

**PROCEEDINGS OF
THE SEVENTH WORKSHOP OF
THE APEC-OECD CO-OPERATIVE INITIATIVE
ON REGULATORY REFORM**

BANGKOK, THAILAND

1 November, 2004

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I. PROCEEDINGS OF THE WORKSHOP

“THE INTEGRATED CHECKLIST: PUTTING KNOWLEDGE INTO PRACTICE”

SEVENTH WORKSHOP OF THE APEC-OECD CO-OPERATIVE INITIATIVE ON REGULATORY REFORM

1 NOVEMBER 2004, BANGKOK, THAILAND

The Seventh Workshop, held in Bangkok, Thailand, on November 1, 2004, concluded the work carried out since 2002 to prepare an Integrated Checklist on Regulatory Reform. The Checklist is an integrated self-assessment tool at three levels. First, it integrates the APEC and OECD principles on regulatory reform. Second, it involves three policy areas – competition, rule-making and market openness – to provide a coherent whole-of-government view. And third, it incorporates governance perspectives – transparency, accountability and performance. The Checklist is a unique, and major effort to promote international development and implementation of good regulatory practices. As a practical tool, it can encourage the development of other instruments to promote structural reform. Consultations at the Workshop with stakeholders, including BIAC and TUAC but also the Pacific Basin Economic Council and the Trade Facilitation Alliance, indicate broad support for early application of the Checklist and for ongoing efforts for countries to share experience.

Multi-disciplinary Integration

The workshop was opened by Ms. Srivicha Rackchamroon, Deputy Director-General, Department of Trade Negotiations, Ministry of Commerce, Thailand, who spoke about the role of Governments in developing a pro-competitive environment and how the Checklist could contribute to achieve this. Mr. Kiyoo Akasaka, Deputy Secretary-General, OECD, spoke of the strategic importance of regulatory reform, and of the practical lessons learned about implementation from OECD members' experience. Mr. Rolf Alter, Deputy Director, Public Governance and Territorial Development Directorate, OECD, noted that the process of drafting the Checklist had been an educational experience for all concerned. The Checklist had therefore evolved from a normative approach in an early draft, to an open-ended one, which emphasizes that there is no single model for reform, and in most cases, no right or wrong answer to the questions.

The opening panel session focused on the relevance of the Integrated Checklist to regulatory reform. John Morrall, United States Office of Management and Budget, highlighted the importance of centralised management and political leadership at the highest level to implement regulatory reform, noting that real progress takes time. As in most countries, regulatory reform in the United States began in response to a crisis, in this case, stagflation in the 1970s. But the course was maintained across successive economic cycles and changes in the presidency. As a result, the executive branch of government has been able to develop and apply regulatory impact analysis more rigorously, based on sound analysis, and conducted transparently to promote economic efficiency. Although there is a cost to the economy associated with regulation, it also delivers benefits which often outweigh the costs, as should be the case when decisions are taken on the basis of *ex ante* impact analysis. Mr. Anatoly Golomolzin, Deputy Head, Russia Federal Antimonopoly Service, discussed the positive impact of a regulatory reform approach for competition policy. Ms. Evodkia Moisé-Leeman of the OECD Trade Directorate emphasized the potential complementarity between domestic regulatory frameworks and market openness, which is all the more important insofar as the elimination of tariffs can create incentives to use regulations as trade barriers. Liberalising one's own domestic market, she pointed out, generates more gains than seeking better access to foreign markets. The Integrated Checklist can help governments identify regulatory capacities and needs, thereby preparing the ground for smooth compliance with trade agreements.

Consultation with Stakeholders

Consultation with stakeholders was an important element of the Seventh Workshop. A major item in the Integrated Checklist itself, consultation proved its value in the workshop, and should be a regular feature of future meetings. As Ms. Nicole Primmer of the Business and Industry Advisory Committee to OECD (BIAC) stated, stakeholder consultation builds trust and confidence in the reform process. There were four interventions, all based on the growing importance of regulatory issues and the need for better understanding both in government and in the public. Although the regulatory agenda can be complicated and technical, regulatory reform itself is not an arcane, bureaucratic exercise, as Mr. Stephen Olson, President of the Pacific Basin Business Council (PBBC) pointed out. He highlighted the links between regulation and competitiveness, not in a so-called race to lower standards, but on the contrary, to emphasize the quality of the regulatory environment as a criterion for investment. Mr. Olson discussed transparency in government procurement, harmonisation and the use of international standards, as well as better relations between regulators and economic actors when public-private partnerships are more robust.

Mr. Pierre Habbard of the Trade Union Advisory Committee to OECD (TUAC) noted with appreciation that the Integrated Checklist, while properly focusing on trade, regulatory quality and competition, now also makes reference to the need for additional work in the future, to include social and environmental issues. Together with other speakers, Mr. Habbard addressed key points for implementation of reform using the Checklist: targeting public services; inter-ministerial co-ordination; linking public accountability to stakeholder consultation; learning from regulatory failure; and making the peer-review process work. The newly-founded Trade Facilitation Alliance was represented by Mr. Samuel Scoles, who highlighted a number of items in the Checklist that would have a positive impact on market openness and would avoid unnecessary burdens. Nicole Primmer (BIAC) spoke of the quality of business regulation and of the institutions that support it as being as important today as macroeconomic policy. Innovation, entrepreneurship, investment, and trade all improve with regulatory reform. Additional issues for further attention include how different levels of government work together, effective use of the peer review process to assess implementation, and alternatives to regulation.

Putting the Checklist to Practical Use

Several presentations deepened insight into the Integrated Checklist and shared information about policy reforms and initiatives in various economies. Dr. Deunden Nikomborirak, Research Director, Thailand Development Research Institute, focused on market openness policy with specific questions or issues regulators should keep in mind. Mr. John Morrall, United States, returned to questions about transparency. Ms. Ewa Flis, Director of Economy Competitiveness, Ministry of Economy and Labour, Finland, elaborated upon efforts to reduce administrative burdens for entrepreneurs, while Edu Jansing, Senior Policy Advisor of the Dutch Ministry of Economic Affairs, described how a series of task forces in 8 cities in the Netherlands had gathered information to support recommendations to cut red tape, using questions in the draft Integrated Checklist for analysis and surveys. The Dutch pilot project, which will be expanded nationally, focused on the need for government to improve communication and co-ordination. Dr. Choong Yong Ahn, President of the Korea Institute for International Economic Policy, described the institutional changes and policy reforms to improve regulation in the financial sector in his country following the Asia crisis of 1997, and confirmed some of the key findings about the reform process emerging from studies of other countries. The challenge of building constituencies for reform inside government as well as in the business community and civil society was the theme of Mr. Josef Konvitz' intervention, OECD, who called attention to some of the innovative tactics used in Japan and Mexico to overcome resistance to change in the status quo.

In the final panel session, Dr. Choong Yong Ahn, Korea, spoke of how useful the Integrated Checklist would be for the APEC Economic Committee as it deals with structural reform as a priority: it meets a need for policy-relevant materials. Mr. Trevor Bull, Chair of the APEC Privatisation Forum, Thailand, recognized the problems when building and maintaining a network of experts in government who can promote and implement reform, and spoke of the need to improve the credibility of regulators in a crowded institutional landscape. Mr. Stephen Olson, PBBC, challenged business to identify the most significant regulatory problems, perhaps in an annual systematic survey that could help decision makers set priorities based on economic significance and impact. One strength of the Integrated Checklist is that it represents the state of the art of the field, a synthesis of what is known about regulatory reform. Another strength is its voluntary nature.

Building on these points, Mr. Rolf Alter, OECD, praised the spirit of openness, which has characterised the positive collegial discussions in the workshop, and looked forward to the time in 2005 and after when economies would begin to exchange experiences based on the use of the Checklist as a self-assessment tool to improve regulatory quality.

Toward the Future

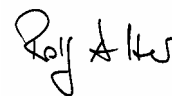
Mr. Kiyoo Akasaka, Deputy Secretary-General, OECD, and Mr. Ernesto Estrada, Convenor of the APEC Competition Policy and Deregulation Group, and General Director for International Affairs, Federal Competition Commission, Mexico, outlined the next steps for the Checklist. The Integrated Checklist is to be circulated for final comments in early December 2004, and presented to the APEC CPDG for approval for the end of February 2005, and to the Committee on Trade and Investment in February; the CTI would propose that Senior Officials and Ministers approve the Integrated Checklist in June. A similar approach would be carried out in parallel in OECD, beginning with its final consideration by the Special Group on Regulatory Policy at its meeting mid-March 2005, and a recommendation for approval by the OECD Council in April.

Looking to the future, participants at the workshop called attention to the challenge of communicating strategies for regulatory reform to the public through the media, given that the subject is often technical and complicated, and progress is measured in years, not days or months. They welcomed the importance of consultation with stakeholders in the Checklist, while appreciating that consultation involves a learning process and commitment on all concerned.

Early indications are that one or more non OECD APEC economies are willing to implement the Checklist in 2005. When made public at the end of these processes, the Checklist is likely to become a point of reference worldwide.



Ernesto Estrada
General Director for International Affairs
Federal Competition Commission
Convenor of the APEC Competition Policy
and Deregulation Group (CPDG)



Rolf Alter
Deputy Director
Public Governance and Territorial Development Directorate
OECD

II. AGENDA OF THE BANGKOK WORKSHOP

THE INTEGRATED CHECKLIST: PUTTING KNOWLEDGE INTO PRACTICE

General objective: Participants will continue to exchange information on competition, good regulatory practices and concepts that can contribute to understanding the necessary elements for the *Checklist*. Discussions will build on the agreements reached during the APEC-OECD Workshop in May 2004 in Pucón, Chile. Seeking an agreement on a common presentation and communication vehicle for the *Integrated Checklist*. This conference will also discuss the follow up and implementation mechanisms to be launched in the next phase of the *Co-operative Initiative*.

MONDAY 1 NOVEMBER 2004

9:30-10:15

Welcome and opening remarks

- **Ms. Srivicha Rackchamroon**, Deputy Director-General, Department of Trade Negotiations, Ministry of Commerce, Thailand
- **Mr. Kiyotaka Akasaka**, Deputy Secretary-General, OECD

The Integrated Checklist for Regulatory Reform

10:15 – 12:30

Session 1: Multi-disciplinary Integration and Interests of Stakeholders

- **Chair: Mr. Rolf Alter**, Deputy Director and Head of Programme on Regulatory Reform, OECD

Speakers:

Regulatory Quality

- **Mr. John Morrall**, Senior Manager, Office of Management and Budget, USA

Competition Policy

- **Mr. Anatoly Golomolzin**, Deputy Head, Federal Antimonopoly Service, Russia

Market Openness

- **Ms. Evdokia Moisé-Leeman**, Senior Trade Policy Analyst, OECD

Views of Stakeholders, Private Sector, NGOs, Consumer Interests, etc.

- **Mr. Stephen Olson**, President, Pacific Basin Economic Council
- **Mr. Pierre Hubbard**, Trade Union Advisory Committee (TUAC)
- **Mr. Samuel Scoles**, Trade Facilitation Alliance
- **Ms. Nicole Primmer**, Business & Industry Advisory Committee (BIAC)

12:30 – 14:00

Lunch

14:00 – 17:00

Session 2: Practical Use and Applications of the Checklist: Self-Assessment; Learning from Experience to Improve Social and Economic Outcomes

- **Chair: Mr. Ernesto Estrada**, Convenor of the APEC Competition Policy and deregulation Group (CPDG), and General Director for International Affairs, Federal Competition Commission, Mexico

Speakers:

Consultation in RIA, Alternatives to Regulation

- **Mr. Wang Chunzheng (tbc)**, Vice Chairman, State Development and Reform Commission, China

Transparency

- **Mr. John Morrall**, Senior Manager, Office of Management and Budget, USA

Government Procurement and Transparency

- **Mr. Elmer H. Dorado**, National Economic and Development Authority, Philippines

The Integrated Checklist and Infrastructure Investment

- **Dr. Deunden Nikomborirak**, Research Director, Economic Governance, Thailand Development Research Institute

Diminishing the Administrative Burdens for Entrepreneurs

- **Ms. Ewa Flis**, Director of Economy Competitiveness Department, Ministry of Economy and Labour, Poland

Resolving Regulatory Conflicts: SME's and the Dutch Experience

- **Mr. Edu Jansing**, Senior Policy Advisor, Ministry of Economic Affairs, Netherlands

Sectoral Regulators and Institutional Complexity: the Case of the Banking Sector

- **Dr. Choong Yong Ahn**, Chair APEC Economic Committee, President of the Korea Institute for International Economic Policy

Building Constituencies for Reform

- **Mr. Josef Konvitz**, Head of Division, Regulatory Management and Reform, OECD

Coffee breaks at the Chair's discretion

17:00 – 18:00

Concluding Session

Appropriate steps required to present the *Integrated Checklist* to respective Executive Bodies of the APEC and OECD in 2005, and areas for future collaboration in the APEC-OECD Co-operative Initiative on Regulatory Reform.

This session will be led by a panel:

- **Mr. Kiyotaka Akasaka**, Deputy Secretary-General, OECD
- **Thai Government Representative**
- **Mr. Stephen Olson**, President, Pacific Basin Economic Council
- **Mr. Rolf Alter**, Deputy Director and Head of Programme on Regulatory Reform, OECD
- **Mr. Ernesto Estrada**, Convenor of the APEC Competition Policy and Deregulation Group (CPDG), and General Director for International Affairs, Federal Competition Commission, Mexico

18:30

Cocktail, hosted by the OECD

III. SUMMARY OF THE PRESENTATIONS

IMPROVING REGULATORY QUALITY WITH CHECKLIST PRINCIPLES: US EXPERIENCE

John F. Morrall III, US Office of Management and Budget

The USG believes that improving regulatory quality leads to strong macro performance. This was the original justification for the US regulatory reform program that was begun during the stagflation days of the mid 1970s. It has been a Presidential priority ever since. Since the mid 1980s, US economic performance (per capita growth, inflation, and employment) has been one of the best in the world, contrary to the per capita income convergence theory. Studies by the World Bank (*Doing Business in 2005*), the OECD, Heritage Foundation, and the Fraser Institute found that countries with flexible and efficient regulatory systems coupled with strong property rights have the best record on per capita income, economic growth, life expectancy, and the UN Human Development Index. According to the World Bank study, moving from the bottom three quartiles to the top quartile of the 145 countries ranked by ease of doing business adds 1.7% to annual economic growth -- even after controlling for other growth factors such as education, investment, and income. For example, the top ten economies on the top of the World Bank ease of doing business scale are also among the most successful. They are: New Zealand, United States, Singapore, Hong Kong, China, Australia, Norway, United Kingdom, Canada, Sweden, and Japan.

Important factors in improving regulatory quality are sustained high level oversight and an emphasis on rigorous analytical regulatory impact assessments. Since 1975, six US Presidents have established regulatory oversight programs based on many of the checklist principles with each Presidential program building on the previous program. For example, OMB review of the costs and benefits of new rules was begun in 1981 and continues today with some streamlining and increased transparency requirements. Currently, under Executive Order 12866, agencies submit about 700 draft significant regulations (both proposed and final) to OMB for an up-to-90-day review before publication in the *Federal Register*. About 70 of these regulations are "economically significant" (over \$100 million per year in economic effects). During our review, we examine the RIA (benefit-cost analysis) and the regulation and make suggestions for improvement. We also make sure that the regulation comports with the Executive Order's good government principles and the President's priorities. If the agency refuses to make recommended changes, we can return the rule to the agency for reconsideration and further analysis.

The key tool used to improve the quality of regulation is the requirement for regulatory impact analysis as described in OMB Circular A-4, issued September 17, 2003. Circular A-4 revised earlier guidance issued in 1996. The analysis examines whether the benefits to society of the proposed regulation justify its costs. Specifically, it answers the question does the regulatory alternative chosen maximize net benefits to society? A key goal is to promote economic efficiency and competition by regulating only where markets fail due to natural monopoly, externalities, or asymmetric information and when regulating, by using cost-effective and market-based approaches. Thus there is a presumption against price and entry regulation.

The Circular requires (1) a statement of need for the proposed rule that identifies the nature and significance of problem (e.g., identification of a significant market failure), (2) an examination of feasible alternative approaches, (3) an analysis of the costs and benefits of each alternative, and (4) an analysis of distributional and sector impacts. The revised guidance adds new requirements for (1) cost-effectiveness analysis in addition to benefit-cost analysis, (2) formal probability analysis such as Monte Carlo analysis to account for uncertainty and (3) a careful consideration of qualitative and intangible values where quantification is not feasible. To carry out these new functions and to build capacity for analysis and oversight, OMB recently hired four PhDs with expertise in epidemiology, toxicology, public health, and engineering to add to our staff of 35 economists and public policy analysts. In addition, we conduct regular training sessions at the agencies on the new guidance.

During the first year of the Bush Administration, OMB returned more than 20 rules to agencies for reconsideration—more than the number of the returns in the entire eight years of the previous Administration. As a result, agencies learned that OMB cares about the quality of analysis. Since the first year, returns have become less frequent.

The best measure of the success of a program to improve the quality of regulation is the amount of net benefits it provides. Based on the RIAs of the 85 major regulations reviewed by OMB from 1993 to 2003 with both monetized benefits and costs, we estimate that over \$23 billion in annual net benefits (benefits of \$62 billion less costs of \$39 billion) were produced over the last ten years. In 2001, we estimated that the stock of all regulations (including tax, economic, and trade regulations) imposed real costs on the economy of about \$600 billion, or about 6% of GDP (equal to our discretionary Federal budget). During the first 32 months of the Bush Administration, new regulations added about \$1.6 billion per year compared to \$7.1 billion for the previous 14 years.

To conclude, the lessons from the US Experience can be summarized as:

1. Effective reform requires a strong commitment from the top, takes time, and often entails short run political costs for long run economic benefits.
2. Placement of a regulatory review program at the centre of government is a necessary condition for success.
3. An effective regulatory program should ensure that regulatory impact analysis is based on sound science, transparent, and conducted to promote economic efficiency.

DEVELOPMENT OF COMPETITION POLICY IN RUSSIA

Anatoly N. Golomolzin, Deputy Head, Russian Competition Authority

Now the competition policy plays an important role both in the macroeconomic state policy and in the creation of the favourable business environment in Russia. This may be explained by the remarkable influence exerted by the competition law and policy on the economic growth, competitiveness and those on the whole character of the market relations.

At present time the reforms of budgetary process is taking place in Russia. The budgetary system is moving from “cost management” to “performance management”. It means that the efficiency of activity of each body will be estimated by the extent to which this authority has achieved its stated objectives. During this process the system of quantitative and qualitative indicators of the efficiency for each executive authority, including competition authority, will be developed. At the present stage each authority has singled out strategic objectives, which it is going to achieve in the medium-term perspective.

Russian competition authority has defined the following two strategic objectives for competition policy:

4. Creation of conditions for competition development by preventing and suppressing anticompetitive actions;
5. Ensuring non-discriminatory third-party access to goods and services, which are produced by natural monopolies and development of competition in potentially competitive areas.

These goals of competition policy comply with general goals of economic policy in Russia as well as with goals of some other economic Ministries and Agencies.

It is necessary to underline, that not only goals of each agency but also its functions become more clear. It has been achieved by creating during administrative reform a three-level system of federal executive authorities.¹ These levels include Ministries, Services and Agencies. Each level has its own clear roles and functions. Besides, it is stated that an authority from one level should not exercise the powers of the authority from another level.

In the framework of this reform competition authority has been empowered to undertake the function of control over natural monopolies (in the field of non tariff regulation). Natural monopolies are one of the main infringers of competition law: for example, about 80% of the revealed abuses of dominant position are done by natural monopolies.

So during structural reforms in Russia it is important to undertake control over natural monopolies from the point of competition law. Such control of compliance with competition law requirements by natural monopolies should be build both in the mechanisms of формирования reform programs and in the mechanisms of accompanying such reforms. This control should be directed to prevention and suppression of competition law infringements and market development. At that one of the goals is to prevent economically sound transition of commodity market from the condition of natural monopoly to the condition of competitive market as well as to prevent negative influence on welfare of consumers who buy goods that are due to regulation.

¹. The legal basis is the Decree of the President of the Russian Federation of 09.08.04 №314.

One of the main tasks of competition authority when undertaking control over natural monopolies consist in ensuring non-discrimination requirements (non-discriminatory third-party access). Such access is considered as a necessary condition for market development.

Experience in applying competition law shows that during structural reforms it is necessary to extend “bottlenecks”, in respect of this non-discrimination requirements are of decisive importance for competition development. These “bottlenecks” include areas of natural monopolies’ activity; spheres connected with areas of natural monopolies’ activity and infrastructural spheres of activity grounded on so-called essential facilities.

This is why at present time competition authority pays huge attention to competition advocacy (in its broad sense) during forming and realizing structural reforms of natural monopolies.

Furthermore competition authority investigates on the facts of competition law infringements: by natural monopolies (as market participants) that abuse their dominant position and (or) undertake anticompetitive agreements and concerted actions, as well as by state power bodies, including regulator.

It is possible, because the provisions of Russian competition law cover the anticompetitive actions not only by market economic entities, but also by state authorities of all levels. At the same time our competition law does not contain any exclusion for state enterprises (that means that the law coves all activities and services of private sector as well as of state sector).

It is important to underline that in Russia there is a clear strategy concerning structural reforms: they are realizing step-by-step, and at the same time the reforms in main areas are dispersed in time. Besides it is significant for ensuring competition development and realizing of structural reforms in accordance with competition policy principles that competition authority and a regulator were created before structural reforms had started.

On the whole competition authority is an independent authority, which is under the Chairman of the Government of the Russian Federation. At the same time the powers of competition authorities cover all levels of state authority: federal, regional and local. Members of Regional Offices of competition authority (there are 75 Regional Offices) are stuff of competition authority, but not of the regional or local authorities. It ensures the independence of regional offices from regional and local authorities.

It is also necessary to point the measures aimed at increasing the transparency of competition authority’s activity. Nowadays we have an easy and free access to competition legislation and different guidelines, including on procedure in competition authority; website of competition authority is regularly updated; databases on all decisions of competition authority and courts are under construction is creating. There is also a wide coverage of decision of competition authority and its position on key points including in the area of structural reforms.

At present time the work is going on creating a new version of the Law “On competition». Its content will be discussed at the session of the Government of the Russian Federation in November 2004.

Taking into consideration the practice of applying competition law, some notions will be concretized (for example, the concepts of “commodity” and “financial” markets, “group of persons”, “dominant position”, “discriminatory conditions”, “anticompetitive agreements” and “concerted actions”, etc.) in the new Law.

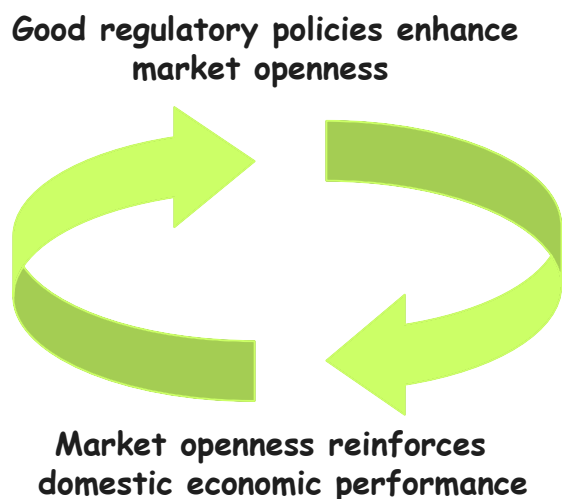
Besides there will be more clear and accurate provisions concerning anticompetitive agreements and concerted actions. There also will be included an exhaustive list of anticompetitive agreements, which cannot have any negative influence on competition and thus are not fall under the scope of competition regulation. At the same time special attention will be placed to oligopoly markets, including the markets where the situation of joint dominance if possible.

One of the main directions of improving Russian competition law is increasing the sanctions for its violation. At the moment non-compliance with the order of competition authority will be fined at the rate of 5 thousands of minimal wages (about 17.000 US\$). For companies (especially for natural monopolies), that abuse its dominant position or undertaking anticompetitive agreements, such a sum of 17.000 US\$ is absolutely inessential.

It is also supposed to widen the list of violations of competition law for which penalties will be imposed and to include in these list abuses of dominant position and anticompetitive agreements (concerted actions). In other words, the penalty will be imposed for facts of abuses of dominant position or anticompetitive agreements (concerted actions) and not only for non-compliance with the order of competition authority (as it takes place nowadays). Moreover it is proposed to increase the rate of sanctions for such violations: in particular, to base the sanctions on annual turnover of infringer companies (2-4% of annual turnover), as well as to reduce the responsibility depending on gravity of violation for competition and collaboration with competition authority during proceedings (leniency program).

INTEGRATING MARKET OPENNESS AND DOMESTIC REGULATORY MANAGEMENT

Evdokia MOÏSÉ, OECD Trade Directorate



A Positive Interrelation ...

- International commitments anchor deregulation
 - ✓ providing momentum and direction to domestic reform
 - ✓ shielding from pressures to backtrack
- An improved regulatory framework
 - ✓ contributes to market efficiency and resilience
 - ✓ reinforces foreign investment attractiveness
 - ✓ provides optimal conditions for developing export capacity
 - ✓ reduces costs of adjustment following trade liberalisation

... With a Few Caveats

- The elimination of tariffs may create incentives to use regulation as trade barrier
 - how to avoid capture by protectionist interests?
- The complexity of regulatory issues and the divergence of regulatory approaches may lead to disputes
 - how to overcome the cost of divergence ?
- Market openness commitments need to appropriately reflect domestic realities

- how to ensure proper achievement of public policy objectives ?

Liberalisation Gains in Regulated Areas

- The greatest gains from liberalisation arise where there is more room for regulatory improvement
 - ✓ Services
 - ✓ Trade facilitation
- Liberalising one's own domestic market generates more gains than seeking better access to foreign markets

Taking Into Account Domestic Realities

- Adapting the nature, pace and sequencing of liberalisation and reform to the domestic economy
- Fostering awareness during the preparation of trade negotiations
- Building capacity to introduce and implement appropriate regulatory frameworks

Reconciling Flexibility and Coherence

The Checklist as a diagnostic tool that can help prepare for multilateral or regional trade negotiations

- identifying capacities and needs
- setting realistic negotiating agendas
- preparing the ground for smooth compliance

And for More on the Subject.

- *Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD Countries*, OECD 2002
- *Quantitative Assessment of the Benefits of Trade Facilitation*, OECD 2003
- *Services Trade Liberalisation: Identifying Opportunities and Gains*, OECD 2004
- *Regulatory Reform and Market Openness: Understanding the Links to Enhance Economic Performance*, OECD forthcoming

COMMENTS ON THE APEC-OECD INTEGRATED CHECKLIST ON REGULATORY REFORM: REGULATORY, COMPETITION POLICY, AND MARKET OPENNESS POLICY ISSUES

Pierre Habbard, Trade Union Advisory Committee to the OECD (TUAC)

Chair, government representatives, colleagues,

On behalf of TUAC, I would like to thank the Thai Government, the APEC and the OECD for organising this workshop which completes the second phase of the joint APEC-OECD Co-operative Initiative on Regulatory Reform, and which is set to approve an Integrated Checklist for country self-assessment on competition and market openness regulatory issues. TUAC and its sister organisation the Public Services International (PSI) have actively engaged in, and been generally supportive of both the OECD work on Regulatory Reform since 1995, and the subsequent joint APEC-OECD initiative. In previous APEC-OECD workshops, TUAC and PSI representatives have shared the view that regulatory quality is a means to an end, not an end in itself. For the labour movement, the ultimate objective of regulatory reform is to contribute to sustainable and equitable development, through more effective and accountable government, and an enabling regulatory environment for wealth creating private sector and effective public services. This broad framework speaks in particular to the need for a “whole of government” approach, as praised by the OECD itself, through horizontal and inter-sector coherence of reforms and institutions. The draft Checklist, which is today under consideration, has the potential for becoming a useful instrument contributing to this broad approach. Here, I will limit my intervention to a few comments on the proposed text.

As regards the overall direction of the Checklist, we welcome the change in the title which now refers to “*Regulatory Reform addressing Regulatory, Competition Policy, and Market Openness Policy Issues*”. This change is very important as it specifies the scope of the questionnaire, namely competition and market openness policies. Regulatory reforms are not confined to those objectives; they should promote social, economic or environmental goals. Similarly, we welcome the added text in the Preamble: “*there is scope to consider further how regulatory quality affects social and environmental policy objectives*”. APEC and OECD governments should reflect on that and consider the opportunity of developing similar checklists for those policy areas, with equal levels of engagement.

As regards the content of the questionnaire, we broadly welcome section ‘A’ on regulatory policy. We share most of the concerns that are addressed there, notably the need for transparency of purpose of the regulatory environment, as well as visibility and predictability of government institutions, and their public accountability. However, in other parts, we do believe improvements or clarifications could be achieved before final adoption by APEC and OECD in 2005. Those are areas where particular attention should be paid in the implementation phase when government will make effective use of this questionnaire. Let me briefly outline these issues.

Ensuring a balanced inter-ministerial coordination in the public interest.

A “whole of government” approach to regulatory reform begins with strong inter-ministerial coordination mechanisms. However the related question H8 (on inter-ministerial mechanisms for integrating competition and market openness considerations into regulatory management) and its annotation leave the impression of a one-way process by which competition and market openness issues are / should be prioritised to the detriment of other social and environmental areas. Such approach – even with the new focus on competition and market openness – does put at risk the necessary public interest balance between economic social and environmental policy objectives. That concern also applies to question B3 on the “advocacy function” of the competition authority within government institutions.

Recognising public services as a foundation of the economy as well as non-trade concerns.

Any self-assessment work on regulatory reform should be based upon the permanence of public services in the economy, their contribution to social cohesion and to poverty alleviation, but also to a wealth creating and dynamic private sector. Questions B4 (on the neutralisation of government business advantages) and B9 (on competition law applying to all activities in the economy) do not grasp that reality. Rather than minimising public services at all cost – which is the underlying theme of that section of the text – the questionnaire could have more usefully addressed the articulation between competitive and non-competitive sectors. In a similar fashion, the Checklist makes poor consideration for non-trade concerns (such as product safety, food security, environmental concerns) in addressing market openness policies, notably question H4 (on consideration for eliminating or minimising discriminatory policies).

Learning from regulatory failures and engaging open dialogue on re-regulation.

Within this forum, TUAC and PSI representatives have on several occasions stressed the importance of government institutional learning from past regulatory failures, especially when de-regulation was involved. Those failures have often come with long-term costs for working people in terms of job security, access to basic services and social welfare. They have prompted a renewed debate on “re-regulation” as a policy response, a topic that is recurrent in the work of the OECD. Question H2 rightly points to the need for strong political leadership in implementing reform. However the annotation is restrictive when it explains opposition to reform by the fact that “*long term benefits of reforms are masked by short-term transaction costs*”.

Linking stakeholder consultation with government accountability.

Regulatory reform also requires broad based public support and an ongoing input from those who are primarily affected. We welcome the text that refers to consultation, transparency and communication by the authorities to the public of regulatory decisions. For consultation to be relevant however, stakeholders must be assured that their concerns will be addressed, not just heard in the policy making process, for which government accountability mechanisms are essential. In the check list this calls for a clearer articulation between questions A5 (on consultation mechanisms) and H3 (on accountability mechanisms).

Broadening references to internationally recognised standards beyond trade-related standards.

International standards are mentioned only once in the draft Checklist, namely in question C7 on trade-related standards. We believe reference should be broadened to social, environmental and ethical standards, since market openness and competition policies may affect their compliance and implementation. The regulatory section should integrate reference to universal standards, relevant UN Conventions and Covenants and the ILO Declaration on Fundamental Principles and Rights at Work. Reference should be extended to policy standards that have been agreed by all OECD countries and have an international outreach, including the OECD Guidelines for Multinational Enterprises, the OECD Convention on Combating Bribery in International Business Transactions, and the OECD Principles of Corporate Governance. In the future, the Checklist could well be revised to integrate the forthcoming OECD Guidelines for the Corporate Governance of State-Owned Assets.

The implementation of the self-assessment exercise must pass the “stakeholder test”

APEC and OECD governments’ engagement in that process does not end with the formal adoption of the Checklist in 2005. For this self-assessment exercise to be effective – and not simply a self-serving exercise – it must ensure an inclusive approach whereby core constituencies – trade unions, business and civil society organisations – are closely associated to the process. Such an inclusive approach is at the heart of the OECD work: trade unions and business enjoy an equal status as advisory bodies. It makes the Organisation stronger, it heightens its legitimacy and gives assurances that its initiatives pass the “stakeholder test”. The APEC would be better served with an OECD type consultative framework, including with the ICFTU Asia Pacific Labour Network (ICFTU/APLN) on the same footing as that given to the business sector.

MULTI-DISCIPLINARY INTEGRATION & INTERESTS OF STAKEHOLDERS: THE INTEGRATED CHECKLIST - PUTTING KNOWLEDGE INTO PRACTICE

Samuel Scoles, Communications Secretary, Trade Facilitation Alliance

The Trade Facilitation Alliance (TFA) is a private-sector initiative committed to simplifying and harmonizing the regulation of cross border trade, including customs procedures, to the benefit of both businesses and consumers. The ultimate objective of TFA is to help produce tangible “bottom-line” benefits for the private sector with respect to trade facilitation. TFA’s main objectives are as follows:

- Advance trade facilitation in multilateral, regional and bilateral negotiations;
- Develop the substance of trade facilitation rules that would reduce impediments to cross-border transactions;
- Create support for trade facilitation within a diverse range of countries through their private industries; and
- Build on the existing efforts of other organizations dedicated to trade facilitation, such as APEC and the OECD, and coordinate with these organizations.

In light of these objectives, TFA actively supports the *APEC-OECD Co-operative Initiative on Regulatory Reform* aimed at reducing regulatory burdens and improving the quality and cost-effectiveness of regulations. The Integrated Checklist is complementary to the WTO negotiations on trade facilitation and reinforces good governance and best practices among participating economies. Its primary purpose is to encourage relevant government agencies, departments and ministries to self-assess country implementation of regulatory reform and the three key policies that support it – (i) regulatory, (ii) competition, and (iii) market openness policies.

The Integrated Checklist includes several points that are particularly relevant to TFA’s strategies and objectives. The Checklist’s focus on the avoidance of discrimination in regulation, competition and market openness policies is a case in point. Any potential agreements and understandings dealing with GATT Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) must have this characteristic. It would be inefficient for customs to discriminate and treat some parties less favorably than others. TFA also supports the Checklist’s emphasis on transparency, which is a key objective of Article X, and the coherency in timing and sequencing of reforms. TFA strongly believes that there is a timing aspect to the implementation of a Trade Facilitation Agreement post Doha Round. The negotiations on trade facilitation also have stressed from the onset the importance of technical cooperation, training, and capacity building programs as a means to successfully reduce regulatory burdens. TFA has discussed ways in which its members might contribute to capacity building in this area.

TFA supports the Integrated Checklist’s trade friendly approaches to regulation, *i.e.* consistent, simple, predictable and transparent approaches, which avoid unnecessary burdens on private sector stakeholders. In this vein, TFA is building support for negotiations in developing country capitals, in particular by addressing the technical and financial assistance concerns of developing country governments. The “Capitals Strategy” is one of the TFA’s highest priorities in this regard. In order to encourage national governments to play a pro-active and constructive role in the negotiations, TFA works to raise the awareness of the private sector in developing countries about the importance of WTO negotiations in this field and to address the technical and financial concerns that these countries may have.

TFA emphasizes the message that (i) both governments and business gain from enhanced and more rapid border procedures; (ii) there are many complementary approaches that can be taken to promote trade facilitation and not all involve large costs to governments or excessive technical assistance; and (iii) developing countries are among the most important potential “winners” from trade facilitation as South-South trade tends to be more burdened than trade among developed countries. These goals are consistent with those of the Integrated Checklist.

TFA is working with its Members and partners, relying on their expertise in the field, to drive forward the Capitals Strategy. We rely on the geographical diversity of our membership to ensure TFA’s participation in key trade facilitation events in their home countries. In addition, TFA is developing partnerships with governmental and private sector organizations to promote local trade facilitation efforts in the Doha Round.

Complementing the Capitals Strategy, TFA produces position papers and reports on pertinent developments in Geneva and country capitals related to the trade facilitation negotiations. In addition, the TFA Website (www.tfalliance.org) provides up-to-date information for Members and non-members: (i) documents progress in discussion groups and meetings with trade officials; (ii) provides links to databases, organizations, TFA Members and other sources of information; and (iii) posts the TFA’s *Global Customs and Trade Facilitation Update* and other publications.

USING THE INTEGRATED CHECKLIST TO IMPROVE TRANSPARENCY

John F. Morrall III, US Office of Management and Budget

The integrated checklist has several transparency requirements:

- Laws, regulations, guidelines, policies, practices and procedures should be transparent, consistent, comprehensible, and accessible. This clarifies property rights, eases costs of doing business, and increases fairness.
- Regulatory institutions, rulemaking, and the management process should be transparent and open to all members of the public. This contributes to more informed policy decisions and promotes efficiency and fairness.
- Regulatory impact analysis should be transparent. Transparent methodologies, assumptions, and data increase accountability and improve the quality of the analysis.

The US Federal rulemaking process has become more transparent over time and is a key part of the success of our program. The Administrative Procedure Act of 1946 requires agencies to go through a notice and comment process open to all members of the affected public, both U.S. and foreign. Notices are published in the *Federal Register* and increasingly posted on the web. Before agencies can issue a final regulation, they must respond to the public comments, make sure that the final regulation is a logical out-growth of the proposal and the public record, and is not arbitrary or capricious. The public record is then used by the courts in settling any challenge to the regulations brought by the affected public.

OMB's review of regulation under Executive Order 12866 has also become more transparent over time. The public can now consult OMB's website and learn each day which rules are under formal review at OMB and which have been cleared. OMB's website lists the outside groups that lobby OIRA on rules under review. All written information given to us while a rule is under review is sent to the agency, placed in our public docket reading room, and posted on our website. Return letters sent to the agencies outlining our concerns with the rules we send back are posted on our website.

OMB's regulatory impact analysis requirement plays a key role in increasing transparency and the quality of analysis. The gold standard in science is reproducibility. Short of reproducibility, we rely on transparency, peer review, and information quality standards to maintain quality. RIAs are subject not just to OMB quality control but also to public comment. An additional incentive for the agencies to produce quality regulations is that they are also subject to judicial review based on the public record

All three branches of the US Government (executive, legislative, and judicial) have a role in developing regulations and assuring transparency and accountability. Agencies demonstrate to OMB, acting as an advisor to the President, that their regulatory analysis is of high quality and supports a finding that the regulation is likely to maximize net benefits and is in compliance with the law. After OMB concludes its review of a regulation and it is published in the *Federal Register*, Congress reviews it under the Congressional Review Act. After a rule goes into effect, affected parties can bring suit against the agency issuing the rule to have the courts reverse or mandate it back to the agency based on a finding the agency violated the Administrative Procedure Act's process requirements, the statute that authorized the rule, or the U.S. Constitution. In addition, the Regulatory Right-to-Know Act requires OMB to issue a report to Congress each year estimating the costs and benefits of regulations in the aggregate, by agency and agency program, and by regulation and to suggest recommendations for the reform of regulations.

E-Rulemaking by the agencies has improved OMB's ability to oversee rulemaking. Rules, RIA's and supporting documents and public comments are, for the most part, accessible on the internet. This speeds up coordination with other White House offices and the agencies. With online digital dockets, OMB is less reliant on agencies to forward a representative and high quality set of comments and documents. These developments increase the quantity and quality of the work done by OMB's limited staff and assure that public concerns are taken into account.

In OMB's recent Reports to Congress under the Regulatory-Right-to-Know Act, OMB sought nominations from all interest parties on several regulatory reform initiatives: the specific rules and regulatory programs in need of reform or elimination, the use by agencies' of guidance documents as back door regulation, and, most recently, rules to be reformed or eliminated that impact the manufacturing sector. We have received hundreds of nominations from thousands of commentators. We are currently tracking agency progress on over 100 rules judged to be promising.

To summarize, the key lessons from the US experience with transparency is (1) an effective regulatory program should ensure that regulatory impact analysis is of high quality and that transparency of analysis is a key component of quality assurance and (2) transparency is necessary to maintain long run support for an effective regulatory program. The integrated checklist should further help with our effort.

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GOVERNMENT PROCUREMENT IN THE PHILIPPINES

Mr. Elmer H. Dorado, National Economic and Development Authority, Philippines

Numerous laws, rules and regulations and administrative orders/ issuances previously govern government procurement in the Philippines. On October 8, 2001, President Gloria Macapagal Arroyo issued Executive Order No. 40 entitled “*Consolidating procurement rules and regulations for all national government agencies, government owned or controlled corporations and government financial institutions, and requiring the use of the government electronic procurement system*” to streamline the procurement process. The implementing rules and regulations of Executive Order No. 40 were formulated and became effective on April 4, 2002. The issuance of the Executive Order is line with the policy of the new Administration to adopt a standard and uniform set of rules and regulations to govern the procurement of civil works, goods/supplies, and consulting services for government projects. It is also in consonance with government’s commitment to good governance and adherence to the principles of transparency, accountability, efficiency and economy in the procurement process.

Executive Order No. 40, however, applies only to national government agencies/corporations and merely imposes administrative sanctions for erring government officials. Further, said EO can not amend and repeal existing laws. Thus, to consolidate and standardize procurement rules/ regulations and come-up with one procurement law to cover goods/supplies, civil works and consulting services for both national government agencies and Local Government Units, Republic Act (RA) No. 9184 (*otherwise known as the Government Procurement Reform Act*) was approved and signed into law on January 10, 2003. The implementing rules and regulations of RA 9184 were thereafter formulated and became effective on October 8, 2003.

The reform measures introduced under Executive Order No. 40 and Republic Act No. 9184 include the following:

1. Simplification of the pre-qualification process through the use of an objective eligibility check and strengthening of post-qualification;
2. Shift from lowest *evaluated* responsive bid to lowest *calculated* and responsive bid as the criterion of award in the case of procurement of goods/ supplies and civil works;
3. Use of the Approved Budget for the Contract (ABC) as the ceiling for the bid price and the award of the contract to strengthen fiscal discipline and promote transparency; and
4. Use of transparent, objective and non-discretionary criteria in undertaking eligibility check, evaluating bids, and determining the lowest calculated responsive bid (for goods/ supplies and civil works) or highest rated and responsive bid (for consulting services) through post-qualification and presentation of these criteria in the bidding documents.

The reform measures were meant to address collusion, abuse of discretion, lack of transparency, lack of competition and delays in the procurement process. Under RA 9184, all national government agencies and local government units are supposed to complete the process from opening of bids to award of contract within three (3) months. RA 9184 also provides for penal, civil and administrative sanctions for government officials and bidders engaged in corrupt and fraudulent procurement practices.

The Philippine Government Electronic Procurement System (G-EPS)

RA 9184 mandates the establishment of an Electronic Procurement System (EPS) to enhance transparency, accountability, equity, efficiency and economy in the procurement process.

The Procurement Service which is under the supervision of the Government Procurement Policy Board shall establish, manage, operate and maintain the EPS, which shall serve as the single and centralized electronic portal for all government procurements. The G-EPS shall initially be utilized for the procurement of common use goods. The system, which is currently undergoing enhancement, shall soon have an electronic tender board, e-registry and e-catalogue. Additional features of the G-EPS in the future include a Virtual Store, Electronic Payment and Electronic Bid Submission.

Through the G-EPS, suppliers and buyers will be able to gauge the supply and demand of a particular good/ services at any time. Orders will be posted online as well as the number of people/agencies wanting to buy and sell. The system is expected to increase transparency and competition as the private sector and civil society organizations will have an easy and free access to information about government purchases and expenditures. As of May 2003, there are about 7,093 suppliers and 2,484 government agencies that are registered with the G-EPS. A total of 45,479 bid notices have so far been posted at the G-EPS.

Nationwide Training Programs

The government is currently conducting a nationwide training program on RA 9184 and on the features of G-EPS to ensure that all national agencies and local government units will have a common understanding of the provisions of the new law.

To facilitate training of personnel assigned to the Bids and Awards Committee, the government has commissioned two groups to simultaneously undertake the training programs. The Local Government Academy/ Regional Composite Teams are tasked in training the local government units while the Regional State Universities and Colleges/ Development Academy of the Philippines are to handle the training of national government agencies.

Role of the Private Sector and Civil Society Organizations

RA 9184 opens up the door to private sector and civil society participation through memberships in the Oversight Body (i.e., the Government Procurement Policy Board), as observers in the actual public bidding conducted by the Bids and Awards Committees and in the training component of capacity building. Linkage/ coordination with the Office of the Ombudsman, the Presidential Anti-Graft Commission and the Commission on Audit are also being strengthened to ensure that the process of check and balance will be more effective.

Current/ Future Developments

The Government Procurement Policy Board which is chaired by the Department of Budget and Management has recently formulated the Standard Bidding Documents for goods/supplies, civil works and consulting services for mandatory use by all government agencies and local government units by June 2005. Meanwhile, the preparation of a generic Procurement Manual is underway.

The government will also undertake future studies on the application of value engineering for infrastructure related projects, creation of procurement supply units and the corporatization of the Procurement Service.

THE INTEGRATED CHECKLIST AND INVESTMENT IN INFRASTRUCTURE

Deunden Nikomborirak, Thailand Development Research Institute

Objective

- To ensure that the integrated checklist addresses issues that concern investment in infrastructure in developing countries.

Regulatory problems hindering investment

- Licensing power controlled by state regulator-cum-operator
- Access to essential facilities is blocked or condition of access is unfavourable
- Economic regulations governing like services are inconsistent, giving rise to distortions.

Suggestions for making the checklist more investment friendly

- Horizontal Criteria Concerning Regulatory Reform:

H4: Comments: "positive" discrimination should also apply to "asymmetric" regulations in favour of new entrants versus incumbent. Discrimination can lead to greater efficiency if it promotes greater competition in the market.
- Regulatory Policy - Proposed additional questions:
 1. To what extent are measures taken to ensure that no operator in the market possesses de facto regulatory power?
 2. To what extent is the agency responsible for administration and enforcement of the sectoral regulation independent of operators and politics?
 3. To what extent are regulatory rules ensure fair access to essential facilities or frequencies?
 4. To what extent are measures taken to ensure that there are no regulatory discrepancies between like services?
- Market Openness:

C5: "To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?" This should also apply to government "concessions" in case of infrastructure as well

DIMINISHING THE ADMINISTRATIVE BURDENS FOR ENTREPRENEURS (POLISH EXPERIENCE)

Ewa Flis, Director of the Economy Competitiveness Department at the Polish Ministry of Economy and Labour

In the last two years the Polish government has undertaken steps aimed at amending laws regarding business activity so as to reduce administrative barriers for businesses. The need to reduce administrative barriers has also been noted by the business community, which argued that the existing law in many cases hindered the development of entrepreneurship and pointed out that the Business Activity Law, being the fundamental act governing economic activity in Poland has to be changed. This was further highlighted by the need to implement the European Union *aquis communautaire* into the Polish legal system.

As part of an ongoing program aimed at the simplification of administrative procedures for businesses, the government has introduced revisions to the existing Business Activity Law. The new Law called Economic Liberty Act was adopted by the Parliament on 2nd July 2004. In comparison to previous legislation the new Law:

- Simplifies registration procedure for businesses by creating a one stop shop
- Introduces greater simplification measures with regard to the registration procedures for new businesses by means of introducing just one identification number, which will replace the existing system of having a separate Business Identification Number, Tax Number and Social Security number.
- Reduces the number of licences and permits
- Replaces the current system of permits being granted by way of administrative decisions for certain types of business activity, with a system of automatically registering these permits.
- Limits the number of governmental inspections of businesses and introduces the duty of coordinating controls amongst individual departments of public administration.

As far as registration is concerned the Economic Liberty Act upholds the dualistic system of registering business activity. Private individuals will be able to register in the Communes (Municipalities), while companies will have to be registered in the National Court Registry.

A key change in the new Act is the establishment of just one identification number that is to be used by businesses. It has been decided that the Tax Number will be the only number on the basis of which the business will be identified in the government registers and databases.

Furthermore, only one application form will need to be filled in, in order to register business activity. It will be the responsibility of the local Communes in case of private individuals or the National Court Registry in case of companies to contact the other relevant organs of public administration i.e. (that is) Tax, Social Security and Statistical Offices.

In comparison to the previous legislation, the Economic Liberty Act reduces the number of sectors requiring licensing, introduces changes to the way permits are issued and the identifies specific business activities, where permits will be awarded on a different basis than that proposed by the new Act (i.e. in accordance with existing regulations).

With regard to licences, their number was reduced to just 5 i.e.:

- exploration, identification and excavation of minerals,
- manufacturing and trading in explosives, weapons and ammunition and goods and technology for military or police usage,
- manufacturing, processing, storing, transmitting, distributing and trading in fuels and energy,
- protecting persons and property,
- broadcasting of radio and television programmes

In order to increase the transparency it has been decided that when the number of licences is limited, they will be awarded to the highest bidder in a process of public tender.

The Economic Liberty Act replaces the previous system of permits being granted by way of administrative decisions for certain types of business activity, by a system of automatic registration of such business activity. According to the previous system permits were granted automatically when the issuing organ verifies that the business conforms to all the criteria defined by law. Under the new Act, in order for the regulated business activity to be registered, a declaration will have to be signed, that confirms that the business meets all the relevant criteria as defined by law. The organ of public administration responsible for the given registry of regulated activity reserves the right to control, and should the business be found in breach regulations or having made a false declaration it can be subject to sanctions e.g. not being able to register a regulated business activity for 3 years.

Due to businesses complains about the frequency of administrative inspections of their activities, the Act aims to regulate this matter. It has been agreed that at a given time, only one inspection can take place. This however does not apply in a situation where the business is subject to an investigation. The Act also defines the maximum duration of a inspections conducted by the government institutions that can take place during one year. This has been established as 4 weeks for SMEs and 8 weeks for other companies.

Although the Economic Liberty Act has been adopted in Poland only about half a year ago we recognise it only as a first step towards further liberalisation of our business environment. The Regulatory Quality Team (a special high-level interministerial steering committee) is now working on a program aimed at the simplification of legislation, which has caused administrative burdens for businesses. Poland is also greatly supportive of the EU initiative to conduct a review of all of the Community's legislation, which creates red tape for businesses.

Efforts have also been made to examine the experiences of other countries in the field of reducing administrative burdens for businesses. We have examined the Dutch model of measuring administrative burdens for businesses, the so called Standard Cost Model, and discussions are now underway on introducing this model in Poland. We are closely cooperating with our Dutch colleagues and are planning the introduction of a pilot project.

The regulatory reform in Poland is fundamentally connected with programmes aimed at reducing administrative burdens with special reference to small and medium sized enterprises. The aim of this activity is to create in Poland a better climate for conducting business activity and to simplify and accelerate the administrative procedures for entrepreneurs. Over the past decade, regulatory reform has turned the Polish economy into a market oriented one, open to international competition. We do hope that through all these described changes in existing laws and regulations we will manage to improve business environment in our country. It is important especially now when Poland has joined the European Union integrated market where the competition is much stronger. We must remember that only the country that creates the best business environment will be able to attract more investors and create new jobs. The last point is very important especially for countries such as Poland where the rate of unemployment is relatively high. Therefore these efforts towards simplifying business regulations are so important.

RESOLVING REGULATORY CONFLICTS: SME'S AND THE DUTCH EXPERIENCE

Edu Jansing, Dutch Ministry of Economic Affairs

Dutch regulatory reform (2002-2006)

An integrated policy for regulatory reform (H1 of the checklist)

Legislation

- From detailed rules to target prescriptions (Justice department)
- Reduction of administrative burden by 25% in 2006 (Finance department)

Enforcement system

- A new vision on enforcement (Interior department)

Improvement within system

- Resolving Regulatory Conflicts for SME's (Economic department)

Resolving Regulatory Conflicts for SME's

Strategy: a two-way approach (*all levels of government involved, H5 of checklist*)

- Bottom-up: local taskforces □ operational approach of problems.
- Top-down: national covenant signed by all involved departments □ political support and inter ministerial co-ordination (H2 and H8 of the checklist).

Main conclusions

- Problems best solved by sitting together with all problem owners: creates commitment and understanding for each others positions.
- Regulatory conflicts only consist of 5 % of the problem, 95% of problems are about lack of communication and bad co-ordination and co-operation of public bodies.

Recommendations

- *Straw outline*: local; account managers, integrated licensing and preliminary consultation
- *Improvement of government communication*: shared sector information, connection websites, on line helpdesks for entrepreneurs

SECTORAL REGULATORS AND INSTITUTIONAL COMPLEXITY: THE CASE OF FINANCIAL SECTOR IN KOREA

Choong Yong Ahn, President of the Korea Institute for International Economic Policy (KIEP)

I. Introduction

The Causes of Financial Crisis in Korea

- Structural weakness in financial sectors
Government-led development strategy prevented market discipline for a long period.
As a result, the strict segmentation of financial industry and high entrance barriers limited the financial innovations ->Low profitability and inefficiency
- Weak regulatory and supervisory systems
Typical regulatory forbearance, regulatory capture, and political capture had prevailed.

Background on Reform of Regulatory Structure

- Chance to reform
Due to the crisis, Korea had a chance to reform the governance structure of financial supervisory body.
But, the demand for strengthening regulatory efficiency had grown in 1990s.
- Financial environmental changes in 1990s
Korea's admission to the OECD in 1996:
financial market open in line with the OECD criteria
more competition in financial market
Financial innovation and technology development:
complex financial products
- All of these changes increased the pressure for institutional reforms on regulatory structure.

II. Major Issues on the Structure and Governance of Financial Supervision

- Increased attention on the financial supervision

Recently, there has been increasing attention on the structure and governance of financial supervision among government, market players, central bank, and supervisory authority.

- Major issues

Appropriate structure of financial supervision

Appropriate scope of financial activities to be supervised

Degree of independence of supervisory authorities from political and economic policy pressure

Structure of Financial Supervision

- Two key issues on structure of financial supervision

Single vs Multiple Supervisory Authorities

Single consolidated supervisory body is recent trend (Scandinavian countries in early 1990s, England 1997, Korea 1998, Japan 1998)

- Supervisory Authorities vs Central Bank

Whether supervisory responsibility to the central bank emphasize safety and soundness of financial system

- Single vs Multiple Supervisory Authorities

Arguments for single supervisory bodies

Financial conglomerates: supervisory oversight of risk management should not be fragmented, uncoordinated or uncompleted.

Economies of scale and scope: cost saving and developing expertise. For financial service industry's point of view, this represents a reduction in the regulatory burden.

Systemic Risks: Single authority is better positioned to respond the systemic risks.

International cooperation: a single authority provides unified channel to consult with foreign supervisory authorities.

Arguments for multiple supervisory bodies

Concentration of Power: Too much power on a single supervisory agency, excessive bureaucracy

Potential conflict of interest between monetary policy and financial supervisory: In case when central bank is also conducting prudential regulatory function, it is highly likely to produce the conflict of interest within central bank.

- Central Bank's Responsibility to Supervisory Function

Arguments for the central bank supervising banks

Safety, soundness, and system stability

Central bank needs to have access to information on banks to exercise its function of lender of last resort and monetary policy

Central bank is relatively independence, and assigning central bank supervision promotes independent action for financial supervision

Resource allocation

Central bank has a comparative advantage in recruiting and retaining the best staff

Supervisory Independence

- Supervisory independence is crucial to prevent financial crisis

Most financial crisis in the 1990s resulted from regulating forbearance including tax prudential rules and tax application of existing rules.

Supervisory Independence means that supervisions are to monitor the financial condition of banks in a strictly professional and consistent fashion, including the appropriate level of responsiveness to the guidance, constructive criticism and direction.

III. Establishment of Integrated Financial Supervisory agency in Korea

- Establishment of single consolidated supervisory body

Major Issues on structure and governance of supervisory body in general were debated and implemented in the course of the establishment of single consolidated supervisory body in Korea since 1997.

The establishment of an integrated supervisory body began in early 1997.

- Regulatory structure before the crisis

Until the 1998 reorganization, Korea had several supervisory bodies responsible for different types of financial institutions.

The Ministry of Finance and Economy (MOFE)

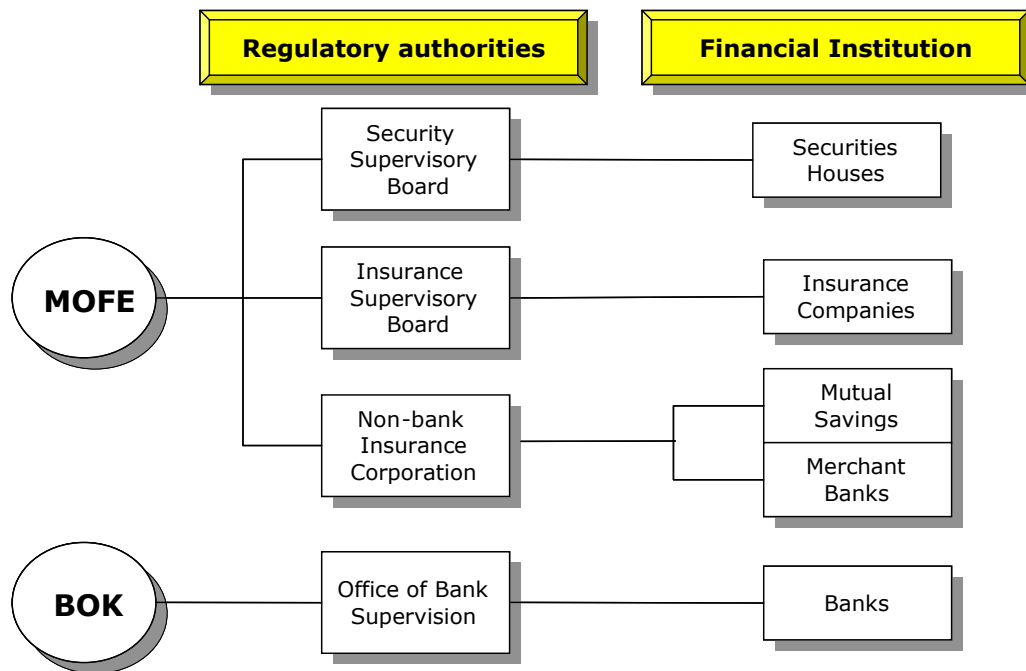
Securities Supervisory Board

Insurance Supervisory Board

The Bank of Korea

Office of Bank Supervision

Pre-Crisis Regulatory Structure



- Regulatory structure before the crisis

However, all the regulatory and supervisory powers directly or indirectly belonged to the MOFE.

The complex regulatory structure and inadequate coordination among each supervisory agencies created a lack of consistence and ineffective supervision.

- Creation of a Single Supervisory Body

In early 1997, the establishment of a single supervisory agency began with the launching of the Presidential Commission for Financial Reform.

But this plan was failed to reach the conclusion due to the conflict between BOK and the MOFE.

After the crisis, the IMF recommended the integrated financial supervisory agency.

On April 1, 1998, a supreme financial regulatory, the FSC, was established.

On January 1, 1999, FSS as an executive body of FSC began serving.

Two major rationales for consolidated supervisory authority are:

Independence in supervision

Increase in effectiveness of supervision

Independence

Independence from political pressures and economic pressures (especially from the MOFE and BOK)

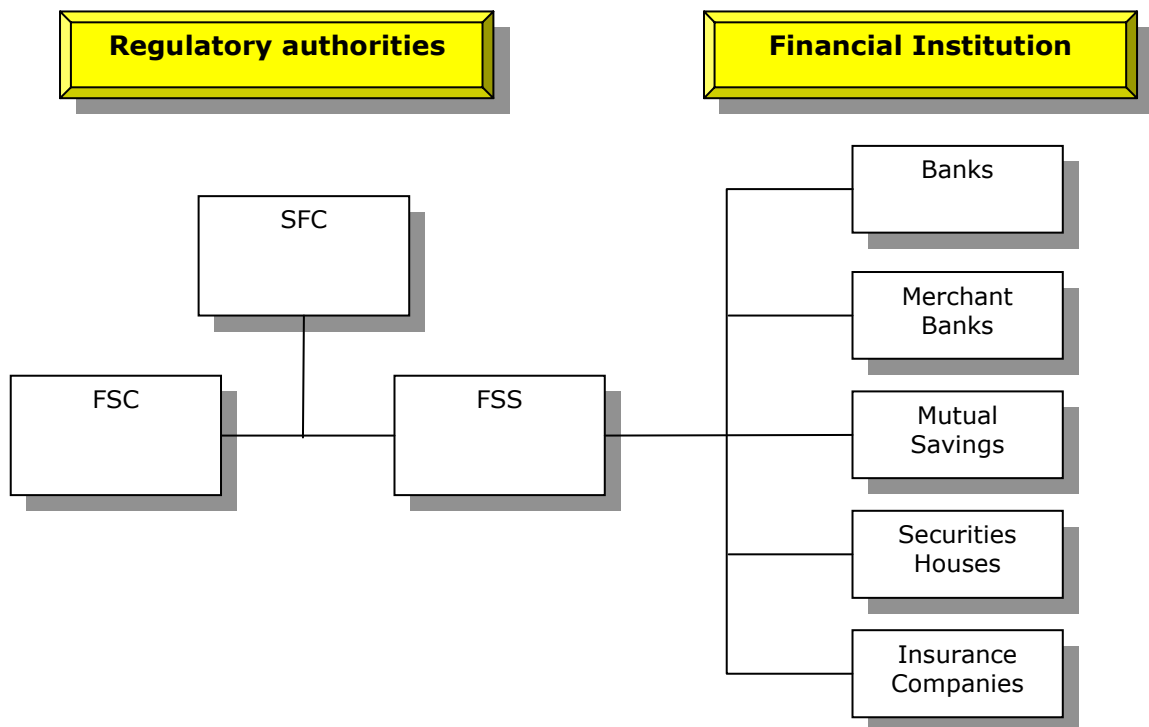
The MOFE has the right to present draft bills related to the FSC.

The BOK focuses on monetary policy.

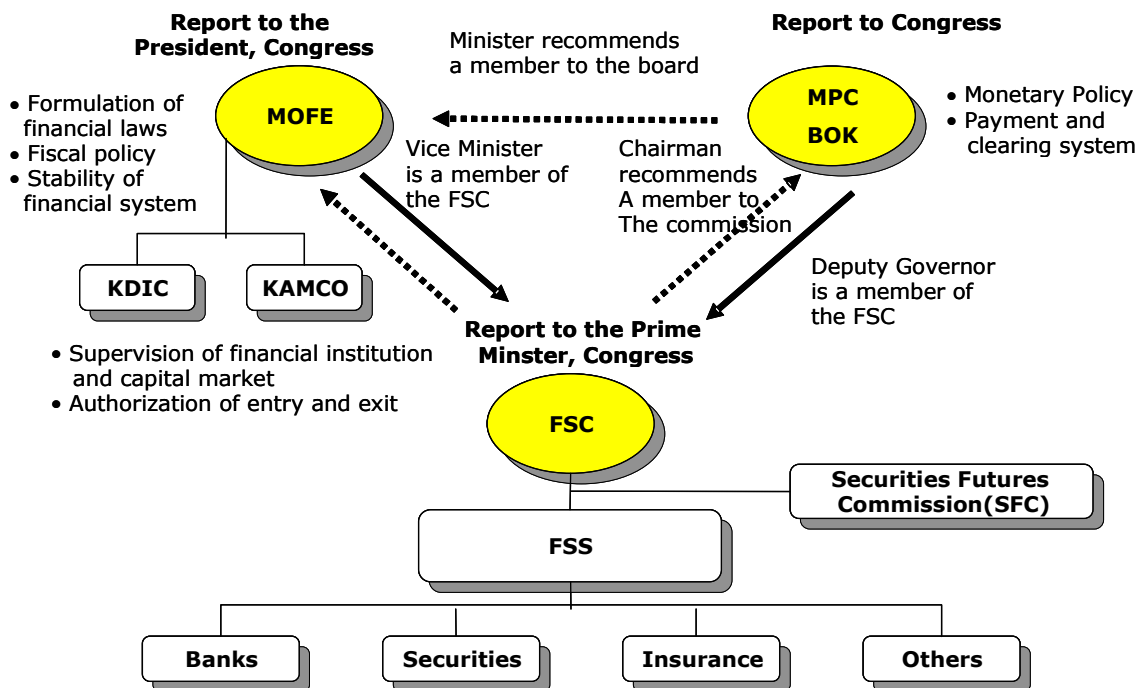
Effectiveness

Consolidation of multiple agencies

Post-Crisis Regulatory Structure



Post-Crisis Regulatory Structure in Korea



- Remaining Issues

Organizational Structure

The relationship between the FSC and FSS is not working efficiently.

Conflicts of Interests

Increasing conflicts of interests between the prudential regulators of supervisory agency and the macro-economic policy of the MOFE

Credit card companies' crisis (2003)

IV. Lessons from the Korean Experiences

- The organizational structure of supervisory agencies depends on the financial environment of a specific country.

Structure should take into account a country's specific characteristics such as the institutional set-up and the degree of financial market integration.

In this sense, more open and integrated financial market increases the demand for a single consolidated supervisory body.

- Independence of supervisory body is crucial to efficient and effective supervision
- Cost effectiveness, transparency and accountability and major criteria for assessing the efficiency of a supervisory regime.
- Cooperation and information sharing are important among government, CB, and supervisory agency.
- The organizational structure of supervisory agencies depends on the financial environment of a specific country.

Structure should take into account country-specific characteristics such as the institutional set-up and the degree of financial market integration.

In this sense, more open and integrated financial market increases the demand for a single consolidated supervisory body.

- Independence of supervisory body is crucial to efficient and effective supervision
- Cost effectiveness, transparency and accountability and major criteria for assessing the efficiency of a supervisory regime.

BUILDING CONSTITUENCIES FOR REFORM

Mr. Josef Konvitz, Head of Division, Regulatory Management and Reform, OECD

Once the long and often arduous process of adopting a regulatory policy has been completed, the hard work really begins. Implementation appears in virtually every country review as a major challenge. The opponents of reform are articulate, concentrated and clever. Alliances of convenience within the bureaucracy, and between bureaucrats and different sectors, can be remarkably solid. By contrast, those who would benefit from reform are usually widely scattered, and have other priorities. The issues are complex, making it difficult to promote an understanding in the public at large concerning the benefits of reform. But the public can see the costs, which become highly symbolic and political.

Part of the difficulty lies in getting people to accept an alternative to regulations, at least of the traditional kind expressed in rules. The value of such regulations, expressed in laws, is that they compel compliance, but enforcement can be time consuming and costly.

Building a constituency for reform therefore involves 1) promoting cultural change within public administrations; and 2) promoting awareness of and willingness to accept less direct intervention by governments, and more use of more flexible instruments. “The fundamental problems in implementing the necessary cultural change are to break down entrenched habits that see particular policy areas as necessarily being dealt with via particular policy instruments, and to increase the degree of understanding among policy-makers about the range of policy tools and the characteristics of each.” (OECD, *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, 2002, p. 52).

Tactics include: promoting a more user-friendly approach, leadership from top management down, introducing incentives to act including job mobility, building in a strong RIA process with an end-of-year scorecard, and strengthening the capacity for economic analysis in government. Consultation and transparency measures are obviously important. Outside government, there is a role for advocacy councils to play, and the voices of stakeholders, foreign as well as domestic business and consumer groups and NGOs, should be heard. Two examples of innovative efforts include: Mexico’s Federal Regulatory Improvement Council, and Japan’s Council for the Promotion of Regulatory Reform, both chaired by the highest level of government, and both combining business representatives with ministries.

The learning process can be fast, but it is never straight. Mistakes happen, and setbacks occur. What is critical is to learn from failure as well as success, wherever examples can be found. In the long run, progress depends on promoting a better understanding of the economic importance and social benefits of regulation, and on forming coalitions or alliances that can work co-operatively across political or electoral cycles.

IV. SUBMITTED PAPERS

COMPETITION POLICY AND ITS ENFORCEMENT IN INDONESIA

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Introduction

I am greatly honoured to be invited to speak in this 7th Workshop of APEC-OECD Co-operative Initiative on Regulatory Reform and I would like therefore to thank ASIA-PACIFIC Economic Cooperation Secretariat. As Indonesian delegation that represents competition authority (KPPU), I would like to focus my presentation only on regulatory environment related to competition policy and law as well as its enforcement in Indonesia.

For a better understanding of Indonesian competition policy and law, it would be beneficial to know the brief historical background. Indonesian economy for so many years has been best described as having highly concentrated industries dominated by large state-owned enterprise which supposedly inefficient firms, operating in markets insulated by various types of barriers and distorted by numerous regulations. Various forms of inadequate government policies have led to market distortion. The business opportunities created did not enable all the society to participate in the development of various economic sectors. The development of the private sectors has in fact been mainly the result of unfair business competition conditions. Businessmen close to the elite have obtained extreme facilities resulting in the creation of a social gap. The emergence of conglomerates and a group of strong businessmen that were not supported by the spirit of true entrepreneurship has been one of the factors, which cause economic resilience to become extremely vulnerable and uncompetitive.

The above mentioned situations and conditions have forced Indonesia to rearrange its business activities so that the business activities can grow and develop in a fair and appropriate way. So it can create a fair business competition climate and avoid concentration of economic power on one certain person or group, which are contradictory to the ideals of social justice. Indonesia has then adopted a competition law, which is entitled the “Prohibition of Monopolistic Practices and Unfair Business Competition” (Law No. 5 of 1999).

The structure of this paper is as the following:

- Part 1 describes competition policy in Indonesia that explains the integration of competition values in various government regulations. This part also explains the recent development on competition policy and commitment of the new government.
- Part 2 outlines the elements of Law No. 5 of 1999, which are:

Principles and Objectives of Law

Prohibited Agreements

Prohibited Conducts/Behaviour

Dominant Position

Miscellaneous Provisions

- Part 3 provides the information on the Commission for the Supervision of Business Competition that covers duties and authorities and the progress in the enforcement of the Law.
- Part 4 discusses the interface between KPPU and Sectoral Regulator
- Part 5 gives the conclusion of the paper

Part 1 - Competition Policy in Indonesia

Just like for most developing countries, competition policy for Indonesia is seen as a means to stimulate development and it rests on the notion of the public interest. Indonesia realizes that public interest is difficult to assess but the country nevertheless try to achieve a balance between efficient markets and sustainable development. In the pursuit of other social and economic objectives, some government policies may restrict competition in some area. Policy makers however consider very carefully the impact on competition of other policies to ensure that the policies contribute towards the government's development goals rather than contradicting each other.

The scope of competition policy is very broad, encompassing all government measures that directly affect the conduct and behaviour of enterprises and the structure of industry. Indonesia has integrated competition policy in various government policies and implemented by government ministries and agencies. These government policies include in the sector of telecommunication (Law No. 36 of 1999), electricity (Law No. 20 of 2002) and oil and gas (Law No. 22 of 2001), where deregulation and liberalization as well as privatization has also been adopted.

The development of national competition policy is becoming even more important in the new presidential era. The newly elected president, Susilo Bambang Yudhoyono, has given a strong commitment on competition policy as he mentioned in his first speech as president. His cabinet for the 2004-2009 period will immediately start to formulate and implement the initial steps of government policies that comprise the continuation of adoption and implementation of open economic policies, in order to integrate the economy with regional and international economies. In doing so, the government will focus on short and medium term agendas in enhancing productivity and competitiveness.

The appointed ministry of trade has mentioned that the main problem for Indonesia is the low-competitiveness of national product. Therefore it is necessary to create an integrated vision on how to increase national productivity and efficiency in various sectors, in order to improve the competitiveness of national product. Competition policy in this case can be used as a tool to solve the problem as it optimizes the efficient allocation of capital, triggers innovation and quality improvements, guarantees market prices and consumer welfare.

Part 2 – Substance Elements of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition

Principles and Objectives of Law (Article 3 and 4)

The law states that the competition shall be based on economy democracy, with due attention to the equilibrium of business practitioners and public interest. The objectives are to:

- Safeguard the public interest and to increase the national economic efficiency as one of the efforts to increase the people's welfare;
- Establish a conducive business climate through the arrangement of fair business competition thus guaranteeing the certainty of equal business opportunities for large, middle and small business practitioners in Indonesia;
- Prevent monopolistic practices and/or unfair business competition caused business practitioners and
- The creation of effectiveness and efficiency in business activities

Prohibited Agreements (Article 4 – 16)

Law No. 5 of 1999 aims to tackle agreements between firms that restrict competition. These prohibited agreements include oligopolistic agreements, price fixing, divisions of territory, boycott, cartel, trust, vertical integration, closed agreements and agreements with foreign parties that can result in the occurrence of monopolistic practices and/or unfair business competition.

Prohibited Conducts/Behavior (Article 17 – 24)

Besides agreements, there are some conducts/behavior of firms that are prohibited by competition law. These conducts comprise of monopolistic conducts, market control and conspiracy.

Dominant Position (Article 25 – 29)

Law No. 5 of 1999 is also required to tackle acts or behaviour by firms that constitute abuse of market power. The provisions on dominant position cover the criteria of dominant position and the behaviour of firms that considered as abusive. The chapter on dominant position also covers the provisions on interlocking directorate, share ownership and merger, consolidation and acquisition.

Miscellaneous Provisions (Article 50 – 51)

Law No. 5 of 1999 applies without discrimination to both public and private sector firms. However, firms supplying public services or functioning as monopolists mandated by respective law can be exempted from the law, but only within the limits of the mission attributed to them.

The special characteristics of certain sectors and the multiple economic objectives of governments justify general exemptions and special treatment for certain actors or enterprises. Exclusions represent decisions by legislature or the government to remove the subject from the jurisdiction of the competition law or the competition agency. Where there is exclusion, it has to be based on a law stipulating special rule or treatment in that sector.

Miscellaneous provision of Law No. 5 of 1999 specify exemptions from competition law for certain business actors, agreements and conducts, these are:

- Actions and/or agreements with the purpose of implementing controlling law; or
- Agreements connected with intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product designs, integrated electronic circuits, and trade secrets, as well as agreements related to franchising; or
- Agreements on the technical standardization of products of goods and/or services which do not restrict and /or restrain competition; or
- Agreements for agency purposes which do not contain provisions to re-supply goods and/or services with lower prices than the price agreed in the agreement; or
- Agreements for research cooperation to increase or improve the living standards of society at large; or
- International agreements which have been ratified by the government of the Republic of Indonesia; or
- Export-oriented agreements and/or actions which do not disturb demand and/or supply of domestic market; or
- Business actors categorized as small-scale business; or
- Activities of cooperatives, which exclusively serve the interests of their members.

Part 3 - Commission for the Supervision of Business Competition

To ensure the effective implementation of law in accordance with its principles and objectives, the Government of Indonesia established KPPU (Commission for the Supervision of Business competition; an independent institution free from the influence of the Government and other parties. The KPPU reports directly to the President and the Parliament. KPPU was established on June 7, 2000, which consists of eleven members – including a Chairman and a Vice Chairman – appointed by parliament for a five year term.

The KPPU's major role and functions as stated in Article 35 are as follows:

- Conducting evaluations of agreements that may result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Article 4 to 16;
- Conducting evaluations of business activities and/or actions of business actors that may result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Articles 17 to 24;
- Conducting evaluations of whether there is or is not any abuse of dominant position that may result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Articles 25 to 28;
- Taking actions in accordance with the authority of the Commission as referred in Article 36;

- Providing suggestions and consideration on government policies regarding monopolistic practices and/or unfair business competition;
- Compiling guides and/or publications regarding this law;
- Providing periodical reports on the results of the activities of the Commission to the President and the House of Representatives.

The authorisations of the commission as stated in Article 36 are:

- Receiving reports from the public and/or business actors concerning alleged occurrences of monopolistic practices and/or unfair business competition;
- Conducting research on allegations of any business activities and/or actions of business actors that could cause monopolistic practices and/or unfair business competition;
- Conducting investigations and/or examinations on alleged cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or discovered by the Commission as result of its investigation;
- Concluding the results of investigations and/or examination whether there are or are not any monopolistic practices and/or unfair business competition;
- Summoning business actors who are suspected of having violated the provisions in this Law;
- Summoning and calling witnesses, expert witnesses and any person who is considered knowing of any violation to the provisions in this Law;
- Asking for assistance from investigators to summon business actors, witnesses, expert witnesses or anybody as referred to above in paragraph (e) and (f), who are unwilling to fulfil the summons by the Commission to appear;
- Asking for information from government agencies in connection with investigations and/or examinations of business actors who are violating the provisions in this Law;
- Obtaining, researching and/or evaluating letters, documents or other evidence for the purpose of investigation and/or examination;
- Deciding and determining whether or not there has been any loss suffered by other business actors or public;
- Notifying the Commission's decision to the business actor suspected of conducting monopolistic practices and/or /unfair business competition;
- Imposing sanction in the form of administrative sanctions to the business actor who is violating provisions in this Law.

Business actor may appeal the KPPU's decision to the District Court. The District Court must hear the appeal within 14 days after filing, and it must render a decision within 30 days after initiating the case. Appeals from the District Court are brought to Supreme Court. The Supreme Court must hear an appeal within 14 days after filing, and it must render a decision within 30 days after initiating the case.

The following is the list of cases decided by the Commission from 2000 to July 2004:

1. Case Decision No: 01/KPPU-L/2000 Procurement Tender Cashing and Tubing at PT.Caltex Pacific Indonesia
2. Case Decision No: 03/KPPU-L-I/2000 on violation of Article 2 and 3 on the objective and purpose of competition law by Retail PT. Indomarco Prismatama (Indomaret)
3. Case Decision No: 07/KPPU-L-I/2001 Tender for Import Beef Cattle Breeder at East Java Province
4. Case Decision No: 08/KPPU-L/2001 Procurement Tender Barite & Bentonite at YPF Maxus Southeast Sumatra B.V.
5. Case Decision No: 10/KPPU-L/2001 Decision on Oligopolistic practices conducted by Insurance Companies at Bank BNI
6. Case Decision No: 01/KPPU-I/2002 PT. Sieamless Pipeline with PT.Citra Turbindo
7. Case Decision No: 02/KPPU-I/2002 on price fixing conducted by Day Old Chick (DOC) company.
8. Case Decision No: 03/KPPU-I/2002 Tender PT. Indomobil Sukses International
9. Case Decision No: 09/KPPU-L/2002 Tender PT (Persero) Telekomunikasi Indonesia
10. Case Decision No: 05/KPPU-L/2002 on vertical integration conducted by Cineplex 21
11. Case Decision No: 01/KPPU-L/2003 concerning vertical integration done by Garuda Indonesia Airways
12. Case Decision No: 02/KPPU-I/2003 on price fixing for Cargo Jakarta-Pontianak
13. Case Decision No: 03/KPPU-I/2003 on price fixing for Cargo Surabaya-Makassar
14. Case Decision No: 04/KPPU-I/2003 on monopolistic practices by Jakarta International Container Terminal (JICT)
15. Case Decision No: 05/KPPU-I/2003 price fixing by City Bus
16. Case Decision No: 07/KPPU-L/2003 Tender SIMDUK in Semarang
17. Case Decision No: 08/KPPU-L/2003 on market control in Auditing Service at PT. Telekomunikasi Indonesia_(PT.TELKOM)
18. Case Decision No: 01/KPPU-L/2004 on market control by Pelindo I Belawan and PT.Musim Mas
19. Case Decision No: 02/KPPU-I/2004 on abuse of dominant position done by PT. (Persero) Telekomunikasi Indonesia Tbk.

20. Case Decision No.: 03/KPPU-L/2004 on violation conducted by Perusahaan Umum Percetakan Uang Republik Indonesia (Perum Peruri) dan PT Pura Nusapersada.
21. Case Decision No.: 04/KPPU-I/2004 on market control conducted by sugar importer
22. Case Decision No.: 05/KPPU-L/2004 on tender Security Services di PT. Thames Pam Jaya.

The article 35 letter (e) Law No.5/1999 mandates that one of KPPU's tasks is to provide advice and suggestion to government regarding related to policies causing monopolistic practices and unfair business competition. The following are KPPU's advice and suggestion to government:

1. Advice and Suggestion on Taxi Tariff to Department of Transportation
2. Advice and Suggestion on application of "Halal" label to Department of Religious Affairs
3. Advice and Suggestion on the Shipping Port Policies in Tanjung Priok
4. Advice and Suggestion on the Demand Side Management Program – PT PLN.
5. Advice and Suggestion on the Policies related to the Market Structure of Carbon Black Product.
6. Advice and Suggestion on the Settlement of Compensation in the Telecommunication Industry.
7. Advice and Suggestion to the Local Government regarding to the Presence of Small Retail Shops in the Small Areas.
8. Advice and Suggestion to the Local Government of Makasar regarding the Film Distribution.
9. Advice and Suggestion on Government's Plan to Fix the Lower Rate in the Scheduled and Domestic Air Transport for Economic Class.
10. Advice and Suggestion regarding the Finance Minister's Decree about providing Loans to the Veterans of War/Military and their Widows and its Payments.
11. Advice and Suggestion regarding the Partnership Pattern in the Chicken Farms.
12. Advice and Suggestion on government policy concerning Sugar Import directive.
13. Advice and Suggestion on Presidential Decree concerning The Promotion of National Sea-Transportation Industry.
14. Advice and Suggestion on Printing Cost of Clearing Document to a government coordinating agency.

Part 4 – The Interface of KPPU and Sectoral Regulator

In the spirit of restructuring public utilities sector, the government of Indonesia has formed several independent regulatory bodies, each with duties and responsibilities specific to related sectors. By definition, the role of government as regulator now shifted to these independent regulatory bodies (IRBs). The establishment of these institutions was meant to supervise the implementation of reformation in the public utilities sectors effectively.

The main role of KPPU as a competition authority is to protect competition from anti-competitive behaviour and mergers, while the sectoral regulators are responsible more for economic, technical regulation and competition, since these sectoral regulations aim to promote as well as to protect competition. Based on its duties given by law, KPPU may provide recommendation to government, as well as sector regulator regarding competition issue. It is believed that by disseminating competition values to the executive and legislative institution include sector regulators, KPPU could speed up the process of internalization competition values and culture in every sector. The dissemination of competition values to related institution or sector regulators is very important, mostly because it is expected that any policies coming from these institution would be in line or compatible with the competition values (policies). By using what so called “Policy Harmonization Mechanism” KPPU would identify related policies, which are believed can effect competition in the industry.

The relationship between KPPU and sectors regulators is regarded and defined as evolving, continuous and simultaneous process of coordination and cooperation. At the earlier stages, the process of coordination and cooperation would include intensive communication to achieve a common understanding of each responsibility. Under the mechanism of policy harmonization and competition advocacy, KPPU has already initiated discussions, public workshops and seminars, which involved sectoral regulators, like BRTI (telecommunication sector), Bapeptal (electricity sector) and BP MIGAS/BATUR (oil and gas sector).

Part 5 – Conclusion

1. Indonesia has integrated and implemented competition policy in national regulatory framework. The political and government commitment to increase national competitiveness make competition policy and law play an important role.
2. Law No. 5 of 1999 forms one element of a competition policy, providing the legal back up to the policy. It contains substantive provisions on prohibited agreements, conducts/behaviour and abuse of dominant position as well as some exemptions from the application of the law.
3. KPPU has been established to ensure the effective implementation of Law No. 5 of 1999. Mandated with various duties and authorities given by the law, KPPU has decided cases and provided recommendation to government.
4. In order to disseminate and enforce competition policy in regulated sectors, KPPU develop coordination and cooperation with sectoral regulation through policy harmonization mechanism and competition advocacy program.

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