus, the argument is not that union power is visible only where they were able to prevent industry change but rather that their input was essential in determining the timing and nature of regulatory reform in the 80s and 90s. Later, its input delayed the extent to which Eircom adjusted to the modernisation of the rules and structure in its regulatory space.

As suggested in Chapter three, Unions have generally appeared to be unsupportive of privatisation and the opening of the economy to competition as noted above. Lack of union support had, for instance, been used as a reason for not privatising telecoms in the late 70s and 80s.⁴⁷⁵ Their approach was to draw attention to the possible ills of reform. For instance, David Begg, then General Secretary of the CWU commented at a general meeting in 1993:

(T)he EC-driven policy of liberalisation would eliminate the smaller companies and leave a few large industries. And these may not even be European but could be American multinationals seeking to increase their profits.

IT (1993d)⁴⁷⁶

Resistance was again to resurface with talk of the firm privatising the company in the early 1990s; the unions promised to “fight tooth and nail against privatisation” (Gallagher 1993b). Further, while recognising that the firm was overstaffed, the unions and employees also resisted attempts to streamline numbers or introduce other measures to change the organisation.⁴⁷⁷

The basis for the power and influence held by employees and unions may also be seen in the political influence held by this group. For instance, they were able to secure support from politicians who saw national firms such as Eircom as, “symbols of an independent and proud

⁴⁷⁵ Privatisation had been considered an option from the late 70s. The result of a review, *The Report of Posts and Telegraphs Review Group*, had noted the difficulty in moving forward with reforms of this nature given the lack of union support (GoI 1979). Also see Hall (1993: 11).

⁴⁷⁶ Of course, the irony is that the Union failed to acknowledge that at that time the sector had already been populated by one big firm who had the greater share of profits from the sector.

⁴⁷⁷ These had included the attempts by CEO Brendan Hynes in 1992 to reduce the informalism and assist the firm in preparing for the changes that had already begun in the neighbouring UK. See for instance, Gallagher (1992b) and further discussion in Chapter three.

economy” (O’Toole 1992: 14).⁴⁷⁸ Indeed, the decision to reform the firm into a State owned enterprise in 1982 instead of outright privatisation was also influenced by the backing of the unions of political groups such as the Labour party who were against the idea of privatisation (Hall 1993: 11).⁴⁷⁹ As such there was some alliance or at least symbiosis in the views of some politicians and the unions.

Even where some political figures may not have been against reforms, such as privatisation, it had not always been politically expedient to speak directly about this. For instance, as one politician interviewed observed, references to industry reform during the 80s and early 90s were informed by a conscious attempt not to, “call it privatisation” (Interview: Minister, Dublin, November 11, 2003). Concerns about jobs, regulatory reform and privatisation were heightened in light of the UK experience, where developments were acknowledged as having a significant effect on the Irish Republic (Interviews: Ibid; Representative of TIF, November 7, 2003).⁴⁸⁰

In fact, the ideology of ruling parties and of the line minister has been important in determining what direction telecoms policy took over the years.⁴⁸¹ For instance, as argued in Chapter three, political parties had varying degrees of support for privatisation and full competition with parties such as Labour helping to keep these off the agenda and then delaying competition, even in the face of EU Directives from 1981-1997.⁴⁸² However, elections in 1997 resulted in a coalition that was more sympathetic to liberalisation and market forces, explaining the decision to end the derogation and have full competition by the original EU deadline of

⁴⁷⁸ Some of this came from a suspicion of international business which resembles what happened in some developing countries in the 60s and 70s where the involvement of foreign investments was not welcomed given the perception that it was destructive to national growth (Gutierrez and Berg 2000: 5; also Dutt, et al 1994).

⁴⁷⁹ See Gallagher 1992b; O’Toole 1992: 14; and MacConnell 1992: 4.

⁴⁸⁰ Even so, debate on privatisation was opening up from the late 80s, albeit very moderately. As such, the governing party in 1998 (Fianna Fail) had also pledged, in electoral campaigns from 1987, that in the event they were to come to power shares would be granted to employees should the Company be privatised (Interview: Former telecoms Minister, Dublin, November 11, 2003).

⁴⁸¹ Though there have been other vital influences, such as the European Union Directives.

⁴⁸² For instance, the composition of the coalition government in 1981 and 1987, which consisted of Labour and Fine Gael, made it inherently difficult for any discussion of privatisation to proceed openly and without prejudice. The Progressive Democrats have tended to favour markets helping to drive through liberalisation when they entered a coalition government with the Fianna Fail in 1997.

December 1998.⁴⁸³ There was also growing political support for liberalisation and privatisation from as early as 1993 when the new minister Brian Cowen noted that he was not supportive of the idea of retaining public enterprises (Brennock 1993: 6). Further, while the existence of a pro-reform coalition led to a premature end of the derogation, the position of the unions and staff were also advanced thanks to the entry in 1997 of a Minister who was seen to be sympathetic to their cause.⁴⁸⁴

But on the eve of liberalisation the unions recognised that they stood to lose more from continuing to deny or prevent competition and privatisation than from approaching these head-on (Interview: Head of regulatory affairs, CWU, Dublin, November 6, 2003).⁴⁸⁵ The first bout of privatisation in 1997 had indicated that the tide had shifted and that their rationale for objecting to change was receiving less support (Wallace 2002: 13). Further, in the face of technological developments they could no longer support arguments against full competition and privatisation. This meant moving from a situation where they reacted to whatever policy tide was en vogue to becoming key decision makers in the sector. As such, they were determined that successful negotiation of any change within the sector and in the Company was not to be attained without their active involvement. In fact, even while appearing to be against liberalisation and privatisation publicly, the unions had also approached the Minister in charge of telecoms from the early 90s to discuss the possibility of gaining shares for its support of any privatisation and reform effort (Gallagher 1992e: 12). So while the stance was openly anti-reform in the 80s and early 1990s, this was to change when the unions recognised that they were

⁴⁸³ Ibid.

⁴⁸⁴ Nonetheless, the background of the line Minister and their knowledge and experience of issues related to reform have also been vital in determining the level of influence that interests within the firm have had within the sector. For example, employee/union power in the late 1990s was seen to have been advanced when Mary O'Rourke became the head of the Department in charge of telecommunications in 1997. Unlike her Jamaican counterpart, Minister O'Rourke was viewed by employees/unions as an ally in their bid to increase their input in company policy (Hastings 2003).

⁴⁸⁵ While this work has viewed the role of employees and their unions, particularly, the CWU as important; one interviewee has in fact questioned their role in the whole process. But while he contested the relevance of the CWU in the whole process, he also pointed out that he did not have a very long history in the area of Irish telecoms but had only entered the sector as a member of a consulting company in 1999. Also, while he did not feel the Union was important, other interviewees and commentators (noted in this text) felt this was quite the contrary. Support also came from a senior civil servant within the Department in charge of telecoms who was keen to point out the support that the unions received from the Labour party (Interview: Senior civil servant, Dublin, November 5, 2003).

swimming against a powerful tide, signalled by moves in the EU and globally, which was suggesting that reform was a must. Reforms in this sector were also being viewed as important for the ability to re-shape the economy and draw investment in related areas such as banking and IT.⁴⁸⁶

Subsequently, the decision was made to support the reform process whilst employing sufficient negotiating capacity to make an impression on the content of the reforms (Interview: Head of regulatory affairs, CWU, Dublin, November 6, 2003). From here the unions representing the majority of employees joined together to secure the services of a highly skilled legal team to negotiate directly with the government.⁴⁸⁷ In so doing, they would be able to overcome capacity gaps by contracting in those skills they did not possess internally. As such, they were able to have a voice in the way the sector was reformed, get the maximum benefits from the reform process and gain future rights over new initiative undertaken by the regulators (Ibid).

The unions had also recognised the importance of coming to the table equipped and the value of securing the support of the politicians. For instance, outside its role as majority owner of the firm at this point and its apparent sympathy for the employees, government's significance here may be viewed in light of Section 10[3][d] of the 1983 Post and Telegraphs Services Act, which mandated that both the Ministry of Finance and line Minister's permission had to be sought in any decision or arrangement aimed at dividing Eircom's share capital. The unions were also aware of the government's relevance here and were therefore keen to make appeals to them over the heads of management.

Indeed, the firm's senior management also understood the importance of getting the employees onboard if it was to be able to reform smoothly and compete successfully. Past

⁴⁸⁶ For instance, Burnham addresses these themes, noting the role of the reforms in telecoms in allowing for and sustaining the emergence of the Celtic Tiger by laying the groundwork for the development of related industries (2003).

⁴⁸⁷ The unions secured the support of a Wall Street investment bank with experience in negotiating similar contracts in the US. They were also able to increase their knowledge of such arrangements through research (Taylor 1996: 4).

experiences had also suggested the importance of securing this support.⁴⁸⁸ The imperative to avoid industrial action and modernise the firm was to become more important with the announcement of full liberalisation at the end of 1998. As such, the firm, state and unions went into negotiations and were able to conclude an agreement before the end of 1998 (TE 1998: 19). It is not a coincidence that this agreement coincided with the opening of the sector also at the end of that same year (ODTR 2001d: 1). That is, the management's realisation that it needed to streamline staff in order to enhance its ability to respond to the demands of a new operational environment heightened the need for a smooth and speedier transition making the government and management more willing to entertain the firm's demands. Some commentators have also observed that the government may have been sympathetic to the unions and hence more willing to support their cause (Interview: Reporter, Irish Times, Dublin, November 10, 2003). This also finds support in Hastings, who observed that the unions and employee's position was supported by the line minister for telecoms (2003: 158).

In this deal the CWU secured 14.9% of the company for agreeing to full privatisation in 1999 (Wallace 2002: 13). Shares were to be held in an Employee Share Ownership Plan (ESOP). This represented a gain for the unions considering the government had initially offered only five percent.⁴⁸⁹ The ESOP itself comprised two trusts, the Employee Share Ownership Trust and the Telecom Approved Profit Sharing Scheme. These shares were not offered all at once, but were instead tied to the union's support for transformation measures within the firm

⁴⁸⁸ Already they had the experience of industrial unrest in 1979 that had ended in the shakeup of the sector when it was moved from a fully nationalised company operating under the Post and Telegraph Department to a standalone state-owned company (Hall 1993: 256). The subsequent difficulty in achieving privatisation was due to lack of internal support as already mentioned.

⁴⁸⁹ Chari and O'McMahon have suggested that the role of unions though having some relevance in the process has not been significant, particularly when compared with the gains of private investors (2003: 4 and 38). For instance, the 1997 sale had seen the private investors paying less for their shares than the employees had secured in 1999. The unions also had to secure a loan to fund its purchase (2003: 37-38). However, the gains made by the firm are all the more significant within the context of their argument that such social actors have had little role in the privatisation of state enterprises in Ireland, given the extent of the involvement and gains of this group in 1999, which as noted above extend beyond the union's original requests. Furthermore, failure to secure gains on par with the private investors in 1997 does not negate the value that this actor has played in the process by allowing for privatisation to take place smoothly and for the firm to make specific adjustments, which it identified as being important for its ability to compete in an open, competitive regime. For the immediate purpose as well, the involvement of the unions at this level is important in illustrating the divers that actors within the regulated firm, who will have a say in how regulatory reform proceeds and as such, whom the regulators and policy makers must consider when redesigning an industry.

(TE 1999: 137-138). Thus, while the agreement had been hammered out in 1998, the initial share transfer of 13.23% took place May 14, 1999 with a further 1.67% being transferred at the end of that year and only after performance targets had been achieved (TE 1999: 11). Through these the employees ensured themselves a share and direct interest in the firm's profits and long-term success. Again demonstrated here was the strength of the union's negotiating team that rivalled that of the government and private investors.⁴⁹⁰

By agreeing to some of the terms laid down by the CWU, the government was thus, able to lay the foundation for opening the sector and competing fully in a new telecoms regime.⁴⁹¹ Thus, the minister was forced to make individual arrangements with union and staff in order to increase competitiveness and overall support for industry restructuring (See Taylor 1996: 4). Demonstrated here are the bargaining arrangements and compromises which government regulators sometimes have to engage in when trying to secure support from firms whose size, wealth and relevance (beyond their immediate sphere of operation) makes their support crucial for any attempt to reform the sectors within which they operate. The offer of shares thus, represented a trade-off providing the staff the incentive to lend its support to the government and private investors to go ahead with industry change (Hastings 2003: 152; Gallagher 1992e).⁴⁹² In return for the shares the Union agreed to major reforms in work practices and cost reduction measures of the Company. But even here, the firm came out victorious, since staff cuts were to some extent cosmetic with some of those made redundant being relocated to man its new acquisitions.⁴⁹³ The role of the unions in the reform process and the significance of this agreement for the firm's performance and response in a liberalised regime are therefore, not to be underestimated. As was observed in the annual report,

⁴⁹⁰ Interview: Head of regulatory affairs, CWU, Dublin, November 6, 2003.

⁴⁹¹ The idea of employees being given a stake in the firm had been proposed by one of the unions (IMPACT) representing workers in 1993 (Sweeny 1993: 6). But whereas it was being used as a carrot to gain worker and union support for privatisation in 1997, the rationale in 1993, was that the share ownership be used as an alternative to privatisation.

⁴⁹² Chapter five has already been shown the effect of the ESOP in allowing the firm to restructure its operations.

⁴⁹³ See Chapter five.

this comprehensive agreement between the company and the unions is the final building block of an approach that will see Telecom Eireann (*Eircom*) properly structured as a fully commercial company competing in a highly competitive marketplace.

(TE-AR 1998: 19)

Again, this quote suggests the importance of this agreement in allowing Eircom to move forward with redesigning an internal response to industry change. Thus, the role of internal interest groups is therefore seen as affecting the strategies or method for obtaining regulatory reform. In order to secure support for industry reform, regulators in the Jamaican case had to barter with a dominant incumbent; while the government regulators in Ireland has to negotiate with a dominant interest group within the incumbent.

As has been argued whether this would in fact translate into the firm actually being able to initiate the full breadth of reforms necessary for efficiency and growth was another issue. For instance, the fervency with which acquisitions and holdings were pursued and the regression back to an upward trend in personnel figures amidst the reductions that had been secured gradually since the 80s was the result.⁴⁹⁴ As such, it has been noted that the employees were able to restrain the level of reduction in personnel size for a number of years after regulatory reform was achieved (Interview: Reporter, Irish Times, November 10, Dublin). Further, while granting shares to the employees may have allowed for a smooth transition into liberalisation, others have criticised this decision viewing union and employee power as a restraint on the development of the sector.⁴⁹⁵

This prompted another increase in employee ownership. The incumbent was then to become fully private by 2002 with the government also selling its stakes in the firm. The carrot of an increase in shares was once again dangled to the unions as a means of securing employee support for the further sale of the company and support for more intense reforms (Interview: Reporter, Irish Times, Dublin, November 10, 2003). Interesting enough as was shown in Figures 5.1, 5.2 and Table 5.1 this sale marked another significant turn in the firm's activities as

⁴⁹⁴ Ibid.

⁴⁹⁵ Interview: Representative of TIF, Dublin, November 7, 2003.

personnel and holdings decreased and efficiency saving measures introduced. Overtime the firm has been able to reduce costs and increase its competitiveness. The firm had by then began reorienting its outlook and approach to competition focusing more on adding value and quality as opposed to adding to its size and scope. Thus, the additional shares also have been issued to buy support for further shifts in the firm's structure and *modus operandi*. Highlighted here are some of the strategies which firm and state regulators have to utilise to secure for reforms when faced with powerful internal interests possessing the power to subvert the reform process and in turn affect the extent to which the regulated entity can comply with regulation.

As the regulator became more surefooted after liberalisation and the government receded this actor's relationship with the incumbent was to become more important. As the union with a significant proportion⁴⁹⁶ of its members being both owners and employees of Eircom, the CWU has since helped Eircom to maintain a direct presence in the development of the sector (Interview: Reporter, Irish Times, November 10, 2003). CWU representative also sits on Eircom's Board and has continued to vocalise the firm's views on a number of issues.⁴⁹⁷ This has seen the CWU making various submissions to the regulator and ministers, as well as, to the media on the firm's behalf.⁴⁹⁸

These efforts have sought to highlight what it considered to be the over-regulation of Eircom and any other area in which it felt the firm was being unfairly targeted by Comreg. As such, it has actively lobbied key players and decision makers in order to gain an advantage for Eircom (Interview: Technology Reporter, Irish Times, Dublin, November 10, 2003). The CWU has been vocal on attempts to limit Eircom's aggressive win-back strategy and in highlighting the many gains that the firm has brought to Irish telecoms market and its customers as arguments for Comreg to adopt a less aggressive approach to regulating the firm.⁴⁹⁹ The union's aggressive tactics have therefore, demonstrated this variety of interests which regulators have to take into account in trying to carry out their tasks; the variety of levers which regulated firms

⁴⁹⁶ It represents 8,500 of Eircom employees, excluding its managers.

⁴⁹⁷ See for example, CWU (2003b).

⁴⁹⁸ See for instance, Bride (2003a; 2003b; 2003c); CWU (2003a); *Business Plus* (2003: 34-35).

⁴⁹⁹ See notes 487 and 488 above.

have at their disposal in placing pressure on regulators; and finally, the complexities involved in regulation and its reform. Thus, not only must the regulator monitor the incumbent's activities, but it also has to withstand the pressures brought on it from the firm's supporters.

Thus, thanks to their Union, "the workers have done *extremely* well out of the privatisation of Eircom" (Interview: Technology Reporter, Irish Times, November 10, 2003). Employees have since also received significant dividends on their shares (Interview: Head of regulatory affairs, CWU, November 6 2003). For example, after a year into liberalisation, shareholders (with a significant portion being employees) had received a 26% increase in dividends per share over the previous year.⁵⁰⁰ Thus, in 2004 the chief executive recognised the significance of employees in the firm's internal modernisation noting that:

Eircom's success in a competitive market depends on the commitment of the people who work in Eircom. During a period of rapid downsizing, restructuring, and focused management the contribution of the employees has been outstanding.

(Eircom Annual Report 2004: 16)

7.3 Discussion: Internal Differentiation of Regulated Incumbents and its Response to Change

The activities employed by the staff and their unions at various points throughout the firm's history have had some influence on the firm and overall telecoms sector. As in the Jamaican case, the findings suggest a place for considering interests and actors within the incumbent firm and how these affect the way regulation proceeds, as well as the way these firms respond to changes in their markets. The existence of such actors is shown as another factor that regulators may have to take into account when assessing regulatory strategies. This is to the extent that these internal stakeholders are able to frustrate regulation (as with the unions in Ireland) or encourage successful regulation (as in Jamaica).

With the aid of sympathetic political groups and unions, staff of the incumbent have been able to apply enough pressure to the government to delay industry reform and constrain its freedom in policy-making. This is as seen in the decision to restructure the firm along the lines

⁵⁰⁰ Eircom (2000c).

of a State Owned Enterprise (SOE) instead of outright privatisation that had in fact been recommended by government advisers in 1982 and later, in the 90s, as well as, in the government's decision to press for derogation in the early 1990s. Resistance, to privatisation constrained the choices of the government as they still shied away from introducing measures that were to be contrary to the unions (in the 90s). Additionally, as suggested in this chapter, their role came out again in delaying moves to make the firm more efficient through staff reductions, cost containment and slowing up efforts to sell the company between 1997 and 2002, one of the main periods of telecommunications in Ireland.⁵⁰¹

Though Eircom has thus far been dealt with at only one level (as a single entity or monolithic structure) there is room to consider the different interests within the firm itself and how these affected its operations in the sector. This is particularly relevant for Ireland where a recount of regulatory reform in the telecommunications sector would not be complete without an attempt to capture the role of employees and their Unions in the development of the sector mainly in 1998-2002. Indeed, the findings on the role of unions and the employees here stands in stark contrast to observations made by Chari and McMahon about the "relative absence of social actors including organised labour" from the privatisation of state enterprises in Ireland (2003: 17). In this as in the Jamaican case, the incumbent firm is clearly not just a single actor with one definitive overarching voice or position. As shown here, there exists a number of divergent interests, in this case unions and employees who have been empowered within a specific institutional context which privileges these actors, recognising them as valid participants in the regulatory space.⁵⁰² The inclusion of the Unions in this case was also important given what Hardiman recognised as their ability to make life difficult for the Irish

⁵⁰¹ Interesting enough, it was one of the unions in the sector (IMPACT) who had also recommended that SOEs including Eircom diversify its operations in order to reduce the potential effect that a downturn in any one area would have on the firm (Sweeny 1993: 6). This of course was one of the strategies employed by Eircom in the late 90s and accelerated after the employees gained shares in the Company.

⁵⁰² Even were they not recognised as such, it could still be argued that the level of organisation and activism within the unions may still have made them visible. Thus, the findings on the role of the unions in the process of regulatory reform supports those of Hastings who observed that, the Irish case demonstrates "the way in which a union coalition, acting in a highly cohesive and strategic fashion, can through the use of their influence at national and local levels deflect and neutralize the strategy of a government department" (2003: 151).

government (1988: 215) as well as a pattern of governance which privileged unions in the policy making process.

Chapters two and three focused on the role of actors in the regulatory space and how these can be brought into regulating incumbents. Chapters six and seven argue for a consideration of another set of drivers, namely those existing within the incumbent (e.g. shareholders, employees and their unions) and the impact that these have on the incumbent's choices and actions. As shown in both cases, the consideration of these actors is important, as they are seen to affect the ability of industry regulators to carry out their tasks. These divergent interests also affect the way the incumbent responds to reform, in particular, its choice of coping strategies and how these are implemented. However, the Irish case differs somewhat from C&WJ in that here interests outside those of the government and the senior management actually demonstrated their power through and on behalf of the incumbent. In other words, unions such as the CWU represented, expressed and asserted the incumbent's influence, thereby taking a decisive role in the reform of the sector whereas employees beyond senior management have not had as great a role in the Jamaican case. Following from this, the incumbents presented here are not one-dimensional, but are shown to be complex actors with different motivations for their actions. Importantly, not all these motivations are determined by regulators. Nonetheless, the power of regulation here is its ability to unleash forces (e.g. competitive pressures); which may secure behaviour modification in an incumbent, where direct regulation (e.g. rules and legislation) may not prove as effective.

The issue of governance and ownership and their impact on the firm's responsiveness and propensity for innovation and change emerges as important considerations in understanding incumbency and incumbent's response to change and overall compliance. In the first instance, the partial privatisation achieved at the end of 1997 began a process of modernisation within Eircom. However, the second phase of ownership change which saw the adoption of an ESOP accompanied a turnaround in the firm's strategies which as noted above were informed mainly by a desire to expand ownership and coverage throughout the sector. In so doing, the firm sought to enhance its grip over the sector in lieu of the loss of its position as a state monopoly.

Strategies were to once again shift at the end of 2001 and this coincided with both the reductions in personnel and the end of the expansionary impulse witnessed in the first three years of regulatory reform. Indeed, as shown in the presentation of the internal strategies employed by the firm in coping with the changes in its regulatory space in chapter five, it was during this phase that the most far-reaching reforms necessary for streamlining the firm were made. Thus, even while regulatory reform began in the late 90s it was not till a group of private investors took over the firm moving it decidedly into a fully private market that the incumbent began to seriously move towards becoming leaner and more focused; this as opposed to the haphazard actions of simply trying to dominate the sector through acquisitions.⁵⁰³

The interesting story here is not only about the change of ownership, but also that it was the change to a privately operated entity, which also seemed to matter. The removal of government from the triad involving employees and private investors had provided for a degree of independence and autonomy within the firm where the extent of changes desired could finally be attained. With the removal of this influence, the leverage and support commanded by the unions within the firm (and hence their ability to hold out on certain reforms) was reduced significantly.⁵⁰⁴ Unions by then were also becoming more aware of the need to adopt harsher strategies if Eircom was to continue doing well.

As such, the more far-reaching changes in addressing size, costs and efficiency within the company were further enabled by the shift in the balance of power that came as a result of the exit of the government from the triadic ownership structure. Resistance to staff cut was therefore, less effective allowing the new private owners to trim the firm as they saw fit. It can be recalled that one of the main arguments against competition and privatisation had been that it would result in a loss of staff. Within this context it might appear that prior to 2001 there still had not been enough desire or political will to streamline staff numbers. Thus, the immediacy with which this move was made after full privatisation at the end of 2001 suggests that this development had offered Eircom the momentum and freedom to move ahead with

⁵⁰³ See Section 5.2.2.

⁵⁰⁴ The pressures faced from the global crisis in the telecoms sector at the start of the Century may also have placed more pressures on shareholders including, the staff making them more accepting of change.

improvements, which may have been difficult to achieve under the previous ownership structure.

These shifts in ownership therefore, had an impact on the paths taken by the incumbent in these years demonstrating the effect of divergent interests and its impact on firm choice. What this helps to demonstrate once more, is the notion that regulated firms are not monolithic structures even though they may appear as such from the outside. Rather, there may be internal differences and interests who have an impact in so far as the incumbent is able to respond to market changes. These internal differences also have important consequences for how the firm responds to regulatory reform.

7.4 Conclusion

Thus, an important actor in this case has been the staff, who through their unions were able to gain the support of key political figures, forming a powerful bloc within the incumbent. The desire of government and the firm's senior management to attain a smooth transformation and maintain peaceful relations within the company helped the Union in its bid to secure gains for workers. In essence, the management was not willing to rock the boat, preferring to give employees a stake in the company in return for their support for new company policy. As such, both government and private owners were more inclined to find ways of appeasing this group, as with the offer of shares in the late 90s. Through ownership, employees could have a more direct and legitimate means of directing company policy. That is, as shareholders, their right to sit on company boards and meetings as well as to direct Company policy was now legitimised.

Now staff and their unions could be actively involved in shaping these initiatives and consequently, be in a position to monitor Eircom and its regulators. In regulating the regulators, the employees and unions have also kept a watchful eye on the activities of the regulator in regard to the performance of its rules and responsibilities especially with regard to the incumbent, Eircom. In so doing, another level of regulation may be said to have been added here as the employees and their unions became overseers of the incumbent, the regulators and the wider telecoms sector.

In this sense, the unions and employees have functioned as one of the empowered public interest groups whom Ayres and Braithwaite have given some place in their tripartite model of regulation (1992: 54-100). That is, the unions even while acting as protectors of employee interest and as such also as advocates of the incumbent firm have also acted as regulators (of the regulators, competitors and of the regulated firm itself). The analysis also goes beyond this to answer the puzzle posed by Mendelhoff in his review of Ayres and Braithwaite's recommendation for such actors in regulation, namely "where would they get technical and legal assistance?" (1993: 718). Here the resources to actively pursue its objectives were expertly secured by the union itself. In its intent to secure the technical competence needed to negotiate with the government, the board and senior management of the incumbent the unions enrolled the support of lawyers and industry experts hence amassing the legal competence to reason with these actors on an even footing.

Finally, the presentations in Chapters six and seven have sought to go beyond a portrayal of the incumbent firms as recipients of regulation and as monoliths. As has been shown, the interests at play within incumbents are not always unified or singular but may diverge in significant ways. These divergent interests may have an impact in dictating the firm's stance on reform and how it approaches regulation and regulators. These diverging interests may also condition strategies and choices in responding to reforms. Among the key 'interests' in this chapter is that of employees and unions, taking this presentation beyond that in Chapter six where the emphasis was mainly on a specific category of employees, i.e. the board and senior management. In this case the employees within the incumbent formed a major force to be reckoned with. Acting as a separate power broker they chose to negotiate with the senior management and government as independent stakeholders. The ESOP has therefore represented and allowed for the emergence of empowered union and employees who were to have significant power in the industry; a feat which is all the more remarkable in what has been described as a country which has been dominated by producer interests.⁵⁰⁵

⁵⁰⁵ See for instance, OECD (2001a: 47-59); Chari and O'McMahon (2003: especially 4, 38).

It is not so much that these divisions did not exist in some form prior to reform. However, the uncertainty brought on by sector reform made these more pronounced as each group sought to protect its position or gain the most from the reconstruction of the telecoms regime. As such, incumbent firms are not necessarily unitary actors but may be seen as housing various interests who may choose to sit in different and competing arenas during times of uncertainty. While these many interests diverge the aim is still to assist the firm in maintaining its dominance. Divergences may not last beyond such periods of uncertainty as the firm seeks to secure its dominance in the face of continued market uncertainty. Thus, C&WJ and Eircom have, in the post-liberalisation era become more knitted structures with more harmony among internal interests.

CHAPTER EIGHT

SUMMARY AND CONCLUSION

8.0 Introduction

This research was aimed at understanding how incumbent firms have responded to regulatory reform, in so doing, understanding why these actors have remained at the centre of the telecoms sector. This followed from a recognition that the literature on regulatory reform did not fully help to explain the sustained dominance of these actors in telecoms after reforms, which have taken place mainly over the last two to three decades. It also aimed to understand the drivers of change for such firms and the implications for regulation. In addressing these issues, the thesis has shown that the incumbent's response is not only about the developments in the regulatory space, but also about how it internalises reform. The value of this work, therefore, rests in its attempt to shed light on some of the ignored actors in regulation, specifically, the information that it gives on incumbency and how large dominant actors, who are critical to regulatory success, operate and what it reveals about the choices and strategies of regulators.

The aim in this final chapter will be to discuss these themes and summarise some of the main findings from the previous chapters. In doing this, the chapter takes a closer look at the two cases to consider how the incumbents have responded to reform, the influences on the incumbent's behaviour as well as a more specific focus on incumbency. The wider implications of the study, namely how the findings can inform regulation and its reform will be assessed, particularly as they relate to regulation in small states.

8.1 Incumbent Response to Regulatory Reform

In looking at the ways in which incumbents respond to reform and the influences or forces that affect their behaviour the work argued that the incumbent's response was firstly about its activities in the regulatory space (external). Secondly, the incumbent's response was also about how reforms affected it internally and how it reordered itself to respond to change. Finally, it demonstrated that incumbents (and regulated firms, by extension) are not monoliths. The

discussion in this section will examine these three points, ending with a more direct assessment of the implications of the overall findings, as they relate to regulation and regulatory reform.

8.1.1 Incumbent Response to Changes in the Regulatory Space

The presentation in Chapters two and three was aimed at showing how incumbents respond to change, with their strategies evolving in line with changes in the regulatory space. In the years leading up to liberalisation at the end of the 1990s, the tactics adopted by the incumbents in asserting their position in the sector had included attempts to appeal directly to government officials. This was understandable, particularly in the Irish case, given the role of government as owner of the then monopoly. This practice did not change much with the introduction of the independent regulators as both incumbents viewed this institution as an interloper in the sector and in the relationship between itself and its line minister. The first years of the IRA's operations thus saw the incumbents ignoring the regulators and then challenging its authority, competence and legitimacy. Some of this had been guaranteed by a failure to equip the IRAs with sufficient power and resources to command legitimacy in the sector, while politicians also subverted the role of the IRAs in the years leading to full liberalisation. This also shows the importance of equipping regulators with sufficient power to carry out their duties.

However, as the state's intent to transform the sector became more and more apparent (driven by a mix of local and international factors in both cases), both first sought to prevent full liberalisation and delay reform. However, as the certainty of reform became more obvious, the incumbents also changed their stance. That is, whereas reform had initially been viewed as a constraint and something to be avoided, both incumbents began attempting to shape the reform process and actively monitor the regulatory space to identify and utilise the opportunities provided by reform (for example, legislative loopholes and increased regulation of competitors) to their advantage. In so doing, both firms sought to dictate the nature, extent and implementation of reform. So whereas in the Jamaican case bypass had affected the firm and it had previously sought to increase its exclusivity as a means of reducing this problem, reform

provided additional institutional resources (e.g. SMA and Telecoms Act) to police this problem more closely.

Within these efforts were the incumbent's attempts to prevent entry and the growth of competition through measures such as unfair pricing and withholding access from its competitors. This has also been accompanied by a hesitance in both incumbents to unbundle their services and provide full information on their capacity to their IRAs. In both cases this has been argued to have frustrated competition and the ability of the IRAs to achieve transparency in their respective markets.

Importantly, these strategies were accentuated by greater use of the Courts to settle disputes, particularly as the 'cordial relationship' with policy makers became more strained (as in the case of C&WJ) as the IRA became more active (especially in Ireland). Thus, these became more obvious as the threats and uncertainty heralding reform became more pronounced. Thus, both incumbents have used the courts to delay the introduction of unfavourable regulatory rules and legislations. In both cases, their command of wealth and technical expertise has meant that they have been more willing than other actors to seek the courts to clarify, delay or impede developments in the sector. The courts therefore, became another medium through which the incumbents could demonstrate their strength. Ironically though, this development may also have been indicative of the success of reforms in changing the informality in relationships and thus increasing formalism in the sector.

While there were many similarities, there were also some differences in the incumbents' response. For instance, the Irish incumbent has since utilised the courts more, as a tool for monitoring and keeping the IRA in check than has been the case in Jamaica. This may be explained by the fact that "competitive" pressures have arguably been felt more by the Jamaican incumbent (e.g. mobile) with the incumbent being more concerned with the need to protect its market. Eircom has arguably received more pressure from the regulator than from entrants. As such, the object of greatest threat in both cases differed, with Eircom turning more to the courts to challenge and circumvent regulation and C&WJ, more concerned with pressures from competition.

Chapter one had noted that approaches such as responsive regulation and Capture theory largely presented regulation as a bilateral relationship between firm and regulator, ignoring the role of other actors in influencing firm behaviour. The presentation in the Irish case would suggest that such approaches were valid, even while the use of the courts suggested that the firm was unable to capture the regulator. Further, as it relates to drivers of incumbent's behaviour, the main influences may have diverged in both cases, with competitive pressures being more dominant in Jamaica and regulation being more influential in Ireland.

The difference in the cases may also be explained by the fact that the Jamaican incumbent had a strong hand in the design of the rules and structure of the new regime and thus, had little reason to challenge the rules that it had helped to design, whereas Eircom had less direct impact over legislation. This form of negotiation, as seen in Jamaica, was important, given the state's desire to achieve a speedy reform and the reality that the incumbent possessed resources that it could benefit from. Such negotiation or exchange may occur in small developing settings such as Jamaica where government is constrained in the amount of resources or technical expertise it can command against a strong MNC that may have comparable or even greater amount of technical resources and capital. Responsiveness, in this case, may be more about conciliation and negotiation than about confrontation. Comreg, on the other hand, could more directly benefit from the regulatory capacity of the EU.

The focus on the firm's activities in the regulatory space also allowed for an identification of some of the main actors influencing the firm's behaviour. These included, entrants and the pressure of competition (real and potential), consumers, external actors (e.g. regional and international governing institutions and developed states) as well as the IRA themselves. In so doing, the study highlighted the interplay of the different constellation of interests and actors in the regulatory space and how these can be brought to bear in influencing its behaviour. Cawson has, for instance, argued that the constellation of power is important in dictating the nature of the institutional structures that will emerge in a country (Cawson 1990: 366). In this case, this can be taken as the balance of power and alignment of the actors in the policy arena and the rules which determine who is in or out of this arena. These rules shift with

actors gaining varying degrees of power at different periods throughout the incumbent firm's operations. This realignment and shifting balance of power can be the result of industry reform.

8.2 Implications

Following from this, the various influences on the incumbent firm have therefore not been constant or static. This may for instance, explain the role played by customers as well as that of international actors and even the regulator itself in influencing the behaviour of the incumbent at some points as opposed to others. An important lesson learned from this is how the regulators in both Ireland and Jamaica have reconfigured their regimes so as to empower actors such as consumers and even more to utilise external support to legitimise local regulation and break the incumbent's hold over the sector. In this way, the findings also add value to the smart approach to regulation, which acknowledges that actors outside the IRA can also regulate the behaviour of the firm.

These are shown as important actors in national reforms given their role in helping these countries to overcome national resistance to reform. As such, the findings presented here help to shed light on the interplay between international and domestic reform agendas demonstrating the internationalisation of telecoms regulation and the role of external actors as legitimate participants in national regulation. Thus, where regulators in small, or developing, states are faced with constraints (e.g. expertise, power, legitimacy and credibility) then these can call upon the resources of external agents, to assist in local regulation.

8.3 Internal Reordering in Response to Change in the Regulatory Space

Chapters four and five, like two and three, illustrated the ways in which former monopolies maintain their power and dominance in more open accountable environments where capture is less realistic or made less likely by industry reform. Thus, as reform got underway the incumbents were awakened to the need to find more diverse ways of responding to reform beyond attempting to reduce entry, going to the courts and challenging the regulator. Following

from this, the incumbents then began to modernise their operations and capacity in response to the changes in their regulatory space through a process of co-evolution between incumbents' internal organisation and their operational spaces. The thesis, thus demonstrated that the incumbent's response to regulation is not only about developments in its regulatory space, but also about how incumbents move to restructure their operations in order to heighten their ability to respond effectively to change and protect their market position; this as opposed to simply seeking to affect the rules in their regulatory space.

Importantly as transparency and the distance between the firm and government increased (indicated by the entry of the IRA in both cases) so too did the incumbent's internal regulatory capacity. By so doing, they could, when necessary, act to counter growing state regulation. Both incumbents have also sought to reduce their size and scope, improve skills, training, infrastructure and network quality and overall service, while also revitalising their brands and image. Their response also involved more attention to reducing operational costs and highlighting their corporate social responsibility. Ultimately these helped to reorient internal rules, priorities, culture and ethos, increase efficiency and overall competitiveness in the incumbents. These moves were also aimed at maintaining dominance and reducing threats, which reforms have posed by enhancing internal capacity to monitor the activities of the regulators, their competitors and consumers.

The incumbents in both cases have employed basically similar strategies in trying to enhance their ability to compete and play a more pro-active role in the regulatory space, suggesting some general trend across states. However, whereas the regulator has had to intervene to force Eircom to divest itself of its operations (e.g. mobile) in order to allow for more competition, this has not been the case in C&WJ, perhaps indicating that competition was more effective in the Jamaican market. C&WJ's policy, from the outset, was also one of retrenchment, while placing more emphasis on improving those areas of its operations that would enhance its competitiveness. While Eircom did eventually arrive at this juncture it did so only after the failure of its expansionary policy aimed at replacing its legal ownership, with

physical dominance and coverage in the market, indicating that it could not maintain its dominance or earnings by simply expanding size and scope.

Additionally, while the increase in internal regulatory capacity has been more a feature of C&WJ this has been less the case in Ireland. Again, the fact that the Jamaican incumbent was more closely involved in designing the post 1999 regime and had more of a stake in monitoring the activities in the sector to ensure compliance, not only from entrants but also from the government and the OUR itself. Furthermore, as a front-runner in liberalisation and regulation and as a part of a global network of companies, developments in Jamaica were particularly important for the incumbent and its sister companies making technical and regulatory affairs particularly important for the company and its future developments in their remaining Caribbean markets.

Together, these support the findings of Johnstone (1999: 380) and Souter (1994: 43-44) who state that large firms and former monopolies select strategies such as outsourcing, down-sizing and a reconsideration of cost in responding to regulatory reform. However, whereas Souter noted that reform may result in training quality being compromised; both incumbents have been shown instead increasing their emphasis on developing the quality and skills of their personnel, with competence being advanced in areas such as customer service, sales and marketing. Failure to appreciate such response means less of an appreciation of the full impact of reform on incumbents and the extent to which they have reformed themselves, to maintain their dominance.

The main motivation for change in both incumbents was regulatory reform. Thus, the competitive forces (real and potential) unleashed by full liberalisation provided the incentive for the incumbents to associate organisational fitness with market fitness. The regulators also played a key role in directing these reforms. For example, moves to demerge its Mobile and Cable business were a direct result of Comreg's decision, while C&WJ's decision to allow access to its network and reduce its rates were also at the regulator's direction. On the other hand, both incumbents have been less forthcoming on unbundling. There have therefore, been efforts of innovation or self-regulation on the part of incumbents. This is also seen in both

incumbents going beyond the demands of regulation to reduce their size and prices beyond the dictates of regulators. However, it remains difficult to separate the influences on the incumbent's response, where it is recognised that the change in the rules and structure of the sector did allow competitive pressures to have more of an impact on the incumbent's activities, with much of the internal reforms being about the its desire to become more competitive and responsive in a fully liberalised era.

Finally, all these efforts were to have positive consequences for the firm's ability to compete and withstand the pressures placed on it by regulatory reform. In fact, in the case of Eircom, its position in the market is, in some ways, now stronger, having faced reform and grown in a fully competitive regime. This is as opposed to the threats and uncertainty it experienced under monopoly.

8.4 Internal Organisation and Effect on Incumbent's Response to Reform

The research also illustrated that the drivers of change were not all external, but also within the incumbent. In so doing, Chapters six and seven carried forward the focus on internal response presented in Chapters four and five, suggesting that incumbents were not monoliths, or one-dimensional structures. Rather, their internal organisation and orientation also matters in an understanding of how these actors operate in the regulatory space. This research therefore, argued for a more nuanced view of incumbent firms, one which acknowledges the internal complexities, which may exist in these actors and the effect that this may have on the firm's ability to respond to regulation.

Following the framework in Chapter one, both incumbents were shown to be fragmented internally. However, whereas C&WJ was segmented more along the lines of its head and local office, the Irish incumbent was more about the differences between the employees and their unions and managers, with interests becoming more distinct at the height of reform. Briefly, this point also suggests some difficulty, once more, in separating internal interests and their effect from regulatory reform as an influence on the incumbent's activities.

That is, internal differentiation was shown to have both a constraining and liberating effect on the incumbent's response. This was largely enabling for C&WJ, illustrating how a firm's location in a large and experienced multinational network can allow it to leverage resources and influences afforded by this network to its advantage when dealing with national regulators and coping with reform. In this case, the collective strength of the incumbent firm as a part of a geographically dispersed network rivalled the capacity and expertise of a small developing country, strengthening the incumbent's hand in negotiations for industry reform. Even more, the presentation illustrated how incumbents can utilise their dispersed structure and centres of decision-making to play-off competing messages to their advantage when negotiating with local regulators. C&WJ has therefore accessed negotiating capacity, best practices, legal and technological expertise from its network.

The constraining effect of internal diversity was most visible in Eircom's case and may have been due to the more complex ownership and management structure. While there was some exchange of skills (as in Jamaica), thanks to its early partners in Europe, the differences at the national level (i.e. senior management, employees with the unions and politicians) remains the more interesting story for this case. Whereas, balance of power clearly existed with C&W plc in the case of the Jamaican incumbent, this was not the case in Eircom with important consequences for the ways in which the latter responded to reforms. For instance, the amalgamation of political interests and union/employee power has been argued to have been serious constraints to the incumbent introducing the level of efficiency (e.g. cost and staff reduction) that it could have adopted in its attempt to restructure its operations in the years immediately following liberalisation. This effect has not been all constraining as seen in the role played by unions in lobbying for the incumbent, especially against what it saw as unfair regulation from Comreg. In the end, more groups had to be appeased in Irish reform, with negotiations and reform in both cases being more about the regulator's ability to achieve a balancing act among various interests.

Finally, the specificities of 'regulatory reform' may differ from state to state though there may be general similarities and trends across the board. Thus, the particular timing and

implementation of the events varied in Jamaica and Ireland, even while there were similarities in the nature of the reforms as well as in the incumbent's response to these changes. Additionally, there will be specific institutional features, which may result in slight differences in the way the incumbent firm responds to regulatory reform and the way rules and structural change play out in the regulatory space. For instance, the constellation of interests differed, with unions and employees playing a greater role in dictating the choice and strategies of the incumbent in Ireland than in Jamaica. As noted in this work, the difference lies in the specific cultural and political ethos in Ireland, which has been informed more by collegiality and social partnership, with employees and their unions being more involved in policy planning and development. On the other hand, employees beyond the senior management team in Jamaica did not have much impact or direction on the firm's policies. This point also played out in the way the firms went about negotiating for reform with both using ties and influence with government/policy makers in different ways. Whereas C&W used its segmented structure as an MNC with its head office dealing directly with the government to overcome the apparent unwillingness of the local branch to agree to reforms, the mass of staff in Eircom were able to make direct appeals to the line minister to direct the way the sector was being reformed.

8.5 Implications of Findings

This section examines the implications of the above findings as they relate to incumbents, regulation and regulatory reform. The changes outlined in this thesis may be particular to incumbents. These, however remain significant and warrant special attention for a number of reasons. Among these are the depth and timing of reforms by actors formerly seen as slow wasteful and unresponsive. Further, a focus on how this actor responds is particularly significant for regulators, given the importance of the incumbent in regulation and their impact on the success of reform.

The first point here is that the findings defy presentations of large firms such as incumbents (former monopolists) as, "structurally inert or slow to change" (Flier et al 2003: 2165; see also Hannan and Freeman 1984). This is particularly so given the pace in which these actors have

been able to reorient their structures to face risks in their regulatory space. Incumbents are then not static targets of regulation. The point here is that these are able to modify their operations at paces which defy their state of inertia during monopoly. This indicates the value of regulatory reform as an instrument for governments and regulators wishing to obtain particular policy and regulatory goals such as competition or improved infrastructure and sectoral performance.

For the most part, their status as large, well-resourced actors possessing the ability to change with their markets and regulatory changes may also mean that they have more capacity to manipulate regulation to their advantage. Thus, while acknowledging the difficulties that such large networked actors may have in accomplishing accounting separation and unbundling, the time in which both incumbents have taken to do these remains contentious, given the speed in which they have undertaken other intensive reforms that have helped them to become more competitive. An awareness of these strategies of creative avoidance can assist regulators in designing more targeted interventions. On the other hand, reference to delays in regulatory compliance caused by size and number of operations is a legitimate claim, making it difficult for regulators to judge the incumbent's sincerity. The regulator's task also becomes more difficult as the firm's exercise of its incumbency changes and it takes on new capacity. Regulation in such contexts then becomes even more in tune with Selznick's view of this activity as a sustained and continuous process (1985: 363).

The wider lesson here is about the role of regulatory reform in nudging large dominant incumbents towards making changes necessary for advancing efficiency, quality and effectiveness in their respective sectors, in so doing, increasing value and choice for customers. Thus, even where competition does not thrive and where specific institutional concerns (e.g. economies of scale) may dictate the level of competition which small markets such as those of Ireland and Jamaica can accommodate, the threat of competition is shown as being important in achieving regulatory goals such as, increased transparency and overall performance among dominant firms. This is important, since the size and reach of the incumbents in such small states may have wider implications for overall sectoral performance than in larger states. Thus the performance of the incumbent and the level of improvements that it is able to undertake will

be important, given the limits of the market in facilitating competition. What regulatory reform has done is provide the incentives for incumbents to make the improvements necessary for increasing their performance, and by so doing the overall performance of the market.

Both incumbents, as shown here, are able to embrace regulatory reform, not necessarily in the sense of trying to co-opt, or take over the regulatory agenda (as is shown in the previous section), but is more in internalising regulatory principles and competitive pressures to drive internal reform. As with organisations under the population ecology approach, external pressure for change penetrated the incumbent's 'genetic code' and reformed its ethos and operations (see Gaskell et al. 2006: 102). These have marked the firm as a monopolist apart from the firm as incumbent.

Secondly, following from the above, the work also demonstrated that regulated firms are not simply policy takers, but also act to shape as much as they are shaped by regulation and its reform. For instance, they are active participants in the regulatory space, who are able to reform their organisations or co-evolve in line with changes in the operational/regulatory space, as seen in the far-reaching reforms in their internal operations. An understanding of the nature of regulation and attending processes such as regulatory reform will lead to an acknowledgement of the fact that regulation is not only carried out by governments or through the courts, a position similar to the smart approach to regulation and the regulatory space thesis.

What the study offers is an appreciation of the diversity of interests and actors involved in regulation and whereas these may not all be able to participate directly in designing or drawing up blueprints for industry reform they nonetheless, may have a direct impact on how rules play out during and after the implementation of industry rules. This is seen in their activities in relation to reform and other actors in the regulatory space.

Thus, incumbents have been shown having to respond to direct instructions from IRAs as well as from the pressures presented by entrants and consumers. The IRA and ministers were therefore shown modifying the rules in the sector to unleash these forces to nudge the incumbents towards a desired objective and stepping in directly (e.g. forcing Eircom to depart the Mobile market) where the full effect of other drivers or influences were not being realised.

The point here is that knowledge of the forces influencing the incumbent's behaviour may help to inform the regulator's strategies. That is, whether to intervene directly or to create the environment in which other actors will become more empowered and in turn monitor the incumbent.

Regulators are also able to expand the regulatory space and borrow capacity and skills from these drivers in regulating incumbents. This is particularly the case, for international forces of regulation. Importantly, rules or man-power from international or regional regulators, for instance, help to lower the cost of local regulation (e.g. since regulator does not have to spend time forming new rules and spend time experimenting) and heighten the legitimacy of local regulators. It is therefore, not just non-state actors who can be included in regulation as implied by Braithwaite's (2006: 884-898) reworked responsive approach but also large or more developed countries and multilateral institutions can be brought into regulation to overcome resource constraints faced by regulators in small or developing countries.

International influence has introduced another level, which arguably, cannot be ignored by accounts of regulation in a modern era. Authors such as Braithwaite and Drahos (2000) and Hall and Soskice (2001: 51) have acknowledged the relevance of this dimension in the spate of telecommunications reform that had occurred simultaneously across the globe. In challenging the organisation and management of telecommunications, these forces have helped to redefine the regulation of national telecoms. A resounding yes would therefore meet Hall, Scott and Hood's question as to whether there has emerged an eighth stage in the development of telecommunications regulation involving the increased involvement of international actors (2000: 210). Thus, whereas Hancher and Moran noted that internalisation of regulation has compromised local regulatory capacity in some sectors (1989: 289), the opposite is true for the cases investigated. The suggestion then is that, for small and developing countries, an ability to appeal to international actors and institutions for support in local regulation is important in helping to raise local capacity.

Following from this, the findings suggest that what regulators need to do in dealing with incumbents is understand how relationships, and influence vary and change and how these can

be brought to bear either singularly or collectively in securing compliance from incumbents and large regulated firms. Thus, where the Jamaican government was faced with C&WJ's recalcitrance it was able to turn to international actors and take advantage of timing (growing support for reform, as seen in the rise in the popularity of concepts of regulatory reform and liberalisation) in order to break the local deadlock between itself and C&WJ. The findings also have implications for how regulators and governments in small capacity restrained states can obtain compliance when dealing with deeply embedded firms who, as in the case of small and developing countries such as Jamaica and Ireland, have resources and capacity to possibly rival that of the government itself. This is important, since the success of reform will, to some extent, depend on the level of support and compliance from the incumbent. This can also be achieved by increasing information flux by placing requirements for reporting and disclosure on the incumbent, as was introduced by Comreg. As seen in the Jamaican case, this may even mean utilising the regulatory capacity of the incumbent's network.

The incumbent's attempt to influence regulation and the way reforms evolved was also demonstrated in the cases. This point is most evident in the Jamaican case where the incumbent's power and experience provided leverage for it to negotiate on an even footing with the government and influence the shape of the Telecoms Act. This was however, less the case in Ireland. That is, whereas both incumbents have affected the pace of competition (e.g. through anti-competitive practices) and the regulator's ability to carry out its task (failing to comply fully with rules and use of the courts), the Irish incumbent had less of an impact on the formation of the actual rules governing processes such as liberalisation. This may be explained by the nature of regulatory governance in Ireland, which as part of a larger regional bloc (the EU) arguably has less freedom than Jamaica in deciding the structure of reforms. Further, for years the Irish government shied away from introducing privatisation and full liberalisation, due to the lack of support from some groups within the incumbent.

Thus, incumbents are therefore, shown attempting to shape the choice, design and implementation of regulation and regulatory strategies as much as they have been shaped by them. The presentation of internal reforms is also useful to firms and other organisations

struggling to reform in the face of changing market environments, indicating how intra-organisational reform can impact on inter-organisational, or inter-firm competitiveness. It is important to note here that there need not be an overwhelming number of examples of regulated firms influencing regulation for this point to be relevant. Rather, what is being suggested is the need for a more fluid view of regulated firms as proposed by the regulatory space approach. That is, that they are not simply takers of regulation, but also act to regulate the regulators.

A third lesson emerging from this work is the fact that regulated firms are not monolithic structures. These are instead, more dynamic actors and are segmented internally with different interest groups and balance of power. These can, in turn, access support from actors in the regulatory space (e.g. government and unions for Ireland) to gain influence over internal organisational policy. Periods of uncertainty, such as wider regulatory reform are shown to create the climate in which such internal differences will become more apparent, as groups may seek to use such uncertainty as an opportunity to renegotiate the balance of power within the firm with some implication for how these incumbents choose to respond to reform. For example, where local managers in C&WJ resisted reform, the head office appeared more conciliatory. As suggested, C&WJ may have been able to play off competing messages between the head and local offices in negotiations with the Jamaican government to its advantage, utilising the resources in its global network to inform its operations in the local regulatory space. As noted in Section 8.1, staff and unions in Eircom were at times able to avoid the IRA by making direct appeals to politicians to influence the way regulatory reform (i.e. privatisation) was achieved, while the dominance of employee interest arguably limited the extent to which modernisation could be achieved in the firm. It has been shown how the use of capacity from its sister companies also empowered C&WJ and its ability to monitor the regulatory space.

Fourthly, while this segmented structure can be an advantage to incumbents; this reality has more direct implications for regulatory choice and strategy. That is, knowledge and awareness of the segmented nature of regulated firms and of the location of the different internal actors and interests can yield important information on how to secure compliance from regulated firms. Thus, rather than see a firm (in this case, incumbent) as one powerful bloc,

regulators may choose to appeal to individual sections within the firm (e.g. head office or groups of employees and their unions) to secure compliance with rules and regulation. It is important to note, however, that not all interests or groups have the same level of access or power (with actors in the regulatory space) with cultural differences playing a role here. An awareness of these differences may assist in the design of more effective risk regulation. By helping to inform regulators and policy makers of what groups will be able to assist or frustrate its efforts. For instance, policy makers and regulators who are more aware of the different interests in a regulated firm are likely to be better able to develop strategies to increase compliance and support from such groups from the outset. Thus, privatisation in Ireland was only fully achieved when the state recognised that privatisation would not be successful without the support of the incumbent. Giving the employees a stake in the firm meant that reforms could proceed quickly while guaranteeing employees a stake in the incumbent's success.

Again, implications for small capacity, constrained settings involve a potential to reduce costs and time involved in trying to secure compliance from large well-resourced firms or actors within those firms. This may also be useful where extreme measures such as, licence revocation, are difficult to enforce. Further, where Baldwin and Black contend that it may not always be possible to use the 'big stick' of the responsive approach to regulation (2008: 9-10), then such attempts at appeasement of targeted actors may prove more useful in breaking deadlock.

Furthermore, the regulatory capacity and expertise that is available to the regulated firm through its network may also be utilised by the regulator. This point has been demonstrated more in the Jamaican case, again perhaps, due to lack of access to as much regulatory support as the Irish incumbent and support from its membership in the EU vis-à-vis the lack of capacity in CARICOM. This illustrates once more the ways in which regulators in capacity constrained settings or small countries can in fact increase internal regulatory capacity particularly at the start of the reform process, where regulatory experience may be lacking. The challenge remains to avoid the risks (e.g. capture) that such a close relationship could encourage. Thus, where the regulator is aware of the different drivers, both inside and outside the incumbent, such

knowledge can help to produce regimes that are more responsive and smaller, insofar as there is an awareness of tools and techniques that regulators have at their disposal.

A fifth lesson is concerned with the extent to which regulation (by the IRA, or otherwise) can affect the behaviour of a large firm. Thus, the issues around local loop unbundling have been a sustained contention in relations between the incumbents and industry regulators in both cases. The ultimate here may be for license revocation but this can be too big a punishment given the extent of the firm's operations and relevance for the country and entrants. As seen in Jamaica, the incumbent's power prompted more attempts at conciliation and bargaining as well as appeals to third parties in the attempts to liberalise the sector in the late 1990s. Thus, the size of a market or regulatory space may preclude the use of certain strategies as outlined in the responsive or smart regulation framework. Furthermore, as seen in the ongoing use of the courts in Ireland, a standoff is not helpful, since this may lead to a waste of resources and delays in regulation.

A sixth lesson from the findings is that competition in one area of a regulated market may have an impact on the areas of the market where competition is less vibrant. Though all areas of the Jamaican market have been opened, there remains little competition in the local loop. Competition in the mobile market has, on the other hand, seen increased access to mobile phones and lower prices. C&WJ has responded by increasing access, quality and pricing options in its fixed line business in order to stem the departure. As such, whereas regulation had failed to secure more value for customers in the fixed line market over the years, competition in the mobile market has provided motivation for the incumbent to increase service value in its fixed line business. In this instance regulation has had its limits but regulatory goals have, nonetheless, been advanced by the effect of competition and market pressures on the incumbent's operations.

In the end, regulatory reform has not only been about new legislation and rules. It also relates to the overall change that has resulted from the interaction of these rules with the regulatory space and the firm's internal organisation and management overtime. Regulatory reform as presented here is not a one-off activity, which only ends with the passing of a piece of

legislation but also involves the actual process of implementing this legislation. It is also about how such legislation plays out in actually changing the landscape of related rules, relationships and structures in the regulatory space and here, how they actually affect the incumbent's behaviour towards desired ends.

The presentation has suggested that incumbency offers firms a natural advantage in a competitive environment. Thus, incumbency does offer a firm a number of natural advantages, particularly at the cusp of a new regulatory regime. For example, they have first mover advantages, seen for instance, in Eircom's ability to expand quickly in its attempt to prevent entry from 1999-2001 and C&WJ arguing successfully for a delay in full liberalisation to allow it to prepare itself for reform and to recoup investments. These actors also remain the provider of choice in their relevant countries, particularly in the fixed market.

Such a status has also proven difficult to overcome given that these actors had access to the majority of telephone users and owned the local loop. In the immediate period following discussions to liberalise and the entry of new players in the sector this first mover advantage made it easier for the incumbents to react to attempts to enter certain areas of the market by introducing measures aimed at preventing entry or limit the success of competitors (e.g., unfair pricing). In some instances such an advantage had the effect of forcing smaller competitors out of the market. In both cases, the decision to grant the incumbents additional time before the start of full competition gave them more time to adjust their businesses to lead the pack at the onslaught of full competition. Even where this decision was rescinded in Ireland, this was done suddenly and may have reduced the time in which others could prepare themselves to enter the market, which arguably still allowed the incumbent to have an edge in a competitive market.

The title of 'incumbent' does not necessarily guarantee that a former monopolist will remain successful overtime or even in the short run. Both incumbents have, for instance, suffered from legacy issues with consumers taking up service from other operators. Additionally, Digicel, the first entrant in mobile services benefited from the fact that it was new and did not have the baggage of C&WJ. However continued success and competitiveness has been related to the incumbents' ability to scan their environments for new opportunities taking

advantage of loopholes in regulations, transforming themselves to match the needs of their customers and a competitive market. As such, the extent to which incumbents underwent transformation internally and the pace in which this was translated into improved quality in its relations with its customers and in the standard and variety of its network and services were also key to the incumbent's success. Thus, with the realisation by the Irish incumbent, that its ability to compete was going to be linked to product and service quality and cost-containment (not simply its ability to dominate the sector), the firm gradually changed its orientation, becoming more efficient.

The speed with which citizens shifted to competitors of former national monopolies may have been indicative of the level of dissatisfaction with the incumbent. Liberalisation has afforded customers the choice of showing dissatisfaction with the quality of service and customer care by switching to entrants. However, the early march away from the incumbents was halted shortly after reform thanks to the steps taken to improve their operations. The Irish incumbent has arguably been more successful in doing so. Nonetheless, while C&WJ has not been able to dominate the mobile market completely, it has reduced the rate at which customers switch to competitor networks.

The status as incumbent nevertheless, helped to provide the resources and time in which the firms investigated here could undergo a number of shifts in their internal governance and organisation to deal with industry reform and halt the early departure of their clients. Thus, continued success and dominance were based on the incumbents' ability to deliver quality service at competitive rates vis-à-vis its customers. In this way, the incumbents' possession of capacity and resources, as well as their ability to affect legislations (either slowing down or allowing it time to adjust), have been key in helping them to adjust to reform successfully.

Finally, by focusing on incumbents and regulatory reform, this study has contributed to the existing research on regulation by addressing the need for more empirical and comparative research on regulation and regulatory reform (Christensen and Lægreid 2005: 2), the effects of regulatory reform (Wallsten 2003: 220) and how firms have responded to reform (Koski and Majumdar 2002: 455).

8.6 Conclusion

This chapter has reviewed the main arguments of the work, showing that incumbent firms response to reform is about its activities and relationships in the regulatory space as well as about its internal organisation. It is not being suggested that the findings are not beneficial to an incumbent in a large space. For example, European states are also subject to the rules of the EU. However, according to Hancher and Moran, “economic regulation under advanced capitalism has several distinctive features and those features in turn shape the character of regulatory activity” (1989: 271). By extension, the effect of such external influence will differ for small and developing countries such as Ireland and Jamaica with size conferring different issues and capabilities on such states. This holds implications for how large dominant firms operate vis-à-vis regulators in such settings and for how the latter responds to such firms and the choices available to it. Thus, external actors (donors, regional bodies or large developed states) may arguably play a more significant role in the options and choices of the firms themselves as well as those of industry regulators in small settings (regardless of the levels of development) than in larger, more developed contexts.

Additionally, authors such as Braithwaite (2006: 884-898) have also acknowledged the constraining effect of small size and lack of resource on obtaining responsive regulation. What this work has done is to suggest the ways in which IRAs in small states have been able to regulate firm behaviour and secure compliance and the creative ways in which this has been achieved in these environments where regulatory resources may often be limited and where options proposed under approaches such as responsive and smart regulation (e.g. licence revocation or active consumer lobby) may be absent or weak.

Further, it is not being suggested that all the tactics adopted by the incumbent firms, especially its internal reforms are unique to incumbents. Rather, what is important and significant here is the fact that these tactics were carried out by a firm that a decade or two earlier would not necessarily have undergone these changes in and of itself. The breadth and swiftness of the changes achieved within the incumbent are also important. As such the importance is the impact of regulatory reform on large incumbent firms and the steps, which

these take in adjusting to a new environment facilitated by reform. All in all, these have ensured that, to a large extent, the firms that existed prior to reform are arguably different in orientation and operations from those that exist in the post-reform era.

Thus, in pointing out the experiences of incumbents more directly, the aim has been to add to the existing understanding and knowledge around regulatory reform and the effect that this process has had on former monopolists as well as to offer an explanation for how these actors have responded to reform, the factors influencing this response, and the implications for regulation. The activities of the incumbents described here not only indicate that large regulated firms are in fact capable of change, but goes beyond this to show that these actors are not monoliths and have creatively used their incumbency to assist them in staying at the centre of regulation.

The work has also highlighted the specific experiences of two small states, Jamaica and Ireland who have faced both legal and capacity restraints in their regulatory bodies (IRAs and state) and who have been faced with the task of reforming sectors typified by large, well-resourced, entrenched actors. In so doing, the ways in which such actors have managed to regulate the incumbent and the choices and tools that have been used in overcoming limitations of size and capacity have been highlighted. Importantly, the cases examined in this study add to the empirical work on regulatory reform, particularly as it evolved in small countries. In so doing, it also aides an understanding of some of the constraints faced by regulators in such states as well as the negotiation, compromises and tactics, which they make in order to secure compliance from large firms and support for regulatory principles.

Response has largely been similar in both cases even while one is developed and the other developing, suggesting the importance of size in a consideration of regulatory reform. Thus, to the extent that developments in these cases represent experiences of other small or developing environments they can provide useful information that can be used to inform regulatory strategies in other small states.

Nonetheless, the findings also highlight the fact that whereas certain regulatory strategies may work in one country, they may not work as well in another setting. Thus, in

Ireland, where the employees were more organised and had a more robust voice they were able to act as a counterweight to the government, senior management and investor interests in the firm. As such, the success of any initiative to reform the incumbent and by extension, the communications sector, meant that the support of this group of stakeholders had to be secured. In Jamaica, however, the structure and location of the firm as a part of a wider group of companies meant that bargaining was more about trying to secure the cooperation of both local and head office for the reform process. However, as shown the head office was seen as the final link in the chain thus, where political bargaining at the local level did not appear at first to yield the results that the government wanted, it chose to apply directly to the head office in seeking support for its cause.

The cases illustrate the value of regulatory reform (particularly, real and potential competition) in bringing improvements to the incumbents and in so doing to the wider communications sector. It is important to note too that sustained dominance does not necessarily indicate failure or success of regulation since telecoms reform was not necessarily about 'crushing' incumbents but providing an enabling environment for competition and choice.

The study has also highlighted the process of internationalisation of regulation and expansion of national regulatory spaces and the opportunities, which such a reality bring for regulatory strategies in small states. The incumbents here have embraced regulation, moving from a state of trying to avoid or capture regulation, to developing their capacity to respond to regulation, use it to their advantage, as well as reforming their operations to minimise the potentially negative effects of regulation and regulatory reform. There is however, some limit to which these actors may be said to have embraced regulation, particularly in the case of Eircom, which has continued to struggle with the IRA.

Finally, the emphasis on telecommunications and the small case size may limit the extent to which generalisations can be made from the study. Nonetheless, the findings do have some value in informing an understanding of other sectors dominated by large firms, even if its use is in offering a point of departure.

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