PROCEEDINGS OF THE HIGH LEVEL CONFERENCE
AND THE THIRD WORKSHOP OF
THE APEC-OECD CO-OPERATIVE INITIATIVE ON
REGULATORY REFORM

JEJU, KOREA
16-18 October 2002
# TABLE OF CONTENTS

I. PROCEEDINGS OF THE HIGH LEVEL CONFERENCE AND THE THIRD WORKSHOP ........ 5

II. AGENDA OF THE JEJU WORKSHOP AND HIGH LEVEL CONFERENCE ....................... 9

HIGH LEVEL CONFERENCE:

III. KEY NOTE SPEECHES OF THE HIGH LEVEL CONFERENCE ............................. 15

3RD WORKSHOP:

IV. REPORT OF THE RAPPOLEURS

   SESSION I: ENHANCING REGULATORY TRANSPARENCY .......................................... 35
   SESSION II: REGULATORY REFORM IN KEY ECONOMIC SECTORS ............................... 39

V. SUMMARY OF THE PRESENTATIONS .................................................................................. 55


VII. APPENDIX I: SUBMITTED PAPERS .................................................................................. 95

VIII. APPENDIX II: LIST OF PARTICIPANTS .......................................................................... 167
I. PROCEEDINGS OF THE HIGH LEVEL CONFERENCE AND THE THIRD WORKSHOP

16–18 October 2002, Jeju Island, Korea

The APEC-OECD Co-operative Initiative on Regulatory Reform provides a forum for exchange of experiences on good regulatory concepts, policies and practices. The common agenda is driven by the APEC 1999 declaration of *Principles to Enhance Competition and Regulatory Reform* and the OECD principles of the *1997 Report to Ministers on Regulatory Reform*. It aims to support the implementation of similar principles on regulatory reform in the respective economies.

At the launching conference, held in *Singapore on 22—23 February 2001*, a series of three workshops were agreed upon and the governments of China, Mexico and Korea offered each to host one of them. An important decision of the conference was to ensure wide dissemination of the results of the Co-operative Initiative by publishing the proceedings of the workshops and establishing an information network via a special Web page. The proceedings for the China Workshop were published in December 2001 and for Mexico in September 2002. Both reports can be accessed on the OECD Web site www.oecd.org/regreform.

The meetings of the APEC-OECD Co-operative Initiative in Korea consisted of two events: the third regular workshop and a High Level Conference to launch the second phase of the initiative in 2003/2004.

The **High Level Conference** was opened by Mr. Suk Soo Kim, Prime Minister of Korea, Mr. Donald J. Johnston, Secretary General of the OECD, Ambassador Piamsak Milintachinda, Deputy Executive Director of the APEC Secretariat, Mr. Yukio Yoshimura, Vice President and Special Representative of the World Bank in Japan, Mr. John Lintjer, Vice President of the Asian Development Bank, and Mr. Mario Gallo, Commission Member of the Board of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI-Peru). The participants assessed the results of two years of the APEC-OECD Co-operative Initiative and discussed the launching of a new biannual phase of this programme. Many delegates indicated that they had benefited through the events and the dialogue between practitioners. They supported the launching of a second phase of the Initiative through a series of four events in 2003 – 2004 (i.e. three workshops and one final conference). They noted though that the participation of high ranking officials would be key for its success. The final conference could be an occasion to bring together policy makers at ministerial level in order to sustain the efforts. It was also suggested that the second phase of the programme could be extended to other countries beyond the APEC or OECD member economies. The delegates also discussed a draft proposal prepared by the OECD and the APEC to develop an integrated checklist on regulatory reform. The integrated checklist would cover rule making, competition, and trade policies in order to function as a useful tool for self-assessment by each economy. It is to be ratified by APEC and OECD governing bodies.
The Jeju workshop was opened by Mr. Moon Suk Ahn, Co-chairman of the Regulatory Reform Committee in Korea, Mr. Yung Taek Kim, Lieutenant Governor for Political Affairs of the Jeju Province, Ms. Margarita Trillo, Acting Convenor of the APEC Competition Policy and Deregulation Group, and Mr. Rolf Alter, Deputy Director of the OECD Public Governance and Territorial Development Directorate. It brought together 37 countries as well as representatives from business, labour and several international organisations including the EC, the World Bank, and the Asian Development Bank.

The delegates to the Jeju workshop discussed aspects on regulatory reform around two main issues: ensuring regulatory transparency and understanding regulatory reform in key economic sectors namely telecommunications, electricity, and financial services.

The first session on Enhancing Regulatory Transparency focused on recent trends and challenges for implementing transparent regulatory procedures. Participants discussed for example the increased use of the requirements and standards governing public consultation of draft measures included in framework laws such as the Administrative Procedures Acts, the growing importance of international trade rules in promoting transparency, and the rapidly expanding use of electronic information and communication technologies. Participants also shared practical ways and means to ensure the effective transparency of regulations and quasi-regulations. This session generated particular interest when discussing how to deal with problems and challenges to implement de facto transparency and balancing different objectives, such as confidentiality versus general application; urgency to implement measures versus proper consultation processes; or predictability of the regulatory framework versus ensuring flexibility and particularisation of the measures.

Other important issues included the adoption of minimum standards for consultation, the use of transparency tools to prevent and fight corruption, and the transparency components of Multinational Trade obligations and the Doha Development Agenda. Important messages that can be drawn from the discussions of Session 1 are:

- A balance between transparency and confidentiality, urgency, or flexibility is always needed but it is difficult to define. Setting clear boundaries often differ from economy to economy.
- Transparency in rule making improve the quality of the outcome in terms of good regulations as well as higher compliance and more economical enforcement. Transparency can be implemented through specific requirements on rule-makers to consult with regulated parties and other stakeholders. However, there is the risk that well-organised and powerful groups may try to capture the consultation process.
- Real transparency is much more important than formal transparency. A good way to ensure real transparency is to promote through positive and negative incentives an open administrative culture and new behaviour of government officials.
- If a regulatory system is transparent to foreigners, it is very likely to be transparent to all regulated parties.

The second session on Regulatory Reform in Key Economic Sectors focused on striking the right balance between competition and regulation and regulatory reform in natural monopoly industries. This session was built around presentations focusing on recent reforms in the financial, telecommunications and electricity sectors in APEC and OECD countries.
During the concurrent (sectoral) and plenary sessions, participants discussed the regulatory reform experience in various jurisdictions, with particular emphasis on what can be learned from both the successes and failures. Topics receiving considerable attention included the relationship between foreign exchange crises and financial liberalisation, ways to reinforce the independence of regulatory authorities, and the optimal relationship between sector/multi-sector regulators and competition authorities. The following points can be drawn from these discussions:

- Despite growing competition in many network sectors, key parts of the telecommunications, electricity, and financial services sectors need still strong regulatory interventions in addition to a continuous enforcement of domestic competition law. A balance must be maintained between competition and regulation, and efficiency and stability.

- Globalisation and innovation are transforming former natural monopolies into competitive markets, but they also tend to create new natural monopolies, for example in the information technology sector.

- Unbundling of vertically integrated monopolies, and breaking up former state enterprises into a number of horizontally competitive firms can be key steps in promoting competition, and increasing efficiency. However, changes from public to private ownership do not automatically assure a positive outcome in terms of consumer interests and competitive behaviour.

- Duplication and overlap between competition authorities and sectoral regulators are to be minimised. In very broad terms, competition authorities may concentrate on core protection against anti-competitive conduct (including through mergers and acquisitions), while sectoral regulators may concentrate on price control and technology-oriented supervision.

- Frameworks for access to or interconnection with networks should be established before telecom and electricity industries are privatised or deregulated so that new entrants may enjoy the same level playing field as incumbents. In the case of financial services, recent events have demonstrated the limits of self-regulation.

The Thai government invited participants to the first workshop of the second phase in May 2003. The workshop will be held back to back with the APEC-OECD Competition Policy and Deregulation Group (CPDG) annual meeting.

Rolf Alter  
Deputy Director, Public Governance and Territorial Development Directorate  
Head of Programme on Regulatory Reform, OECD

Margarita Trillo  
Technical Secretary of the Antidumping and Countervailing Measures Commission, INDECOPI, Peru  
Acting Convenor of the APEC Competition Policy and Deregulation Group
II. AGENDA OF THE JEJU WORKSHOP AND HIGH LEVEL CONFERENCE

WEDNESDAY 16 OCTOBER 2002

12:00

Registration

14:00 – 15:00

Welcome and opening remarks

- Mr. Moon Suk Ahn, Co-chairman of the Regulatory Reform Committee, Korea
- Mr. Yung Taeik Kim, Lieutenant Governor for Political Affairs, Jeju Province, Korea
- Ms. Margarita Trillo, Convenor of the Competition Policy and Deregulation Group, APEC
- Mr. Rolf Alter, Head of the Regulatory Reform Programme, OECD

15:00 – 19:00

Session 1: Enhancing Regulatory Transparency

Regulatory transparency is an important factor of regulatory reform and management. Transparency contributes greatly to the quality and the compliance of regulations. Transparency prevents regulatory failures and corruption as well. It reduces the risk of capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risks, and lack of accountability. Moreover, transparency helps create a virtuous circle – consumers trust competition more because special interests have less power to manipulate governments and markets, while investors are more willing to enter markets that are seen to have a level playing field. Both in turn demand more transparency. Overall, transparency has become a necessary ingredient for economic actors at national and international levels, including for trade and investment and thus for economic growth. Many countries have developed various ways to ensure regulatory transparency. Based on a key presentation from an international expert, this session will provide an opportunity to exchange views and experiences, between countries and between different areas of expertise, including the public and private sectors. The session will focus on how regulatory transparency is made operational. It will examine selected strategies, tools, and regulatory approaches that increase market transparency and reduce policy risk. These include:

- Techniques of public consultation and notification, including the use of information technologies;
- Controls on administrative discretion and corruption in regulatory enforcement;
- Transparency mechanisms for a successful integration of firms and national economies to the global economy.
Chair: Rolf Alter, Head of the Programme on Regulatory Reform, OECD

Rapporteur: Ali Haddou, Co-ordinator General RIA, Federal Regulatory Improvement Commission, COFEMER, Mexico

- **Mr. Rex Deighton-Smith**, Jaguar Consulting, Australia. “Assuring Regulatory Transparency”
- **Mr. Manuel-Maria Santiago-Dos-Santos**, Principal Advisor, European Commission. “The European Unions Action Plan on Regulatory Quality”
- **Mr. Junsok Yang**, Senior Researcher, Korea Institute for International Economic Policy, Korea “Regulatory Transparency: What We Learned in Korea”
- **Dr. Suchit Bunbongkarn**, Member of Constitutional Court, Thailand. “Transparency, Regulatory Reform and Control of Corruption in Thailand”
- **Mr. Stuart Carre**, Vice-Chair of the OECD Trade Committee Working Party and former Canadian Deputy Senior Official to APEC, Canada. “Regulatory Reform, Transparency, and Doha”

18:45 – 19:00

Summary by the Rapporteur

19:00 – 20:00

Dinner hosted by Mr. Yung Taek Kim, Lieutenant Governor for Political Affairs, Jeju Province

THURSDAY 17 OCTOBER 2002

9:00- 18:00

Session 2: Regulatory Reform in key economic sectors

Does the regulatory regime for key economic sectors such as telecommunications, electricity or financial services allow the development of efficient domestic and international markets, while protecting other important public interests in the most efficient way? The central reason for reform of these industries is to optimise economic performance, defined in the widest sense to include environmental and security of supply performance. The key to optimising economic performance is a regulatory environment that supports competition and consumer empowerment through application of the core principles for quality regulation at both sectoral and framework levels.

The session will be opened by a key presentation from an international expert. Participants will then join one of three panels working in parallel on a specific sector (i.e. telecommunications, electricity and financial services). Based on a template provided by the Secretariat, a rapporteur for each panel will present the main findings in a plenary session in the afternoon.
**Chair: Joanna Shelton**, Director (Interim), The Maureen and Mike Mansfield Center, University of Montana

9:00 – 10:00

**Plenary session: Presentation of a key speaker**

- **Mr. Paul Crampton**, Head, Outreach Unit, Competition Division, OECD. “Striking the Right Balance between Competition and Regulation: The Key is Learning from Our Mistakes”
- **Mr. Korkmaz Ilkorur**, The Head of the Governance Committee of BIAC (Business and Industry Advisory Committee) to the OECD

10:00 –10:30

**Coffee Break**

10:30 -13:00

**Panel discussions**

Three panels working in parallel will discuss regulatory reform in telecommunications, electricity and financial services sectors. In each panel, panellists will present a country perspective or a thematic issue.

**Panel 1: Regulatory Reforms in the Financial Sector**

*Chair/Rapporteur: Ian Harper*, Professor of Business Management School, Australia

- **Mr. John Thompson**, Counsellor, Directorate for Financial, Fiscal, and Enterprise Affairs, OECD. “Regulatory Reform in the Financial Sector”
- **Mr. Thomas Schmitz-Lippert**, Head of International Affairs – Banking Supervision, Germany. “New Financial Supervisory Structure in Germany”
- **Mr. Ming-yen Tseng**, Deputy Director of Planning Department, Fair Trade Commission, Taiwan. “Regulatory Reforms of the Financial Sector: Case of Taiwan”

**Panel 2: Regulatory Reforms in the Telecommunications Sector**

*Chair/Rapporteur: Carl Willner*, Department of Justice, United States of America

- **Mr. Chong-Hoon Park**, Director of the Telecommunications and Broadcasting Policy Division at the Korea Information Society Development Institute (KISDI), Korea. “Regulatory Reforms in Telecom Services (Korean Experience)”
- **Mr. Stephen Farago**, Assistant Director, Telecommunications, Australian Competition and Consumer Commission, Australia. “The Evolution of Telecommunications Regulation and Competition in Australia”
• **Mr. Michel Roseau**, Responsible for International Affairs, Ministry of Economy-Competition Policy and Anti-competitive Practices, France. “The Regulatory Reform in the Telecommunications Sector in France”

• **Ms. Cui Shutian**, Division Director, Ministry of Information Industry, Peoples Republic of China. “Summary on the Telecom Regulatory Reform in China”

**Panel 3: Regulatory Reforms in the Electricity Sector**

Chair/Rapporteur: **Mr. Mark Ronayne**, Senior Commerce Officer, Civil Matters Division of the Canadian Competition Bureau, Canada

• **Mr. Armando Caceres**, Consultant in Competition and Regulatory Policies, Former Convenor Competition Policy and Deregulation Group of APEC, Peru. “Regulatory Reform in the Electricity Sector: The experiences of APEC Economies”

• **Mr. Andrey Tsyganov**, Deputy Minister, Ministry for Anti-Monopoly Policy and Promotion of Entrepreneurship, Russia

• **Mr. Shing Daw Tsai**, Senior Specialist, Fair Trade Commission, Taiwan

13:00 – 15:00

**Lunch**

15:00 – 16:00

**Panel conclusions**

Based on a Secretariat template, the rapporteur of the panel will discuss and prepare a report to the Plenary

16:00 – 16:30

**Coffee Break**

16:30 – 17:30

**Plenary session: multidisciplinary discussion**

The three rapporteurs of the session will present their conclusions.

17:30 – 18:00

**Recent developments in regulatory reform in OECD and APEC**

**Closing remarks and conclusions of the workshop**

19:00 – 21:00

**Dinner hosted by Mr. Moon Suk Ahn**, Co-chairman of the Regulatory Reform Committee, Korea
HIGH LEVEL CONFERENCE OF THE
APEC-OECD CO-OPERATIVE INITIATIVE ON REGULATORY REFORM

FRIDAY 18 OCTOBER 2002

9:30 – 10:45

Opening Address and Keynote Speeches
Challenges, Vision and Strategy of Regulatory Reform in APEC and OECD Economies

- Mr. Suk Soo Kim, Prime Minister, Korea
- Mr. Donald J. Johnston, Secretary-General, OECD
- Ambassador Piamsak Milintachinda, Deputy Executive Director, APEC Secretariat
- Mr. Yukio Yoshimura, Vice President and Special Representative, Japan, World Bank
- Mr. John Lintner, Vice President, Asian Development Bank
- Mr. Mario Gallo, Commission Member for the Defense of Competition and Protection of Intellectual Property (INDECOPI), Peru

10:45 – 11:00

Coffee Break

11:00 – 12:15

The APEC-OECD Co-operative Initiative on Regulatory Reform – Continuing the Dialogue

Chairs: Mr. Rolf Alter, Head of the OECD Programme on Regulatory Reform, and Ms. Margarita Trillo, Acting Convenor of the Competition Policy and Deregulation Group, APEC

- Representative of OECD Economy
- Representative of APEC Economy

12:15 – 12:30

Closing remarks and conclusions

- Mr. Key-Chong Park, Deputy Minister, Prime Minister’s Office, Korea

12:30 – 14:30

Lunch hosted by the Minister of the Office for Government Policy Coordination

15:00 – 15:30

Press conference
III. KEY NOTE SPEECHES OF THE HIGH LEVEL CONFERENCE

Kim Suk Soo, Prime Minister of the Republic of Korea

The Honourable Donald Johnston, OECD Secretary-General; Ambassador Piamsak Milintachinda, Deputy Executive Director to the APEC Secretariat; Mr. Yukio Yoshimura, Vice President of the World Bank Group; Mr. John Lintjer, Vice President of the Asian Development Bank; representatives of the APEC and OECD member countries, and distinguished guests,

It is truly a great pleasure to be holding this APEC-OECD high-level conference on regulatory reform here on Jejudo today. On behalf of the Government of Korea, I wish to extend a wholehearted welcome.

This conference is the result of a proposal by the Korean Government at the regulatory reform workshop held in Mexico last April. In proposing it, we wanted to provide high-ranking officials of APEC and OECD member countries an opportunity to gather and discuss their visions and strategies for regulatory reform and the future direction of the APEC-OECD Co-operative Initiative on Regulatory Reform.

Distinguished delegates,

As we move into the 21st century, we are seeing rapid and fundamental change—change that is unprecedented in history. The two driving forces behind this change are globalisation and the information revolution. The world is melding into one community, with six billion people being enveloped by the current of globalisation. Economies, transportation, communication, information, and even cultures are becoming globalise. And this trend continues to accelerate.

In this information age, human resources remain the most important asset, and creative knowledge is the key to national development. The information revolution is making it possible to share individual creativity world-wide through new communication networks.

All these changes together pose new challenges not just to individuals and corporations, but also to governments. This is why regulatory reform is so important. Through regulatory reform, we will be able to change obsolete frameworks that hinder progress towards an information society and create new ones. Innovation through regulatory reform is key to meeting new needs and addressing new challenges of the global and information era.

The Korean Government recognised this and has been revising its laws and systems since 1999 to better fit the new paradigm of an information society. The core of Korea’s regulatory reform effort is the pursuit of economic growth through increased productivity and advanced knowledge.

In meeting this goal, Korea’s regulatory reform seeks the following objectives in the area of information: encouraging the growth of e-commerce and other electronic transactions, deregulation of Internet banking, promoting telecommuting, and establishing Internet education systems. Especially, the
Korean Government has been working hard to establish an advanced e-government system. As a result, we are launching various systems, including a home tax service system, this month; through them various approvals, licenses, and procurement projects can be processed.

Distinguished guests and ladies and gentlemen,

Korea is not alone in making these reform efforts. Other APEC and OECD member countries have also pursued similar regulatory reform with varied success.

We have an opportunity, today, to look at the experiences of each country in the process of reform and to analyse the causes for success or failure. We will then be better able to find new, forward-looking strategies for regulatory reform that will help bring about continued economic growth. At the same time, I think it is important that we also consider ways to improve business environments and social infrastructure, such as education and welfare. Through these discussions, we will be able to take further steps towards greater co-prosperity.

Distinguished representatives of APEC and OECD,

In our discussions on regulatory reform here today, we need to keep in mind several key points. First, regulatory reform must be able to keep pace with the changes of the 21st century. As such, it should be pursued under a new paradigm, one that is appropriate in the information age. In this respect, I think it would be very promising for APEC and OECD countries to jointly explore new areas of regulatory reform that use information and communication technology. These could include the creation of an electronic government, the reform of standardisation systems, and the promotion of electronic custom services and procurement. The Korean Government is eager to share its experiences and the results of its efforts in these areas with fellow APEC and OECD member countries.

Second, regulatory reform goes hand-in-hand with administrative reform. Therefore, the true effect of regulatory reform should be seen in the rational reorganisation of the government structure and function through administrative reform. It would not be an exaggeration to say that administrative reform begins and ends with regulatory reform. I sincerely hope that the many member countries which have successfully linked regulatory and administrative reform will share their experiences with us today.

Third, the active participation of NGOs is crucial in maintaining continued interest in regulatory reform and in establishing a firm basis of public support. The general public, which is most affected by regulatory reform, needs NGOs to represent it in different sectors of society. In addition, the reform of laws and institutions is only effective when accompanied by reform of consciousness and practices. Through voluntary reform programs, NGOs help minimise the inevitable resistance and opposition towards reform processes.

Fourth, I would like to mention the need for an examination of global standards that have served as the basis for domestic regulations in APEC and OECD member countries. Just as transparency and objectivity of domestic regulations are important, the simplification of global standards that are the basis for these regulations is also an important task in regulatory reform. In this regard, I think it would be very beneficial for member countries to actively find ways to improve global standards in areas such as customs procedures, technology, services, investment, intellectual property, and competition policy.
Finally, I would like to emphasise that strengthened international co-operation will help promote regulatory reform world-wide. Through initiatives such as the APEC-OECD Co-operative Initiative on Regulatory Reform, member countries have continually shared their experiences in carrying out regulatory reform. As regulatory reform is ultimately a means of enhancing economic growth and prosperity, I believe we need to explore ways to share our understanding with countries outside of APEC and OECD and work for regulatory reform with them as well. Today’s meeting is an important opportunity to discuss approaches to strengthening co-operation between APEC and OECD member and non-member countries and encouraging voluntary Cupertino with non-member countries.

Distinguished guests,

Through this meeting we have taken an important first step towards international Cupertino in regulatory reform. I sincerely hope that through our earnest thought and discussions today, we can set a foundation, not only for APEC and OECD member countries, but also for all countries in the world, to develop together. I also hope that we can reconfirm our common goals and expectations.

In closing, I would like once again to extend to you my warmest welcome. I hope that you will enjoy the beautiful island scenery of Jejudo and the experience of our culture.

Thank you.
Donald J. Johnston, Secretary General of OECD

Prime Minister and distinguished representatives here on the platform with me of APEC, of the Asian Development Bank as well as the World Bank, representatives of APEC and OECD countries who are here present, and distinguished guests. It’s a great pleasure for me to be here with you today and I am honoured by this opportunity to speak at this high-level meeting. I might say, Prime Minister, I very much enjoyed your comments. I think you have dealt with some important issues in terms of regulatory reform in the context of our knowledge-based societies. As the Prime Minister has just mentioned, the subject is extremely important. Neither APEC nor OECD countries will achieve sustained economic growth unless we liberalise our markets within the framework of appropriate regulatory and competition policies.

Now today, I wish to share a few thoughts with you, some lessons learned from the OECD’s recent experience, recent work on regulatory reform. I would like to propose some directions where OECD and APEC could jointly engage in the coming years.

But Before doing so, I would like to place this concept of regulatory reform in a historical perspective. Why is there so much concern about regulatory reform. Not just in Korea, but in all members of the OECD. What has spurred this interest? And here I tend to make a few personal observations. What has changed and what does it portend for policy makers? And here I think we should examine the present in light of the past for the purposes of the future as Maynard Keynes so wisely advises. Well without looking at a comprehensive review of all those that have taken place, let me offer some of my own perspectives on several critical areas which I have watched evolve over the past 20 years. During the early 1980s, I held a number of economic portfolios in the Canadian Federal Cabinet including the management of government and budget, economic and regional development at another time, and science and technology. Now from those perspectives, I had both an active, if you like, policy and management role as well as a view as what was transpiring across other OECD countries as well. Well what did I witness then, and how does that differ if you like from what I see today, and does it in some degree explain this intense interest in regulatory reform? Well first of all, from what I saw then with respect to the role of government, many of position and authority in the 1980s believed that government should be an active player in the economic growth dimension of our societies. In other words, not only should the government set framework conditions for economic development but it should also be an active player. That implied a heavy dose of regulation, and in many cases, even the ownership of many industries. Industries engaged in commercial activities, for example, in Canada be they aircraft manufacturing, rail transportation, utilities, even the petroleum sectors both upstream to expiration and downstream to retailing at the gas pump. Moreover, governments believed that they could pick winners strategically and this meant tax incentives and it meant subsidies to some industries who had given little thought to market distorting consequences. In some sectors, for example, monopolies and telecommunications or power generation lived in a world of heavy regulation to protect consumers. On macroeconomic policy, there were indeed sharp divisions of view on the benefits of what we now call fiscal consolidation. The deleterious effect of primary deficits and concomitant public debt were not evident to all and the deterrent effect on foreign direct investment was even welcome to some nationals who saw such investments in the form of equity as a threat to sovereignty. On globalisation, frankly, the word was not used very much if at all and domestic policy and international policy lived in separate worlds. Seldom if ever did we consider the international implications of domestic policies or domestic regulations even where heavy public subsidisation or extensive market distorting regulations might apply. Well what do I see now? Well the role of government has by and large changed dramatically. Governments have largely withdrawn from being active players in the market and we have seen massive privatisation. Market competition is increasing in all areas with substantial benefits to growth and to consumer interests. Therefore the role of governments in setting the right frameworks for healthy competition through regulatory reform has become even more important because of the disappearing line of demarcation I might say between domestic policies and international policies. Nearly
all domestic policies today carry international consequences, a fact that we largely ignored 20 years ago. Governments are turning more to the core issues of making markets work. Occasionally attempting to correct market failures and reinforcing their primary role and ensuring the safety and security of the public. This of necessity implies major changes in regulatory applications which we call regulatory reform. In addition, there has been a very strong convergence of views across the globe on macroeconomic policy. Strengthening national balance sheets is a theme every one agrees with and so far, there have been some remarkable successes in some areas for example in Europe driven by the necessity of meeting the Maastricht criteria but many other countries as well. This accommodation of economic growth and public sector expenditure reduction and the contribution of regulatory reforms as a contributor to growth through letting markets work more effectively, this is where there is a direct interface between structural policies and macroeconomic policies. Now in this context, let us look at Korea.

Let me stress at the outset that I consider Korea to be an exceptional venue for discussing regulatory reform. Korea has established a remarkable record of reform over the past 10 years and in particular since the 1997 crisis.

Two years ago the OECD published a major report on regulatory reform in this country. And our main message was that regulatory reform had played a key in fact an essential role in the strong economic recovery. Strong political support was necessary, and it was given and it had permitted the launching and in many cases, the completion of very important initiatives:

- Deregulation, market opening, tougher competition policy had strengthened market forces in driving Korea’s development.
- New regulatory regimes and institutions were developed for the financial sector.
- Corporate governance was strengthened, in particular for the Chaebols, helping to converge toward international standards.
- And tools such as what we call regulatory impact analysis, and the expanded use of public consultation, regulatory efficiency, and transparency, all these were adopted.
- Valuable reforms were introduced in sectors such as electricity and telecommunications, although as yet these reforms are not fully complete.

Since the publication of the report in 2000, Korea has continued in its efforts. And of course, there is still room for improvement. In fact, we now understand that regulatory reform is a never-ending policy task for all countries. It is like a race to improve the regulatory environment but a race which has no finish line. But the main message I want to underline is that Korea is one of the stars, that the OECD considers Korea as a very serious and successful reform country.

Now through its example and active participation, of course the Prime minister made reference to the importance of sharing these experiences across a wide range of countries, Korea stands out as an example of where that can be done. But Korea has also consistently been a strong supporter of the programme within the OECD itself.

As I mentioned a few moments ago, regulatory reform is not just a domestic issue and that’s why OECD members are so supportive of seeing regulatory reform take place in other countries. Other countries especially which are trading partners, or which are destinations for investment. In an era of globalisation, when the economies of nations are inter-connected through a multitude of exchanges of goods, services, investment, communications, technology, people, culture, regulatory reform in one country also fosters economic and social progress in its entire region and in the world at large. Regulatory
reform is also important in providing a level playing field for trade and investment. It can help to reduce disputes and frictions between countries and between regions. Some have called it a vaccination against and a remedy for economic downturns.

During the 1990s, both APEC and the OECD countries had recognised these benefits. They knew that regulatory reform was critical and in September 1999, in Auckland, the APEC heads of state accepted the Principles to Enhance Competition and Regulatory Reform. And on their side, the OECD members had adopted in 1997 a common set of principles on regulatory reform and made a commitment to continue to implement reform in order to boost productivity, investment, and innovation. Both the OECD and the APEC principles recognise the importance of parallel efforts to strengthen competition policy, open markets, and improve public sector performance and corporate governance.

Eighteen months ago, in Singapore, APEC and the OECD began to work together on this fundamental issue in order to build capacities to implement quality regulation and to promote that implementation. With the support of China and Mexico two further workshops were held, culminating in yesterday’s programme which took place here in Korea. And this represents a very intensive dialogue about regulatory reform.

Well, one might ask what have we accomplished through all this talk? Well I believe we can point to several important outcomes.

First, our dialogue has deepened understanding of how regulatory reform can contribute to efficient markets and good governance and how to implement it.

The main countries in the region have shared their experience and ideas.

We have agreed upon some very important lessons:

The importance, for example, of establishing and enforcing adequate rule-making procedures. These should provide for consultation with regulated parties and ensure proper assessment of future impacts.

Also the need to avoid conflicting relationships between economic regulators and competition authorities.

Also the urgent necessity to set up efficient and transparent customs procedures to benefit from globalisation, a point raised by the Prime Minister.

Thus we are now proposing to take our joint work a very important step further by launching a Second Phase of the APEC-OECD Co-operative Initiative during 2003 and 2004. The principle aim would be to prepare an integrated checklist of regulatory reform.

Now this integrated checklist would function as a self-assessment tool for all APEC and OECD members. And it would help them to monitor progress, and ultimately it would help them to maintain the momentum for reform in APEC and OECD economies. We propose that this checklist should be presented to the respective APEC and OECD executive bodies in the year 2005.

Later today – and in the coming weeks – we will have more time to discuss and elaborate our work programme for the next two years. I am aware that our goals are ambitious and I know that a great deal of hard work lies ahead. But I am also convinced, as we all should be, of the benefits of those efforts. A joint approach to regulatory reform is central and it is needed to create strong foundations for sustained growth.
In the next two years, the Co-operative Initiative will also continue to be a platform for discussion and exchange of information. I spoke a moment ago about the benefits that the APEC-OECD Initiative has achieved. But I did not mention one that might just be the most important. We have now created among us a network of reformers, comprising practitioners, and stakeholders from business, academe and organised labour – reformers from North and South America, Europe, Asia and Oceania.

No one should pretend that regulatory reform is easy and I know this from personal experience. When I was a minister I referred to at the outset, when I was a minister in the Canadian government in the early day of the 1980s, the then Prime Minister, Pierre Trudeau asked me to assume responsibility for regulatory reform. I don’t recall any of my cabinet colleagues being jealous of that assignment. Nor do I recall having been very successful beyond establishing a theoretical framework which would never win out over vested interests with political clout. There will always be pressure from such interests to slow reform or even to abandon it altogether. And some segments of the population may also be fearful about the impact of reform especially if they perceive – remember perceptions in politics are realities, – if they perceive that the safety and security of the public, might in some way be affected. But today I am pleased to report that the situation has evolved in a very positive way for reasons which I mentioned at the outset. Governments recognise that regulatory reform which supports open liberalised markets is essential for economic growth and social progress and hence they looked to the OECD to provide expertise which in turn can be marshalled to overcome vested interests in the greater interest of the public good. But this is work in progress and we see how difficult it can be to introduce regulatory reform in some of our member countries today in politically sensitive areas, labour markets being an obvious example.

Well the APEC-OECD Initiative with this network of reformers will be an invaluable source of ideas, experience, and encouragement to each one of us as we work to accomplish reform that will hopefully break down those barriers of vested interests to the benefit all of our countries, our regions and to the benefit of the global economy.

I can assure you that in this field OECD is committed to working with its Membership and with APEC to this end. And I hope to be able to come back in two years time and review I hope very positive results.

I thank you very much for your attention.
Your Excellency Prime Minister Kim Suk Soo, Secretary-General Johnson, distinguished colleagues, ladies and gentlemen,

The increased connectivity between people and economies, particularly during the last century, has helped build our global economy; it has increased trade and enhanced the lives of our citizens.

The size of this global economy has continued to grow. Each day our people contribute to economic growth by taking part in the trade of goods and services – both in the domestic market and across the borders of our economies.

By trading across our borders we strengthen domestic economies, we facilitate the environment for increased competition and erode monopolies, and we provide the prospect of choice to business and personal consumers. But most importantly, increased trade and exchange translates directly into job creation and higher living standards.

However, despite progress in breaking down explicit barriers to trade, and despite advances in technology, communications and transport, we still have a lot more work to do in harmonising the regulatory systems that govern and safeguard our societies.

Some of the main obstacles to facilitating more open trade arise from a lack of information on best practices in deregulation.

Red tape, bureaucratic confusion and process incompatibilities between regulatory regimes inhibit the flow of goods and services. These complications undermine investment potential and in the end hamper economic growth.

This lack of regulatory cohesion comes at great cost to the men, women and children of our economies. Our people pay more for goods and services, face diminished employment prospects and do not enjoy the opportunities to reach their full economic potential.

For recipient-investment economies the dangers are even more troublesome. Restrictive regulations undermine the ability of an economy to attract the foreign direct investment required to build industries and create jobs.

For us at APEC, economic deregulation lies at the heart of the goals stated in the Bogor declaration that was adopted in Indonesia in 1993. This declaration laid out our goal to achieve free and open trade and investment in the Asia-Pacific region. The target year of 2010 was set for developed member economies, and 2020 for developing member economies.

Since the adoption of these goals, APEC economies have agreed on a number of measures to enable us to meet the 2010/2020 goals, and facilitate open and fair trade.

For example, the APEC Competition Policy and Deregulation Group was created to formulate a more co-ordinated approach for member economies, and to share information, research and dialogue. There were two reasons for this: First, to increase the transparency of existing competition policies and deregulation processes, and secondly, to provide advice on implementing competition and deregulation policies within our region.
In harmonising regulations between economies there is clearly a balance that must be struck. Many of the regulations that are in place are there for the social protection of our people. Certainly in the past some regulations were implemented as a barrier to competition, while some regulations are just outdated relics of the past. It is these latter examples that must be removed, while the regulations designed for social protection are harmonised between our economies.

The APEC-OECD Co-operative Initiative on Regulatory Reform supports this very purpose.

These three workshops have strengthened the already healthy relationship between the OECD and APEC at an institutional level. They have also provided an avenue for the exchange of valuable information and dialogue on the reform experiences of OECD and APEC member economies.

From an APEC perspective, a core function of our operations involves enhancing capacity building efforts to assist the current deregulation process within each member economy. Through these workshops we hope to identify more of the tools required to dismantle regulatory inconsistencies and impediments.

Besides being an indispensable activity to achieve APEC’s free and open trade and investment goals, the APEC-OECD Co-operative Initiative also contributes to the Strengthening the Functioning of Markets mandate from APEC Leaders.

This mandate was based on the understanding that the more competitive and transparent a market is, the less distorted it could potentially become. This concept implies that in a competitive environment, open observation of the main variables will provide accurate information for investors, producers, consumers and government.

This will result in more accurate and accountable decisions on investment, production, consumption and industry regulation. This is particularly true for small and medium enterprises which often lack the resources to compete in an environment of stifling regulations.

Since 2001, APEC has supported our joint APEC-OECD workshops by providing resources and funding from the Trade and Investment Liberalisation and Facilitation special account.

For 2003, Mexico has already submitted a project proposal through the proper channel in APEC so that we may continue these workshops over the following year. This funding has since been approved from working level to the Senior Official level, and we anticipate will be approved by APEC Ministers next week in Los Cabos, Mexico.

At APEC, we look forward to the next round of meetings and workshops to be held as part of this Co-operative Initiative. There is a great wealth of knowledge and ideas we can all share based on our collective experience.

The potential we have before us at this forum is great. All delegates to this series of meetings and workshops, from many economies around the world, have worked together to effectively identify regulatory impediments to trade. Now the task before us is to act on the issues we have identified, and to implement programmes to overcome what we describe as “distortions of economic potential.” One of the best ways we can do this is to continue to build on the strong working relationship that has developed between the APEC and OECD groups of economies.

We are confident that these APEC-OECD meetings and workshops have identified actions and initiatives that will deliver real benefits. These benefits will have real meaning for business people, investors and the more than three billion people who live in our combined economies.

Thank you.
Yukio Yoshimura, Vice president and Special Representative, Japan, World Bank

Distinguished delegates and guests,

It is a great honour for me to represent the World Bank to deliver a speech on regulatory reform which is one of the leading policy objectives of our times.

As we all well know, regulations comprise a vast spectrum of rules that impinge upon virtually all aspects of our lives. The volume, quality, convenience, diversity and pricing of communications services is as much dependent on the regulatory framework as is the quality and pricing of health services. In recent years, it is the gradual pruning of regulatory controls along with scientific advances that have led to the progressive integration of the global economy by promoting trade, the circulation of capital, migration and the diffusion of technologies. This integration has in turn generated further pressure for regulatory reforms for a variety of reasons.

First, the stimulating of certain activities by removal of some regulations has created an appetite for further de-control. For example, the deregulation of trade has led to a vast surge in the international flows of goods and services which has aided growth and underlies the impetus for further trade liberalisation.

Second, closer interaction among countries has focused attention on the differences in regulations and spurred comparative analysis. Such comparative assessment by highlighting the strengths and weaknesses of both regulatory systems as well as of individual regulations motivates the continuing effort to improve the regulatory framework.

Third, as the economic and social links among nations have multiplied and tightened, the advantages of harmonising rules and adopting common standards have become steadily more apparent. This can contribute to market efficiency by minimising transactions costs and lowering entry barriers.

In the balance of my address today I want to concentrate on three areas of regulatory reform that point both the opportunities that can be within our reach and the pitfalls to be avoided. The three areas are (i) capital account and financial sector liberalisation, (ii) the deregulation of network industries such as electricity, transport, and telecommunications; and (iii) the harmonisation of regulations among countries. Arguably these, along with trade reform, are at the top of the regulatory reform agenda and, moreover, are uppermost in the minds of policymakers.

Let me start with the liberalisation of the capital account and the financial sector. The importance of regulatory reform in the financial sphere has been reinforced by a series of crises among which the one that swept East Asia five years ago was one of the most damaging. That crisis and its aftermath taught us five lessons. First, we now better understand the centrality of the financial sector for the stability and growth of an economy. A weak, uncompetitive, and mismanaged banking system and underdeveloped financial markets can lead to the misallocation of vast amounts of capital, can retard the entry of innovative new companies and make countries more vulnerable to crises.

A second lesson brought home by the crisis is that partial de-regulation of the capital account and of the financial system gives rise to many uncertainties. It creates a situation when neither market forces nor regulators are in control. When checks and balances are weakened, the likelihood that dysfunctional practices will proliferate is much greater; practices that sow the seeds of a crisis because they sharpen the perception of risks and make investors nervous. And in an integrated world environment they raise the possibility of sudden outflows of funds in response to even a minor incident.
A third lesson, once again driven home by the crisis, is that de-regulation requires advance planning and preparation. While the problems of market failure, of moral hazard, and of asymmetric information have been well known for some time, also frequently rehearsed are the advantages of sequenced deregulation and prior building of institutional safeguards appropriate for a deregulated environment. However, as we discovered in the 1990s, once countries embarked upon deregulation, the euphoria attendant upon the early and positive returns deflected attention from the hard work of careful sequencing and building of institutional supports for market forces. In the absence of these checks, heavy and indiscriminate short-term borrowing by finance companies, banks, and industrial firms weakened their balance sheets so that when the crisis hit, currency and maturity mismatches gave rise to serious problems for the affected sectors. As a consequence, the crisis suspended questions over the wisdom of deregulating the financial system and freeing the capital account.

The final lesson I would like to touch upon, relates to the liberalisation of the capital account. The evidence that has accumulated to date suggests that there are longer-term gains from the closer integration of national with global capital markets. These accrue by way of increased availability of capital, greater competition, the diffusion of new instruments and technologies, and lower interest rates. However, it seems that the returns are more modest than they appeared during the 1990s; they are realised over a lengthy period and to a degree are counterbalanced by the risks of openness. The message to us is that financial liberalisation should proceed but countries must first ensure that an adequate regulatory framework is in place.

Let me now turn more briefly to regulatory reform of network utilities in sectors such as electricity, telecommunications, and transport. As you are well aware, until a little more than a decade ago, network utilities the world over were vertically integrated and frequently publicly owned entities, or private limited companies subject to close public regulation. The regulatory bodies sought to balance two sometimes conflicting objectives: they attempted to keep prices low so as to benefit consumers, but not so low as to discourage investment. Long and hard experience has shown us that striking an acceptable balance is extremely difficult; when regulators have tried to relate prices to costs, efficiency suffers. Alternatively, when they have linked prices to benchmarks, these are often set too high so as to allow inefficient and high-cost producers to survive. In the majority of cases, regulation has had a weak track record. Network utilities end up either charging excessive prices—or they have high operating costs, or a combination of low fixed prices and operating inefficiencies lead to a steady deterioration in production capacity and in performance.

Regulatory reform of networked utilities was long overdue. These are sectors that badly needed to be exposed to market-based competition, so as to raise efficiency, lower costs, improve services, and stimulate innovation. But as with the deregulation of the banking system and the liberalisation of the capital account, the dismantling of rules must be properly orchestrated and guided by clear objectives. Stripping away regulations that lead to de-integration and expose providers to competitive pressures does not by any means guarantee an improvement over a regulated environment. In fact, as we have learned, market forces even in the most highly developed economies can produce perverse or unwelcome outcomes.

The basic message is the same as with financial reform. Regulatory reform must continue however, it should aim not for the elimination of regulation but for fewer robust rules that subject utilities to market forces and at the same time equip the market with institutions that strengthen its functions. Markets are clearly not a panacea, but markets buttressed by rules that sharpen competition, improve monitoring, and augment disclosure are likely to be a significant advance over the tightly regulated and publicly owned utilities that were the norm in the past.
I noted at the beginning of my address that with greater international market integration the advantages of harmonising regulations and standards are increasing steadily not the least because such actions can reduce trade friction. For example, the harmonising of competition policies and their enforcement by the European Commission has begun curbing monopoly power, eroding price fixing arrangements, and encouraging the growth of more productive firms that in the past were held back by a plethora of regulations segmenting the European market.

An alignment of national rules as a part of regulatory reform should have a high pay-off over the longer term. As I see it, a harmonising of competition policies and focus on their performance would significantly reinforce the efforts at deregulating sectors within countries. Such a move in my view would ensure that regulatory reform leads to competition within an enabling framework of rules that span the breadth of a regional market such as in East Asia.

In summing up, I want to reiterate that the topic of this conference is of the highest importance for the performance of the APEC and OECD economies. The World Bank strongly endorses the efforts underway to reform regulation in the interests of efficiency, growth, and greater welfare.

In my address today, I have focused my remarks on a few selected areas while recognising that regulatory activities penetrate most if not all aspects of our lives. I chose to talk about the financial sector and the capital account, about network utilities and about the regional harmonisation of regulations because these deserve priority. Moreover, the substantial experience with regulatory reforms in each of these areas has been extremely fruitful in terms of lessons. In particular, it is vital for us to define the objectives of reform clearly, to take a comprehensive long-term approach to reform, and to harness market forces to the full. We should also make sure that deregulation is paralleled by the creation or strengthening of institutions that will allow the market to deliver outcomes much superior to those possible under earlier, tightly regulated regimes.
Mr. John Lintjer, Vice President (Finance and Administration), Asian Development Bank

I. Introduction

Good morning, ladies and gentlemen.

It gives me great pleasure to join this important conference on behalf of the Asian Development Bank. I would like to thank the organisers, and especially the Government of Korea for inviting us. We are glad to share some observations and experiences we have encountered in our work in Asia and the Pacific.

May I start by explaining why the Asian Development Bank puts regulatory reform so high on its agenda. This is because of the link with our overarching objective, which is combating poverty.

Poverty is one of the main challenges of our time. In Asia and the Pacific, tragically, nearly one billion people live in what I would call inhuman circumstances at subsistence level. Just enough income to live but no real chance to play an active role in society.

To contribute to poverty alleviation, ADB focuses its activities in Asia and the Pacific around the challenges of ensuring robust and sustainable economic growth; encouraging social policies that enable the less privileged to participate equally in development; and promoting the kinds of effective regulatory institutions and policies that are needed for good governance.

Poverty reduction comes through job creation and faster economic growth resulting in large part from private sector investment. Such development can provide a path out of poverty for millions of people. Most of the new jobs in an economy are created in the private sector and most of those escaping poverty do so via private sector livelihood.

The Asian financial crisis of 1997 exposed the weaknesses in the region’s financial systems (early opening of capital account without having appropriate financial structures in place), and highlighted the need for good governance, which is crucial to the success of deregulation and privatisation strategies. Establishing an adequate regulatory environment has been a crucial part of the process of reform that began after the crisis. The major role of regulation being to reduce uncertainty in society by providing a stable structure for interaction between individuals and organisations.

I would like to touch upon some of the regulatory reform items which we at ADB have found crucial in our operational work (in projects, programs, capacity building and technical assistance) and give some examples about achievements in Asia (mainly coming from the financial sector). The first subject I would like to cover deals with the objectives of regulation, secondly touch upon the structure of regulatory agencies and thirdly mention regulatory reform and good governance.

II. Objectives of Regulation

There was a time when regulation was viewed mainly as a way to deal with market failure and even to supplant the market. More recently, the concern of governments has shifted towards regulation that helps the market to function, while at the same time balancing efficiency and distributional goals.
In this respect, regulation should be seen as a form of Public Private Partnership (PPP). This implies that before the public sector takes on any regulatory action, lessons learned from experiences in other countries should be considered and international best practices should be implemented in the context of the specific country environment.

Building up public awareness by engaging, informing and educating the people is an important ingredient. Communication will lead to understanding and understanding will lead to public acceptability and confidence in regulatory reform. This, in our view, is the key success factor in a reform process. All concerned parties should be part of the process at an early stage in the cycle, understand and co-operate. For this to succeed, transparency is the key word.

Competition lies at the heart of the regulatory goals. But transparency does not come automatically with the furthering of competition. In effect, especially in the financial sector, information asymmetries are the order of the day. Therefore, regulatory reforms have to aim at expansion of disclosure requirements of market participants.

I have alluded to the financial sector because in the aftermath of the Asian financial crisis, this sector in many countries still suffers from undue regulatory constraints.

Asia has about the highest savings rate in the world. However, putting these savings to productive use is still hampered by constraints often in the regulatory area.

In some Asian countries, funds raised are used as a captive source of finance for the government budget rather than deployed in productive investment opportunities. The savings to investment transmission is hampered by constrained financial information and disclosure.

It is the role of government to create a conducive and transparent environment for investment through proper legal and regulatory infrastructure. Our host country, Korea, has shown new forms of public-private partnerships by restructuring the financial sector with the clear goal to improve the functioning of the markets. A new financial regulatory framework was put in place. The foreign presence in the banking sector has increased substantially. And Korea has progressed substantially in creating markets with free entry and exit. In that respect Korea has taken up a leadership role.

III. Structure of Regulatory Agencies

The structure of regulatory agencies is a key factor in the effectiveness and efficiency of market regulation. When designing a regulatory body, it is important to specify its independence and insulation from internal and external influences.

Any conflicts between legislative institutions and regulatory agencies must be resolved, with the separation of powers clearly specified and a system of checks and balance put in place. In this regard, I would like to cite a few examples of what has happened in some Asian countries in the past five years.

In the republic of Korea and Indonesia, central banks have been given operational independence and autonomy to prevent undue interference in monetary management and, in the case of Indonesia, ensure independence of banking supervision.

Particularly in Korea and Thailand, the often non-transparent relationships and financial transactions among different types of financial institutions had contributed to the financial crisis. Both countries have since adopted integrated regulatory or supervisory structures for the financial sector as an integral part of their crisis resolution strategies.
IV. Corporate Governance

The important lesson from the Asian financial crisis is that governance matters and that good corporate governance is actually the pre-requisite for a proper functioning of the financial sector.

Weak governance standards in several Asian countries still nowadays hamper the proper functioning of banks and institutional investors. It is not uncommon to find banks and investors to hold substantial holdings of shares in related entities, entities which are financed by the same banks. Funds are often utilised to further the interests of vested interests without a proper risk assessment. New regulatory and governance standards should therefore clearly separate various responsibilities and accountabilities.

Reforms have focused on strengthening the independence of the supervisory board and on the rights of minority shareholders. This is especially important in Asia because of concentrated ownership. Several Asian countries have now introduced codes of conduct that largely follow international best practices.

Accounting standards have to remain at the forefront of investor protection. In the Republic of Korea, legal changes have been made so that domestic accounting practices conform to international standards. Group companies are now required to compile consolidated financial statements. In Indonesia, initiatives have been taken to harmonise the Financial Accounting Standards with International Accounting Standards (IAS). In Malaysia, accounting standards are among the highest in East Asia and are generally consistent with the IAS. However, in many cases, issues of compliance and enforcement still have to be addressed.

ADB also plays an active role in the People’s Republic of China. Our strategy for the financial sector is to support the Government’s efforts in establishing a progressive policy and institutional framework, improving the legal and regulatory environment, facilitating its integration into the global financial market and enabling the financial sector to play an important role in PRC’s transition to a market economy. The scope of operations focuses on policy and institutional framework, and establishment of efficient infrastructure for the financial market. Most activities in the financial sector are through the provision of policy oriented technical assistance.

V. Conclusion

Regulatory reform and restructuring are crucial elements for economic development and poverty alleviation and will require continuous efforts. After all, national, regional and global environments will continue to change. Therefore progressing with adaptations is inescapable. This is the case for developing countries in Asia, but certainly not uniquely for them. It is also necessary for mature market economies. As soon as a country finishes one phase of reform, it needs to move on to the next phase. Both recent achievements and future challenges should be viewed in this context. The conclusion is that the remaining agenda for reform continues to be long and substantive. It is fair to say that especially in the financial sector (from which I have quoted some examples) regulatory reform, corporate governance and accounting standards will top the international agenda for the foreseeable future. To summarise: the first challenge will be to fully implement new regulations and where necessary enforce these. In that respect, early engagement in communication with civil society appears crucial. The second challenge is then to progress further in restructuring and regulatory reform.
All of us are confronted with these challenges, national governments, market players, civil society and international organisations. The Asian Development Bank reckons itself no longer as a mere financier, but as a promoter of policy reforms, a catalyst of development and a partner in strengthening institutional frameworks and stands ready to continue to support our shareholders in Asia and the Pacific in their crucial reform endeavours.

Thank you very much.
It is an honour for me to be here and speak on behalf of Mr. Cesar Almeyda, President of the Board of Indecopi, who was planning to attend this meeting and made all the proper arrangements, however at the last minute he had to stay in Peru. He sends his apologies and regrets not being present at this conference.

Probably some of you are asking why a developing and small country like Peru is doing in this High Level Conference, joining top representatives of such important institutions as the ones I just mentioned.

I guess Peru, and especially the institution I represent, INDECOPI, which is the short name for the Peruvian National Institute for the Defense of Competition and Protection of Intellectual Property, for which Mr. Cesar Almeyda is the President of the Board, has gained its place in this conference, for having been the link between the OECD and APEC economies. And let me explain why. Peru is a member of APEC since 1998, and Indecopi, one of its institutions, in the year 2000 assumed the challenge of leading the APEC Competition Policy and Deregulation Group or CPDG, by being its Convenor, as we call it in APEC terms.

When assuming the convenorship the APEC Principles to Enhance Competition and Regulatory Reforms, proposed in APEC by New Zealand, were already approved, and the task Peru had was to promote the implementation of those 4 principles within APEC member economies and different APEC Groups, like the Group in Services, Standards, Market Access, Trade Facilitation, etc.

When assuming this task, an informal meeting with OECD people, made it clear to us that OECD had also set up its principles on the subject, and was also working on their implementation, and the idea of working together was born.

But in mid 2000, this was only an idea, a wish, a hope to build something together, and ideas sometime stay in the same condition for years, however in the case of this idea it turned up to be true, and was implemented, and my institution Indecopi, had a lot to do with this implementation process, and that is why I can say, Peru has gained its space in this conference.

The Opening Conference in Singapore, April 21 and 22, was the first time representatives of both organisations gather under the same roof, marking the first implementation of this APEC OECD joint effort.

But we went far beyond our expectations, and more workshops followed, one in Beijing, another in Mexico and now our final one in Korea.

This explanation justifies why Peru, is here in this podium, but it does not explain why has Peru so much interest in devoting its scarce human and economic resources to be involved in the issues of regulatory reform.
To answer this I will have to explain briefly how Indecopi works. Indecopi is an autonomous government agency, in charge of several different areas, Competition Policy, Standards and Regulations, Corporate Restructuring, Antidumping and Countervailing Duties, Market Access, Consumer Protection, Trademarks, Copyrights, and Patents, these offices are in most countries separated under different government agencies or authorities. In Peru, a small developing country with very scarce resources, in order to save in administrative costs and to give political autonomy to decisions on those important subjects, Indecopi was created with all the tasks I just mentioned. Yes, indeed Indecopi is big, and has a lot of powers.

So, although Indecopi is not really a regulator, sets the pace for many regulations and is always looking from the competition point of view the actions taken by sectoral regulators. Indecopi has become an advisor and an educator in competition issues at all levels, government, businesses and consumers. And this educational and advocacy task assumed by Indecopi, urged us to learn more about a subject so difficult and with so many angles as regulatory reform.

That is why we devoted our scarce resources to this APEC OECD Joint Venture.

And now that the joint effort and the project presented to APEC by Peru, is coming to an end, we could ask ourselves, What have we gained from this project and this four meetings? What benefits can we say we have received?

First, the opportunity to promote the APEC Principles to Enhance Competition and Regulatory Reform, which are 4: Transparency, Non Discrimination, Accountability and Comprehensiveness,

Second, to get to know through this 5 principles the benefits of good regulatory practices and the costs of introducing, improvised and improper regulations.

Third, to reassure, that Regulatory Reform is a mean to obtain better economic results and to improve economic efficiency and thus, people’s welfare.

Fourth, to give a step forward in the discussion of regulatory issues, we know it is not anymore a discussion of the amount of regulation, it is not a discussion of the need for regulation or deregulation, it is no more a discussion if we should leave markets solve the economic problem or to have the government set the rules of the economic “game”. After this two years of this APEC OECD joint venture, the discussion on Regulatory Reform has reached a new level. The need for government intervention with regulations is recognised as important, people need regulations and request governments to enforce them, and the government has the responsibility to do it right, to choose that particular regulation that will have the desired effects and to implement it correctly and without doubts or special considerations, in other words, preserving the principle of non discrimination. And that is not an easy task, and as it has been discussed before, there is no a single recipe or specific way to do it. The particular circumstances should be taken into account, and the proper timing should be considered. This makes the task for government officials even more difficult.

The responsibility of enacting good and well oriented regulations is on us, the authorities, government officials, and we were interested in learning what do we need to have smarter regulations, or quality regulations or proper regulations?

Basically, three elements are needed, political decision, strong institutions and prepared and honest government officials.
The APEC OECD Co-operative Initiative has done a big job in giving us the elements to have strong institution, and in building capacity for our government officials, as well as in letting us know experiences on how to tackle corruption and dishonesty.

I am sure this initiative has been an important tool for capacity building to all of us. Some have learned more than others, but in fact, some came knowing less than others, so the field in the knowledge side is nowadays, more levelled. Those who have attended the workshops have learned from the experiences of others, and could go back to their economies to be part of those “prepared and honest” government officials that every economy needs. I can affirm without a doubt that nobody could say that the workshops were not useful, for many of us, the challenges on Regulatory Reform have been clearly set, and now is up to us to do something about designing better and smarter regulation in our own lands.

In that sense I am proud to say that the APEC OECD Co-operative Initiative on Regulatory Reform, has fulfilled with “honours” its objectives, and that Peru is very proud of having been a seminal part of it.

Let me take this opportunity to publicly thank, Mr. Armando Caceres, who was the one who made the initial negotiations with OECD, and put the idea on paper, and to Ms. Margarita Trillo, who had the task of making this idea a reality.

Thank you very much.
IV. REPORT OF THE RAPPORTEURS

ALI HADDOU

RAPPORTEUR FOR SESSION 1 ON ENHANCING REGULATORY TRANSPARENCY

Methodology of the summary

Participants discussed the nature and methods for enhancing regulatory transparency during a four hour session that included presentations from each of the participants, a session of questions and answers with the public, and a brief summary of conclusions by the rapporteur, which is presented here.

This summary organised the information presented and issues discussed into four major categories for the sake of clarity. These categories are:

1. The benefits of transparency
2. The definition of transparency
3. The obstacles to transparency
4. Ways of improving transparency

The content of the summary includes ideas presented by the different speakers and issues discussed with the attendees during the question and answer period, but it does not credit specific persons for their input. All speakers submitted written presentations or papers which can be consulted directly in order to determine the provenance of the ideas presented.

1. Benefits of transparency

Transparency is an extremely broad governance issue that affects virtually all areas of public policy, as it is a central element in the construction of a well functioning democratic society. Regulatory reform policy is no exception. Indeed, regulatory transparency contributes to the quality and the compliance of regulations, reduces the risk of capture and bias towards special interests, and empowers citizens by allowing them to gain access to information that enhances their decision making abilities as consumers and their possibility of participating in regulatory processes.

Public servants that have access to information from diverse affected or interested parties during the process of developing or evaluating regulations are more likely to make better decisions and produce higher quality regulations. Also, making government regulatory processes and corporate disclosure rules clear and open is essential for avoiding conflicts of interest, regulatory capture and outright corruption.
2. Definition of transparency

The OECD defines transparency as “the capacity of regulated entities to identify, understand and express views on their obligations under the rule of law.” Participants expressed the usefulness this definition, since the term transparency can be interpreted to mean many different things.

An important issue discussed was the distinction between public and private transparency. Generally when we think of transparency, the first aspect that comes to mind is transparency of government information and regulatory processes. However, recent events in the United States related to accountancy standards and information disclosure by private companies have weakened confidence in capital markets, not only in that country, but world-wide. The renewed interest in corporate governance regulation and standards clearly shows that transparency is not solely a public sector concern.

Regulatory transparency is also closely linked to international trade issues. Bilateral and multilateral trade agreements have for years addressed the issue of “behind the border” barriers to trade, and the importance of high quality, non-discriminatory and open regulatory systems. Participants indicated the pervasiveness of transparency issues in the Doha Development Agenda, for example.

Transparency thus encompasses not only the accessibility of regulations and information, and the processes through which they are produced or can be obtained, but also their degree of complexity and the level of coherence and compatibility with existing regulations and information, be they national or international, public or private.

3. Obstacles to transparency

Many obstacles to effective transparency were discussed. The sheer volume of information, regulations or obligations creates significant problems for effective compliance or citizen participation. Regulatory inflation makes it difficult to know which rules apply, and creates potential hazards in the form of duplicative or contradictory information or obligations.

Incorporated material (usually in the form of detailed technical standards or guides) can help improve transparency by reducing the complexity of documents, but can also create a series of problems. Materials incorporated are usually not meant to be mandatory, and referencing them in their entirety, while attractive for the sake of legal conciseness, is not usually wholly appropriate. In addition, these materials are generally developed and updated by private parties, which can create confusion as to the appropriate versions of the documents, or even undermine transparency by allowing de facto private modification of legal obligations.

One of the major criticisms of increased transparency is that it can hamper or slow down government activities, and thus create significant costs to society. Many people are concerned over the lack of manoeuvrability related to transparency procedures (to deal with emergency situations, for example). While transparency allows for greater predictability and certainty, it also reduces flexibility of government or private action. In regulatory circles, there is often strong opposition to transparency based on these grounds.
The costs of transparency are often related to the formal procedures associated with it. Participants and discussants stressed that one of the key issues in establishing effective transparency was the balance to be achieved between formal and informal information and consultation mechanisms. Even when formal mechanisms are put in place to give the appearance of transparency, it does not mean that citizens will have their opinions heard or taken into account in decision making processes. Conversely, certain authorities or private organisations may be very transparent and seek balanced viewpoints from many sectors without having very formal transparency mechanisms in place.

Also discussed during the session was the fact that opaqueness and lack of transparency hinders competition. Transparency makes it difficult for governments to use unwritten regulations or informal controls to limit or manage market participation. In addition, it limits the disproportionate influence of large players which have greater resources to devote to information retrieval and lobbying. These influential players therefore can sometimes act as obstacles to transparency in order to skew the balance of regulatory action in their favour.

Related to this problem is that of regulatory capture and corruption.

Authorities are less likely to succumb to pressure from vocal interest groups if their decisions and decision-making processes are transparent and decisions must be justified (such as through regulatory impact analysis). Also, lack of transparency and accountability can obviously lead to unchecked conflicts of interest and outright corruption of public servants or corporate officers.

4. Ways of improving transparency

For the private sector it is clear that transparency can be improved by establishing clear and explicit governance standards. These may be developed by government decree or by private regulatory bodies or associations.

The menu of options for national government is very long indeed and different countries have gone about it in different ways. During the presentations, the specific cases of the European Union, Korea and Thailand were discussed.

The European Union’s main strategy for promoting transparency consists of a three-pronged process involving the simplification of rules and regulations, the mandatory impact assessment of proposed measures, and the establishment of minimum standards for consultation in the regulatory process.

Korea’s strategy rests mainly on the development of an e-government programme that creates new opportunities for participation and involves the codification of rules and procedures; an explicit anti-corruption policy (presentation of public servants’ assets and liabilities, ethics codes); and the creation of legislative administrative procedures requirements (specific time frames, plain language drafting, standardised review processes and consultation of affected parties).

Thailand has embarked on a counter corruption programme in which regulatory transparency plays a pivotal role. The programme stresses the importance of civil society’s participation and the periodic review of results as important tools to achieve success.

The role of the WTO Doha Development Agenda in promoting transparency at the international level was touched upon, particularly with regard to trade facilitation through the harmonisation of standards, the publication of information, the creation of enquiry points, and the establishment of rule-making, public consultation and appeals procedures.
Participants discussed at length ways to attack the dilemma of “formal vs. real transparency” and concluded that a solution may lie in the use of a mix of transparency mechanisms, including publication of proposals, general question and answers, focus groups, and notice and comment procedures. While using diverse mechanisms may increase costs, it also increases the chances of gathering information from a greater number of affected parties. Authorities must evaluate the costs and benefits of incremental mechanisms, while maintaining a minimum standard of transparency.

For countries currently lacking appropriate transparency policies, the question of the speed of implementation of new obligations is relevant. Korea, for example, adopted a “big bang” approach that involved rapid and broad implementation of transparency obligations, tools and procedures, raising the priority of the issue on the government’s agenda. This type of approach may be useful to counteract the natural resistance to transparency that some public servants may exhibit because of the costs and loss of administrative discretion involved. In Europe on the other hand (at least at the supra-national level) the approach has been more gradual, allowing transparency tools to be fine-tuned and implemented more slowly. This type of approach places more emphasis on the effectiveness of individual tools and policies.

Agreement was reached with regard to the need for minimum standards on transparency. These should include clear content, adequate information tailored to participants needs, sufficient time for information to be processed (6 to 8 weeks), and use of web-based and other IT mechanisms (while being careful not to exclude less affluent sectors of society), while instituting adequate safeguards with regard to disclosure requirements in order to ensure confidentiality of personal information. The breadth of efforts was also deemed important; mechanisms should not solely address business interests, but also broader societal issues relating to consumer welfare, environmental protection and sustainable growth.

Because the creation of appropriate transparency mechanisms can generate significant costs, it is necessary to carefully consider the financial and human resources, and the time involved in the processes. There is no definite answer as to the correct amount to be invested, but it there seems to be a clear difference in the time frame of materialisation of costs and benefits. The implementation of obligations relating to pre-publication of proposals, notice and comment procedures, and other tools imply significant up front costs. The benefits of such obligations, on the other hand, may not be easy to quantify and may be greater than the sum of the benefits obtained in specific regulatory proposals. In other words, there is most likely a general benefit that derives from the mere existence of transparent policy mechanisms, in the form of increased citizen interest and participation, and civic responsibility. Unfortunately, this benefit may only materialise in the medium to long term, as a culture of regulatory transparency begins to take root. This may imply that costs exceed benefits in the short term.

As a result, one of the most important elements in implementing an effective policy of regulatory transparency may be the existence of clear and sustained political support. The cultural shift towards transparency requires sufficient institutional and political backing to overcome short term costs and bureaucratic inertia. In addition, active and sustained efforts in the implementation of obligations are necessary. Creating a transparent regulatory environment is a process, not an event. The publication of administrative procedures or access to information acts with clear transparency obligations may be useful first steps, but the cultural shift needed requires constant nurturing, and involvement by civil society. The public sector should probably be the first to set the example, but in order to achieve long term success, consumers, corporations and civil associations must play an active role based on the tenets of participation and co-responsibility.
SESSION II: REGULATORY REFORM IN KEY ECONOMIC SECTORS

IAN HARPER

RAPPORTEUR FOR PANEL 1 ON FINANCIAL SERVICES

In the context of financial market deregulation, three key themes are important:

− There is a long-standing evolution from financial institutions to financial markets. The migration from institutions towards markets requires complete re-thinking and re-design of financial regulations. Financial services are information-intensive services. The revolution in information and communications technology has fueled subsequent changes in financial regulatory systems.

− The transition from direct controls to market-oriented intervention has placed greater emphasis on disclosure & governance rather than direct controls, and increased the need for reliable financial & accounting information.

− Traditionally, greater weight was placed on stability rather than efficiency considerations. In the 1960s and 1970s, many countries found that stability came at too great a cost in terms of efficiency. So the trade-off between efficiency and stability was re-cut. There is an on-going need to re-balance efficiency against stability.

When we look back on the history of liberalisation in the financial sector, we note that:

− liberalisation was forced by the growth of substitutes for traditional regulated finance, following improvements in technology, globalisation and financial innovation.

− A convergence of public and private interests to deregulate the financial sector is one of the key reasons why financial services were amongst the first to be deregulated in many economies.

− Removal of direct controls left banking systems exposed to systemic instability. Many OECD countries were subsequently obliged to introduce prudential controls.

Deregulated financial systems have produced:

− more competitive and innovative financial systems;

− greater choice at lower average cost to consumers;

− enhanced productive and allocative efficiency;

− more jobs and higher value added from financial services.
However, financial liberalisation has also produced greater instability, with financial flows in both international and domestic financial systems becoming more volatile. There is a greater risk of insolvency, which demands careful management in the interests of systemic stability.

On-going problems of market failure in the financial sector have required:

- New prudential regimes to manage systemic risk.
- New access regimes in ‘bottleneck’ areas such as payments systems and credit card systems.

Reform of regulators has also been required:

- Need for greater co-ordination & communication amongst regulators has arisen because the distinctions among banking, insurance, and funds management have blurred.
- ‘Integrated’ financial regulators are replacing ‘stand-alone’ regulatory agencies in many countries as a way of dealing with convergence in financial systems.
- Relationships between competition authorities and financial regulators vary across regimes. The incidence of mergers in financial systems makes this relationship a special focus of concern.
- Attempts are being made to enhance the independence of regulators from government. Policy autonomy as well as independent, off-budget funding are being considered. Independence from government should enhance institutional effectiveness.

Financial reform is on-going:

- Continuing evolution of financial systems drives on-going reform of financial regulation. One of the main reasons for the rapid evolution of the financial sector is that the ICT (Information and Communications Technology) revolution drives financial innovation. Regulation must be ‘smart’ enough to anticipate, or at least adjust rapidly to market developments.
- Globalisation of financial markets requires continuing efforts to co-ordinate regulatory activity on an international basis. Current examples include the Basle Committee on Banking Supervision (BCBS), the International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS).
CARL WILLNER

RAPPORTEUR FOR PANEL 2 ON THE TELECOMMUNICATIONS SECTOR

The past decade has seen a major transition in telecommunications markets, away from the state-owned network and service monopoly paradigm to competitive markets with privately owned or partly privatised providers in many countries. During the telecommunications panel discussion, we reviewed telecommunications regulation and competition in four economies in different stages of development, Australia, Korea, France and China. In all of these economies, competition has been introduced in telecommunications networks and services and regulatory regimes have changed to further this transition. There have been some important similarities as well as differences in how governments have implemented these reforms.

1. Principal Steps Taken to Introduce Competition

In all of the economies we have considered, telecommunications reforms have been introduced gradually rather than through an immediate flash cut to full competition and privatisation. Generally there has been some degree of transition, for example from monopoly to a duopoly or limited competition regime, or with opening of only some services to competition (e.g., value-added, mobile, data, long distance) followed by an opening to full competition with more open entry. This is viewed as providing the incumbent some opportunity to adjust to market opening and engage in rate rebalancing, as well as curbing excessive investment at the outset and providing more security for the initial new entrants as they build out their networks. Australia’s progressive opening of its telecommunications market, moving from a managed duopoly in fixed services between 1991-1997, to an open competition regime from 1997 to present, clearly reflects this process. However, this progression has not been strictly followed in all economies. France, which had already opened some services such as value-added and data to competition during the 1990s, moved directly from a monopoly in infrastructure and voice services to open entry in 1998 along with most other European Union member states. Korea, which began the market opening process with value added services in 1990 and international long distance in 1991-92, and moved to include mobile in 1999, had a legal duopoly at one time in mobile, but did not have a formal duopoly in fixed services although one existed in practice at various stages of the process. China, which began opening its telecommunications markets with value-added services from 1993 onward, is still in a stage of limited competition with respect to both fixed and mobile services. An open entry regime can more readily be implemented in fixed than in mobile telecommunications services, given the need for the government to allocate a definite amount of mobile spectrum and determine how it will be licenced. However, it is possible to sustain several mobile competitors in many economies. China still has a mobile duopoly, while France has three licensed mobile competitors, and Korea and Australia have both expanded the number of licensed competitors from two and three respectively to four (Korea has contracted from five as the result of a merger).

Separation of the operation of the incumbent’s network from the regulatory role of the government has been consistently recognised as an essential step to ensure a competitive environment and has been implemented to a significant degree in all of the economies discussed. In France and in Australia, the separation of the telecom regulators – the Telecommunications Regulatory Authority (ART) in France, and the competition-focused Australian Competition and Consumer Commission (ACCC) and technically-oriented Australian Communications Authority (ACA) in Australia – from telecommunications operators is well established, though the telecommunications ministry in France still retains some important responsibilities for oversight of the retail offerings of the incumbent France Telecom that remain
effectively though not legally monopolistic. In Korea, the telecom sector-specific Korea Communication Commission (KCC), which has in the past played more of an advisory role, has recently been given more powers and greater separation from the telecommunications Ministry of Information and Communication (MIC), though it is still under the supervision of MIC to some extent and not fully separate. Until 1998, the Chinese telecom ministry MPT was both the regulator and the network operator controlling China Telecom, creating serious problems for new entrants such as Unicom, but a formal separation between the Ministry of Information Industry (MII), the new ministry with regulatory authority over telecommunications, and the network operator has now been achieved. Although most of the economies we considered have retained majority government ownership of the incumbent network operator – and China still has a unique model of state ownership of multiple providers including ones in competition with each other – Korea has recently taken the next major step of full privatisation, which serves to promote investment and ensure regulatory neutrality. Ongoing public ownership is recognised in Australia as creating a tension between social and economic objectives and further privatisation is eventually contemplated. France and China, however, remain committed to a model of government ownership for an indefinite period. Development of some forms of asymmetrical telecommunications sector-specific rules governing the transition to competition and constraining the market power of the incumbent has also been consistently regarded as essential. It is common to impose greater obligations, with respect to network access and retail price regulation, on the incumbent network operator than on new entrants. Australia, Korea, and France all rely on an asymmetric regulatory model focusing on the market power of the incumbent operator, while China, which continues to regulate new entrants as well as incumbent operators, nonetheless has some differences in regulatory treatment. Practice varies, however, on the extent to which those sector-specific rules are enforced primarily through a sector-specific regulatory agency as in Korea, China, and France, or through a competition agency that has both general responsibilities and specific ones for telecommunications as in Australia (where there is also a sector-specific telecom agency dealing with technical issues).

2. **Problems Encountered in this Process**

- **Insufficient enforcement authority of the regulator has been a common concern.** It is necessary for the regulator to have adequate powers to resolve disputes over interconnection, access to the incumbent’s network and other competitive issues quickly, without administrative delays or prolonged judicial review, and to have access to sufficient penalties and other remedies to be able to compel compliance and punish misconduct. Particular concerns about adequacy of enforcement authority have been encountered in Australia and China, and “soft regulation,” relying on industry participants to negotiate a resolution to disputes, does not appear to have worked well where it has been used.

- **Integration of various vertically and horizontally related lines of business in the incumbent operator has led to competitive concerns, but there was not a consensus on the best solution.** China has undertaken the most dramatic reform, breaking up its incumbent operator China Telecom into five companies based on lines of business (mobile, satellite, paging and fixed network) as well as geographic areas (northern and southern provinces for the fixed network). This has been used in part to encourage new entrants, for example by allowing the paging business of China Telecom to be acquired by a new mobile competitor, Unicom, and by allowing the northern part of the fixed network to be acquired by a new Internet backbone provider, Netcom. Apart from China, the economies considered have not opted for structural separation of the incumbent telecom provider. Although it is recognised that accounting separation is not likely to be as effective as structural separation in protecting against competitive misconduct, structural separation also potentially imposes significant costs and a political consensus to require it can be difficult to achieve. Legally, structural separation can
also prove harder to impose after the incumbent is partly privatised and is no longer under the complete control of the government. It is also important to recognise that there are different degrees of structural separation, ranging from a complete divestiture creating distinct companies as in the break-up of AT&T in the United States, to mere separation of a company into distinct subsidiaries that continue to be commonly owned. The latter type of separation does little to change economic incentives, but may further detection of misconduct. In Australia, the continuing dominance or market leadership of the incumbent Telstra across multiple service sectors (local, national and international long distance, mobile, cable TV service, broadband, Internet service) is recognised as a continuing competitive problem, which has given rise to some regrets about not pursuing more extensive separation at the outset of competition, but structural separation does not appear likely now. Resistance to structural separation arises partly from a recognition of loss of efficiencies, and partly from political opposition from labour and from the government itself, which as the majority owner of Telstra expects to realise more from the eventual privatisation of an integrated company. Although France’s incumbent France Telecom is also integrated into multiple telecom sectors much as Telstra in Australia, this vertical and horizontal integration is not regarded as such a significant problem by French authorities, who regard integration as giving rise to economies of scale and scope for FT. French authorities have not seen evidence that competition has suffered from the continued integration of FT. Korea separated the incumbent providers of mobile and fixed services during the transition to competition, but did not pursue further separation of fixed networks or services carried over them.

- Local markets are the most resistant to development of fixed network competition, and some degree of unbundling of the incumbent’s network is coming to be accepted as a means to promote local competition. While a facilities-based competitive model has worked well in long distance services and mobile services, in local markets the limitations of relying solely on facilities based competition have now been widely recognised. Three of the four economies considered, Australia, Korea and France, all initially opted for a facilities-based model but have now required some degree of unbundling of the incumbent’s local network, particularly with respect to local loops, to promote local fixed line competition. Korea and France both took this step in 2001, after having authorised facilities-based local competition in 1999 and 1998 respectively, while Australia took this step after reforms to its telecommunications law in 1997 and several years of an authorised facilities-based duopoly. In Korea, the local market share of the incumbent KT remains at 96.8%, as it has only recently been subjected to an unbundling obligation. In contrast, in Australia the local market share of the incumbent Telstra is 95.6% based on ownership of lines used to provide service, but 83.2% for retail sales of lines in service taking into account the effect of unbundling and resale.

- Some governments continue to express concern about the effects of unlawful competition, but this has not been perceived as a widespread problem in most economies. China has seen the most extensive network development of any of the economies considered, but at the same time has been concerned about unlawful price competition, in the form of price discounting by competitors at the expense of the incumbent. All competitors’ prices remain regulated to some extent in the Chinese system of limited competition although most regulation is directed at the incumbents, Telecom and Netcom. China has been concerned that low prices may hurt development and fail to cover costs, and continues to view frequent instances of “unfair” methods of competition as a problem, seeking to prevent “excessive enthusiasm” and maintain gradual and steady growth. Other economies considered have not viewed price cutting by smaller competitors as a concern, given the benefits of such competition to consumers and the lack of market power of the new entrants, and the prices of the smaller competitors usually are not regulated in any case.
3. **Direction of Regulation/Re-regulation**

In the transition to telecommunications competition, there has not always been a steady progress toward less regulation, and in some areas more regulation – not across the board, but targeted at specific problems – has been seen as necessary. Australia, in particular, has found a need for additional regulation to protect service quality and consumers in rural areas, as well as to ensure access to the incumbent’s local loops and to give the regulator additional ability to resolve access and interconnection disputes. Proposed legislation would require the ACCC to publish access terms instead of merely waiting to arbitrate disputes, would reduce opportunities for appeals from the ACCC’s decisions, would enhance accounting separation between the businesses of the incumbent Telstra, and would abolish an industry self-regulatory body.

In mobile services, which usually are not subject to price regulation, there has been a reintroduction of controls over terminating prices on the major operators in France as well as other European countries to ensure cost orientation.

4. **Changes to Regulation of Bottleneck/Essential Facilities**

Increased support for unbundling of the incumbent’s local fixed network, providing access to the local loop, has been an important development in the treatment of essential facilities. This development has been notable among economies, such as Australia, Korea and France, where governments initially focused on promoting facilities-based competition but recognised that little progress was being made by new entrants at the local level. At the same time, it is often considered important that competition involve facilities based alternatives and not merely services operated over the incumbent’s network, and Korea, in particular, was concerned that mandatory resale of networks during the transitional stage would have hindered network buildout and did not require local unbundling until after seeing the ineffectiveness of relying entirely on facilities competition in local fixed service markets. Significantly, Korea found that facilities based competition developed more in broadband than in traditional local telephony and attributes its leading position in broadband penetration partly to having followed this approach of initially promoting facilities-based entry, which encouraged the incumbent to develop its own broadband offerings in response to use of cable television facilities to provide such high-speed services. It has also been recognised by several governments in these economies that the process of providing access to the incumbent’s facilities must be simplified, and incumbents must not be allowed to prolong access disputes. Negotiated or “self-regulatory” arrangements have not been effective, and the regulator must have adequate power to resolve disputes. Without such authority, incumbents can leverage their local bottlenecks into new services, as France Telecom, for example, has been able to do with ADSL (Asymmetric Digital Subscriber Line) broadband services. At the same time, promoting additional local entry can give the incumbent incentives to innovate and modernise its own facilities and services, as supported by examples from Australia (Telstra’s buildout of a Hybrid Fiber Coaxial network after Optus began to develop the same type of network), and Korea (Korea Telecom’s expanded offering of broadband after a new local entrant began to offer such services).

5. **Price Regulation of Monopoly Services**

There is not yet a consistent pattern. Accepted modes of regulating retail prices for monopoly services differ from those used to regulated wholesale access to interconnection and network facilities. Differing regulatory methods may take into account different levels of competition, as well as concern about the potential distortionary effect of regulatory tools on markets. Australia has the clearest mode of regulation of the economies considered, with price caps used to regulate retail prices for local calls, while TSLRIC (Total Service Long Run Incremental Cost) pricing is used for provision of originating and terminating
access and unbundled local loops. Korea, which has used FDC (Fully Distributed Cost) pricing to regulate the incumbent’s charges to other providers, is moving toward LRIC (Long Run Incremental Cost) pricing as well for interconnection charges beginning in 2004. The government must approve the incumbent’s retail tariffs, and Korea has announced a plan for price cap regulation of the incumbent’s retail local telephony services beginning in 2001. In France, while the independent regulator ART has authority over prices for interconnection and access charged by the incumbent to competitors and applies cost-oriented pricing standards as called for by the European Union’s regulations, the government telecom ministry still controls the retail tariffs for services in which the incumbent France Telecom remains dominant, as FT is majority owned by the government. In China, retail service prices are still regulated where effective competition is lacking, based not on a single transparent test but on a mixture of cost concepts and other factors such as perceived needs of the industry; however, unlike the other economies, prices charged between the incumbent and other competitors are not regulated.

6. **Effects of Competition and Innovation**

   Competition is generally acknowledged to have led to huge changes in choices available to consumers in telecommunications services, substantial decreases in prices, considerable expansion in service penetration, and important innovations in services and facilities. Significant examples include the development of the Hybrid Fiber Coaxial (HFC) networks of Optus and Telstra capable of providing cable TV and Internet services in Australia, the rapid development of broadband services in Korea, which is now the world’s leader in broadband penetration, and the enormous development of fixed and mobile telecommunications networks in China. It is generally agreed that competition has brought prices down substantially, particularly in long distance and mobile services, but not all consumers have benefited equally from this development, and low volume residential users who use primarily local services may end up paying more for services as a result of rate rebalancing by incumbents, a problem identified in France and Australia. There is an appropriate role for government in preserving universal service of acceptable quality for such users, through transparent and non-discriminatory mechanisms that do not distort competition by favouring the incumbent.

7. **Flexibility of the Regulatory Regime**

   Insufficient flexibility has been a concern in some regulatory systems, particularly in Europe, where there is an overlay of transnational regulation along with requirements imposed by the French and other national regulators, and regulatory responses can be slow. The new European telecommunications regulatory framework, however, represents a major advance in dealing with issues of convergence, by applying the same standards for defining markets and evaluating market power to all forms of electronic communications. Some European countries are also making progress in dealing with issues of convergence by creating consolidated ministries with authority over all forms of telecommunications and broadcasting, like the United Kingdom’s planned Ofcom. Another area in which the importance of regulatory flexibility has been identified is spectrum policy. In Korea, the government has not sought to mandate a single standard for 3G (Third Generation) mobile services as in Europe, but has authorised a dual standard permitting competition among the 3G WCDMA and CDMA 2000 technologies. This increased flexibility has permitted more rapid progress toward 3G implementation, now that WCDMA has encountered readiness problems and CDMA 2000 has taken the lead. Korea also has followed a “wait and see” strategy with respect to the regulatory classification of new services rather than trying to define the state of the market from the outset. Australia’s approach of “declaring” specific services for which the incumbent is required to provide network access and unbundling, instead of having a general right of access, permits changes to be made in light of competitive developments. The ACCC has reduced the incumbent Telstra’s access obligations in some respects based on the development of competition.
8. **Transition to Competition**

The four economies discussed have followed rather different approaches to managing their transitions to competition. A clear set of rules with transitional milestones for modifying regulation and permitting entry has been found to be important in managing the process. Korea’s transitional regime has been characterised as a “textbook approach,” with a step-by-step movement toward open competition, separation of regulation and operation of the network, privatisation, and deregulation, in which industry players were made aware of the transitional nature of the process. Value added services were opened to competition in 1990, international services in 1991, mobile services in 1994, domestic long distance in 1995, and local services in 1999. Privatisation of the incumbent mobile operator was carried out in 1994, while the fixed network incumbent Korea Telecom was privatised in stages, from adoption of the privatisation law in 1997 to full privatisation in 2002. However, Korea initially did not have competitive safeguards, a drawback of its process it has since sought to remedy. In Australia, having the general competition authority also implement the more specific rules on telecommunications market competition may have made the transition smoother. Australia made it clear at the outset that the managed competition period, which lasted from 1991 through 1997, was only a transitory phase of the telecommunications market evolution, so that licenses were only granted for a limited term for the fixed network duopoly and the limited number of competitors for mobile. France also has some clear rules governing market evolution derived from the European regulatory framework, such as the significant market power touchstone for determining when regulation can be imposed. In China, which is acknowledged to be a market still in transition, the milestones for moving to effective competition and modifying the regulatory framework are not as clear, although China has committed to schedules for permitting entry in various markets as part of its WTO accession. China is still in the process of drafting a telecommunications law, but established new regulations in 2000 as well as rules governing foreign investment in 2001.

9. **Use of “Carrots and Sticks” to Promote Transition to Competition**

The paradigm for use of these transitional incentives is found in the United States, with long distance entry authorisation for local incumbent telephone carriers keyed to opening of their local networks and services to competition, but relatively few such incentives were identified in the economies discussed. China has the best example of use of “carrot and stick” incentives of the economies discussed, similar in some respects to the U.S. concept. The ability of the two new regional fixed network incumbents created from the break-up of China Telecom, Netcom in the north and Telecom in the south, to enter each other’s regions has been conditioned on their progress in providing interconnection to new entrants. Korea also has some provisions for government review of cross-entry of incumbent facilities-based providers into value added services, though without any specific checklist. In both Korea and Australia, the introduction of facilities-based competition at the local level proved to be a powerful incentive to stimulate the incumbent to offer new services and improve its own network, even though the incumbents continued to remain dominant in local services.

10. **Consultation on Reform**

This subject did not receive much attention in the panel discussions. The Australian government has undertaken the most public consideration of possible reforms, having initiated in 2000 a review of its telecommunications specific competition regulation, which has led to a number of proposed amendments to the telecommunications law to reform the oversight process. The “co-regulatory” process in Australia provides for substantial industry involvement as well as government regulation in determining terms for network access.
11. Remaining Restrictions on Competition

Of the economies considered, the most important restrictions on competition are found in China, which is still considered to be in a transitional phase of limited competition, with state ownership of not only the incumbents but other telecom providers. The number of facilities based competitors is restricted in China, and though this is expected to change, related to China’s WTO accession commitments, it is not yet clear what form changes will take. Although China does not have formal limits on the number of fixed competitors, the government’s willingness to grant licenses serves as a barrier to further entry, since licenses are not available to all firms that meet certain transparent requirements as in the other economies considered. Rather, China’s government believes that the number of competitors must be limited to some extent in practice, to preserve economies of scope or scale. In addition, China continues to restrict the ability of not only incumbents but new entrants to compete freely on price, regarding some forms of competitive pricing as unlawful. Significant foreign investment limitations still exist in China, Korea and Australia. In Australia, the incumbent Telstra still does not recover all line costs through its access charges and also receives a deficit contribution from other providers. Korea has recently reformed the mechanism it has used to subsidise research and development in telecommunications manufacturing, eliminating the lump-sum contribution required of all operators as of 2002 and reducing the annual contribution to 0.5% of revenues, to make the system fairer to operators.

12. Best Practices to Strike Balance between Competition and Regulation

Best practices identified in the panel discussion for the telecommunications sector include:

− Establishing clear, non-discriminatory rules for providing universal service.

− Creating a strong, effective telecommunications regulator with adequate powers to resolve quickly interconnection and network access disputes and enforce its decisions.

− Establishing clear policies for designating the extent to which the incumbent is required to provide access to its network and determining where sufficient alternative competition exists, with flexibility to adjust these determinations in response to market developments.

− Fully separating the government’s regulatory role from any remaining role in the ownership of telecommunications carriers, so that the regulator can function on an independent and neutral basis.

13. Relationship of the Competition Agency and Sectoral Regulator

This relationship did not follow any consistent pattern in the four economies discussed. However, in some of these economies there is a discernible trend toward convergence between competition law and sector-specific regulation, either through combining the functions in one agency or through co-operation among the agencies in enforcing the same conceptual framework. In Australia, because the competition regulator and sectoral regulator (except with respect to technical issues) are the same agency, the Australian Competition and Consumer Commission, the relationship is much simpler than elsewhere and the risk of conflict is eliminated. However, this dual role can lead to some blurring of responsibilities in regulating and promoting competition. Regulatory arrangements in Australia, under which specific services must be designated for retail or wholesale regulation imposed on the incumbent, are sufficiently flexible to account for varying levels of competition in different markets. In Korea and in France, there are separate competition authorities and telecommunications sectoral regulators, as well as an additional layer of
competition oversight by the European Commission in France. The new regulatory environment based on European law is able to respond flexibly to the level of competition in particular markets and provide for exemptions from regulation in geographic areas where competition exists, and it provides for Cupertino among competition agencies and sectoral regulators in defining markets and assessing market power. Multiple agencies in Korea have an interest in the competitive process in the telecommunications sector, including the competition authority, the sectoral regulator and the telecommunications ministry. In China, which unlike the other three economies does not yet have an antitrust law, general legal requirements directed at preventing “illegal competition” have not played a substantial role in the telecommunications sector, and the competitive environment is entirely the product of sector-specific decision making.

14. Role of the Sectoral Regulator in Approving Mergers

Merger review in all of the economies considered is the primary responsibility of the competition authority rather than the sector-specific regulator. In Australia, this distinction is not important since the same agency, the ACCC, has both general competition powers and sector-specific responsibilities. However, in at least one case, Korea, there is some overlap in the responsibilities of two different agencies, as the telecommunications ministry, the MIC, also has a role in approving license transfers although the competition authority, the Korean Fair Trade Commission (KFTC), is generally responsible for merger review.

15. Extent of the Sectoral Regulator’s Jurisdiction

Although there is not a consistent pattern among the economies discussed, the trend in most of these economies is to have a regulatory authority with some focus on the telecommunications sector, rather than combining regulatory oversight over all utility or network industries in a single multisectoral body. The telecommunications regulators in Korea and France do not have responsibilities for other industries. In China, the MII has broader responsibilities than the former MPT which was limited in authority to the telecommunications and postal sectors, but the MII is still focused on information-related industries and does not regulate all utilities. In Australia, one of the two regulatory bodies, the ACA responsible for technical issues, is sector-specific, but the other agency, the ACCC, combines general competition oversight in all areas of the economy with telecom-specific powers to ensure interconnection and unbundling, and prevent anticompetitive conduct. This allows it to draw on its wider knowledge of competition issues in other industries, although it is not always as focused on telecom technology as a sector-specific regulator might be.

16. Application of the Domestic Competition Law

Domestic competition law has been used in most of the economies discussed to resolve interconnection and access issues as well as issues of industry structure. Australia’s ACCC has been particularly active in this respect, having intervened in a number of telecommunications merger cases to block acquisitions by the dominant carrier, as well as arbitrating a large number of disputes, 46 in total including 40 between the incumbent and its competitors over various competitive issues. There has been a benefit in having competition and sector-specific responsibilities combined in one agency, giving rise to cross-fertilisation and sharing of knowledge of competition and telecommunications concepts. The competition authority in France has also intervened in a number of disputes over anticompetitive practices by the dominant operator France Telecom. For example, the Competition Council took an important decision to enable competitors to order ADSL broadband services from the incumbent FT. In Korea, more controversially, the KFTC permitted the merger of the largest and third largest of five mobile operators to go forward, creating a firm with a market share of over 50%. It does not appear that the conditions imposed
on this merger, including reduction of the dominant firm’s market share below the 50% threshold, have been effective in preventing a reduction in competition, and the government has recommended that additional steps be taken to break up the combination. In China, in contrast to these other economies, the telecommunications sector has been practically exempt from the application of competition law.

17. **Relationship of the Sectoral Regulator to Other Regulators**

These relationships were not discussed with respect to most economies, although in the European context, as a result of development of the new regulatory framework, co-operation between the French regulator and other national regulators as well as the European Commission is expected to grow.

18. **Independence of the Sectoral Regulator**

Although the sectoral regulators in all of the economies considered are structurally separate from the telecommunications operator, their degree of independence from the rest of the government and from political influence varies, and more could be done to enhance regulatory independence in some cases. The Australian regulatory bodies, the ACCC and ACA, are considered to be effectively independent and appear to have been able to carry out their functions without significant political interference, despite the government’s continuing majority ownership of the incumbent operator. The French ART is also independent with respect to issues wholly within its authority, although the ART’s powers over the incumbent telecommunications operator are not comprehensive and the ART must depend on the telecommunications ministry to take decisions to resolve some types of pricing issues. This can lead to political influence over certain types of decisions, given the government’s continuing majority ownership of the incumbent FT. In Korea, the telecommunications regulatory body, the KCC, has not enjoyed the same degree of independence from the telecommunications ministry, the MIC, and remains under the MIC’s supervisory authority although steps have been taken to make the KCC more separate. For example, the chairman of the KCC is now appointed directly by the President rather than by MIC, and the KCC now has authority to conduct price regulation directly rather than merely advising MIC. This strengthening of the KCC, together with the full privatisation of the incumbent Korea Telecom accomplished in May 2002, helps to alleviate concerns about the government’s incentives to use its influence over the regulatory process in a discriminatory manner. Finally, in China, the telecommunications regulator, the MII, remains part of the government and is not an independent body, so that political influence remains a legitimate concern, though the MII is now formally separate from the government-owned network operators, reducing incentives for discriminatory treatment of competitors.

19. **Principal Costs and Benefits of Regulatory Reform in the Telecommunications Sector**

There is a broad consensus on the benefits of introducing competition and regulatory reform in the telecommunications sector. The principal benefits consistently identified include lower prices for consumers, greater availability, choice and quality of services, development of industries, and innovation. These benefits have been seen to have significantly outweighed any costs in all of the economies considered. There have, however, also been problems identified for some categories of consumers, including low volume residential users and consumers in rural areas, as well as broader social and economic concerns about misallocation of resources or excessive investment in some respects.

In Australia, competition has clearly brought about lower prices, which have been quantified by the ACCC. Significantly, the move from duopoly to an open competitive environment led to further substantial price reductions, 21.4% overall from 1997 through 2001 based on a basket of telecom services.
Some problems have occurred with over investment, and the failure to impose greater structural separation on the incumbent Telstra from the outset is now seen as a missed opportunity, although such separation could also have entailed costs. Competition could have also been enhanced if the second fixed network operator, Optus, had a better network base such as a cable network from the outset. Broadband take-up continues to be low. Measures continue to be retained to ensure universal service, funded by industry providers based on revenue shares.

In Korea, the effects of competition generally have been good, leading to better choices, higher quality of service and lower prices for users. Fixed and mobile subscription has expanded significantly, with fixed line teledensity increasing from 7.2% in 1980 to 48% today, and 30 million subscribers now using mobile services, four times as many as five years ago. Mobile penetration, now over 60%, is higher than fixed line teledensity. Broadband take-up is high, with the most favourable level of penetration in the world, 13.91%, and 67% of Korean households have access to high-speed Internet services. There have been problems identified of misallocation of resources and over investment, with too much fiber being laid as a result of an excess of competition. Competitors have incurred steep marketing costs and have had to provide some excessive subsidies to attract users, leading, for example, to mobile service handsets being thrown away.

In France, where fixed network service penetration was already high at the outset of competition, the main benefit of introducing competition has been a substantial decrease in prices for fixed long distance services and mobile services. There has been a significant rebalancing of prices between long distance and local services, eliminating inefficient and non-transparent subsidies from the former to the latter. Telephone service prices now are based more on the real costs of providing services, and have gone down overall 30% for business and 10% for residential users. Mobile service penetration has grown significantly over the past few years and has now reached 62%, induced by an initial 20% drop in mobile prices which have been more stable since 1999. Internet traffic has doubled and Internet service prices have decreased by 60%. However, there is still considered to be huge room for price decreases with respect to mobile and Internet services. Broadband penetration is still relatively low but it is hoped that unbundling of the local loop will generate more competition in this area and avoid domination of broadband by the incumbent FT. The introduction of competition is not seen as resulting in significant costs. However, preservation of universal service continues to be a concern in France and a regulatory mechanism has been devised to raise universal service subsidies from operators. France has not pursued structural separation of the incumbent operator in view of the perceived costs of doing so.

In China, regulatory reform is viewed not only as the business of government but also of telecommunications enterprises. Significant benefits have been seen from regulatory reform and competition in the form of lower consumer prices, improvements in service quality, and a dramatic build-up in the number of subscribers from a combined fixed and mobile penetration rate of 8.11% in 1997 to 30.22% (16% for fixed services and 14% for mobile) in 2001, giving China the largest absolute numbers of both fixed and mobile subscribers in the world (201 million fixed and 180 million mobile) within a decade of development. Competition and reform have also served to promote information-related industries and brought overall development benefits to the economy, with a telecom growth rate three times that of gross domestic product over ten years. Teledensity is still relatively low, however, by the standards of developed countries and there is recognised room for improvement and huge market potential yet to be realised. Government involvement plays an important role in seeking to develop infrastructure in the western area of China, but there is a lack of an adequate mechanism to ensure universal service. China's telecommunications policies have sought simultaneously to encourage competition and prevent over-competition or price wars.
MARK RONAYNE

RAPPORTEUR FOR PANEL 3 ON THE ELECTRICITY SECTOR

- Low cost reliable supply of electricity is of key importance not only for the competitiveness of industry in a country but also for the welfare of citizens.
- Unfortunately, while the industry of vital importance to countries, restructuring to obtain the potential benefits from competition is probably more difficult for electricity than any other industry.
- At the core of electricity systems are essential network facilities, transmission and distribution, access to which all companies need in order to compete effectively.
- Interconnections across and between systems and the fact that electricity follows the path of least resistance mean that what happens in one area affects what happens in others. If this is not taken into account along with transmission constraints electricity systems cannot operate reliably.
- Supply and demand must be instantaneously matched.
  - electricity is non-storable.
  - demand varies widely by time of day and from season to season, but capacity must always be available to meet demand.
  - costs vary widely across different types of generating capacity.
- The result is a need for very strong central control.
  - To run reliably, electricity systems and markets must have lots of rules.
- Other complications:
  - Different types of generating capacity have vastly different environmental implications (e.g., coal versus nuclear versus hydroelectric)
  - Electricity also brings into play other economic and social policy goals (e.g. universality, uniform price, remote access, industrial policy, economic development)
  - Effectively competitive generation markets are difficult to establish.
  - High degree of government involvement through ownership.
  - Stranded debt / stranded benefit issues in moving to competition.
- With these obstacles, why restructure?
  - More and better capital investment.
  - Lower operating costs.
  - More reliable, or at least as reliable supply.
  - Pricing of electricity to better reflecting real costs.
  - Appropriate framework for choosing between competing sources of energy in some applications.
– Importance of the potential benefits indicated by work done by the APEC Energy Working Group.
  • Estimated that capital requirements for APEC countries to the year 2020 is between 1.35 and 1.42 Trillion US dollars.
  • EWG estimates that the potential benefits to pro-competitive restructuring to be in excess of USD 50 billion.

**Competition in Electricity Systems**

– Competitive generation market.
  • There are two aspects to competitive generation. The first pertains to open competition to build new generation capacity. The second concerns the creation of competition to supply electricity from existing generation assets. The former promotes more efficient additions to generation capacity, the latter can promote more efficient use of existing capacity.

– Regulation of transmission and distribution access.
  • Transmission and distribution system are essential network facilities access to which all competitors must have in order to compete. Ensuring pro-competitive access pertains both to non-discriminatory physical connection to the electricity system and to dispatch on the system after connection.

– Retail competition to supply individual customers.
  • Competition to contract with individual electricity customers for supply.

**Progress of restructuring in Russia, Peru and Chinese Taipei**

– The three jurisdictions under consideration in the workshop have or are proposing to implement some but not all of the elements of fully competitive electricity systems.

– All 3 are providing for open and non-discriminatory access to transmission and distribution.
  • In Peru and Russia this is being achieved through the structural separation of transmission and distribution into separate companies from generation. In Chinese Taipei, this is to be achieved through regulation of the integrated utility.

– All also provide for competition in the supply of new generation. This is to be achieved through bilateral contracting for power. However, none is moving immediately to real time markets for the supply of electricity to the transmission grid. Rather, in Russia this is a matter to be determined by a stake-holder group including user and producer interests. In Peru and Chinese Taipei, dispatch similar to the cost-based approach to dispatch process in integrated utilities.

– The level of competition at the time of market opening will differ between the countries. In Peru, existing generation is relatively unconcentrated. In Russia, the main generator has a market share in excess of 70% with new independent producers anticipated to create additional competition. New entry in each of the markets will initially be on the basis of bilateral contracting.

– Retail competition is not being initially implemented in any of the three markets.

– On competition oversight:
• In Russia the competition authority has powers to oversee competition in electricity markets that may include restricting prices and requiring access to transmission and distribution. In Peru, the competition authority does not have the power to regulate prices, rather this will have to be done by an industry specific regulator. In Chinese Taipei, the competition authority may examine prices and can recommend that they be reduced if too high, but review of rates will be through an industry specific authority.

Conclusions:

− There are some standard restructuring elements across the jurisdictions.
  • open access to transmission and distribution.
  • regulation of transmission and distribution pricing.
  • free entry to generation.
  • combination of regulation and competition law.
  • dispatch of electricity on transmission and distribution independent of interest of any particular stakeholder.

− Beyond this moving to competitive electricity markets a difficult process that must take into account a variety of different stakeholder interest groups. Competition may have to be phased in starting with areas where possible. The precise manner and process by which competition is introduced will depend on aims of restructuring and what is feasible.
  • Issue in phasing in competition may be where competition is likely to provide the greatest benefit. Starting with open competition for new generation capacity is likely to provide the greatest benefit for countries requiring investment in new facilities. If generation assets are available and are sufficient to support effective competition through real time markets for energy may promote generation operating efficiencies. Retail competition does not directly affect decisions concerning the type of generation to be built or the efficient ordering of dispatch of existing generation. Rather, its direct benefits tend to be in the creation of payment terms, billing and product bundling service offers that are better tailored to individual customers tastes and needs. Consequently, where concerns are centered on the creation of new capacity and the efficient supply of generation from existing facilities, retail competition might be phased in later if desired.

− Overlap between regulation and competition law oversight is inevitable in electricity sectors restructuring for competition and has been recognized as an important issue in each of the countries under consideration.
  • One approach for dealing with overlap is interface document has been developed in the Ontario electricity sector. This document provides for inter-agency co-operation and co-ordination in examining competition issues. Also clarifies each agencies roles and responsibilities with respect to different types of competition issues that may arise in electricity markets.
V. SUMMARY OF THE PRESENTATIONS

Session I. Enhancing Regulatory Transparency

Assuring Regulatory Transparency – A Critical Overview

Rex Deighton-Smith, Jaguar Consulting, Australia

Regulatory transparency has rapidly achieved prominence in the OECD countries in association with the rise of the governance agenda. Transparency initiatives now form a major part of regulatory policy in most OECD countries, and 20 have government-wide transparency policies in place. Transparency in the development, implementation and enforcement of regulation has yielded substantial benefits in terms of regulatory quality and legitimacy, and in terms of the accountability of governments. Transparency can be defined as the capacity of regulated entities to identify, understand and express views on their obligations under the rule of law.

Two major dimensions of transparency can be distinguished: the accessibility and intelligibility of regulation, on the one hand, and the openness and consistency of regulatory processes on the other. The accessibility and intelligibility of regulation is dependent on the total volume of regulatory requirements being within reasonable bounds, the requirements being organised, or codified, adequately, plain language being used to express requirements and adequate access to regulatory requirements being maintained, through electronic and other means.

The main procedural elements of transparency include ensuring standardised and widely understood regulation-making processes are followed, providing adequate opportunities for consultation and dialogue with stakeholders – including the general public – and ensuring independent appeals mechanisms are available in the context of regulatory enforcement.

Consultation is a particularly important element of regulatory transparency. It embraces both “active” elements, based on a dialogue with affected parties, and “passive elements”, based on ensuring a right to be heard. Consultation tools differ in their characteristics and effectiveness and should be combined appropriately in the course of regulation-making. Consultation is a process and not a “one-off” requirement.

While the benefits of regulatory transparency are increasingly widely understood, significant tensions between transparency and other elements of regulatory quality can be identified and must be managed appropriately. Moreover, maintaining the quality of transparency tools is itself a significant challenge. Main issues in these respects include:

- Ensuring transparency does not unduly slow the regulatory process and reduce its responsiveness;
− Preserving the effectiveness of transparency measures by safeguarding against “consultation fatigue;”
− Ensuring that transparency is “real”, and not merely “formal” in nature;
− Achieving the right balance between the predictability of regulatory processes and the need to maintain adequate flexibility;
− Balancing transparency and confidentiality requirements;
− Ensuring that consultation/concertation does not threaten governments’ responsibility to govern for all constituents;
− Balancing the use of different consultation mechanisms to ensure adequate transparency;
− Ensuring that the use of regulated transparency requirements on private actors remains effective and appropriate.

Good practice in relation to transparency is not simply about having “enough” transparency – in some quantitative sense – but rather about the quality of the different elements of regulatory transparency, including the extent to which they are integrated with each other, and the regulatory process more broadly, and are consistent with, and mutually supportive of each other.
The European Union’s Action Plan on Regulatory Quality

Manuel Santiago dos Santos, European Commission

In his contribution to the working session Mr. Santiago will address two main subjects: the shift in emphasis on regulatory reform priorities that has occurred in the European Union over the recent years and the action plan that has been adopted to simplify and improve the Community’s regulatory environment. He will also talk about the experience accumulated by the EU on regulatory assessment procedures.

In the late 1980’s, the European Community focused on market reforms under the ‘1992 Single Market programme’, which the harmonisation of national legislation to promote competition and e intra-community trade. With the Internal Market now largely accomplished the focus of regulatory reform has shifted to improved regulatory quality that meets evolving societal needs and technological development. To this end the European Commission has recently approved a regulatory package that addresses three complementary subjects: the simplification and the improvement of the EU’s regulatory environment, the introduction of a mandatory Impact Assessment system and the adoption of Minimum Standards for Consultation.

In adopting its strategy, the European Commission has built on previous experiences developed in house and elsewhere in the OECD countries. A number of examples will be given.
In developed and developing countries, the importance of regulatory reform, including administrative reform, is becoming more apparent. Effective regulatory reform consists of many different components, but one of the most important is increasing the level of transparency. Without transparency, any regulatory reform will be crippled since the reform may not give the people what they need, and the people will not know what changes have taken place.

In OECD (2001), regulatory transparency was defined as the capacity of regulated entities to express views on, identify, and understand their obligations under the rule of law. This definition of transparency is far more complex and far-reaching than the idea of information transparency, and transparency becomes an essential part of all phases of the regulatory process. This paper examines both regulatory transparency and information transparency, since information transparency is an essential component in achieving and maintaining regulatory transparency.

Some developing countries may question whether regulatory reform, which has been carried out mostly in developed countries, is relevant for developing countries. In the Korean case, because Korea had to overcome its lack of natural resources and capital stock in its early stages of development, government instituted various regulations and industrial policy to speed up the development process. While such strategy may have been effective at the earliest stages of development, by 1980s it was clear that the social and economic costs of these regulations were greater than the benefits. Also, many of these regulations were abused, as they were being used to protect the interests of the powerful, rather than achieve economic efficiency or increase social welfare. These problems became acute in the 1990s. The increasing globalisation made it difficult for Korea to afford the high economic and administrative costs arising from these outdated regulations.

A crucial component of regulatory reform is the introduction or the strengthening of competition policy. In order to foster an environment for creativity and innovation, new firms must be allowed to enter the market freely, while inefficient firms must exit from the market to free up resources for the more efficient firms. Competition policy helps create such an environment. Also, a comprehensive reform, involving many areas of regulations including competition policy is more effective in increasing the efficiency of the economy. Transparency, which makes it difficult for the government to use unwritten regulations and informal controls, contributes to making such comprehensive reform successful, and raises the level of regulatory compliance, reducing social costs while maximising benefits.

During the financial crisis of 1997~98, the Korean government instituted a large-scale reform of its economy. The reforms encompassed such areas as anti-corruption, administrative reforms, and regulatory reforms. Koreans learned much in the process of the reform process, including the importance of transparency and how to raise the level of transparency. Some of the lessons that Korea learned from the reform process are listed below.

- Regulatory reform should be approached in a unified and systematic fashion to raise the general expectations of the public, which would ultimately fortress the public’s expectation for transparency permanently.

1. OECD (2001), para. 255.
The government has to be recognised as a unified single entity by the public.

Reduce information burden of the public.

Maintain multiple communication channels with the public.

Eliminating uncertainty leads to higher transparency.

Plain words and expressions make transparency possible.

If it is compatible with common sense, it’s transparent.

Be transparent to foreigners.

Market openness and increased imports played a crucial part in Korea’s development. Some of the lessons in transparency and market openness that Korea learned during its 40 years of development and market opening process are listed below.

Use international institutions and international standards.

Provide easier means of access to information.

Listen to foreigners.

Make the system simple, and allow it to reflect the international market mechanism.

Adopt a regulatory system which can deal with the globalise environment.

Engage actively in liberalisation discussions and negotiations.

Review domestic systems regularly from the user’s point of view, and update the systems.

If the system is transparent to foreigners, it is likely to be transparent to all.
Transparency, Regulatory Reform and Control of Corruption in Thailand

Dr. Suchit Bunbongkarn, Justice of the Constitutional Court

The new constitution promulgated in October 1997 introduces several innovations to the Thai political system. One of them is transparency in newly established control or regulatory mechanisms as a means to battle corruption in the political circle and the government bureaucracy. Another is transparency in regulatory reform connected with the use of government power and authority in the areas of the exploitation of natural resources, consumer protection and environmental preservation.

Let me begin with the transparency in combating corruption. In Thailand corruption in the political circle and government bureaucracy has been a pervasive phenomenon. This indicated that private interest and greed has been put to a high priority by a number of politicians and civil servants. Combating corruption is a necessity but it is not an easy task. It involves a wide range of activities and measures ranging from political and bureaucratic reforms to create good governance and transparency to instilling ethics and morality among the children and the younger generation. The enactment of the new constitution in 1997 was a part of the political reform program aiming at reducing political and bureaucratic corruption. It has set up a number of independent regulatory and judicial institutions, for example the Constitutional Court, the Administrative Court, the National Counter Corruption Commission, the Election Commission and Ombudsmen. The new constitution demands more transparency in politics and government administration as an effort to eliminate corruption and malfeasances. For example, the prime minister, cabinet members, senators, MPs, judges and high ranking government officials are required by the constitution to submit to the National Counter Corruption Commission (NCCC) reports on their assets and liabilities. As for the prime minister and cabinet members, their reports must be open to the public. The NCCC has an authority to investigate whether those reports are accurate or not. If the NCCC found that any politicians have intended to submit false reports, it will send a compliant to the Constitutional Court to make a final ruling. If the court rules that the defendants have intended to do so, they will be barred from political office for five years.

The constitution requires that the court procedure be transparent. The procedure must have fundamental guarantees with regard to the openness of hearing, the opportunity for the parties to express their opinions, the right of the parties to inspect documents relating to them.

In addition, the NCCC is empowered to investigate allegations of corruption of politicians and government officers and to prosecute them. In the case that the NCCC found that any allegation is a prima facie case, it will be sent to the senate for impeachment and to the Supreme Court’s Criminal Division for Persons Holding Political Positions for a criminal trial.

To what extent have those regulatory mechanisms and transparency reduced the rate of corruption? Compared with the period before the promulgation of the present constitution, things should be better now. Before 1997, there existed a counter corruption agency officially called Counter-Corruption Commission (CCC), but it had less power than the present one and was less independent since it was attached to the Office of the Prime Minister. The CCC was empowered to investigate abuse of power by public officials from which benefits accrue to themselves or others and misuse of public funds. But it had no authority to prosecute any wrongdoers. The prosecution was the authority of the police and public prosecutors. The CCC was not authorised to monitor corruption practices by members of parliament including vote-buying. Because of this limitation, the CCC could only indict junior officers committing ‘petty’ corruption. The new powerful National Counter Corruption Commission has signalled that those who have committed corruption will be more vulnerable. At least the NCCC prosecuted one former
politician on corruption charge and a number of politicians were barred from political office due to their
submitting false reports on their assets and liabilities. The fact that the NCCC was able to put the case of
Prime Minister Thaksin Shinawatra to the Constitutional Court for the charge of submitting false reports on
his assets and liability indicates that these new mechanisms work, although he was later acquitted by the
court.

There are many more corruption practices that have not been caught. This is because the counter-
corruption mechanism has recently been established, no one can expect it to get rid of corruption over
night. Corruption is deeply rooted in the Thai political circle and bureaucracy, therefore the newly
established mechanism should be given more time to prove itself a success.

Regarding transparency in the regulatory reform, there are clauses in the constitution which
forces the government to be more transparent. Among them is the one that recognises the right of the
people to have access to government information about its decisions on issues affecting public interest or
their communities. These include the infrastructure constructions, consumer protection, and exploitation of
natural resources. The constitution has encouraged regulatory reform and consultation with the people
concerned in those issues to increase transparency. But to insure the increase, more legislation is needed.
For example, environmental impact assessment is required before any protect which affects environment
can start operating, but no public participation is require in the assessment process. Thus there should be a
law to allow people’s participation in this.

The effectiveness of those regulatory mechanisms depends on several factors. Political
intervention could affect the working of those mechanisms. Although the NCCC is an independent
institution, it is believed that lobbying by politicians is still possible, particularly in cases that affected their
interest and political position. Moreover, some political leaders thought that those independent regulatory
agencies were too powerful and constitutional amendment might be needed to reduce their authority. In my
opinion, the authority and autonomous status of those agencies including the Constitutional Court, the
Election Commission and the NCCC should not be revised to serve the interest of politicians. Democracy
needs a check and balance system and the objective of the present constitution in establishing those
independent institutions is to create the system of checks and balances. If we want to make these newly
established checking institutions work effectively and honestly, political intervention should be
discouraged. Politicians and government officials should refrain from using their influence to affect the
decision-making of those institutions.

Strong and reliable civil society is needed to monitor the regulatory mechanisms, regulatory
transparency and politicians. If there is such strong and reliable civil society that represents the people and
community’s interest, it can monitor effectively the performance of those mechanisms and to ensure the
system of checks and balances as well as regulatory transparency. Nonetheless, the development of Thai
civil society is still slow which affects its role in checking the integrity of public officials. Several civil
society organisations are still weak and unorganised although they are more assertive in fighting the
government malpractices. They should be better organised, more cohesive and institutionalised. More
importantly, they should be autonomous, not under the control or influence of business or political groups
or leaders.

Regulatory transparency in the public and private sectors is a necessity if we want to ensure
efficiency, honesty, responsibility and accountability in management there. But in Thailand as transparency
has not been part of organisational culture, we should start to develop it in the public sector first and then
the private or economic sector. Battling corruption needs co-operation of the private sector too. Good
governance must be established in private business organisations but this cannot be done if good
governance does not exist in the public sector.
Much of modern day trade policy is “behind the border”, involving much more than traditional trade policy concerns such as tariffs and quotas, and is now deeply inter-linked with domestic regulatory policy. Ensuring effective market access means at the very least putting in place of regulatory processes and practices which are sensitive to the impact these will have on international trade. What it does not mean is the subjugation of legitimate domestic regulatory policy objectives (such as health, social, or environmental objectives) to international trade commitments. Transparency helps ensure effective market access consonant with domestic policy objectives.

Transparency is a key ingredient in building a solid foundation of high quality regulations which are non-discriminatory and open. As part of the OECD regulatory reform project, 16 OECD member countries have been reviewed. A key dimension of these reviews included detailed reviews in the area of market openness, and transparency was one of six “efficient regulation principles” utilised to help structure the reviews on market openness. The others were: non-discrimination; avoidance of unnecessary trade restrictiveness; use of internationally harmonised measures; recognition of equivalence of other countries' regulatory measures, and application of competition principles.

Four areas emerged as critical to ensuring maximum transparency:

a) Systematic availability of information using various channels
b) Clear, open simple procedures to ensure predictability in the making and
   implementation of rules
d) Systematic and rigorous reliance on public consultation
e) Clear, open and effective appeals procedures

Transparency in four areas was also examined in depth: grey regulation, self-regulation, standards development, and government procurement.

Canada’s particular national experience in developing transparent and high quality regulations will be examined in a number of areas, especially services in general and financial services in particular.

Throughout, the links to the Doha Development Agenda will be explored.
Session 2. Regulatory Reform in Key Economic Sectors

Striking the Right Balance Between Competition and Regulation:
The Key is Learning from our Mistakes

Paul Crampton, OECD

This address focuses upon striking the right balance between competition and regulation, to achieve greater economic efficiency and higher living standards. It is often forgotten that competition and regulation have the same ultimate goals, namely, to prevent the illegitimate acquisition and exercise of market power and to facilitate the efficient allocation of resources. Competition typically is preferable to regulation because it delivers lower prices, better product quality, new products, better positions companies and economies to “respond to the unexpected”, and helps to reinforce democratic institutions. Where free and unrestricted competition is unlikely to produce these outcomes, it is generally recognised that some sort of regulation is appropriate, either as (i) a full substitute for competition, (ii) a means for establishing a sustainable framework within which effective competition can take place, or (iii) a means of “holding the fort” until the anticipated arrival of competition.

This gives rise to a need manage the interface between competition policy (broadly defined) and regulatory policy in a way that recognises their mutually reinforcing nature and optimises economic welfare. The most important ingredient for successful reform is the strength and consistency of support at the highest political level. It is also crucial to establish clear objectives for the regulatory reform exercise as well as in any legislation or regulations that may be implemented to effect the reform. Furthermore, steps should be taken to ensure that these legal instruments, as well as the regulator’s policies, practices and procedures, are highly transparent and predictable. In addition, competition should be introduced to all activities that are not natural monopolies, to the maximum extent possible. This includes minimising any restriction or distortion of competition to achieve environmental, social or other public interest objectives. For economies in transition, reliance on market forces should be maximised at every stage of the process.

In addition to these general rules, close attention must be paid to the three key pillars of successful regulatory reform: establishing the right market structures, the right rules and the right regulatory institutions.

Regarding structure, it generally is better to break up a monopoly into a number of competing firms before it is privatised and/or deregulated. A second key component of creating the right structural conditions for competition, particularly in industries where there are significant economies of scale, is to remove regulatory impediments to entry by foreign or other potential competitors. In addition to creating the right horizontal structure, it is important to address other structural considerations. For example, serious consideration should be given separating the regulated and non-regulated activities of any entity that will continue to be regulated.

With respect to the establishment of the right rules, this includes: adopting an effective domestic competition law early in the process, minimising the number of exemptions from that law and making a commitment to its vigorous enforcement; permitting the domestic competition agency to intervene in all regulatory proceedings, to make submissions to all regulators, and to participate in the process of developing laws or policies that have the potential to impact adversely upon competition; creating a framework for non-discriminatory access to bottle-neck or network facilities, with the access price being based on the cost of providing the service; eliminating cross-subsidisation between the prices of products in one part of an industry and those in another part of the industry; adopting performance based price regulation where the prices of products need to be regulated; ensuring that the regulatory regime is sufficiently flexible to accommodate changing market conditions; and, where possible, establishing a clear time limits or other objective benchmarks on the transition period as a whole or on certain aspects of it.
Regarding the creation of the right institutions, in addition to establishing competition and sectoral or multi-sectoral regulators, a commitment must be made to ensuring that these regulators are well-staffed and well-resourced. In this regard, serious consideration should be given to providing them with structural and budgetary independence, to safeguard them from the types of real or perceived pressures that can exist when a regulator recognises or is made aware that a certain course of action may have adverse future budgetary implications. In addition, regulators must be given sufficient powers to obtain the information they require to make their decisions. This includes not only powers to compel oral testimony or representations, but also written submissions and paper or computer records or other documents. It is also important to minimise duplication and overlap as between the regulators.

After discussing the foregoing, the address then briefly turns to the topic of universal service. In short, regulation is not the only way of achieving universal service objectives. Competition can help make universal service easier to afford – as it has in Chilean telecommunications.

Finally, the address discusses learning from our past mistakes. There have been a few notorious failures in regulatory reform, such as California electricity. On close examination, it appears that there were reasons for such failures that can be avoided in the future. Experience has taught us that getting competition started and established in some industries is harder than we thought; learning is on-going. But this no reason to refrain from embarking on reform. Rather, we ought to learn from our mistakes to avoid the failures of the past.
Mr. Chairman, Distinguished Participants, Ladies and Gentlemen;

Please permit me to start by saying how delighted I am being in Korea, attending a most important workshop and conference. On behalf of the Business and Industry Advisory Committee to the OECD, which is the OECD’s window to the business community, I would also like to extend, to the organisers of this event, our appreciation for being given the opportunity to present the views of business on such an important subject like Regulatory Reform.

Before reaching this meeting, I am sure, all the countries which are represented by OECD and APEC and their representatives who are present here now, have had ample discussions on subject matters like what Regulatory Reform is, what sort of benefits it generates, what sort of costs are incurred, what sort of measurement methods should be employed and so on. Therefore, rather than repeating what we all have extensively discussed before, I prefer to underline a few points, we, as business, view essential to the success of Regulatory Reform efforts. I should admit that some of these points are more relevant for emerging market economies, as I am coming from an emerging market country, namely Turkey. But, after all, this event is part of OECD’s outreach efforts which target at extending its expertise on important matters like Regulatory Reform to non-member countries including emerging market countries which are also represented in APEC.

Businesses are run on the markets and for the markets. Markets are governed by a wide range of tax, labour, environmental, capital, customs, competition and as such, laws, regulations, decrees, practices and other rules in every governmental jurisdiction; national and local. These are all necessary to make a market function properly. When businesses seek out a market, they need to find a supportive policy framework, a policy mosaic composed of elements such as rule of law, property rights, intellectual property rights protection, good governance, transparency, accountability etc., ensuring that the environment is conducive to business. Therefore, the catch for business is the regulatory quality, not the quantity.

Business is in full agreement that there is room for improving the quality of regulations to achieve the target of developing competitive and efficient markets while protecting other important public interests in a most efficient manner. However, business is also very keen to avoid any misinterpretation of the concept of Regulatory Reform which would adversely impact the pace of world-wide liberalisation of the markets. Therefore, business is in full appreciation of the fact that the process that had started with “de-regulation” to achieve the above mentioned target has now reached a stage of “re-regulation” following a stage of “liberalisation”. Therefore, as the word implies, business is convinced that Regulatory Reform is all about enhancing the quality of regulations, not their quantity.

This, we believe, is especially important in the case of emerging market countries the development of which, business thinks, is essential in reducing poverty and achieving sustainable development world-wide. It is the expectation of business that the forums like this become vehicles of giving the right messages to emerging market countries that regulatory reform is meant to create a better and more conducive environment for competitive businesses rather than as a means of solidifying the government’s heavy hand on the economy.
This is especially significant for putting the independent regulatory authorities, which are becoming increasingly important for the success of regulatory reform efforts, into their right perspective. Globalisation forces governments reduce their heavy involvement in national economies, both in terms of economic activity and regulations. They do so; but, in most cases, rather reluctantly. To overcome this forcing and to compensate the loss of “involvement” in the economy, governments tend use independent bodies to reinstall themselves, by having an unproportional weight in the composition of such bodies, as well as by introducing very strict financial monitoring and weak personal benefits incommensurate with the level of responsibility. We find such a situation to be detrimental to the “independence” of such bodies.

Needless to say, this tendency does hinder the success of regulatory reform. Quite contrary to persistence of the governments to maintain their weight in the processing of regulations, business expects the governments to increase the level of consultation with and involvement of business in the process.

We also believe that the same increased level of consultation with and involvement by business is a must in the measurement of the success of regulations. This brings us to the need for asking the governments to spend an equally significant amount of time for devising the most effective tools for regulatory impact analysis, using them, measuring the impact of regulations, constantly reviewing regulations; discarding immediately those which are costly, ineffective, burdensome, hindering competition and, in short, deemed to be blocking the success of reform. Follow up reviews of commitments to reform regulatory frameworks are critical to the success of reform programs over the long run. We also encourage consultation with business and with the consumers as an alternative to regulations.

Through BIAC, business is very much supportive of OECD’s efforts on regulatory reform and its determination to emphasise it in its outreach program. We believe, OECD’s programmed consultation with business as well as labour has contributed significantly to the achievements in the regulatory reform work registered so far. We expect the same in the future. On the other hand, we believe, results of the work could be significantly increased and speeded up by effectively linking governance and administrative simplification into the regulatory reform work. We believe governance is an essential part of regulatory reform. If there is no good governance, this is bad news for the success of regulatory reform. That is why, at BIAC, we re-named “The Working Group on Regulatory Reform” as “The Governance Committee” simply to accentuate this fact.

We firmly believe that governments must embrace and exploit change. This means the existence of a regulatory mosaic that permits the market to work to its best. To achieve this regulations should be attentive; but, definitely, without being overly complex and burdensome. That is why we support administrative simplification and view it an essential part of the regulatory reform efforts.

As time is limited I will not be spending much time on issues of regulatory reform in key economic sectors as experts will be discussing them in detail in the panels. The comments on this session on note to this event is self explanatory on the purpose of regulatory reform in these key sectors: Regulatory regime for key economic sectors such as telecommunications, electricity and financial services (should be formulated to) allow the development of efficient domestic and international markets while protecting other important public interests in the most efficient way. The central reason for reform of these industries is to optimise economic performance, defined in the widest sense to include environmental and security of supply performance. The key to optimising economic performance is a regulatory environment that supports competition and consumer empowerment through application of the core principles for quality regulation at both sectoral and framework levels. Business cannot agree more with these comments. However, we should underline our belief that competition is the best friend of consumers and drives human ingenuity to optimise economic performance, defined, as the note indicates, in the widest sense to include environmental and security of supply performance. Therefore, efforts to install self regulation versus government regulation should never be curbed and neglected.
Please permit me to conclude by making one point on each key sector:

BIAC, through its work on the subject, believes that investment in ICT is an important driver of innovation and is one of the significant factors explaining the growth differences among countries. Therefore, BIAC underlines the very critical importance of telecoms regulations in developing the telecoms infrastructure to support innovation in products and services markets as well as in e-commerce.

On energy, BIAC believes that regulatory reform should, to the extent possible, be all inclusive. Liberalising and regulating the generation side without having the matching steps on transmission and distribution will not ensure achieving the purpose cited in the event note.

Lastly, on financial sector, BIAC believes that a well functioning and competitive financial sector is essential for the rest of the economy. That is why we believe the ongoing work on regulatory reform should have more coverage of the financial sectors; especially of emerging market countries.

Thank you very much.
Session 2. Panel 1: Regulatory Reforms in the Financial Sector

**Liberalisation and Regulatory Reform in the Financial Sector in OECD Countries**

*John Thompson, Directorate for Financial, Fiscal, and Enterprise Affairs, OECD*

Financial services was traditionally among the most tightly regulated sectors of the economy. Controls and regulations sought to make financial institutions meet a variety of economic and social objectives such as regional or industrial policy, low cost housing finance or the purchase of government debt. Limitations on product innovation and risk taking were common. Additionally, exchange controls as well as restrictions on the establishment and activities of foreign institutions reduced international competition.

Due to domestic deregulation, liberalisation and innovation by OECD countries during the 1980s and 1990s, this sector is now one of the most market driven. Interest rate controls and credit allocation policies have largely been abolished, while segmentation of banking, investment and insurance has been largely abolished. OECD countries allow foreign institutions to compete in their home markets and capital controls have been lifted.

One unanticipated result of deregulation has been a series of costly and destabilising financial crises in many OECD countries. Consequently, while the trend toward deregulation has not slowed, supervisors have had to devote more attention to systemic issues focusing on 1) minimising systemic risk 2) maintaining a fair and transparent environment for risk taking and 3) avoiding “rescues” using public funds. Meanwhile, awareness has grown of the need for international supervisory co-operation and common international standards so as to avoid “regulatory arbitrage” and to discourage business from migrating to the least regulated markets. Financial supervisors have formed international networks to define common standards and co-ordinate supervision. Examples of such co-operation include the Basle Committee’s agreement to stipulate a common definition of bank capital and to impose a global 8% minimum capital requirement. Securities markets supervisors have developed a network that allows securities to be listed and traded simultaneously on many markets under adequate supervision. At the same time, the Basle Committee, International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) have developed principles and standards for their respective areas of competence.

It is increasingly accepted that supervisors should delegate significant responsibility for observing sound practices to each institution while relying on market discipline. Thus, each institution must have capital proportional to risk while management places the owner’s capital at risk in market operations. Each institution is expected to build a robust in-house system of risk management and governance that satisfies prudential and fiduciary concerns while also being responsive to the demands of shareholders. Rather than setting detailed rules, supervisors now seek to assure that institutions’ own systems are equal to these tasks.

Having summarised the long-term process of financial liberalisation, it is now instructive to examine some issues currently under examination by those responsible for the integrity and stability of the financial system. (Other panellists will highlight other current issues.) The issues selected for consideration are 1) risk transfer instruments and systemic stability, 2) market integrity and 3) the position of emerging markets in the liberalised financial system.
Previously, the nature of risks assumed by banks, capital market investors and insurance companies were distinct. However, recently financial innovations have developed a number of products where risk is transferred among components of the financial system. The identification and measurement of the risks of such products and entities are a major concern for systemic stability. For example, credit derivatives involve the sale of the credit risk inherent in assets such as corporate bonds or bank loans to investors. One group of investors in such products is insurance companies, which may have less capacity to analyse and price credit risk than banks or bond investors. Another source of risk to insurance companies stems from reinsurance companies, which purchase risks from traditional insurance companies. These companies are essentially unregulated and carry on much of their business in offshore centres. Alternative risk transfer products enable investors to purchase risks (e.g. catastrophe bonds) traditionally assumed by insurance companies. These instruments lead to displacement of risks that may not be fully understood.

The new supervisory paradigm postulates that financial markets should exert discipline over participants. Furthermore, since many activities are shifting from the balance sheets of banks and insurance companies into capital markets, it is essential that those markets be fair and transparent. In order for this to take place, information must credible and various market participants be able to fulfil their monitoring functions effectively. However, recent cases of corporate distress have revealed that these “checks and balances” did not always operate as expected. Corporations resorted to aggressive accounting practices while auditors acquiesced in these practices. Boards of directors, bank credit systems, securities analysts and rating agencies often were ineffective in monitoring.

While most OECD countries now conform to the model of open competitive markets with implementation of global standards, many non-members still exhibit traits such as those that characterised OECD countries in earlier years. In many cases, financial systems that are still highly regulated and supervision has not fully assimilated the practices that have emerged over the past two decades in more advanced markets. At the same time, emerging markets are clearly vulnerable to the many destabilising influences that have appeared in financial markets in the past two decades. The message most OECD countries would like to convey about the experience of the past two decades is that while liberalisation indeed assists in making economies more dynamic, it is essential to upgrade supervision in order to deal with the higher risks inherent in a market based financial system. The considerable body of international standards and best practices that have evolved over the past two decades is a useful too in managing the transition.
New Financial Supervisory Structure in Germany

Thomas Schmitz-Lippert, International Affairs – Banking Supervision, Germany

- European Framework for Financial Supervision
  - Maastricht Treaty and the European Central Bank
  - Monetary Policy and Financial Supervision
- Former System of Financial Supervision in Germany
  - Sectoral Banking, Insurance and Market Supervision
- Options for Change discussed in Germany 1999 and 2000
  - Central Bank Model versus Single Regulator Approach
- January 25, 2001: Decision for an Integrated Supervisor
  - Ministry of Finance Press Conference
  - German Government’s Decision for an Integrated Supervisor
- Reasons for BAFin
  - Supervisory framework as a reflection of realities in the financial markets
  - Blurring of business lines and convergence of products
  - Comparable structure in organisation and management
  - Risk transfer and level playing field
  - Financial conglomerates
  - Better consumer and investor protection by way of integrated supervisor
  - Payment structure and budget
  - International representation
  - General rationale for a single regulator
- Implementation in 2002
- BAFin’s New Structure
- Cross-sectoral Departments
  - Financial Markets and International Co-ordination; Consumer and investor protection, pension schemes; Integrity of the Financial System
• Responsibilities of BAFin and Bundesbank in Banking Supervision
  – New Section 7 of the Banking Act regulates co-operation in on-going supervision
  – Memorandum of Understanding will cover details
  – Negotiations continue

• Modified Single Regulator
Trends in the regulation of the financial sector: Accountancy

Richard Martin, Financial Reporting, Association of Chartered Certified Accountants, United Kingdom

Though there are several respects in which accountants and their work are regulated, the two most common are the regulation of financial reporting by companies (especially those companies with equity or debt raised on capital markets) and the regulation of auditors. The regulation in these areas is at present under scrutiny and revision in many countries. Most immediately because of the failures of financial reporting and auditing that have been evident in the USA, but also because of more widespread shortcomings for example in relation to the “new economy”.

The issues in the regulation of accounting include:

- Market forces and regulation – the costs of failures have been high compared to that of regulation. Collapse of Andersen was partly triggered by regulation, and this has not helped competition in the market for the audit of large corporations.

- External regulation or self-regulation – The issues have included the greater independence and enforcement powers of the external regulator, against the greater expertise, adaptability to developments and lower costs of “self” regulation. The trends have been towards more external regulation and away from the accountancy bodies. This has been more marked in financial reporting than in auditing. The solution has often been external monitoring of regulation

- Institutional structures – Similar regulatory structures have often developed. This may include an on oversight body, which includes representation of all interested parties, responsible for funding and appointments. An expert group to set the rules, as independent as funds will allow. Another group to police compliance. Transparency and adherence to due process have been important qualities

- Rules versus principles – sometimes portrayed as a US Vs European approach. Clear unambiguous rules are easier to enforce. They however create and encourage loopholes and an avoidance mindset. The longer term trends have been for the standards and rules to expand steadily. There are some countervailing factors at the international level and from the SEC.

- Setting standards and enforcing them – The one makes little sense without the other, but there are reasons why they might be best done separately. There should be feedback between the enforcement and standard setting bodies of new issues that have arisen.

- Globalisation – Setting the rules is increasingly done at a global level to provide high quality comparable information for global capital markets. Enforcement has to remain at national level generally for legal reasons. Between those two companies and auditors want a level playing field in terms of compliance.
Regulatory Reform in the Financial Sector: the Case of Taiwan

Ming Yen Tseng, Planning Department, Fair Trade Commission, Taiwan

During the past half century, the financial system in Taiwan has evolved in keeping with the pace of economic development. The financial sector was under severe regulations in the early stages of economic development due to various reasons. As a result, an imbalance growth pattern ranging from financial depression to financial duality can be observed in different ways. Along with both rapid economic growth at home and the economic liberalisation world-wide, the strict regulation over financial sector of those days had certainly become obsolete and outmoded for economic development in Taiwan. Fortunately, a series of financial reform has been well underway in the past three decades as competition policies have taken the lead in formulating sound economic development strategies. To put it simply, financial liberalisation and economic development have been progressing hand-in-hand to mitigate any adverse impact from outside. Moreover, the adoption of competition policies and the implementation of regulatory reforms in the financial sector are two of the most important factors accounting for Taiwan’s immunity from the Asian financial crises of the late 1990s.

Regulatory reforms have witnessed an almost free entry of both domestic and foreign newcomers to the local market. This can be fully proven both by the surge in the total number of offices of all finance-related institutions that are currently found countrywide and by the wide range of products each financial institution provides. In addition, we currently note an across the board downturn in the profit margins of various operations conducted by individual financial institution and by the financial sector as a whole. These figures clearly indicate that consumers are better off than they used to be in the sense that they now pay considerably less and get much more in return. Despite all the gains in the past two years, some critics have claimed that the financial supervisory system is still too outmoded for the continuous innovations of the financial market. Thus, efforts are required for both the restructuring of the financial supervisory system and the rearrangement of the financial legal framework. The enactment of The Merger Law of Financial Institutions and The Financial Holding Company Law are two examples illustrating the government’s quick responses to the latest demands of the market. Still one more point worth addressing is that the asset quality of all financial institutions, in general, and the community financial institutions, in particular, has recently turned sour as the economy is presently experiencing a slowdown in economic growth. In combating this, the government has just passed the Statute for the Establishment and Management of the Financial Restructuring Fund (FRF). It is hoped and strongly anticipated that the imminent problems will have mostly been resolved by the end of this year.

Financial liberalisation and regulatory reform have not taken place over night. To be sure, the relevant agencies right from the administrative level down to the legislative departments have all been involved in the achievement that have been and are currently being made. The Taiwan Fair Trade Commission has been one of the aggressive agencies at the ministerial level in advocating competition policies and regulatory reforms in the individual sectors, including all of the financial industries. The major efforts the Taiwan FTC has made have been three folds: the handling of all cases filed, making recommendations to relevant agencies in the process of drafting or revising laws, and the advocacy of competition policies through various kinds of education programs. The conclusions that can be drawn, if an, from Taiwan’s experience in regulatory reforms in the financial sector can be summarised as follows. First, it takes considerable time to achieve and observe meaningful regulatory reforms. Secondly, the task by no means can be successful without the advocacy of competition policies. Thirdly, the competition authority can play an important role in the process of reforms. Last but not least, it must always be kept in mind that regulatory reforms can never come to a complete halt. Re-regulation with high quality, ever-evolving regulatory thinking and innovative rules are indispensable in the process of economic development as the economy develops at such a rapid pace.
Panel 2. Regulatory Reform in the Telecommunications Sector

Regulatory Reform in Telecommunications Services: The Korean Experience

Chong-Hoon Park, Korea Information Society Development Institute, Korea

During the last two decades, Korea has implemented a series of essential regulatory reforms that has changed the telecom market environment into a pro-competitive one, contributing to the tremendous growth in the telecom sector. Teledensity has grown from 7.2% in 1980 to over 48%. Mobile service subscriptions have quadrupled over last 5 years to more than 30 million, leading the mobile market in Korea to become the 8th largest in the world. Sixty-seven percent of all Korean households, or over 9.6 million families, have access to high-speed Internet services.

Regulatory reforms in Korea emphasised the textbook approach (separation/privatisation, liberalisation, and deregulation/re-regulation), facility-based competition, and creating virtuous cycle among vendors, contents providers and network provider, as well as ensuring consumer welfare such as universal service and consumer protection. Those reforms had pros and cons for achieving effective competition, broadband rollout, and consumer welfare. Korea took necessary measures to respond quickly to the various challenges such as market power of incumbents, conflict of interest among players, and convergence.

Key factors of regulatory reforms differ according to the policy objectives of each country. There is no one country that can be held up as a successful model of regulatory reform. Nevertheless, Korea’s approach draws valuable implications since Korea has followed the textbook method and the international standard, which has contributed to attaining lower service tariffs, higher service quality and greater efficiency in the market.
The Evolution of Telecommunications Regulation and Competition in Australia

Stephen Farago, Telecommunications, Australian Competition and Consumer Commission, Australia

Up until the late 1980s telecommunications services in Australia were provided exclusively by three non-competing government owned entities. Early reforms in 1989 and 1991 provided for an independent regulator and created an environment of regulated or managed competition, with an emphasis on facilities-based entry. Emerging under the reforms were a merged government owned fixed network business, a single competing private fixed network operator and three mobile networks. There was also the introduction of interconnection and access rights, revised universal service arrangements, a retail price cap regime applying to the government owned incumbent and the creation of an industry funded ombudsman to deal with billing related complaints.

The current regulatory environment emerged in 1997 with the Telecommunications Act 1997. The Act provided for open entry of carriers and carriage service providers. A co-regulatory framework was established consisting of various government regulators and self-regulation. Responsibility for competition regulation in telecommunications was transferred to the general competition regulator the Australian Competition and Consumer Commission (ACCC). This involved insertion of telecommunications-specific access provisions (Part XIC) anti-competitive conduct provisions (Part XIB) into the Trade Practices Act 1974.

Under the regulatory arrangements governing third-party access, the emphasis is on the primacy of commercially negotiated access and interconnection arrangements followed by arbitration by the ACCC where such negotiations fail to produce mutually agreeable outcomes. This follows a trend established under the previous regime.

The reforms to date have seen the entry of large numbers of new carriers and carriage service providers, an increase in the diversity of services and falls in prices of many services. However, the incumbent Telstra remains dominant in most markets it operates in, there has been a high level of dispute in relation to access brought to the ACCC for arbitration and there has been some evidence of falls in service standards, particularly in rural areas.

Contrary to expectations when the current regime was established, a number of amendments to the legislation governing the regime have seen regulation become tighter. This trend is set to continue with further amendments proposed. These include among other changes, provision for enhanced accounting separation of Telstra’s wholesale and retail activities and a requirement for the ACCC to publish access prices for core services. This in part reflects Telstra’s continuing dominance in a number of markets.

Looking forward, there are current debates about the merits of structural separation, possible further privatisation of Telstra and service standards in rural areas.
The regulatory reform in the telecommunications sector in France

Michel Roseau, Ministry of Economy, Competition Policy and Anti-competitive Practices, France

The French telecommunications sector has been considerably transformed over the past five years. The French basic organisation was based on the monopoly held by France-Telecom. The structure of markets radically changed due to the fall of network costs, technological progress that led to the end of the natural monopoly, accelerated demand for new services. New operators emerged, causing a huge decrease in tariffs and a huge growth of volumes.

The French telecommunications Act of 1996 dismantled the old monopoly system. In the meantime, Government accepted a drastic change in its role, abandoning direct administration of the network and concentrating on regulation stakes. This gradual approach has been successful. Opportunities of new businesses were offered quickly to new comers as the incumbent operator was under growing pressure to share the networks and the data transportation facilities. Asymmetrical regulation on the incumbent operator was the key tool to reach successive competition equilibriums, imposing on France-Telecom cost-oriented interconnection tariffs.

Recently enacted, a new European regulatory framework will strengthen competition in the next few years. This framework creates special duties for so-called powerful operators which proved to have a significant market power. These operators are under close control concerning their pricing policy for retail as for interconnection markets. As a consequence, the action of national regulation authorities throughout the European Union will be under close supervision if we consider that the common law of dominant positions and competition rules will apply more and more in the specific field of electronic telecommunications economy.

The paper delivers also some ideas about regulatory stakes in different segments of the French telecommunications market: fixed telephony, mobile telephony, Internet.
The telecom regulatory reform in China

Cui Shutian, Ministry of Information Industry, China

The regulatory reform in telecom sector is becoming a global trend along with the development of the telecom industry in recent years. How does the regulatory reform suit to the changes of the global economy and compel the healthy development of the industry? That is a problem that the regulatory entities should solve. This presentation will introduce some information on practice and experience of telecom regulatory reform from China telecom regulation authority with respects of the progress of the regulatory reform, the results and problems, and some key learning from the reform.

In the first part, the progress of the telecom reform in China will be sketched from institutional reform, market structure adjustment and rules establishment with the conclusion that the China’s telecom reform is in the transition period. The second part is about the changes and results since the telecom reform and some problems the regulatory authority encountered. In the last part, the writer will give some viewpoints of lessons on the telecom regulatory reform such as how to recognise the telecom industry, how to grasp the relationship between technologies, business and market as well as the regulation and de-regulation etc.
Panel 3. Regulatory Reform in the Electricity Sector

Regulatory Reform in the Electricity Sector: The experience of the APEC economies

Armando Caceres, Competition and Regulatory Policies, APEC, Peru

Total APEC final energy consumption is projected to increase in the next twenty years at an average annual rate of 2.2%, according to estimates from the Asia Pacific Energy Research Centre (APERC 2002). In the same period, electricity generation will be increasing at an average annual rate of 2.9% per annum, lower than the 3.2% estimated for final demand. The difference is explained by transmission and distribution losses that are projected to fall from 17.1% of generation in 1999, to 12.8% in 2020. Capital requirements to meet these demands are estimated between USD 1.35 and USD 1.42 trillions.

Developing efficient domestic and regional electricity markets and advancing in the regulatory reform process in APEC is a priority in the Ministers of Energy agenda. Along these lines the Energy Working Group (EWG) of APEC is in charge of maximising the energy sector’s contribution to the region’s economic and social well being, while mitigating the environmental effects of energy supply and use.

A recent study developed by the EWG (2002) for the APEC economies shows that regulatory reform in the electricity sector can generate important economic benefits, particularly for the new and industrialised economies. Gains in the regional GDP from energy market liberalisation for year 2010 are estimated in USD 71 billion. The benefits increase if a comprehensive and broadly based approach to liberalisation is adopted. The reform can also contribute to achieve some of the key energy policy objectives that include development of more efficient production, distribution and consumption of energy; development of open energy markets; promotion of capital flows and ensuring stable secure and reliable energy supplies for the region.

However, attention must be paid to the development of the institutional and regulatory framework that supports the creation of competitive wholesale and retail electricity markets. At this respect, the Asian Development Bank (ADB 2000) has proposed a phased approach for regulatory reform in the electricity sectors of the APEC region. Five major steps have been suggested for the process: i. getting the investment framework right; ii. deciding on the goals of restructuring and the ideal industry structure; iii. preparing the players to participate in a competitive market; iv. privatising existing and new assets; and v. ensuring that the competitive market is implemented properly.

The outcome of this process will depend on generating effective competition conditions in the wholesale and retail electricity markets. Periodic reviews assessing the level of competition and ensuring that regulation is appropriate to the state of competition are required. A retrospective analysis for the OECD countries (Steiner 2001), demonstrated that even when regulatory reforms involving vertical separation of the industry, market price determination and privatisation impacted favourably on efficiency, these benefits may not be translated to consumers and small industrial users due to discriminatory practices. The final effects of regulatory reform on prices appear to depend crucially on the ability of regulatory policies to control market power after regulatory reforms have been implemented.
Other issues to consider are related to the effects of utility reform processes on poor households. Regulatory experiences affect lower income groups in varied and often complex ways, and even when it is not certain they be will hurt, the problem is that governments and regulatory advisors fail to measure, anticipate and monitor the effects of privatisation on the poor. At this respect, it is important to take into account that privatisation and regulatory reform is not a substitute for responsible redistributive welfare policies.

Assessment of the effects of regulatory reform processes in the electricity sector has also been affected by recent events related to the California Energy crisis and the Enron bankruptcy scandal. The problems in California were not the result of deregulation, but a consequence of failures in the design of the regulatory model, combined with ineffective government responses to the crisis. The Enron scandal affects the availability of funds for new investment projects and is being addressed through the development of new multilateral guaranty schemes that call for a more active participation of governments in project financing.
Andrey Tsyganov, Ministry for Anti-Monopoly Policy and Promotion of Entrepreneurship, Russia

− Current situation of the Russian electricity market

  • The main player of the Russian electricity market is the monopolistic company “RAOUES” which was privatised nearly ten years ago.

  • The Russian government holds 38% of the company’s capital and foreign investors, 20%.

  • The company owns 96% of the total power transmission lines and generates 72% of the overall electricity in Russia

− In the 1990s, the world trend in the electricity sector was gradually liberalised. Four important factors during this process were: competition, price liberalisation, private investments, and non-discriminatory access to networks (grid).

− The basic principle to reform the electricity market in Russia is to separate competitive sectors from natural monopoly sectors.

  • Russia plans to liberalise its price setting mechanism and stimulate market participation in the electricity generation and sales sectors which are competitive sectors.

  • In the transmission and dispatching sectors, Russia plans to maintain a monopoly system under which prices are regulated and equal access to networks is ensured.

− The major projects in the power industry reform in Russia consist of a package law on electricity reform and four corporate systems to implement the law.

  • The basic law for electricity reform, so called the “package law on electricity reform”, was passed by the Russian parliament October 2002.

  • The "Federal State Company of UES” was established as a subsidiary company of RAOUES.

    The goals of this company are electricity transmission and providing the country with power safety and non-discriminatory grid access on the basis of a universal service contract.

    It also runs the united federal electric grid, but cannot sell nor purchase electricity.
• “System Operator of CDUUES” is responsible for technical regulations such as the reliability of the united electric grid and energy quality. It also forecasts electricity production and consumption.

This company is also a subsidiary company of RAOUES.

• “The Trade System Administrator” is a non-profit making partner operated basically by self regulation of energy market participants.

It is founded on the deposits of the largest electricity producers(50%) and consumers (50%).

Its goal is to organise the functioning of the wholesale electricity market and it also defines the equilibrium price and provides liquidity of accounts.

• The wholesale generative companies generate electricity, sell electricity wholesale, and keep the power reserves. These companies are presently subsidiaries of RAOUES, but will be privatised in 2003.

– Conclusions from the experience of the Russian electricity sector reform

• Reforms in any natural monopoly sector should be based on competition principles, especially on non-discriminatory access to essential facilities.

• From the institutional point of view, reform needs a combination of governmental regulation in natural monopoly sectors and self regulation in competitive sectors.

• Reforms should be based on strict legal provisions, not on sectoral regulations, nor on some other authorities’ decrees. It is the best way for successful reforms.

• Reforms are sort of political compromises. We have to bear in mind positions of all interested parties including producers, consumers (especially final consumers), government, trade unions, regional authorities, and shareholders.

• Reforms should be internally generated, not externally. If corporate management does not engage and feel its own interest in the reform process, they have a many means of blocking and stopping any attempts of any reform.
Electricity Industry Deregulation in Taiwan

Shing Daw Tsai, Fair Trade Commission, Taiwan

I. Summary of the Framework of Electricity Industry Liberalisation in Taiwan

I) Total liberalisation of the integrated businesses of power generation, transmission, and distribution, as well as the generation, transmission, and distribution businesses, to free competition.

II) Establishment of an Electricity Dispatch Center to ensure fair and open distribution of electricity.

III) Establishment of an Electricity Dispatch Monitoring Committee.

IV) Liberalisation of transmission and distribution grids for public use.

V) Progressive increase of the consumers’ options.

VI) Ensure a steady supply of electricity.

VII) Regulation of public electricity rates.

VIII) Long-term measures (five years after the passage of the Electricity Industry Law) include providing guidance to the electricity businesses for the establishment of a voluntary electricity pool.

II. Role of the Fair Trade Commission During the Process of Electricity Industry Liberalisation

In the past, the Fair Trade Commission has:

I) Actively participated in the planning of electricity market liberalisation.

II) To expedite competition mechanism within the electricity industry and

III) Timely recommendations on major issues.

In the future, within the confines where the Electricity Law is consistent with the spirit of the Fair Trade Law, the Fair Trade Commission, understanding that each administrative agency has its own authority, will respect the administrative decisions of the independent monitoring and regulatory agency of the electricity market.

The APEC-OECD co-operative Initiative on Regulatory Reform

Work Plan for 2003 – 2004

October 2002

FOSTERING REGULATORY REFORM IN APEC AND OECD ECONOMIES

Market oriented economic reforms continue to be at the core of the OECD and APEC agendas for strengthening market functioning to achieve better living standards. Along with trade and investment liberalisation and facilitation, regulatory reform is needed in OECD and non-OECD economies to improve the potential for market-led growth. Regulatory reforms – including deregulation, re-regulation, and institution-building – aim at revitalising market functioning through economic liberalisation and market opening, including withdrawal of the state from ownership and from intervention in market entry, market exit, and pricing, while building new market-oriented regulatory regimes.

A COMMON APEC-OECD AGENDA ON REGULATORY REFORM

APEC and OECD economies have embraced similar concepts of regulatory quality as the foundation for further progress on regulatory reform. Regulatory quality is at the core of the OECD’s 1997 Report to Ministers on Regulatory Reform and the OECD’s current in-depth reviews of regulatory practices in its member economies. In the 1997 Report, Ministers from OECD economies reached agreement on a broad set of principles for regulatory reform, covering economic and, social regulations, and government formalities. The September 1999 APEC declaration for supporting growth through strong and open markets included the APEC Principles to Enhance Competition and Regulatory Reform. The APEC and OECD principles on regulatory reform are alike in many respects, and can establish the basis for a common agenda and joint work (see Annex).

APEC and OECD members agreed that significant gains could be achieved through collaboration between the two organisations. A joint work on regulatory reform was endorsed at the APEC Ministerial Meeting on November 2000 in Brunei Darussalam. That meeting and support by various OECD committees provided the ground to launch the APEC-OECD Co-operative Initiative to implement the principles on regulatory reform adopted by the member economies of the two organisations.

The agreement permitted the two organisations to move forward in raising the necessary financing, and scheduling and organising events and other deliverables to allow workshops to proceed. The programme is based on the idea that a series of related events that help establish durable networks will be more valuable than a one-off event. Networks permit the development over time of a common

---

2. Canada, Czech Republic, Denmark, Greece, Hungary, Italy, Ireland, Japan, Korea, Mexico, Netherlands, Poland, Spain, Turkey, United Kingdom and United States.
understanding of issues that is impossible in one-off events. They permit a more stable and complex policy dialogue to occur which builds trust between economies. Reports can be iterative and increasingly effective as information and confidence is built.


In 2000 and 2001, the joint work focused on an exchange of information on good regulatory practices and concepts built around the common agenda established by the APEC declaration and OECD principles. Substantive work was achieved during the launching conference and the three subsequent workshops (see below). At each event, over 100 attendees participated. Speakers and participants were invited from different backgrounds. Several international organisations, including the European Commission, the World Bank, and the private sector and trade union representatives also participated.

The opening conference: Challenges in regulatory reform: taking stock of progress and future challenges

The opening conference, held in Singapore on 22 – 23 February 2001, provided an opportunity to update participants on major developments in regulatory reform. The conference took note of the 1997 OECD principles a regulatory reform, and the principles agreed by APEC heads of state in September 1999, and examined how economies are implementing the principles through building regulatory capacities suited to the domestic conditions of each economy. Participants also discussed the implementation of the principles from their own economy experiences.

Follow-up to the initial conference: capacity-building workshops

Through a series of workshops, a broad range of regulatory reform policy issues was addressed. The workshops permitted to exchange views and experiences on regulatory reform, to discuss economy experiences and medium-term challenges for regulatory reform while working to identify common interests in improving regulatory practices to support market functioning.

First workshop held on 19 -20 September 2001 in Beijing, China

The workshop focused in its first session on launching and sustaining a broad regulatory reform programme. Participants discussed three key aspects to enhance capacities to promote reform. A first area of agreement was the need to implement and enforce clear high quality regulation principles, such as consultation with the regulated parties or verification that benefits will cover costs and burdens imposed by new regulation. A second issue covered the need to set up an institutional architecture to monitor reform process and drive reforms. An important issue discussed was to ensure that new institutions are accountable for results. In this respect, proper communicating with affected interests was stressed. A third topic discussed dealt with the governmental efforts to simplify business regulations to reduce formalities and red tape inhibiting business start-ups, market entry, and growth.

The second session of this workshop focused on how the APEC and OECD competition principles of regulatory reform can be placed at the centre of sustainable growth policies through their general policy framework for regulation. Different approaches and dimensions were discussed. First, the

3. The Proceedings of Beijing and Merida Workshops are available at: www.oecd.org/regreform

84
role of competition advocacy and advice was underlined. Second, speakers and participants addressed the need for pro-competition restructuring of public utilities to create competitive markets of former government monopolies and to regulate residual natural monopoly elements with access regimes. Third, participants shared experiences on the design of effective sectoral regulators for public utilities, including the setting up of efficient and effective relationships between these bodies and the competition authority.

Second workshop held on 24-25 April 2002 in Merida, Mexico

The first session of the Workshop concentrated on sharing experiences and discussing common and best practices when implementing a Regulatory Impact Analysis (RIA) system. RIAs — the systematic assessment of positive and negative impacts of regulation and alternatives — has indeed helped many economies to reduce regulatory costs on businesses, while maximising the effectiveness of government action in protecting public interests. RIA has also been instrumental in improving transparency and communication with concerned interests. During the session questions such as the setting up of an institutional framework for a successful RIA system, the use of proper analytical tools and methods in RIA systems, and the mutually reinforcing tools of RIA and public consultation and communication were discussed.

Discussions during the second session focused on the relationship between regulatory reform and trade facilitation, and especially on simplification of customs procedures and harmonisation of standards. It proved to be a most effective and in-depth dialogue between OECD and APEC economies on their respective work in the field of market openness. The session provided an important opportunity to discuss some aspects of the Doha Development Agenda, such as institutional capacities building, in the area of trade facilitation. It was also an occasion to explore some country experiences in terms of using regulatory reform as an instrument of integration into the multilateral trade and investment flows.

Third workshop to be held in Jeju Island in Korea, 16-17 October 2002.

The meeting will concentrate on (1) the importance of transparency in the regulatory framework and (2) on a first stocktaking exercise on regulatory reform in financial services, telecommunications and electricity sectors. A High Level Conference on 18 October 2002 hosted by the Korean Government, will assess the results of two year APEC-OECD Co-operative Initiative and discuss the launching of a new biannual phase of continuing co-operation in the area of regulatory reform.


A central result of the Co-operative Initiative has been the strong understanding by member economies of the benefits of a politically supported and permanent regulatory reform programme. The events also permitted to get practical knowledge of experiences and initiative in different context. From Canada to China, from the Philippines to the United Kingdom, participants had the possibility to discuss and share the progress and challenges in regulatory reform and its contribution to sustainable growth in OECD and APEC economies. A third intangible asset of the first phase was to see the emergence of a network of reformers among the APEC and OECD economies sharing concepts and ideas on structural reform, regulatory governance, competition policies and trade openness. As often underlined, the co-operation in both of the organisations’ name is achieved through open dialogue between peers.

However, though the dangers of ‘one-size-fits-all’ solutions were reiterated frequently, participants also stressed the need to continue sharing the details of past and current initiatives. Indeed, success of reforms and the avoidance of failures are based on grasping and preventing errors during the
design as well as their proper implementation. This is even more important, as reforms become more complex and risks to society and economy larger. In that sense, agreement exists on the need to continue building capacities to help economies to apply the principles. A potential area of opportunity would be to invest work in the development of concrete criteria and benchmarks to assess and self-assess progress.

**Extending the APEC-OECD Co-operation**

Capitalising on the experience and the developing network of reformers, APEC and OECD have agreed to launch a Second Phase of the Co-operative Initiative, building on three workshops and a final conference. The strategic goal of this Second Phase, which will cover 2003 and 2004 will continue to support regulatory reform in APEC and OECD economies. The new phase should further the relationships between regulatory reform and the development of market led economic growth. Furthermore, the new phase should set up the basis of a monitoring system on regulatory reform based on self-assessment, permitting increased flow of Foreign Direct Investment, trade, ideas and common initiatives.

As for the first phase, the Initiative will be implemented through a series of four events (*i.e.* three workshops and one final conference). In terms of output, the joint work will present by 2005 to the respective Executive Bodies of APEC and OECD a *Regulatory Checklist* for self-assessment on regulatory, competition and market openness policies. The *APEC-OECD Regulatory Checklist* should promote the individual and collective implementation of the APEC and the OECD principles by building domestic capacities for quality regulation.

---

**Box 1. Central definitions**

*Regulatory policies*: regulatory policies are designed to maximise the efficiency transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions.

*Competition policies*: competition policy promotes economic growth and efficiency by eliminating or minimising the distorting impact on competition of laws, regulations and administrative policies, practices and procedures; and by preventing and deterring private anti-competitive practices through vigorous enforcement of competition laws.

*Market openness policies*: policies affecting the degree of exposure of a country to international competition; in other words, policies influencing the range of opportunities open to foreign suppliers of goods and services to compete with domestic counterparts in a particular national market (*e.g.* through trade and investment). These policies operate through border barriers as well as through measures behind borders.

**THE USE OF REGULATORY CHECKLISTS**

Regulatory checklists are flexible management tools that can be used for a variety of purposes within governments. In the past decade, many governments have adopted regulatory checklists for use by officials to help self assess the capacities and performance of their policy tools. Such instruments go under many names: “checklists,” “directives,” “guidelines,” “codes,” and “principles.” Although regulatory checklists vary widely in form, status, and purpose, they often consist of a series of questions to be answered. In practice, these checklists are management tools intended to transmit crosscutting policy or administrative concerns directly to officials responsible for regulation. They create a framework in which specific concerns are targeted. Checklists are also important tools for raising awareness and benchmarking.

---

capacities. They identify options, provide information to decision-makers, and help design legal instrument to be drafted. They also provide reference points against which the decisions themselves will be made, and quality standards to assess how well regulators are doing.

The proposed APEC-OECD Regulatory Checklist will include the most relevant questions for achieving effective approaches to designing and implementing regulatory, competition and market openness policies. It will be developed in the course of the four meetings proposed, drawing on and refining as relevant the principles for good regulation as well as the checklists being developed or already agreed in APEC and OECD. It will also draw on other relevant checklists being developed elsewhere (World Bank, OAS, UNCTAD, etc), including at the sectoral level or in the context of multilateral negotiations. The Checklist will be an integrated tool, which will avoid separating the three categories, which often do not reflect the political reality confronting many decision-makers. Indeed, a number of issues concern the three areas (e.g. transparency) and some concepts behind “best practices” in each category are generally similar. The goal will be to provide a whole-of-the-government tool for managing and monitoring regulatory reform.

WORKING METHODS FOR THE CO-OPERATIVE INITIATIVE

The development of the APEC-OECD Regulatory Checklist will take about 40-50% of the time allocated to each workshops. In parallel to these discussions, each event will provide for further information exchange on good regulatory practices and concepts that can contribute to understanding the necessary elements for the Checklist. The final conference in 2004 will complete the discussions and agree on a common presentation and communication vehicle for the Regulatory Checklist. The conference will also discuss the follow up and implementation mechanisms to be launched in the next phase of the Co-operative Initiative.

It is also proposed to establish an APEC-OECD Task Force. On a voluntary basis and working through electronic means, the Task Force will be mandated to manage the Initiative at the operational level and to prepare the draft Checklists and the agenda and follow-up of each workshops.

PROPOSED PRELIMINARY CALENDAR

In order to reduce the number of meetings and costs associated with travelling, an innovation of the Second Phase will be to organise the events back-to-back with other APEC or OECD-related meetings. The following tentative schedule is proposed for consideration:

- May 2003, back-to-back with the APEC – Competition Policy and Deregulation Group (CPDG), Thailand on the Regulatory Policies aspects of the Checklist.
- December 2003, back-to-back with the OECD Regulatory Policy Forum (RPF), Paris, on the Competition Policies aspects of the Checklist.
- Spring 2004, back-to-back with the APEC – Committee on Trade and Investment or Group of Services (GOS), or the APEC – Competition Policy and Deregulation Group (CPDG), location to be decided on the Trade Policies aspects of the Checklist.
- Fall 2004, final conference, location to be decided, on the finalisation of the Checklist.

RESOURCES

APEC and OECD have provided financing for 2003, however, this work would continue to be largely contingent on voluntary resources.
ANNEX

APEC PRINCIPLES TO ENHANCE COMPETITION AND REGULATORY REFORM

- Open and Competitive Markets are the Key Drivers of Economic Efficiency and Consumer Welfare;

- Recognising the strategic importance of developing competition principles to support the strengthening of markets to ensure and sustain growth in the region and that these principles provide a framework that links all aspects of economic policy that affect the functioning of markets;

- Recognising that these principles are non-binding and will be implemented by each member economy voluntarily, consistent with the way APEC operates;

- Recognising that the adoption of these principles for policy development needs to take account of, and encompass the diverse circumstances of economies in the region and the different priorities that arise from these circumstances;

- Recognising that member economies will have flexibility to take into account their diverse circumstances in implementing this framework;

- Recognising that policy and regulation in APEC economies may properly have objectives other than promoting competition;

- Recognising that exemptions and exceptions from a competition driven regulatory framework may be necessary and that these will be implemented in a way that minimises economic distortions, giving consideration to this framework;

- Recognising that an improved competitive environment is beneficial to small and medium sized enterprises, and that extensive consultation has occurred with the business community in developing these principles; and

- Drawing upon relevant inputs from various APEC fora and the Pacific Economic Cooperation Council’s “Principles for Guiding the Development of a Competition-Driven Policy Framework for APEC Economies”;

APEC endorses the following principles:

Non Discrimination

(i) Application of competition and regulatory principles in a manner that does not discriminate between or among economic entities in like circumstances, whether these entities are foreign or domestic.
Comprehensiveness

(ii) Broad application of competition and regulatory principles to economic activity including goods and services, and private and public business activities.

(iii) The recognition of the competition dimension of policy development and reform which affects the efficient functioning of markets.

(iv) The protection of the competitive process and the creation and maintenance of an environment for free and fair competition.

(v) The recognition that competitive markets require a good overall legal framework, clear property rights, and non discriminatory, efficient and effective enforcement.

Transparency

(vi) Transparency in policies and rules, and their implementation.

Accountability

(vii) Clear responsibility within domestic administrations for the implementation of the competition and efficiency dimension in the development of policies and rules, and their administration.

Implementation

To achieve this,* APEC Member Economies will make efforts to:

1) Identify and/or review regulations and measures that impede the ability and opportunity of businesses (including SMEs) to compete on the basis of efficiency and innovation.

2) Ensure that measures to achieve desired objectives are adopted and/or maintained with the minimum distortion to competition.

3) Address anti-competitive behaviour by implementing competition policy to protect the competitive process.

4) Consider issues of timing and sequencing involved in introducing competition mechanisms and reform measures, taking into account the circumstances of individual economies.

5) Take practical steps to:
   - Promote consistent application of policies and rules;
   - Eliminate unnecessary rules and regulatory procedures; and
   - Improve the transparency of policy objectives and the way rules are administered.

---

* Recognising that efforts will seek to avoid the duplication of work of other fora, as appropriate.
6) Foster confidence and build capability in the application of competition and regulatory policy. This will be achieved, *inter alia*, by:

- Promoting advocacy of competition policy and regulatory reform;
- Building expertise in competition and regulatory authorities, the courts and the private sector; and
- Adequately resourcing regulatory institutions, including competition institutions.

7) Provide economic and technical co-operation and assistance and build capability in developing economies by better utilising the accumulated APEC knowledge and expertise on competition policy and regulatory reform, including by developing closer links with non APEC sources of technical expertise.

8) Build on existing efforts in APEC to help specify approaches to regulatory reform and ensure that such approaches are consistent with these principles.

9) Develop programmes, including capacity building and technical assistance, to support the voluntary implementation of the approaches to regulatory reform developed by relevant APEC fora.

10) Develop effective means of co-operation between APEC economy regulatory agencies, including competition authorities, and ensure that these are adequately resourced.
THE 1997 OECD POLICY RECOMMENDATIONS ON REGULATORY REFORM

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.

- Establish principles of “good regulation” to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment – facilitating principles at domestic and international levels.

- Create effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform; avoid overlapping or duplicative responsibilities among regulatory authorities and levels of government.

- Encourage reform at all levels of government and in private bodies such as standards setting organisations.

2. Review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.

- Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of the user rather than of the regulator.

- Target reviews at regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and trade, and affecting enterprises, including SMEs.

- Review proposals for new regulations, as well as existing regulations.

- Integrate regulatory impact analysis into the development, review, and reform of regulations.

- Update regulations through automatic review methods, such as sunsetting.

3. Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.

- Ensure that reform goals and strategies are articulated clearly to the public.

- Consult with affected parties, whether domestic or foreign, while developing or reviewing regulations, ensuring that the consultation itself is transparent.
• Create and update on a continuing basis public registries of regulations and business formalities, or use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them.

• Ensure that procedures for applying regulations are transparent, non-discriminatory, contain an appeals process, and do not unduly delay business decisions.

4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.

• Eliminate sectoral gaps in coverage of competition law, unless evidence suggests that compelling public interests cannot be served in better ways.

• Enforce competition law vigorously where collusive behaviour, abuse of dominant position, or anticompetitive mergers risk frustrating reform.

• Provide competition authorities with the authority and capacity to advocate reform.

5. Reform economic regulations in all sectors to stimulate competition, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

• Review as a high priority those aspects of economic regulations that restrict entry, exit, pricing, output, normal commercial practices, and forms of business organisation.

• Promote efficiency and the transition to effective competition where economic regulations continue to be needed because of potential for abuse of market power. In particular: (i) separate potentially competitive activities from regulated utility networks, and otherwise restructure as needed to reduce the market power of incumbents; (ii) guarantee access to essential network facilities to all market entrants on a transparent and non-discriminatory basis; (iii) use price caps and other mechanisms to encourage efficiency gains when price controls are needed during the transition to competition.

6. Eliminate unnecessary regulatory barriers to trade and investment by enhancing implementation of international agreements and strengthening international principles.

• Implement, and work with other countries to strengthen, international rules and principles to liberalise trade and investment (such as transparency, non-discrimination, avoidance of unnecessary trade restrictiveness, and attention to competition principles), as contained in WTO agreements, OECD recommendations and policy guidelines, and other agreements.

• Reduce as a priority matter those regulatory barriers to trade and investment arising from divergent and duplicative requirements by countries.

• Develop and use whenever possible internationally harmonised standards as a basis for domestic regulations, while collaborating with other countries to review and improve international standards to assure they continue to achieve the intended policy goals efficiently and effectively.

• Expand recognition of other countries’ conformity assessment procedures and results through, for example, mutual recognition agreements (MRAs) or other means.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

- Adapt as necessary prudential and other public policies in areas such as safety, health, consumer protection, and energy security so that they remain effective, and as efficient as possible within competitive market environments.

- Review non-regulatory policies, including subsidies, taxes, procurement policies, trade instruments such as tariffs, and other support policies, and reform them where they unnecessarily distort competition.

- Ensure that programmes designed to ease the potential costs of regulatory reform are focused, transitional, and facilitate, rather than delay, reform.

- Implement the full range of recommendations of the OECD Jobs Study to improve the capacity of workers and enterprises to adjust and take advantage of new job and business opportunities.
VII. APPENDIX I: SUMMITTED PAPERS

Assuring Regulatory Transparency: A Critical Overview

Rex Deighton-Smith

Abstract. The concept of transparency has very rapidly gained prominence in OECD countries. It is particularly associated with the rise of the governance agenda. Transparency is a core governance value, and the regulatory activities of government constitute one of the main contexts within which transparency must be assured. There is a strong public demand for greater transparency, which is substantially related to the rapid increase in number and influence of Non-Governmental Organisations or “civil society groups”, as well as to increasingly well educated and diverse populations.

Transparency initiatives now form a major part of the regulatory policies of many OECD countries: in 2000, 20 of the 30 OECD Member countries had government-wide transparency policies. Many OECD countries have now made substantial investments in improved regulatory transparency, and have reaped important gains in terms of regulatory quality, legitimacy and accountability.

However, despite these gains, the results have, in many cases, fallen short of expectations. As well, the implementation of transparency has itself lead to new stresses and problems within the regulatory process. Today I would like to consider why regulatory transparency is important and point to some of the main trends in terms of improving regulatory transparency. I would also like to look at some of the problems and issues that arise in implementing it and suggest means of minimising the problems and grappling with the issues.

Introduction: The concept of transparency & the major tools

The term transparency is itself largely non-transparent. This is probably a result of the fact that it means a wide range of – albeit related – things in different contexts, and is implemented via an extensive range of tools. One definition of transparency used in a new OECD publication is transparency is the capacity of regulated entities to identify, understand and express views on their obligations under the rule of law.

From a regulatory perspective, transparency involves both the accessibility and intelligibility of laws on the one hand and the openness and consistency of the processes by which they are made, on the other. That is, it is about both the law-making process and the implementation and enforcement of the resulting laws. Each of these parts embraces several elements:

The Accessibility and intelligibility of regulation is determined by considerations including the total volume of legislation in effect, the use of plain language in drafting, the use of incorporated material, electronic access and codification. These are all elements affecting the citizen or business’s right to know and understand their legal obligations. To take each of these in turn:

- The Volume of legislation affects transparency because it is a key determinant of whether affected parties can reasonably be expected to know and understand their compliance obligations. Too numerous or too detailed laws are non-transparent because those who must comply cannot navigate their way through the raft of legislation to determine which laws affect them and how. Thus, moves in many countries to contain regulatory inflation have important potential benefits for transparency. On the other hand, an issue that is little addressed so far is the need to deal with the increasing incorporation of detailed technical material in laws if transparency is to be improved.

- Incorporated material – that is, the adoption of standards, codes of practice and the like in regulation – tends to reduce transparency by increasing the volume of detailed, technical requirements. It also reduces the accessibility of the law, since such materials are often difficult and expensive to obtain and can change frequently. Controlling the use of this material is a major challenge for transparency, since many regulators have increasingly turned to it as a convenient means of addressing regulatory requirements.

- Codification of legislation enhances transparency by ensuring consistency between laws, simplifying and clarifying regulatory requirements and thus rendering them more easily understood.

- Plain language drafting enhances transparency by making the law more intelligible. It therefore enhances public confidence in the necessity and appropriateness of the law. Plain language policies are widespread, but effective implementation means persuading drafters to abandon conventional approaches to drafting, training them in “plain language” alternatives and meeting concerns that the use of plain language should not be at the expense of precision in meaning and practical enforceability.

6. Ibid.
− *Electronic access* to legislation enhances transparency by reducing the costs of access to the law and improving its availability – particularly in regional or rural contexts. This is often combined with central registers of law (including lower level rules) to allow easy searching. Registers of proposed new laws are also important to facilitate involvement in public consultation processes.

The *process elements* of regulatory transparency include clear procedural requirements (Administrative Procedure Acts), opportunities to be heard and appeal rights.

− *Standard procedural requirements*, which are often contained in legislation, ensure that the legislative process is understood and that opportunities to participate in the process are known. They also allow regulators to be challenged if the requirements have not been followed and stakeholders have not been given opportunities to challenge new proposals.

− *Appeal rights* are essential safeguards in the compliance and implementation stages of the regulatory process. Standardised, independent appeal processes ensure that regulation is applied fairly, avoiding arbitrary decision-making and minimising the scope for corruption. They also ensure that this application of regulation is itself transparent. Independent administrative appeals bodies within government administrations, as well as parliamentary mechanisms such as ombudsmen are increasingly used in OECD countries.

− *Consultation processes* are central to transparency, since they involve a dialogue between regulators and stakeholders during the development of new regulation. However, the tools of consultation vary widely, from narrowly constituted advisory groups or committees, to “notice and comment” procedures which give all members of the public the opportunity to participate, whether or not they have direct interests in the proposal.

### Consultation tools

Among the tools of transparency, consultation occupies a pre-eminent position. Given this, it is important to recognise that consultation is not one tool, but rather constitutes a range of quite different tools which, to some extent, have different purposes. A basic distinction can be made between *active* and *passive* consultation.

The term *active consultation* can be given to tools like advisory groups and committees and, to some extent, to public hearings. The distinguishing feature is that this model of public consultation functions as a dialogue between regulators and stakeholders. Thus, the stakeholders are to some degree active participants in the regulatory process, rather than merely being consulted on their views.

The advisory group/committee model implies a selected, usually quite small, group of participants, chosen either for their expertise or because they have substantial direct interests in the proposed regulation. To a large extent, this limited participation is essential to the dialogue aspect of active consultation. However, public hearings represent an attempt to replicate this dynamic in a context of broader participation. They cannot guarantee all voices will be heard, but do allow a “real time” exchange of views and follow-up of questions.
Passive consultation, then, refers to the generally more widespread approach of receiving written comment from stakeholders in response to published regulatory information. Passive approaches are more likely to be open to the general public – e.g. notice and comment procedures. However, other variants exist, such as “circulation for comment”, in which the information is targeted only at selected groups, who are invited to comment.

Selective forms of consultation arguably score less well in transparency terms than models that allow the broad public to participate. However, they can make other contributions to regulatory quality that make them indispensable. For example, more targeted tools that allow for a real dialogue, such as advisory committees, can be more effective in assisting regulators to narrow options and clarify major stake-holder views early in the process. They may also be better means of generating quantitative information for use in the RIA context.

Open processes, such as public hearings or “notice and comment” can ensure all voices are heard and that the opportunities to be consulted are widely known. They are also essential to ensure that consultation is not used as a means of regulatory “capture” whereby concentrated sectoral interests prevail over more diffuse, widespread ones. In particular, transparency allows stakeholders to challenge proposed laws and requires regulators to defend their proposals. This latter characteristic is a key reason that more open, public models of consultation are being used increasingly in most OECD countries – as citizens increasingly demand the right to scrutinise proposed regulation and question the pursuit of such sectional interests. Consultation can also be a key means of identifying additional alternatives and requires regulators to be able to respond to alternatives put forward.

Of course, open consultation processes also function as anti-corruption mechanisms as, arguably, corruption represents the extreme extent of “regulatory capture. This is true of transparency mechanisms overall, and a key reason for promoting them, in many contexts.

These complementary characteristics mean that the two forms of consultation are increasingly being used in combination in OECD countries, while there is good reason to believe that they are mutually reinforcing, in terms of effectiveness.

Transparency in the regulatory context – why is it important

Transparency is a governance value in itself, as well as an essential aspect of ensuring accountability and minimising corruption. It is a key demand of NGOs, who see it as an essential building block of civil society – that is, as a means of empowering citizens. The context in which the rise to prominence of the transparency has occurred is one of declining trust in governments. Transparency is a potentially powerful response to this decline in trust. It requires governments adhere to higher standards of conduct by ensuring that that conduct will be open to scrutiny. It also promotes trust by allowing stakeholders to see and judge the quality of government actions and decisions.

Transparency is also an important regulatory quality tool in a range of other senses. It minimises the risks of regulatory failure in several ways.

Transparency and regulatory quality

Consultation, a major transparency element, is a cost-effective means of gathering data – which supports Regulatory Impact Analysis, a key regulatory quality tool based on objectively weighing the benefits and costs of different policy options in a comparative context.
Regulatory Impact Analysis (RIA) can itself be considered a transparency mechanism. RIA is often regarded primarily as a means of favouring rational (including benefit/cost based) decision-making over other possible models. However, it is also potentially a mechanism for laying bare to stakeholders the nature of the regulatory decisions made and the criteria used. It fulfils this function if it is combined with public consultation – that is, if the results of RIA are made public and used as a vehicle for consultation. Providing information is a fundamental way of making consultation effective and meaningful, particularly in the case of the general public and less well resourced interlocutors.

Transparency – through consultation, plain language drafting, improved accessibility of the law and other initiatives – improves the legitimacy of regulation. It thereby helps promote compliance and, as a consequence, regulatory effectiveness.

Transparency also reveals likely compliance stresses, by highlighting where proposed regulation lacks acceptability (that is, where it conflicts with widely held public attitudes as to what constitutes reasonable behaviour), or where it lacks perceived proportionality (that is, where the proposed regulation is not regarded by the public or stakeholders as a reasonable response to the identified problem).

**Trends in transparency initiatives**

Recent OECD work indicates a number of clear trends in terms of Member countries’ initiatives toward improved transparency. The most important are:

- **Adoption of more public and more extensive consultation processes.** As I’ve mentioned, many countries are opening their consultative processes, adding new consultation tools that are open to the public to longstanding “corporatist” or selective processes. Consultation is also being begun earlier, increasing its potential to affect the final shape of regulation.

- **Providing better information to support consultation.** The use of RIA has expanded rapidly and many countries have combined RIA with consultation to develop a consultation process based on better information flows and, as a result, a deeper and more effective dialogue.

- **Increased use of Administrative Procedures Acts.** Countries are increasingly using legislation to both standardise their regulation-making and regulatory implementation and enforcement functions and to make these processes transparent.

- **Increased use of independent appeals processes.** As part of this move toward more standardised and open administrative procedures, avenues of appeal against enforcement decisions are becoming more widely available and increasingly involve independent bodies, rather than being made by the regulator themselves.

- **Increasing importance of international trade rules in promoting transparency requirements.** One of the most important trends is that international trade agreements are mandating a wide range of transparency standards as means of enhancing international competition and market access. This is tending to drive substantial convergence in transparency standards and tools. The WTO and GATS agreements are major examples.
Electronic access to legislation and related documentation. Governments have grasped many of the opportunities provided by Information Technology to make laws more accessible, as well as providing access to related materials. This represents a major enhancement of technology which is continuing to develop at a rapid rate.

Challenges for transparency initiatives

While substantial progress is being made on regulatory transparency issues, a number of broader regulatory trends pose substantial new problems and risk undermining the gains being made. Some of the more important problems that have been recognised in many OECD countries are:

- The role of “regulatory inflation” in undermining effective transparency. While many countries have recognised and sought to deal with the regulatory inflation issue, success has often been limited, and growing bodies of regulation remain a major concern.

- The increasing use of “incorporated instruments”, including detailed, technical standards in regulation is a major contributor to regulatory inflation, and poses additional problems in terms of lack of accessibility and in undermining “plain language” initiatives. On the other hand, the use of international standards in place of locally derived equivalents can enhance transparency by improving consistency and accessibility for foreign competitors;

- The increasing use of “quasi-regulatory” instruments, of uncertain status, poses particular problems for transparency by creating uncertainty as to what compliance obligations exist.

- Increasing regulation at supra-national levels, especially by the use of international treaties and international standards bodies, poses several challenges for transparency, including ensuring that real consultation opportunities exist and providing adequate access to standards;

- Increasing use of alternatives to traditional regulation has in many cases led to transparency concerns, as the process of developing and implementing the alternative has often had little public input. Less widely used regulatory alternatives do not have clearly defined procedures and safeguards to ensure minimum transparency standards. This is a critical area in the further promotion of the use of alternatives – procedural safeguards to ensure adequate transparency standards must be built in.

- “Emergency” regulatory processes. In some countries, a response to improved regulatory processes has been for regulators to increasingly make use of “emergency” procedures designed to allow the regulatory process to be responsive in cases of extreme urgency.

Problems with transparency

In addition to these specific issues, transparency requirements, considered in general terms, throw up a number of problems or trade-offs that must be managed as part of the design and implementation of transparent regulatory processes. The following set of issues indicates the potential for tensions between transparency and other aspects of regulatory quality.
1. Transparency Vs urgency

First, regulators frequently perceive a stark trade-off between transparency and urgency. I’ve just mentioned the tendency for regulators to abuse emergency procedures to circumvent regulatory processes that are seen as too cumbersome. Transparent, consultative regulatory processes are often perceived to be slower and to reduce regulatory responsiveness, particularly to politically charged problems. Resistance to transparency measures within administrations may often largely be a result of this perception.

The perception is often reality – especially where consultative processes are ad hoc in nature and poorly planned. For example, starting consultation too late in the process can mean either repeating or revising regulatory development already undertaken or else limiting government responsiveness and undermining the purpose of consultation.

Thus, rationally designed consultative processes that are properly integrated with the policy process are needed. As I mentioned earlier, the tools of consultation are many and varied. The OECD’s work on consultation shows that the different tools are often most effective when used in combination. That is, different tools can and should be used at different stages of the law-making process to achieve different goals. Thus, for example, a public notice and comment phase might be more effective and able to be completed more quickly if it has been preceded by active consultation with major interests at an earlier stage in the development of the proposed law.

2. Transparency and consultation fatigue

Despite a massive investment by governments in increased transparency, in particular through the rapid expansion of consultation, there is evidence of widespread public dissatisfaction with the results. This suggests strongly that improving transparency is not simply a matter of increasing the quantity of transparency initiatives, but is rather dependent on the quality of the initiatives taken.

A particular issue is “consultation fatigue”, where groups and individuals have been found to withdraw from participating in consultative programmes over time. Addressing this issue is crucial to safeguarding consultation’s role in enhancing regulatory quality and transparency in the longer term. Achieving this requires attention to a range of factors, including:

- The need to organise consultation efficiently. Better organisation of consultation can minimise separate requests for information and inputs by combining related issues and rationalising the number of consultation stages. As well, the burden of responding to consultation requests can be reduced by providing information to assist stakeholders in understanding the key issues and formulating their response. Providing adequate timelines can enable peak groups and less well resourced organisations, in particular, the opportunity to participate effectively.

- Ensuring responsiveness – Demonstrating responsiveness to the information and opinions received is fundamental to avoiding consultation fatigue. Stakeholders must see clear benefits from their participation through improvements in the acceptability of the regulation to them and, more generally, acknowledgement that their input has been weighed seriously. Thus, regulators must both be responsive and “be seen to be responsive”. Being seen to be responsive can involve, e.g. communicating what influence consultation comments have had or, crucially, why they have not been taken up in particular cases. Achieving true responsiveness is likely to be more feasible if consultation is commenced relatively early in the legislative process, before there is a high degree of commitment or “lock in” to a particular option – or even to the decision to act rather than not act.
Empowering stakeholders – In some policy areas, many important stakeholders are poorly resourced and limited in their ability to organise and present their viewpoints. There may be circumstances in which assisting stakeholders to develop capacities to engage effectively in consultation is appropriate. At the most basic, this can mean no more than providing more time for responses to be received and better information on the nature and reasons for the regulatory proposal.


Closely related to the issue of consultation fatigue is the question of ensuring that opportunities to be informed of, and participate in regulatory activity are “real”. That is, what problems must be faced to ensure citizens and groups are able effectively to take advantage of participation opportunities. Failure to deal with this issue means that the transparency achieved is “formal” rather than “real” in nature and is likely to be a prime contributor to consultation fatigue.

As I noted in relation to consultation fatigue, the timelines within which input is sought and ensuring adequate information provision standards are key factors. The degree of responsiveness to inputs received is also important. This can mean targeting the use of consultation mechanisms to situations in which there are real and substantial policy choices to be made and a willingness at the political level to be responsive to inputs in shaping the policy outcome.

Another issue in rendering transparency “real” rather than formal relates to the impact of Information Technology: The proliferation of information sources via Web sites and other means can mean that scanning for and finding relevant material becomes all but impossible. Thus, enhancing transparency can mean helping participants find their way through this maze of information sources. Many OECD Governments are now paying considerable attention to developing sophisticated web “portals” to guide citizens and businesses to the relevant services and/or information sources provided by Governments at both national and sub-national levels. Integration of these different information sources is a key theme.

4. Predictability Vs flexibility

Predictable regulation-making processes have the benefit of increasing the potential for stakeholder involvement, while also enhancing levels of trust. Thus, as I have mentioned, they are important transparency elements. The use of legislation to standardise and make predictable various elements of the legislation-making process is increasing in OECD countries, increasingly supplanting processes based on tradition or custom, or on policy-makers’ discretion.

For example, in relation to consultation, several countries have legislated detailed requirements in pursuit of this predictability and to create a high level of assurance that the requirements are followed in practice.

However, such highly prescriptive approaches may undercut flexibility, militating against regulators’ freedom to use the best means available to deal with specific issues or circumstances. The OECD has recommended that flexibility be provided within a framework of minimum standards set out in legislation or other instruments. Thus, where some important stakeholders may be difficult to reach, specific measures may be required to actively seek and ensure their input.

On the other hand, departures from standard practices may be required where there would otherwise be opportunities for strategic behaviour, or where regulatory urgency demands it. Thus, flexibility may need to include the possibility of truncating the minimum standard approaches in certain cases.
5. Transparency Vs confidentiality

Transparency is clearly at odds with confidentiality – but regulators must routinely deal with confidential information. The increasing use of a range of public/private partnerships by governments in seeking to achieve public goals effectively and efficiently means that these issues of intellectual property rights and commercial confidentiality increasingly loom large.

The application of “Freedom of Information” legislation and principles to the State’s commercial dealings has already become a major area of controversy – yet there have been few systematic approaches to balancing these requirements.

6. Consultation/concertation Vs the democratic obligation to govern for all.

A potential danger, particularly where consultation becomes concertation (that is, when non-governmental groups actively participate in decision-making, rather than simply being consulted), is that governments’ responsibility to govern for all can be compromised by their desire/imperative to be seen to be responsive to consulted interests.

No matter how open is consultation, more organised interests with larger stakes in particular decisions will tend to predominate, meaning there is a real potential for tension between these groups – and their views – and the government responsibility to guard the general interest.

Within this context, governments will sometimes need to make judgements as to the standing, or degree of “representativeness” or “legitimacy”, in relation to consulted groups. Questions can arise as to whether they are democratic themselves and, if not, what weight should be given to their views. It can also be difficult to determine how large is the group they represent. This is particularly an issue with “peak” groups, which bring together numerous organisations with related interests.

7. Independent review of regulatory decisions

Another example of the tension between openness and the need to develop trust in regulatory processes, on the one hand, and the need for governments to retain responsibility for governing for all is the recent rise of proposals for independent review of regulatory decisions. 7

This has arisen particularly in relation to complex, technically-based regulatory choices, where a key benefit sought from independent review is to provide expert verification of the decisions by supposedly disinterested parties: i.e. there is an element of safeguarding against the possibility of capture. These proposals appear to spring from the diminution of trust in governments that I have mentioned earlier. But how does this notion fit with that of the responsibility of governments to make policy choices? Clearly, if this mechanism is to be used, the role of such review panels needs to be carefully defined and understood if there is not to be conflict.

7. See, for example, Transparency: Toward a global regulatory standard. AgBiotech Bulletin Volume 9, issue5, April 2001.
8. Different models of consultation have different transparency implications.

If the expansions in consultation being seen in many countries include greater use of more focused and less open models of consultation, the result can arguably be a reduction in accountability – and perhaps transparency, due to certain favoured groups being given greater access to the regulatory process.

Thus, where “focussed” models of consultation are used (e.g. advisory groups or boards), the issue of transparency safeguards arises within the consultative context itself. Groups that are “outside” the circle must remain informed and be confident that focussed consultation is not “captured”. This issue is recognised, for example, in the recent European Commission document “Toward a Reinforced Culture of Consultation”. Thus, the co-ordination of different consultation models (open and focussed) may be required to maintain the necessary openness, while allowing the goals of a focussed model of consultation to be attained as well.

9. Transparency requirements as a regulatory alternative

Another dimension of the transparency concept is the use of regulation to mandate transparency in the behaviour of private actors. These mandated disclosure requirements are a long-established tool of “light-handed” regulation and are increasingly being used. This tool is based on creating public pressure for improved practices by increasing awareness of (positive and negative) performance by the target entities. An early example of this approach was the formulation of greatly enhanced market disclosure rules in the wake of the depression of the 1930s. Food labelling and eco-labelling requirements are other, more recent, examples.

Recent failures of these mechanisms – in particular in relation to some spectacular corporate collapses – have raised questions as to the effectiveness of the notion of “legislating for transparency” as a regulatory tool. However, the issue needs to be seen in terms of a number of regulatory governance issues. First, to what extent are the mandated disclosure requirements enforceable? As with any regulatory tool, it is only where there is a high level of confidence that compliance can be attained do disclosure requirements constitute an appropriate tool.

Secondly, the nature and extent of the requirements must evolve over time, as do the problems they are designed to solve. Just as corporate disclosure requirements have evolved in the past to remove exemptions for particular sectors and include various accounting standards, so newly mooted rules for auditing arrangements are being evolved to address current inadequacies. This simply reflects the fact that regulatory quality is necessarily a dynamic concept.


Conclusion

Transparency measures are never costless, and in some cases can represent substantial uses of resources. Thus, as with any other area of government policy, a benefit/cost based assessment is needed in relation to transparency proposals.

This means that good practice in relation to transparency is not simply about having “enough” transparency – in some quantitative sense – but rather about the quality of the different elements of regulatory transparency, including the extent to which they are integrated with each other, and the regulatory process more broadly, and are consistent with, and mutually supportive of each other.

Transparency initiatives can conflict with other regulatory quality values and the potential for these conflicts must be recognised in order to ensure that they are managed as effectively as possible and a conscious process of balancing these goals and achieving appropriate trade-offs is undertaken.
Let me first start by thanking the organisers of this workshop for giving me the opportunity to explain the regulatory reforms that are currently taking place in the European Union. The subject is both well chosen and timely in the European Commission’s perspective.

In my contribution to this session I intend to briefly address two subjects, namely:

− The shift in emphasis on regulatory reform priorities that has occurred in the European Union over the recent years and
− The action plan that is being launched to simplify and improve the Community’s regulatory environment.

I will then conclude by a few thoughts on the lessons that we have learned through years of regulatory assessment activity.

These topics may sound slightly different from the scope of this session, but you will soon see that, in reality, they both relate to governance and enhanced transparency.

**Shift in emphasis on reform priorities**

There should be no surprise to anyone if I start by saying that regulatory reform issues have always been at the heart of the EU’s political, economic and institutional agenda. The reasons are to be found:

− In the unique and evolving sharing of legislative and executive powers existing in the EU’s institutional system of government,

− In the fact that the EU is an economic and political, but also if not mainly a regulatory space, that functions under a mixture of both national and Community rules and where the source of new legislation is increasingly coming from in the Union itself,

− And, in the fact that, taken in its broadest sense, EU legislation does not only govern the functioning of the Internal Market but also its economic behaviour (for example through the growth and stability pact) and its external participation in international rule-making (for example by shaping and implementing the Kyoto protocol or the WTO trade round).

Considering this background, no one will be astonished if I also say that the ordinary European citizen is increasingly concerned with the role played by the European institutions in shaping his daily live. In particular as the European regulatory processes are often perceived as being intricate and difficult to understand, if not autocratic.

Let me say right away that these views carry a certain dose of exaggeration. Indeed, compared to many other public administrations our record in terms of easiness to get to, willingness to listen and concern about the overall wellbeing of the European society is unquestionably not unfavourable.
However, one cannot refute that the European Union’s institutional order is complex and that the issues at stake are increasingly technical. In addition, the European Commission, which has the sole right of legislative initiative, has so far not been very successful, for all sorts of reasons, in explaining that its legislative initiatives are not the result of a discretionary behaviour; but rather the consensual outcome of objective requests from a large number of stakeholders. For the ordinary European citizen there is therefore a problem of transparency with the European institutions, not so much on the substance of what they do but on the way they operate and explain to the public the reasons of their actions.

Fortunately, cultural change is beginning to take place. This is reflected, on the one side by the increasing political commitment to the implementation of a regulatory quality strategy and, on the other hand, by the work currently ongoing in the European Convention on institutional reforms.

Let’s see how all this fits together.

In the late 1980’s, the Community’s legislative priorities concerned market reforms under the ‘1992 Single Market programme’, which implied a significant effort to enact harmonised legislation promoting competition and facilitating intra-community trade. The overall objective here was not to create new legislation per se, but more pragmatically to replace existing national rules, through harmonisation, in areas where differing national laws did not allow the proper functioning of the Internal Market.

In many sectors, this effort resulted in privatisation and deregulation policies as it would not have been possible, while fully complying with the Community’s competition rules, to meet the objectives of increased competitiveness set for the European economy without substantially modernising the industrial structures in several sectors.

There can be little doubt that the implementation of this agenda, which was largely of a political nature, has greatly contributed to improve the functioning of the EU’s single market, with positive effects on growth and, particularly, on the competitiveness of European firms. Without this intermediary step, it would neither have been possible for the EU to serve as a model for regional integration across the world, nor would it have been possible for it to achieve further progress in the areas of economic and monetary integration.

With the internal market objectives now largely accomplished the emphasis of regulatory reform is now definitely shifting to what one could call “knowledge-based decision-making”, in short: towards ‘improved regulatory quality’ that meets evolving needs.

There are fundamental reasons explaining this shift:

− **Firstly**, European governance considerations are becoming increasingly important in the public opinion. The concept refers to the question of how the EU institutions and national governments use the powers given by their citizens. Behind this issue are the concerns of the European society as regards compliance with the essential principles of transparency, participation, accountability, effectiveness and policy coherence. There are also the concerns on the nature of Community legislation, which is often perceived as excessive, inappropriate and cumbersome.

− **Secondly**, the Union is now facing the challenges of enacting legislation in an increasing number of sensitive areas that cut-across an ever larger spectrum of economic activities and societal needs. In short, it is faced with the need to put in place legal frameworks that promote economic efficiency while ensuring sustainable development trends. This concerns, in particular, areas such as environment, health, safety and consumer protection.
where rules do not always exist, knowledge is limited and policy instruments are not necessarily adapted to the rapid changes in technological progress. Moreover, legislative initiatives in these fields cannot reasonably be conceived without taking into account their implications outside the Community and the necessary consensus of the stakeholders that are likely to be affected by the rules. It is therefore vital to adopt adequate mechanisms that guide political decision and optimise public opinion’s adherence. This can only be done through improved prior assessment tools, broader consultations, alternative scenarios to achieve policy objectives, complementary actions by all parties involved as well as a constant monitoring of the adequacy between what was meant to be achieved and its effective results. Bearing in mind, obviously, the likely implications of such rules in terms of costs and benefits for the society and for the economic operators.

This is what the European Commission’s action plan on regulatory environment is about. In technical terms, a regulatory management scheme, in political terms a method to demonstrate that the European Commission uses its right of initiative with rationality and in compliance with the fundamental principles of subsidiary and proportionality that are enshrined in the Treaty.

The ‘strategy to improve and simplify the regulatory environment

While there was consensus in Europe on the need to launch reforms in this area, two initiatives increased the momentum for action.

− The Lisbon Summit of Head of States (2000) that called the Member States and the European institutions for a co-ordinated strategy to simplify the regulatory environment and

− The European Commission’s White Paper on European Governance (2001) that launched a broad debate on institutional reforms.

Both initiatives clearly underline the challenges that I have mentioned as well as the links between the adequacy of the regulatory environment and the European’s political objectives of:

− Turning the EU’s economy into one of the most competitive in the world,

− Simplifying the community ‘acquis’ for a successful and easier enlargement of the Union to new members with different political and administrative cultures as well as economic, social and industrial structures, and,

− Further improving the functioning of the Internal Market in areas where it is still impaired by malfunctions and delays. Indeed, with the changeover to the Euro, the fast development of e-commerce and the progress achieved in economic integration, it is becoming evident that further process needs to be achieved, for example in the service sectors. In addition, the principle of mutual recognition – that is the main reference for free – does not always function, Community regulations often remain complex for users, and coherence with national provisions needs to be constantly monitored in order not to create new market fragmentation. In these domains regulatory quality is central to the improvement of economic performance.
In response to the Lisbon Summit call, the European Commission presented a series of documents (to the Stockholm and the Laeken European Councils) setting the conditions for a successful regulatory strategy. In particular, it underlined that the reforms would need, besides strong political support, to embrace the whole life cycle of a Community act: i.e. from its initial development and approval by the European institutions right up to its application in the Member States.

All parties concerned and, in particular, the Member States governments (through the so-called Mandelkern Group report) have largely endorsed these views.

For the sake of a good understanding, it is important to stress that in the Commission’s opinion:

- Community legislative action should only be taken where deemed necessary,
- Broad consultations and impact analysis should become standard practices as from the early stages of Community intervention and their results be made public to support political decision,
- Each proposal must include the review of alternative scenarios together with an evaluation destined to identify the most appropriate legal/policy approach and instrument,
- The reforms should not lead to delays in the legislative process,
- Rapid and correct transposition and effective application of Community rules must be ensured,
- The effects of enacted legislation should be periodically evaluated, and
- The simplification and codification of the existing ‘Community acquis’ should be accelerated.

It is under this framework that the European Commission adopted on June 5th 2002 the so-called "Better Regulation Package" which was presented to the Seville European Council and which is now being put in place.

In presenting this package the Commission also announced that, it would subsequently address a number of issues that are related to regulatory quality (in particular on comitology, infringements, non-institutional expert advice and on regulatory agencies). As a first move in the field of alternative policy instruments, the Commission adopted last July a Communication on environmental agreements at Community level, establishing the basic criteria to be followed when considering such regulatory tools. The document also contains interesting considerations on the concepts of co-regulation and self-regulatory schemes to which the Community could have an increasing recourse.

10. High-level advisory group created in December 2000 by the Ministers for Public Administration from the EU Member States. The group was composed by 16 national experts and the European Commission and was given the mandate to take an active part in the preparation of the strategy demanded by the European Council in Lisbon.
The “Better Regulation Package”

The recently approved package tackles three complementary subjects:

− The simplification and the improvement of the EU’s regulatory environment through an Action Plan,

− The introduction of a mandatory Impact Assessment system,

− The adoption of Minimum Standards for Consultation.

1. The **Action Plan on simplifying and improving the regulatory environment** includes a number of concrete proposals, with set timetables and objectives. The plan addresses the whole legislative life cycle of a Community act in the sense that it outlines actions that fall under the remit of the Commission as well as actions that would need to be taken by the other institutions and the Member States to achieve concrete results. A proposal for an inter-institutional agreement on several points is also foreseen.

In short, the proposed actions focus on the following:

− **Firstly, well-prepared and more appropriate legislation:** This includes enhanced consultations, systematic ex-ante assessment, making use of the right legislative instrument and the inclusion of revision clauses in relevant proposals (for example in areas subject to rapid technological change).

− **Secondly, simplifying and improving the acquis communautaire:** This covers a quantified objective to simplify and reduce the volume of legislative texts (by at least 25% by Jan 2005) through various techniques (such as codification, recasting and simplification).

− **Thirdly, better transposition and application of Community law:** This includes actions destined to support the electronic transmission of national notifications and the promotion of consultative and evaluation practices within the Member States, in particular in relation to draft national rules that are notified to the Commission (under Directive 98/34).

− **Fourthly, a new culture within the institutions:** This includes the establishment of an internal legislative network in the Commission, under the co-ordination of the Secretary General, including all DGs with regulatory competencies. Such network will ensure the monitoring the plan and the follow up of individual proposals of a significant nature. It will also be responsible for an annual evaluation of the regulatory quality. To follow up on the actions aimed at the other Institutions and Member States, the creation of an inter-institutional group is also proposed.

2. The **Impact Assessment** system, which was adopted by the Commission for its proposals, encompasses the main elements of a new, integrated, method for impact analyses that will be gradually introduced in the planning process as from the end of this year.

The new tool will integrate and replace all the partial impact assessments traditionally used by the Commission (such as on Business, environment and trade impacts). The fundamental objective here is to provide policy-makers with more accurate better-structured and coherent information about the likely
positive and negative impacts of Commission proposals. To deliver on the EU’s Sustainable Development Strategy agreed in 2001, the integrated assessments will cover, to the extent possible, economic, social and environmental aspects.

Although built around best practices already in use in various OECD Member countries, our plans remain ambitious essentially because the scope of the analyses will be expanded to include areas where there is little experience in measuring and quantifying impacts. In addition, the system foresees a formal two-stage process composed by:

- A Preliminary Assessment that will give a first overview, covering the identification of the problem, the alternative policy options, the parties affected, the research already undertaken (consultations, studies..) and the indication of the work that still needs to take place (on a ‘proportionate’ basis). As the production of such a preliminary review, to be done by the drafting departments, will become a condition for inclusion of proposals in the Commission’s Work Programme, we believe that this requirement will positively contribute in launching the cultural change that still needs to take place. We will apply this to all regulatory as well as other policy proposals (such as White papers and negotiating guidelines for international agreements) that are likely to have impacts on the Community.

- For those proposals of a significant nature, an Extended Impact Assessment will be done. On the basis of the preliminary assessments, the College will decide which proposals will have to undergo a more in-depth analysis under the supervision of ad-hoc inter-departmental steering groups.

All this analytical evaluations will be made public so that transparency is enhanced and the Commission’s political decisions better understood and challenged, if necessary, by interested parties. Technical guidelines for IA will be available later in the year and internal organisational arrangements are being put in place to monitor the process and ensure an adequate representation of the various Commissions departments concerned.

3. The Minimum Standards for Consultation that have been adopted for the Commission’s services include a number of guiding principles that will help to:

- Improve the participation of stakeholders and other interested parties,

- Make consultations more transparent as regards the way they are conducted and how the results are used by the Commission, and

- Ensure that all Commission departments adopt a consistent and coherent, although non-binding, approach to the consultation processes.

Examples of minimum standards that support these aims are the clear content of the consultations, the adequate publication, sufficient time limits to participate (min. 6 weeks), proper feedback and easier access through a unique web-portal.

Lessons from the past

As a conclusion, I would like to say a few words on the lessons that we have helped shaping what we are now planning to do.
In developing our approach to better regulatory quality reforms the Commission is neither started from scratch or trying to re-invent the wheel. Indeed, we have built on important contributions from the accumulated experience developed in house as well as elsewhere and in particular from:

- The OECD PUMA group work on regulatory reform and management practices that has over time developed considerable expertise in this area and set the best practices that are being adopted by an increasing number of OECD member states.

- The review of existing systems in various European Member States (but also in the USA) who have since long put in place structures, processes and methodologies to improve their own regulatory practices,

- Various valuable contributions from the other EU institutions, from think tanks and professional associations.

As regards internal expertise, it is worth remembering that the Commission, and in particular its Directorate General Enterprise, has since the late 80’s (1986) developed expertise in carrying out Business Impact Assessments (BIA) that have to be attached to all Commission’s proposals with a significant impact on business, and in particular on SME’s. Similar expertise is also developing in the area of environmental assessments.

However, over the time is has become widely acknowledged that these existing partial assessment tools have not always worked as originally intended. In a Pilot Project BIA carried in 2001\(^{11}\), we looked into the in-house practices to identify its major weaknesses and make recommendations for improvements.

During the exercise, we discovered, for example, that BIAs were becoming an administrative ‘paper requirement’, sometimes carried out on nearly finalised proposals, whereas they should have intervened already during the early drafting process. Moreover, there was too much discretion on how to carry them on, the guidelines were not mandatory, the costs of the proposals for business were rarely quantified and there was no data quality standards. Benefits were often overstated and cost underestimated. In addition, the conclusions were not always supported by objective information, there was little evidence of an institutional learning process from the previous analyses and no requirements to update the assessments to take account of amendments during the legislative process. But, above all, the BIA system was only providing a partial assessment making it difficult for policy makers to get a complete and equitable picture of all the potential impacts of a proposal upon which to base their decisions. In particular as the complexity of the topics to be addressed by the Community is growing.

Our recommendations for improvements are largely reflected in the Commission’s regulatory reform package.

---

\(^{11}\) The final report of this pilot project, which can be found in all EU languages on DG Enterprise’s web-site, draws conclusions on how to improve the analysis of the impact of legislation on business.
Conclusion

As a final word, I would say that the regulatory reform package that European Union intends to bring forward cannot be considered as revolutionary since most of the processes that it advocates have since long been in practise by many in the Commission and fairly well established in several Member States.

However, it remains ambitious because it implies a fundamental change in culture towards co-operation, evaluation, consultation and communication of results. Streamlining different administrative traditions into a more coherent, integrated and efficient approach towards regulatory quality is a major challenge. In particular, as this cannot be achieved without institutional learning in terms of changing the system of interaction between the society, the stakeholders, the public administrations and the decision makers.

As usual, the Commission remains convinced that by reforming its own practices in this area, it will positively contribute in launching the required cultural changes in the Community’s institutional order.

I will be happy to answer questions that you may have.
Regulatory Transparency: What We Learned in Korea

Jin-Guk Kim
Tae-Yun Kim
Junsok Yang

I. Introduction

In developed and developing countries, the importance of regulatory reform, including administrative reform, is becoming more apparent. In developed countries, as many of the traditional engines of growth such as increases in labour force and increases in capital stock are slowing down, these countries are paying more attention to how to increase the efficiency of the existing factors of production. These countries have found that improving the quality of regulations can substantially raise the productivity of their economies.

Regulatory reform is gaining prominence in developing countries as well, as developing countries are beginning to realise that inefficient regulatory regime can hinder the efficient allocation of resources and valuable investment from abroad, as well as raise the possibility of corruption. Thus, these countries have realised that comprehensive regulatory reform is a crucial part of economic development.

Effective regulatory reform consists of many different components, but one of the most important is increasing the level of transparency. Without transparency, any regulatory reform will be crippled since the reform may not give the people what they need, and the people will not know what changes have taken place.

In this paper, we examine transparency and regulatory reform. First, in section II, we will state what we mean by transparency, giving a general framework to our discussions. In section III, we look at regulatory reform in developing countries specifically, based on Korea’s development history. One of the lessons Korea has learned is that the government can set an effective industrial policy by establishing an economic environment which fosters competition, rather than choosing winners and losers. Raising transparency is an important part of such an industrial policy. In section IV, we focus on general lessons on how to raise transparency from Korea’s regulatory and administrative reforms. In the last section, we look at Korea’s market openness policies and transparency as a concrete example of what type of policies Korea used to raise the level of transparency.

II. What We Mean by Transparency

As OECD (2001) states, the term transparency is famously non transparent in operation. The same report differentiated “transparency of market information” which deals with information, and “regulatory transparency” which deals with the operations of the state.

---

In that report, regulatory transparency was defined as the capacity of regulated entities to express views on, identify, and understand their obligations under the rule of law.\textsuperscript{13} This definition of transparency is far more complex and far-reaching than the idea of information transparency, and transparency becomes an essential part of all phases of the regulatory process.

In OECD (2001), the elements of regulatory transparency included such items as:

- Consultation with interested parties.
- Plain language drafting of laws and regulations.
- Legislative simplification and codification.
- Registers of existing and proposed regulation.
- Electronic dissemination of regulatory material.
- Controls on regulatory discretion established through standardised, transparent procedures for making, implementing and changing regulations.
- Appeals processes that are clear, predictable and consistent.

The report also stated quite forcefully the reasons why transparency is so important. Transparency is key to regulatory quality. Transparency helps cure many of the reasons for regulatory failures such as regulatory capture, bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty, inability to understand policy risk, and lack of accountability. Transparency encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation, and it helps create a virtuous circle -- consumers trust competition more because special interests have less power to manipulate government and markets. Transparency is also a major tool in fighting corruption. Furthermore, by helping to increase the activity of civil society, transparency has democratic implications as well.\textsuperscript{14}

As stated above, OECD (2001) differentiated “regulatory transparency” and “information transparency.” However, transparency of information is also a crucial component of regulatory transparency. In order for the public to make an accurate assessment of their obligations and their rights, they must have not only regulatory information, but also statistical information, and information on ongoing policy discussions within the government. Furthermore, information should be accurate, up-to-date, timely and easy to access.

Thus, this paper examines both regulatory transparency and information transparency, since information transparency is an essential component in achieving and maintaining regulatory transparency.

OECD (2001) has suggested various means to raise the level of regulatory transparency, most notably public consultation; improvements in regulatory clarity, communication and access; and improvements in due process and administrative certainty.

\textsuperscript{13} OECD (2001) Para. 255.
\textsuperscript{14} OECD (2001) Para. 249–250.
Public consultation includes *notification*, which is the communication of information on regulatory decisions to the public; *consultation*, which is the active seeking of the opinions of interested and affected groups; and *participation*, which is the active involvement of interest groups in the formulation of regulatory objectives, policies, approaches, or in the drafting of regulatory texts. Tools used for public consultation includes informal consultation, circulation of regulatory proposals for public comment, public notice and comment, hearings, and the use of advisory bodies. The use of information and communication technologies can also be useful.

In the public consultation process, the following principles should be followed:

- Consultation programs must be flexible enough to be used in very different circumstances, within a framework of minimum standards to provide consistency and confidence.
- In order to raise the effectiveness of public consultation, information should be available before the consultation process.
- Consultation should be sought in a continuing dialogue with a wide range of interests.
- Consultation process should be transparent and responsive.
- More investment should be made in the evaluation and review of current consultative approaches.
- A habit of consultation must be built into the administrative culture of regulatory organisations.

Regulatory clarity, communication, and access is crucial to the rule of law, because it affects the accessibility of regulated entities to the rules. Thus, regulatory complexity, fragmentation, inconsistency, unreadability and problems with simply identifying relevant regulations must be reduced if the accessibility to the rules is to be improved. Among the strategies that can be used to increase regulatory clarity, communication and access are the use of regulatory reviews, legislative simplification and codification, plain-language drafting of regulation, publication of future plans to regulate, and the electronic dissemination of regulatory documents.

To improve due process and administrative certainty, transparent and consistent processes for making, implementing and revising regulations are fundamental in ensuring public confidence and safeguarding opportunities for the public to participate in the regulatory process. Establishing objective criteria for making administrative decisions as well as setting formal procedures for when and in what ways to document these decisions help build needed controls around the exercise of regulatory discretion, which in turn help assure greater consistence and fairness in managing regulations, and ultimately boost market confidence and investment, while reducing opportunities for government favouritism and corruption. Methods for improving due process and administrative certainties include such tools as administrative procedure acts; “silence is consent rule” which implies that legislation deems an authorisation to be granted if no formal decision is made and notified within a specified time period; and clear, predictable and consistent appeals processes.
III. Competition Policy vs. Industrial Policy in Developing Countries: Compatible through Regulatory Reform with Transparency

Some developing countries may question whether regulatory reform, which has been carried out mostly in developed countries, is relevant for developing countries. In the Korean case, because Korea had to overcome its lack of natural resources and capital stock in its early stages of development, government instituted various regulations and industrial policy to speed up the development process. While such strategy may have been effective at the earliest stages of development, by 1980s it was clear that the social and economic costs of these regulations were greater than the benefits. Also, many of these regulations were abused, as they were being used to protect the interests of the powerful, rather than achieve economic efficiency or increase social welfare.

These problems became acute in the 1990s. The increasing globalisation made it difficult for Korea to afford the high economic and administrative costs arising from these outdated regulations. Also, regulations from the days of government-led development tended to concentrate on various restrictions to facilitate command-and-control type of development. However, such regulations stifled the creativity of individuals and firms, a crucial disadvantage in the 21st century economy which depends on innovation. Thus, one of the most critical roles of regulatory reform has been to free the innovative capacity of the country.

A crucial component of regulatory reform is the introduction or the strengthening of competition policy. In order to foster an environment for creativity and innovation, new firms must be allowed to enter the market freely, while inefficient firms must exit from the market to free up resources for the more efficient firms. Competition policy helps create such an environment. Also, a comprehensive reform, involving many areas of regulations including competition policy is more effective in increasing the efficiency of the economy. For example, according to Tilton (1997), Japan insists on managed deregulation, where reforms are carried out partially and selectively in order for the government to try to increase the international competitiveness of Japanese firms, rather than trying to maximise consumer welfare as in the case of the U.S. Tilton (1997) argues that, because the government overemphasises the needs of the firm over the needs of the consumers, Japan, even though it has been engaged in extensive regulatory reform, still retains a complex regulatory structure, and has not substantially increased regulatory transparency. Such problems hinder the inflow of foreign direct investment. Furthermore, various regulatory barriers as well as unofficial regulations from industry groups hinder market access for imports, thus raising the price level in the Japanese economy. In short, by trying to increase the competitiveness of the domestic industry through managed deregulation, the Japanese economy restricted competition, and in the end, reduced its competitiveness.

A similar philosophy drove much of the Korean regulatory system up to the 1990s, and even today, such consideration remains in the mindset of some Koreans. According to various US and EU market openness reports, government regulations often act as import barriers.

As the Korean and Japanese examples show, in order to raise competitiveness as well as increase consumer welfare, a government must increase the level of competition in the economy, through active regulatory reform and competition policy which eliminate anti-competitive regulations. Measures must include the elimination of formal and informal regulations which hinder market access for foreign as well as domestic firms. The abundance of informal regulations, made possible because of a lack of transparency, raises transactions cost and market access cost for domestic and foreign firms, which reduces

the gains from market openness. In order to reduce such problems, the level of transparency must be raised in the regulatory reform and regulatory implementation process, so that informal controls will be eliminated, and the needs of all interested parties can be reflected in the regulatory system.

**Industrial Policy: Set the Environment, but Not the Winner**

For developing countries which may lack natural resources or technology, industrial policy should not seek to replace the market mechanism concerning investment, production or employment by competing firms, or share the economic decision making process, which may foster a monopolisation of the market.

Rather, the government should try to develop an economic environment which allows the efficient use of what natural resource and technology the country has. Policies which can help establish such an environment include improvements in information technology infrastructure, support for research and development, improved training and education to foster a skilled labour force.

Regulatory reform ultimately fosters individual creativity, which in turn increases economic efficiency, and in the end, increases welfare for the nation. A crucial component of this process is increased competition, and competition policy helps increase competition.

Once economic reforms establish a competitive economic environment where market principles can operate, regulatory reform and competition policy should be used in conjunction to maintain an environment where the winners are selected by the marketplace rather than by government fiat.

A crucial part of this process is an increase in the level of transparency. Regulatory reform will be successful only if the process is transparent so that new regulations as well as the implementation of these regulations reflect the interests of all parties.

**IV. Experiences of the Korean Regulatory and Administrative Reform**

During the financial crisis of 1997~98, the Korean government instituted a large-scale reform of its economy. The reforms encompassed such areas as anti-corruption, administrative reforms, and regulatory reforms. Koreans learned much in the process of the reform process, including the importance of transparency and how to raise the level of transparency. Some of the lessons that Korea learned from the reform process are listed below.

1. **Regulatory reform should be approached in a unified and systematic fashion to raise the general expectations of the public, which would ultimately fortify the public’s expectation for transparency permanently.**

   Based on the Korean experience, regulatory and administrative reforms should be carried out broadly, encompassing as many areas as possible. Regulatory reform and administrative reforms in Korea was wide-ranging, encompassing such areas as anti-corruption, the establishment of an e-government, and reforms of administrative procedures. The Korean reforms were not only comprehensive in terms of area, but also intensive, as most of the reforms were carried out within a relatively short span of time.
Such intensive and comprehensive reform is useful because it helps raise the consciousness of the public, and ultimately helps gather more support for the reforms. The range and the intensity of the reform efforts help convince the public that the government’s will to carry out these reforms is strong, and in turn, while there may be some strong short term resistance from the public, in the end, the public will stand behind the reform efforts because they are convinced that the government is serious.

The public expectation on the seriousness of the reform has special meaning for raising transparency. When the public starts receiving accurate information from several different channels, and when information gathering becomes easier, the public will begin to expect such trend to continue. Soon, the public will consider an easy access to information as a granted political right, and the public will no longer allow the government or various officials to hide information. Thus, it will become almost impossible to go back to a state where little information was available to the public. The public will no longer tolerate not receiving information, and they will monitor the government to make sure that they provide relevant and timely information.

Thus, if the government is interested in raising the level of transparency in the nation, it should first raise the expectations of the public on what information the public can receive. Before considering the actual details and mechanisms of policy, the government may be better served if it first examines what type of policy can raise the public expectations of transparency, and institute such policies. The Korean regulatory and administrative reforms did a good job in this respect, as the government responded to the public’s demand for transparency, which in turn raised the expectations of the public for transparency.

<table>
<thead>
<tr>
<th>Korean Anti-Corruption Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Corruption Reporting Center under the Anti-Corruption Council receives reports for corruption via direct visits, telephone, mail, fax and internet 24 hours a day, 365 days a year. The Anti-Corruption Act specifies all processes from the reporting of corruption to its disposition, so that the public can take confidence that the corruption is being dealt with in the legally specified manner. The Article 29 of the law, which deals with how the center must deal with the reports of corruption, and the Article 30, which specifies the completion of investigation and time limits on notification, clarify the processes on corruption cases, and raise public confidence that corruption will be definitely dealt with.</td>
</tr>
<tr>
<td>Ultimately, the public expectation on anti-corruption is raised, and the public’s demand for transparency will also be raised.</td>
</tr>
</tbody>
</table>

2. **The government has to be recognised as a unified single entity by the public.**

One of the most important factors which hinders transparency and also raises the frustration of the public is that the government often does not act as one entity. It is natural and necessary that depending on the task, administrative work falls to different departments and ministries within the government, but when the goals and demands of each department and ministries contradict each other or overlap, it increases the confusion and burdens of the public. Korea has engaged in a large scale effort to remove repetitive and overlapped regulations as a part of the regulatory reform process. Korea has removed multiple overlapping regulations and requirements in various license and certification processes, notification requirements, evaluation processes and regulatory processes to reduce regulatory burdens and reduce confusion in public’s contact with the government. The government’s efforts have received positive response from the public, and such efforts have raised the level of transparency.
Quality-Oriented Regulatory Reform: Removal of Conflicting Responsibility for Regulations

From 2000, the Korean government has emphasised the importance of the elimination of redundant regulation as a major goal of regulatory reform. For example, in the area of environmental regulation, the Ministry of Environment, Ministry of Commerce, Industry and Energy, Ministry of Maritime Affairs and Fishery, and other ministries often issue redundant regulations. During the reform, the responsibility for maintaining and enforcing these regulations were given to the Ministry of Environment, so that the confusion over regulatory standards and the cost of redundant enforcement would be lowered considerably. By having one single ministry act as a focal point for regulations and their enforcement, the public deals with one single standard, which increases the clarity of regulations, and reduces confusion over the interpretation of the regulations, thus increasing transparency.

3. Reduce information burden of the public.

Another related factor which lowers the level of transparency and increases frustration of the public is the perception that government is too complicated. Again, it is only natural and necessary that depending on the task, administrative work falls to different departments and ministries within the government, but as a service provider, the government must recognise that it takes quite a lot of effort on the part of the public to understand the roles and responsibilities for each department and ministry, understand the different mechanisms that each department and ministry use, and carry out the different processes and requirements as set by each department and ministry. Thus, to reduce the burdens on the public and raise transparency, a single-window approach becomes very desirable. For example, establishing a single-window to receive complaints by the public eliminates the need for the public to figure out which department, ministry or agency their complaints should be addressed to.

Seoul City OPEN System for Civil Affairs and Petitions

Under the Seoul City’s OPEN system for processing civil affairs and petitions, the internet homepage for the OPEN System acts as a central registry for processing civil affairs and petitions in a comprehensive and open manner. Complainants can always visit the OPEN system homepage to receive all information about what department or office is handling their document at this moment, and when and where it will be processed at the next stage.

4. Maintain multiple communication channels with the public.

The government must recognise that the public is actually a diverse group of individuals rather than a single entity. Opinions, information required, advice or requests, and even the most desirable method of communications differ from person to person. Thus, in order to raise the level of transparency, the government must ensure that information flows from the government to the public and vice versa must be maintained through the largest possible number of channels, such as the internet, public documents, or various mass media.

5. Eliminating uncertainty leads to higher transparency.

Even if a person does not know anything about administrative procedures or administrative mechanisms, if that person knows what consequences his actions will have, one can safely assume that the administrative procedure and the administrative mechanism is effectively transparent.
For entry regulations dealing with Korea’s financial sector, the government is considering the adoption of a licensing system where if the government issues no negative decisions within a fixed period after a potential firm files for a license or a permission to operate, the firm may consider the license given. Such system raises the predictability of the licensing system by clarifying the regulatory standards that the filer faces, and thus raises transparency. Also, such system reduces the burdens of unpredictable administrative actions, and reduces regulatory compliance costs. This system is based on the Korean government’s successful experience with similar measures in fire-prevention regulations.

6. Plain words and expressions make transparency possible.

Administrative paperwork often involves complicated words and expressions, confusing forms, complicated formats, and repetitive tasks. The time and effort for the public to complete such administrative paperwork is considerable, and thus the public seeks to avoid administrative paperwork whenever possible. In other words, for reasons of trivial bureaucracy, the public is prevented from actively participating in the regulatory process. Thus, beyond the superficial result of administrative simplification, namely to make the process easier, there is a deeper, more important goal in simplifying the wording of paperwork and rules – to increase communications between the public and the administrators, and facilitate active participation by the public in the regulatory process.

7. If it is compatible with common sense, it’s transparent.

When a regulation, its purpose, its requirements, and its basis cannot be explained in terms of simple, everyday common sense, the public cannot understand the need for the regulation, and may become confused over the need and the requirements for the regulation. Furthermore, the public will suspect that the government will interfere unduly with their affairs at their discretion in an unpredictable manner, using the regulation as an excuse. Thus, the predictability and understandability of the regulation will fall, and the transparency will fall.

8. Be transparent to foreigners.

In section V, there will be more discussion on the importance of transparency in market openness, but it is important to remember that if foreigners do not have knowledge of the domestic regulatory mechanism and processes, they cannot operate effectively in the domestic economy. Also, foreigners can act as a “test” for transparency; that is, if foreigners have a clear understanding of the system and a voice within it, it should be transparent for all. Typically, foreigners have difficulties in understanding the culture and precedents in the domestic economy, and thus they will have the most difficulty in finding information or making their opinions felt by regulatory authorities. Thus, if foreigners, who are disadvantaged, believe the system is transparent, it is very likely that the system is actually transparent.
V. Korean Experience on Transparency, Market Openness, and Regulatory Reform

By now, Korea’s success as an exporter is well known. What is perhaps not as well known is that, for the most part, Korean imports kept pace with the increasing exports. In fact, market openness and increased imports played a crucial part in Korea’s development. In order for Korean exports to be competitive in the global marketplace, Korea had to import raw material and intermediate goods from abroad at low prices in order to maintain low costs for its exports. In addition, Korea, for the most part, maintained relatively stable macroeconomic environment and a relatively low level of price distortion, which helped set the environment for growth. Such an economic environment would have been difficult to maintain if Korea had closed its market substantially.

In the 1960s, Korea opened its markets for raw material and intermediate goods. However, it did limit imports of consumer goods, and until the 1980s, Korea only opened its market for consumer goods reluctantly. Since 1980s, Korea has begun to open its market for consumer goods as well, and the process accelerated in the 1990s. 1998 saw an important milestone in Korean market openness as the import source diversification program, which had been designed to limit imports of competitive goods from Japan, was eliminated.

While it is true that market openness played a part in Korea’s involvement in the Asian financial crisis, it is also true that market openness, especially foreign direct investment, played a major part in Korea’s recovery from the Asian financial crisis. Furthermore, it seems clear that had Korea maintained a higher level of information and regulatory transparency before the financial crisis, the adverse effects of the financial crisis would have been lessened.

While Korea had began to raise its regulatory and information transparency since joining the GATT in 1967, it is probably fair to say that Korea did not fully realise the importance of transparency until the financial crisis, as Korea realised that transparency plays an important part in developing investor confidence, as well as letting the checks and balances of the market system operate efficiently.

Many foreigners point out that a lack of transparency is still a major problem in Korea. Some government officials, especially local officials, set and implement policies in a non-transparent fashion, exercise too much discretion in interpreting regulations, and try to limit imports or foreign direct investment out of a misguided sense of economic patriotism. However, even the harshest of Korea’s critics admit that Korea has done much to make Korea more open to imports and foreign investment since 1998, and the Korean government has committed itself to maintaining market openness, realising that market openness is crucial in maintaining competitiveness in the global economy, and in increasing the welfare of its citizens.

Some of the lessons in transparency and market openness that Korea learned during its 40 years of development and market opening process are listed below.

1. Use international institutions and international standards.

Korea joined GATT in 1967, APEC in 1993, WTO in 1995 and OECD in 1996. Korea also committed itself to observing general obligations set by Article 8 of the IMF charter in 1988. In addition, Korea actively participates in international standard setting organisations such as WCO, WIPO, ILO, and others. Joining these international organisations and committing itself to observing their various rules, agreements and conventions raised Korea’s regulatory and information transparency because these rules, agreements and conventions set standards on how Korea acted. Thus, it raised predictability and limited regulatory discretion by individuals. Furthermore, many of these organisations have formal rules on
regulatory and information transparency. For example, GATT Article X stipulates that laws and regulations related to trade and customs matters must be made available to other countries, and there must be a procedure for review and correction of administrative matters relating to customs matters. IMF maintains various rules on information provision. Korea has opted to observe IMF’s SDDS standard for information dissemination, which obligates Korea to provide macroeconomic statistical information in a timely manner, and provide definitions and methods of calculation for its statistical information.

In addition, these organisations often file reports on the state of the economy which is very useful for both market openness and transparency. OECD summarises various macroeconomic information in its annual Korea review, and WTO summarises Korea’s market openness policies in its trade policy review, which is carried out once every four years.

Also, Korea participates in APEC’s IAP (Individual Action Plan) program where Korea lists the current status and future plans in various policy areas related to market openness such as tariffs, standards, services, and competition policy.

The importance of using international standardised definitions for statistical information was clearly seen during the financial crisis. International investor confidence in Korea was strengthened when Korea started to use World Bank and IMF standards for its macroeconomic variables such as the amount of debt, and when Korea forced domestic conglomerates to adopt the standards for combined financial statement, which is closer to the international concept of consolidated financial statement.

2. Provide easier means of access to information.

As with most countries, Korea maintains various laws and regulations which restricts or regulates trade and foreign investment for reasons such as the protection of public health, consumer safety, and national security. However, Korea’s trading partners have often stated that the laws and regulations in Korea are more complex than other countries, and traders have a hard time following the changes in these rules.

Korea has dealt with some of these problems by providing a unified list which gathers the relevant laws and regulations in one document. Korea maintains a unified list of laws and regulations dealing with import restrictions, and also a unified list of laws and regulations dealing with foreign direct investment.

In addition, for foreign investment, Korea has set up a one-stop service center, Korea Investment Service Center, where interested foreign investors can gather information on Korea’s regulatory and legal environment as well as possible investment opportunities.

Since the 1998 regulatory reforms, Korea also maintains a regulatory database which includes all the regulations of various government ministries. While the database is currently available only in the Korean language, it is accessible through internet where any interested party can search and examine it.

The various ministries of the Korean government have also strengthened their internet-based information dissemination mechanism such as Web sites and e-mail. Extensive policy, regulatory and statistical information are available from the ministry Web sites. Also, for statistical information, Korea has instituted portal Web sites such as KOSIS (http://kosis.nso.go.kr) where information from various different ministries can be accessed through a single Web site in Korean or English, and downloaded to personal computers.
Some ministries also started to use a “foreign press spokesman” to deliver relevant policy information to foreign reporters in a timely manner.

### Reforms in Korea’s FDI Regime

During the financial crisis, the most extensive reforms in Korea probably took place in the area of Foreign Direct Investment (FDI). In order to facilitate FDI flowing into Korea, the government liberalised most of the industries which remained closed to foreign direct investment. Also, many regulations which directly or indirectly hindered FDI were eliminated, such as nationality requirements for company directors, limits on foreign ownership, and land purchase restrictions. Reforms which raised the level of information and regulatory transparency were carried out as well.

The Korean government established the Korea Investment Service Center (KISC), a “one-stop service center” for FDI which not only provided various information but also explained them for foreign investors, as well as providing various channels for linking foreign investors and domestic firms. The center provides information and explanations on laws and regulations dealing with FDI, collects information from foreign investors such as what type of problems and difficulties they encounter in investing in Korea, and works to solve these problems.

In order to solve legal and regulatory problems between foreign investors and the government, KISC maintains an ombudsman system who can directly address these problems.

In 1998, the Korean government established a foreign investment advisory committee to advise the government on various policies to facilitate foreign investment. The members of this committee consisted entirely of foreign firms: four American, four European and two Japanese. The role of this committee is to: Recommend various policy measures to facilitate foreign investment into Korea; support various seminars and promotional events; and give conferences to FDI-related government officials. In addition, the Korean government organised several “Enhanced Meetings to Promote Trade and Investment” to consult the private sector, including foreigners, on trade and investment policies.

The Korean government is now issuing a unified list of laws and regulations dealing with foreign investment.

In all, the Korean government has overhauled domestic laws and regulations dealing with foreign investment to make FDI in Korea easier, and the Korean government has instituted a system which explains these laws and regulations to foreign investors. Furthermore, Korea formally gathers opinions and advice from foreigners to revise and improve the domestic regulatory system. In all, Korea has greatly raised the level of regulatory transparency for FDI-related regulatory system.

### 3. Listen to foreigners.

Korea maintains various laws and regulations which enforce regulatory transparency. For example, all laws and regulations must be announced to the public at least 20 days before it goes into effect, and executive orders must be publicised through the government gazette. Also, since 1997, whenever a new regulation is introduced, or an existing regulation is strengthened, the relevant ministry must gather opinions from various interested parties. These transparency laws and regulations do not discriminate against foreigners, so foreigners can participate in the process on an equal basis with Korean nationals. Korea also maintains a review process for administrative actions, which are open to Korean nationals and foreigners on a non-discriminatory basis.
In addition, Korea actively participates in bilateral, regional and multilateral negotiations and discussions. Such discussions allow Korea to gather information on what foreigners find difficult about operating in Korea, and what type of policy changes Korea needs to make in order to make it easier for foreigners to trade and invest in Korea. Korea maintains an advisory council consisting of foreign firms which advises Korea on foreign investment policy, and Korea has recently accepted foreign firms as members of an advisory panel on setting drug prices for the National Health Insurance Program. Bilateral negotiations improved transparency in Korea in such areas as procurement of telecommunications equipment, regulations for motor vehicles, and intellectual property. Multilateral negotiations, such as the Tokyo Round and Uruguay Round, improved Korea’s transparency in such areas as government procurement through the WTO Government Procurement Agreement, technical and sanitary standards through WTO Technical Barriers on Trade Agreement and Sanitary and Phylo-Sanitary Agreement.

4. Make the system simple, and allow it to reflect the international market mechanism.

One of the crucial turning points in Korea’s market openness policies and Korea’s development process took place in 1964 as Korea switched from a multiple exchange rate policy to a single exchange rate policy. A single exchange rate is not only simpler to understand, but also reflects the changes in the international marketplace and the foreign exchange rate market much better than the multiple rate system. A single exchange rate system also reduces the chances of rent-seeking, since various firms and individuals may expend much effort and resources into receiving a more favourable rate of exchange under a multiple rate system.

Other Korean examples include switching from a positive list system, which lists what can be imported or which industries are open to foreign investment, to a negative list system, which lists what cannot be imported or industries which are closed to foreign investment. Effectively, positive list system places the burden of proof on those who want to liberalise imports of certain goods or liberalise investment in certain industries, while negative list system places the burden of proof on those who want to limit imports or investment. Thus, the negative list system is more open to liberalisation, and more responsive to the international marketplace. Korea instituted the negative list system for imports of goods in 1967 when it joined GATT, and Korea instituted the negative system for current account transactions in 1998.

5. Adopt a regulatory system which can deal with the globalise environment.

During the financial crisis, Korea found that its existing regulatory infrastructure and environment, which had been set up in the days when the markets were not fully liberalised, was inadequate for dealing with a fully liberalised environment. Most notably, the existing supervisory and regulatory mechanism for the financial sector was inadequate in dealing with the more complex post-liberalisation environment, and thus reforms were urgently needed. These reforms usually involved a higher level of regulatory and information transparency. A new financial regulatory framework was set up where the regulatory framework was simplified from four different agencies to one centralised agency, the responsibilities of the regulators were more clearly defined, and various limits, such as the limits on debt ratios of the financial institutions, were set.
6. Engage actively in liberalisation discussions and negotiations.

When a country takes an active role in international discussions and negotiations on opening markets, it forces that country to review various domestic laws and regulations to see whether the domestic laws and regulations explicitly or implicitly promote discriminations against foreigners, or limit market and investment access to foreigners. Korea is taking an active role in promoting transparency in international negotiations in such areas as services, trade facilitation, investment, and government procurement, and the negotiations have forced Korea to review its own domestic conditions.

7. Review domestic systems regularly from the user’s point of view, and update the systems.

During the financial crisis, Korea needed to quickly increase foreign direct investment, not only for the foreign currency, but also to upgrade the domestic management skills. Korea took advice from various domestic and foreign experts and businessmen on factors which made foreign direct investment in Korea difficult, and addressed those problems through direct measures such as changes in laws and regulations. These measures usually involved a higher level of transparency, since foreigners usually demanded more information about the Korean economy. As a result of these reforms, Korea has succeeded in increasing the flow of foreign direct investment from 3.2 billion dollars in 1996 to 15.7 billion dollars in 2000.16

Korea has also been engaged in installing an e-trade system since 1993. The e-trade system tries to simplify and facilitate customs procedures, especially paperwork, by using various means of information and communication technologies. However, before an e-trade system can be utilised, a comprehensive review and simplification process for customs procedure and paperwork must first take place, since if the customs procedures and paperwork are complicated to begin with, installing an electronic network will only make things worse. Also, customs procedure related information must be disseminated through an electronic network to all users, which increases regulatory and information transparency. Korea carried out such a review and simplification process, and as a result, an efficient e-trade system has been instituted. Several aspects of customs procedure is carried out entirely through the electronic communication network without paperwork, and the burdens on traders have fallen considerably.

<table>
<thead>
<tr>
<th>Korean EDI System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korea has been working on a system for paperless trading since 1993. In that year, Korea began to use the UN/EDIFACT EDI (Electronic Data Interface) standards on administrative work for trade. In 1994, Korea introduced the VAN (Value Added Network) EDI system to ease administrative requirements on trade. From 1996, with the goal of simplification, harmonisation and computerisation, the government began updating its customs procedures. As the result of these efforts, in 2001, in customs procedure areas such as export notification and import notification, as well as submission of shipping reports, reporting of port entry and exit, notification for bonded freight transport, the liberalisation ratio approached 100%. In addition, the government started a paperless import customs procedures in July 1999. These actions have greatly reduced administrative burdens for traders, and Korea’s trade facilitation efforts have been lauded by developed and developing countries.</td>
</tr>
</tbody>
</table>

16. The amount fell somewhat in 2001 to 11.9 billion dollars, but the fall is attributed to the slowdown in the global economy, rather than measures taken by Korea.
8. If the system is transparent to foreigners, it is likely to be transparent to all.

Foreigners usually stand disadvantaged in terms of access to information and access to policymakers, since they may not understand the domestic culture or the political process, and they may not know all the formal and informal sources of information that the domestic firms do. Thus, if foreigners, who are disadvantaged, consider the domestic economy and regulatory environment transparent, it is very likely that the economy is transparent. Thus, transparency to foreigners can be considered as a test of transparency for a country.
**Striking the Right Balance between Competition and Regulation:**

*The Key is Learning from our Mistakes*

*Paul Crampton*

**Introduction**

Yesterday in Session 1 we talked about the *process* of regulatory reform, with a focus on enhancing transparency. Today in Session 2 we will shift to discussing the *content* of regulatory reform and what have we learned about making reforms work well. It is hoped that this discussion will help participants in this workshop to learn from each other’s successes and failures, so that we can stand on each other’s shoulders and avoid ‘reinventing the wheel’ over and over again.

The focus of my remarks will be upon striking the right balance between competition and regulation, to achieve greater economic efficiency and higher living standards. What I have to say in this regard has been inspired by the 1999 APEC declaration of *Principles to Enhance Competition and Regulatory Reform* and the OECD principles on regulatory reform embodied in the *1997 Report to Ministers on Regulatory Reform* (see Annex of the APEC-OECD Work Programme for 2003-2004, p. 88).

Regulatory reform comes in waves. After WWII the trend was toward nationalisation and stricter, often competition distorting, regulation that was intended to direct economic activity to the common good. For the past quarter-century or so, the trend has been the other way, although there have been some noteworthy cases of new regulation and even re-regulation. This reversal, which was given a boost by the collapse of the former centrally planned economies in Eastern Europe and the former Soviet Union, was a response to poor performance in nationalised and regulated sectors. On balance, this latest trend has yielded enormous economic benefits, for example huge price reductions and dramatic product quality improvements, although at times unwelcome supply disruptions or other strains have been encountered.

However, the process in many jurisdictions has been slow, perhaps in part because some poorly conceived reforms have prompted a re-evaluation of the benefits of deregulation. This has increased the need to critically assess the experience to date and the relationship between competition and regulation – an exercise that can be enriched by drawing upon the diverse experiences from around the world.

The principle conclusions that may be drawn from this exercise is that there continues to be a very strong case for pursuing a regulatory reform agenda that has a strong competition dimension. This is because greater competition leads to greater innovation; and it is innovation that provides the main source of increases in our standard of living. Conversely, there are substantial dynamic costs associated with retaining regulatory regimes that stifle competition. However, in pursuing regulatory reform, greater care needs to be given to (i) designing it in a manner that minimises the risks of failure and (ii) ensuring that it is not jeopardised by misunderstandings regarding the reasons for sub-optimal outcomes. If these two steps are not taken, there are disturbing signs that public pressure likely will increase in various parts of the world to reverse or partially reverse important and valuable regulatory reform initiatives. I should add, in passing, that the extent to which substantive regulatory reform can be successful is intimately linked to how the process issues discussed yesterday are handled.

I have grouped my remaining remarks under five headings. First, I will briefly address why countries increasingly are preferring more competition and less or more flexible regulation in most circumstances. Second, I will summarise the principal justifications for regulation. Third, I will offer various suggestions for striking the right balance between competition and regulation, including by
reforming necessary regulatory frameworks to support effective competition. Fourth, I will touch upon the role that competition can play in the area of universal access. Finally, I will briefly discuss how to avoid notorious failures such as that which occurred in the electricity sector in California.

1. **Why Competition is superior to regulation in most circumstances**

   It is probably safe to say that in the developed world, competition is now accepted as the best available mechanism for maximising the things that one can demand from an economic system in most circumstances. Economic regulation is increasingly perceived to be at the opposite end of the spectrum – it tends to leave a larger number of people with a reduced real income and a lower standard of living. In addition, economic regulation imposes costs on society in terms of its establishment and administration, its distorting effect on economic efficiency and the significant time, effort and expense associated with its removal.

   Studies consistently demonstrate that deregulation has been accompanied by large price reductions to consumers and substantial improvements in quality and service.\(^{17}\) In one recent review of a number of such studies relating to the deregulation of the natural gas, long distance telecommunications, airlines, trucking and rail industries in the U.S., it was reported that real prices dropped at least 25% and sometimes close to 50% within ten years of deregulation in those industries.\(^{18}\) The annual value of consumer benefits from such deregulation was estimated to be approximately US$5 billion in the long distance telecom industry, US$19.4 billion in the airline industry, US$19.6 billion in the trucking industry, and US$9.10 billion in the railroad industry. At the same time, consumers were able to benefit from improvements in the quality of service. Moreover, “[c]rucial social goals like airline safety, reliability of gas service, and reliability of the telecommunications network were maintained or improved by deregulation and customer choice”\(^{19}\)

   Notwithstanding this persuasive evidence, many transition and developing countries continue to be highly regulated, with large state-owned sectors and oligopolies or inefficient firms operating in markets insulated by various types of barriers.

   A good example of the role of competition in cultivating discovery and innovation is provided by the experience in Finland’s telecoms sector. Finland was one of the first countries in the world to liberalise that sector. The resulting competition of enterprises drove innovation in the surrounding hardware industries. One company, Nokia, was on the spot, caught in the midst of this intense rivalry. To survive, it had to innovate. Today, it is so successful in this regard that it accounts for a large part of the Finnish stock market. And telecommunications consumers in liberalised markets have benefited from the new products Nokia invented. In contrast to this experience, it is difficult to think of an innovation that arose in a regulated telecommunications market in the past quarter-century.

---

17. See generally, OECD (1997), Report on Regulatory Reform, Paris, Volume II. The findings of various studies are summarised at p. 252.
How important is this? Well over the longer run it is growth in productivity from innovation and better organising production that provides most of the improvements in living standards. This applies in both developed and developing economies. Indeed, I would argue that the competition plays a critical role in many dimensions of overall economic.

Another way in which competition is superior to regulation is in “dealing with the unexpected.” The Internet was created in the US and has now has spread over the whole world. The Internet is based on an open architecture that provides for competitive innovation between web sites. This competition is not just between commercial web sites. For example, as an information provider the OECD has to strive to make its web site more user friendly and useful to ensure that it continues to be attractive to its target audience. Otherwise we will loose out to other information providers, our work will get less exposure and the Organisation will be less relevant. In short, competition forces us to be better. But, it may surprise you to find out that the US was not the first “wired society”. Actually it was France, where a decade before the Internet was born the Minitel system was in wide use. One could bank, book air tickets, find out information and so on over that network. But Minitel floundered. Why? Because it was a closed system with a monopoly core service run by France Telecom using a “locked in” technology. It couldn’t innovate past its slow and graphics free architecture and attempts to incorporate unexpected innovations which arose elsewhere got bogged down in committees.

Finally, I should note that strong competition policy can not only help to deliver lower prices, better product quality and new products, but it can also help to create better conditions for democratic institutions. This is because the democratisation of political systems and the decentralisation of economic decision making are mutually reinforcing processes.

2. Principal justifications for regulation

Implicit in the proposition that competition is superior to regulation in most circumstances, is the notion that there are some circumstances in which free and unrestricted competition is not optimal and therefore some form of regulation may be preferable. These circumstances are fairly limited, and can be grouped as follows:

- to address market failure
- to advance the “public interest”
- to advance special interests
- to assist in the transition to a competitive market

2.1. Market failure regulation

Market failure can be defined as an inability of the market to deliver goods and services to consumers in an efficient manner, i.e. because unrestricted competition cannot be sustained in the industry in question. In such situations, some form of regulation may be efficient and appropriate. Each situation needs to be assessed individually, as regulation won’t be efficient if it costs more than the harm that it seeks to address.
One of the classic and generally recognised examples of market failure is public goods. Examples include national defence, parks, public schools, flood control protection, lighthouses, and road construction and maintenance (although toll highways that are constructed and operated by the private sector are increasingly appearing). These are goods or services for which it likely would be difficult to establish an efficient payment mechanism, and for which the cost of extending the service to an additional person is virtually zero. The form of “regulation” typically adopted in respect of public goods is for the government to assume responsibility for deciding what is to be produced.

Another form of market failure may arise when it is less costly for a single entity to supply the entire market than to have competition between multiple entities. Regulation of the natural monopoly – either its prices or conduct – is then necessary to ensure that the market power of the monopoly is not abused. An example is electrical transmission.

A related type of market failure can occur when prospective entrants into a market must incur high costs that they would not be able to recoup if they were subsequently to exit from the market. Putting wires and pipes in the ground are examples of sunk costs, but so are the costs of learning and negotiating the regulatory regime. If a country wishes to attract private investment into markets with high sunk costs, ensuring a stable regulatory regime that promotes confidence and predictability is a key prerequisite.

Fortunately, the forces of globalisation and innovation are opening up many markets formerly thought to constitute natural monopolies, e.g., electricity generation, electricity retailing, natural gas retailing, local and long distance telecommunications, rail transportation, postal services and even public highways. This experience suggests that assumptions regarding sectors thought to be natural monopolies should be revisited periodically to test their continued validity.

However, these same forces are giving rise to new natural monopolies resulting from network externalities. Demand side network externalities can occur where there are enormous benefits to being a member of a network or standard. As the network or standard is embraced by more people or organisations, its value to existing members rises. Supply side network externalities can occur when the cost of providing services to additional consumers reduces the overall cost of the network. As an existing network grows, potential suppliers of rival networks are often unable to generate or maintain enough sales to compete with the “first mover” or the growing network. The dominance of VHS over Beta is the most cited example of this type of externality. In emerging network industries, policy-makers are still wrestling with how to approach this problem – i.e., through competition law or by leaving the market to decide winners and losers.

Market failure also can exist as a result of information asymmetries. Such asymmetries can lead consumers to under or over consume. To enable the market to function efficiently, protect the public from providers of poor or sub-standard services, and even prevent against fraud, laws relating to matters such as professional standards, product labelling, deceptive marketing practices and securities trading need to be enacted.

A final type of market failure can occur when the government attempts to promote competition between state-owned enterprises. This type of a situation is difficult to sustain over the long run because the implicit or explicit guarantee against bankruptcy and mandate to maintain employment create incentives to predate that are much stronger than for profit-seeking privately owned enterprises. Thus, a market supplied predominantly by competing SOEs faces a high risk of descending into inefficient competition and generating huge losses for taxpayers. Accordingly, creating competition between SOEs should only be considered as a short term step in a longer process of privatisation and deregulation.
Another rationale for regulation that is somewhat analogous to the market failure justification is to promote what is perceived to be the public interest. Regulations related to health and safety, the environment, labour, food and drugs, transportation (e.g., airline, trucking and rail services), securities, insurance, health care and investment often are supported by reference to “public interest” considerations. These types of regulations can be effected through a variety of instruments, including legislation that establishes a licensing regime, prevents or requires certain types of behaviour, imposes foreign ownership restrictions, or imposes product or technical standards. Unfortunately, in the pursuit of legitimate public interest objectives, this type of regulation often distorts competition to a far greater degree than necessary.

Similarly, in the financial sector, regulation generally is recognised to be required for prudential reasons – that is to say, to prevent systemic instability. Systemic failures in financial systems have proven to be very costly, with official “rescue” packages for failed financial institutions costing upwards of 20% of GDP in some cases. Additionally, large failures of financial institutions, such as those that occurred in the post 1997 Asians crisis have been instrumental in causing economic crisis with extremely high economic and social costs. Thus systemic stability clearly is a legitimate public interest objective that warrants regulatory intervention. However, once again, regulatory frameworks designed primarily to promote this objective often have distorted competition to a greater degree than necessary, for example, by preventing foreign financial institutions from competing in various segments of the financial services industry, or by preventing competition between participants in two or more parts of the the financial services industry, e.g., between banks and insurance companies; or between banks and investment dealers.

An increasingly common rationale for regulation is to facilitate the transition of industries from regulation to competition. The process of regulatory reform sometimes involves complicated issues that require very careful consideration to ensure that the benefits of deregulation are not lost, for example by inadvertently enabling deregulated entities to establish private restraints in the place of the public restraints
that have been removed. In addition, during the transition to open markets, the situation can be politically fragile – if the transitory framework fails to produce expected benefits on a timely basis or produces short-term harm to stakeholders with political influence, policy makers may be pressured to re-regulate or to limit deregulation. The recent experience with deregulation of electrical power generation in California provides a noteworthy example. Sorting out the roles to be played by competition and by regulatory authorities during the transition requires striking a balance between sending appropriate investment signals to potential entrants, mitigating the exercise of market power of incumbent entities, and minimising the disruption to consumers. Where to draw the line depends in large measure on the speed with which new rivals can gain a foothold in the deregulated industry, and their incentives to do so. A number of suggestions for expediting the introduction of competition in transition industries are provided in Section 3.2 below.

3. Managing the interface between competition and regulation: suggestions for striking the right balance

It is often forgotten that competition and regulation have the same ultimate goals, namely, to prevent the illegitimate acquisition and exercise of market power and to facilitate the efficient allocation of resources. Where free and unrestricted competition is unlikely to produce this result, it is generally recognised that some sort of regulation is appropriate, either as (i) a full substitute for competition, (ii) a means for establishing a sustainable framework within which effective competition can take place, or (iii) a means of “holding the fort” until the anticipated arrival of competition.

This gives rise to a need manage the interface between competition policy (broadly defined) and regulatory policy in a way that recognises their mutually reinforcing nature and optimises economic welfare. This section of my remarks will begin by providing a number of general suggestions for managing this interface and striking the right balance. It will then provide several suggestions with respect to the three key pillars of successful regulatory reform: establishing the right market structures, the right rules and the right regulatory institutions.

3.1. General suggestions

As emphasised in the Summary document of the OECD’s 1997 Report on Regulatory Reform, the most important ingredient for successful reform is the strength and consistency of support at the highest political level. This means that the “buy-in” and active support of ministers and other political actors in the economy is critical. In short, there must be sufficient supportive political energy to drive regulatory reform efforts throughout the administration.

It is also crucial to establish clear objectives for the regulatory reform exercise as well as in any legislation or regulations that may be implemented to effect the reform. In this regard, the legal instruments establishing the regulatory regime should include, as one of their objectives, the promotion of economic efficiency, and, if possible, competition in areas not subject to regulation.

Furthermore, steps should be taken to ensure that these legal instruments, as well as the regulator’s policies, practices and procedures, are highly transparent and predictable. These steps should include actions and measures designed to give relevant domestic stakeholders and foreign investors confidence that the rules will not be arbitrarily changed.

In addition, as contemplated by the APEC Competition Principles, and subject to political realities, competition should be introduced to all activities that are not natural monopolies, to the maximum extent possible. This includes minimising any restriction or distortion of competition to achieve
environmental, social or other public interest objectives. In other words, a concerted effort should be made to identify segments of the industry or market that can support new or more competition, and then, once such segments have been identified, take the steps required to introduce or expand competition within those segments.

Here, particular attention may have to be paid to shifting the systemic bias. The onus should be to demonstrate the continued need for regulation, or at least the competition impeding aspects of desirable public interest regulation. The onus should not be to demonstrate the benefits of competition.

A good example of how competition can be introduced to particular segments within an industry is provided by the electricity sector. Few people here today would be surprised to learn that the generation stage of the electricity sector is now generally considered to be capable of supporting vigorous competition. But how many of you are aware that changes to the manner in which electricity is metered can affect purchasing behaviour and the overall efficiency of the industry? If electricity use is measured minute-by-minute, as opposed to the month-to-month way that is conventional in some countries, then it can be priced minute-by-minute. That means that large customers with flexible demand can be provided an incentive to reduce their load at peak times and perhaps even resell contracted electricity back into the market. If time-of-use metering applies to enough customers, the peaks in electricity demand can be blunted. Moreover, generators will have less market power because at least some customers can respond to high prices by reducing their demand immediately and the market is going to work better. This means, capacity can be lower, so the overall costs of the electricity system also can be lower.

Even if a segment of an industry or market continues to display natural monopoly characteristics, competition can have an important role to play in helping to increase the overall efficiency of the regulatory regime. This can be achieved by creating competition for the market, for example, by auctioning off the right to be the monopolist supplier.

Finally, competition and efficiency can be increased by minimising the transition period. In some situations, impediments to competition can be removed virtually overnight, whereas in other situations it will be entirely appropriate to move more slowly in order to avoid undermining the paramount objective of achieving conditions that are conducive to the maintenance of long-term competition. In any event, reliance on market forces should be maximised at every stage of the transition process. Restrictions or other limitations on competition should be removed as soon as they are no longer required. In short, every effort should be made to avoid “over managing” the transition to competition.

3.2. Getting the right structure

For competition to work in a market, there need to be competitors. A monopoly is not a good starting point and therefore privatising a monopoly is usually a poor policy. It is clear from experience that it normally takes a very long time for monopolies to be eroded, and not much time at all for privatised monopolists to establish private restraints that take the place of the former institutional restraints to competition.

Accordingly, it generally is better to break up a monopoly into a number of competing firms before it is privatised and/or deregulated. This is consistent with the general principle that regulatory reform should not just allow competition but it should foster it. That being said, there are economies of scale for many of the markets in the sectors we are considering today, so we cannot expect a large number of competitors.
An exception that often is identified in theory is where an industry is very easy to enter and therefore the monopoly power of an incumbent can be effectively constrained by the threat of new competition. Some have argued that the telecommunications sector is an example of this sort, but that is hotly debated. In any event, a key part of creating the right structural conditions for competition, particularly in industries where there are significant economies of scale, is to remove regulatory impediments to entry by foreign or other potential competitors.

In addition to creating the right horizontal structure, it is important to address other structural considerations. For example, serious consideration should be given separating the regulated and non-regulated activities of any entity that will continue to be regulated. At a minimum, this means creating separate affiliates for the purposes of conducting regulated and non-regulated activities, and establishing a number of complementary measures to ensure that structural separation is in fact maintained. Structural separation is required because accounting and costing rules are not sufficient to ensure that costs are properly allocated between competitive and regulated activities. Although this may result in some loss of economies of scope, this cost probably is well worth incurring in order to protect competition from anti-competitive cross-subsidisation and achieve the benefits that competition may offer in fragile, emerging markets.

3.3. Establishing the right rules

The second critical component of any regulatory reform program is to establish the right rules.

This includes adopting an effective domestic competition law, minimising the number of exemptions from that law and making a commitment to its vigorous enforcement. An effective competition law is critical to ensuring that the benefits of deregulation are not undermined by private anti-competitive conduct, and anything less than strong enforcement of that law by an independent competition law enforcement authority can leave significant scope for anti-competitive behaviour to flourish, thereby seriously impeding the shift to competition. Where it is considered desirable to exempt a sector from the application of the domestic competition law, the rationale for such exemption should be revisited from time to time and the sectoral regulation should contain provisions that effectively prevent and sanction anti-competitive behaviour.

Although some have suggested that there may be some merit in delaying the introduction of a domestic competition law until a country reaches a certain stage of economic development, this would simply give former state enterprises and other deregulated firms the opportunity to engage in a broad range of anti-competitive conduct that would seriously impair the development of competition and push back the point in time at which competition is able to deliver the benefits discussed above. To minimise the scope for this to occur, domestic competition laws should be enacted as early as possible in the market opening process and contain as few industry and other exemptions as possible. This is an important sequencing issue.

In addition, serious consideration should be given to permitting the domestic competition agency to intervene in all regulatory proceedings, to make submissions to all regulators, and to participate in the process of developing laws or policies that have the potential to impact adversely upon competition. This will ensure that the competition policy implications of such laws or policies are fully understood.

Turning to more specific rules, where the regulated entity will continue to control network or bottleneck facilities to which third parties must have access in order to compete effectively, the access rules should be non-discriminatory and the access price should be based on the cost of providing the service. In most cases, to ensure a level playing field, this should be the long-run incremental costs
associated with the provision of the services, although there may be situations in which other definitions of “cost” would be appropriate. In addition, there should be a procedure for resolving disputes between the regulated entity and third parties regarding issues related to access, and that procedure should ensure swift resolution of disputes. Measures also should also be adopted to protect the confidentiality of any competitively sensitive information that the regulated entity might otherwise be in a position to learn about its rivals in upstream, downstream or adjacent markets. In addition, provision should be made to ensure that rivals have adequate notice of changes to essential facilities that may adversely impact upon their competitiveness.

Where prices in one part of an industry (for example, long distance telephone services) have artificially subsidised prices in another part of the industry (for example, local telephone services), it also is important to adjust prices in the subsidised part of the industry to reflect their underlying costs. In short, suppliers should recover the costs of each product through the prices charged for that product. This will have the salutary effect of eliminating a strong disincentive to efficient entry by new competitors in the market for the supply of the subsidised product.

A more general pricing-related issue is how prices will be established. Alternative approaches can be grouped into two broad categories, (i) cost of service or rate of return regulation, which permits the regulated entity to obtain a predetermined rate of return on its capital (as defined by its rate base), and (ii) performance based regulation, such as price caps, which set a maximum price that a regulated entity can charge, while permitting the entity to retain any profits that can be realised through cost reduction initiatives. The latter approach is designed to decouple costs and rates so that carriers have a strong incentive to minimise costs and no incentive to inflate their costs or to shift them between regulated and unregulated activities. For this reason, it is now generally considered to be superior to cost of service or rate of return regulation. Revenue sharing is somewhat of a hybrid of rate of return regulation and performance based regulation, in that it permits the regulated entity to retain a share of the returns that exceed its allowed rate of return, thereby providing a greater incentive to pay greater attention to costs.

Another important aspect of the rules framework is to ensure that it is sufficiently flexible to accommodate changing market conditions. For example, if technological advances occur more quickly than anticipated, the timetable for the transition can be reduced. Conversely, if competition is not developing as quickly as hoped, it should be possible to adjust the transition process to take account of that fact.

In addition, a clear time limit, in the form of a sunset clause in the enabling legislation or regulations of the regime, should be placed on the transition period as a whole or on certain aspects of it. Where clear time limits are not appropriate, clear milestones should be established in the legislation or regulations for either the termination of the transition, the termination of certain aspects of the transition, or the obligatory (as opposed to the permissive) forbearance of the regulator when such milestones are reached. Where the milestones approach is adopted, consideration should be given to having someone other than the regulator determine when those milestones have been reached. This will avoid placing the regulator in a conflict of interest of determining when its own mandate should terminate or be narrowed.

Furthermore, consideration should be given to including “carrots and sticks” in the transitory regime, to provide incentives for the incumbent firm(s) to reach the milestones as quickly as possible.

Consideration also should be given to the extent to which a voluntary code of conduct can eliminate, reduce the need for, or reduce the scope of the regulatory regime. In most cases, an important component of such a code would be oversight by an independent party.
Finally, to the extent possible, anti-competitive conduct should be dealt with by the domestic competition law, rather than by the regulator, although it may be appropriate to ensure that sectoral or multi-sectoral regulators can address the exercise of certain forms of market power, such as raising prices or reducing service, if the competitive forces in the market are not yet sufficient to discipline such behaviour.

3.4. Creating the right institutions

Regulatory institutions are extremely important for the success of regulation. It is not possible to anticipate all the problems and all the ways in which enterprises can act to exclude or otherwise harm their rivals, or evade the objectives of regulation. Thus, regulatory institutions need to be established. However, this alone is not sufficient. A commitment must be made to ensuring that these institutions are well-staffed and well-resourced. In this regard, serious consideration should be given to providing the institutions with budgetary independence, to safeguard them from the types of real or perceived pressures that can exist when a regulator recognises or is made aware that a certain course of action may have adverse future budgetary implications.

In addition to budgetary independence, regulatory institutions need to be independent of the enterprises they regulate, and, in a broad range of circumstances, government. Their optimal relationship with government will vary according to the objectives of the regulatory regime and the local domestic realities. For example, if the key objective is to maximise innovation and efficiency, there is a strong case to be made that complete independence from government would be appropriate. On the other hand, if the enabling legislation requires the regulator to make decisions based on a broad “public interest” test, then some mechanism for obtaining government input might be desirable. Between these two ends of the spectrum, a sober assessment must be made at the outset regarding the costs and benefits of complete independence versus varying degrees of government involvement in the regulatory process. For example, if, in addition to efficiency, other objectives of the regulatory regime were to ensure system stability, non-discrimination and universal service, one would have to ask how preserving a role for political influence in the decision-making process would advance these goals and outweigh the adverse implications for certainty, predictability and transparency. In any event, the key is for the regulator not to be subject to political influence beyond that which may be contemplated by the legal instruments establishing the regulatory regime.

Regardless of the degree of independence given to the regulator, it is critical that laws and regulations creating the regulatory regime provide for a high degree of transparency in respect of the tests that will be used by the regulator in making its decisions, the factors that will be considered in ascertaining whether the tests have been met, the procedures that will be followed by the regulator and the procedures that should be followed by persons whose conduct might be the subject of investigation or who might want to make representations and be given an opportunity to be heard. In addition, the regulator’s policies and practices also should be highly transparent. The same is true of the mechanism by which the government or relevant minister might input into the decision-making process. In the absence of such transparency, public confidence in the regulatory regime may be compromised.

Furthermore, regulators must be given sufficient powers to obtain the information they require to make their decisions. This includes not only powers to compel oral testimony or representations, but also written submissions and paper or computer records or other documents.

Moreover, consideration must be given to how best to address the interface between the competition law enforcement agency and the sectoral regulator. In this regard, one particularly valuable and basic step that can be taken is to enshrine in either the domestic competition law or the enabling
sectoral law a right of intervention by the competition authority in the sectoral regulator’s proceedings. This would provide a legal mechanism to ensure that the competition agency can make written or oral submissions regarding key matters such as the industry structure (e.g., how to break up a former regulated entity into several competing firms, or how competition can be promoted through vertical separation); the formulation of industry-specific competition rules; how best to address cross-subsidisation between the regulated and unregulated activities of an entity; how to prevent against the anti-competitive use of sensitive customer information; and alternative approaches to issues such as stranded costs, universal access, deceptive marketing practices and price regulation.

To further reinforce the ability of the competition agency to be an effective advocate for change, serious consideration also should be given to giving the agency, or its head, a statutory mandate to engage in advocacy to promote competition throughout the economy and to help build a competition culture. In any event, a genuine effort should be made to include senior representatives of the competition agency at an early stage of the regulatory reform process within various branches of government, including in interdepartmental meetings within government at which issues related to regulatory reform may be discussed.

Also, it is important to minimise duplication and overlap as between the regulators. This could be addressed in the sectoral legislation, for example, by making it clear that nothing in the legislation affects the operation of the domestic competition law. Alternatively, the legislation could state specifically that nothing in it precludes the operation of certain sections of the competition law (for example the sections dealing with abuse of dominance or hard core cartels), while leaving dual jurisdiction over matters such as vertical mergers, deceptive marketing practices or price discrimination. Another way that regulators have attempted to minimise duplication and overlap, is through an informal protocol which sets out in a clear and transparent way who will assume responsibility for what. An advantage of this approach is that it is more flexible and can be adapted to reflect changes in resources or evolving areas of expertise of the competition agency and sectoral regulator. An informal protocol also can be used to provide an important framework for co-operation between the competition agency and sectoral regulator.

Broadly speaking, it typically makes sense to give the competition agency responsibility to protect the public from anti-competitive conduct and mergers while giving the sectoral regulator responsibility to control pricing by natural monopolists of former monopolists that are still dominant. However, there are some grey areas, such as price discrimination and the terms of access to essential facilities. While competition agencies have more experience dealing with abuse of dominant behaviour, sectoral regulators ordinarily are better suited to reviewing the large volume of cost data that can be required to make an informed decision in these types of cases. They are also better suited to monitoring the industry to ensure compliance with regulatory decisions. Nevertheless, if regulation over the terms of access is only required for a short transitional period, it may make sense to give this responsibility to the competition regulator.

Finally, in thinking about the optimal design of regulatory agencies some thought should be given to the relative merits of creating several specialised single sector regulators versus combining responsibility for two or more sectors (e.g., telecom and broadcast; or gas and electricity) under a single multi-sectoral regulator. Clearly, a key trade-off to be evaluated in this analysis is the higher up-front cost of establishing several regulators versus the ongoing efficiency losses that may be incurred by forcing affected parties to deal with a larger, more cumbersome and less nimble multi-sectoral regulator. Additional considerations that should be factored into this assessment include the economies of scope that might be realised by creating a multi-sectoral regulator, the reduced probability of regulatory capture that would be associated with a multi-sectoral regulator, the availability of sufficient skilled people in the country to spread across several agencies, and the greater expertise and specialisation that would be associated with establishing specialist agencies.
4. **Competition and universal service**

A key concern that often is held by those responsible for designing regulatory reform in developing countries is how to ensure universal service. At first glance, it might seem difficult to ensure universal service and to introduce competition. Superficially, it would seem that the competing firms would supply the most profitable customers (e.g., urban or wealthy ones) and leave the poor, rural population unserved. But a well-designed universal service regime need not have this outcome. Universal service and competition are compatible, and competition can reduce the cost of providing universal service.

The key issue is how it is structured. Poorly designed subsidies can have unintended effects. For example, if basic telecoms service is offered at prices that do not cover costs, and only a fraction of the population can afford telecom services, then the outcome is a subsidy from the average taxpayer to relatively wealthy members of a society. This example demonstrates that the implications of the various ways of raising funds to achieve universal service objectives need to be explicitly addressed, as they tend to contemplate different degrees of distortion.

In terms of who should supply the service, the incumbent is not necessarily the lowest cost provider. One mechanism to get the least-cost provider, using the least-cost technology, to provide those services is to hold auctions. Under these auctions, firms bid for the lowest subsidy they require to provide the uneconomic services.

The example of Chile demonstrates the potential benefits of a market-based approach to meeting universal service and network expansion goals. An innovative feature of the Chilean approach was the auctioning of subsidies to provide telecommunications facilities in unserved areas. While the incumbent carrier won many of the projects, it faced competition from a long-distance rival, Chilesat, which sought to enter these markets through the bidding to build up its long-distance business (in fact, Chilesat bid zero on 16 projects – i.e., no subsidy payment to provide the service – highlighting that services which are alleged to incur a deficit by the incumbent can often be provided without a cross-subsidy). The first bidding round in 1995 involved $2.1 million in direct government funding and gave rise to about $US 40 million in private investments. The result was 1,285 rural public telephones at an average cost of $US 1,634 per telephone.20

5. **How can we avoid past mistakes?**

Opponents of market reform often use examples of less successful outcomes, such as the California sector in the summer of 2000, as an argument against opening up specific sectors to greater competition. Nothing could be further from the mark. It should be kept in mind that the “failures” in regulatory reform have been relatively few in number. While they clearly have given us important things to think about and address, they do not provide a sufficient basis for questioning the entire regulatory reform exercise. Moreover, what opponents of regulatory reform often forget to take into account is that the costs associated with regulatory reform failures must be weighed against the costs associated with failing to reform.

---

A closer analysis of the facts and what the experts have said about those facts reveals that the mistakes that were made in the California electricity sector are the type that easily can be avoided in the future. In this regard, one economist testifying in a senate hearing on Californian electricity decried that, “[o]ne of the sad features of the current debate is the failure to examine how better-conceived deregulation policies are working in other states.”  

What have the experts said? They have observed that well before the summer 2000, flaws in the market design were obvious. These flaws included a restriction on contract hedging and the “disconnect” between fixed retail prices and fluctuating wholesale prices. But the flaws went far beyond these to the fundamental design of the market. Without going into detail, these flaws related to the way energy prices and transmission varied by location, and to the way different types of related markets—short-run, long-run, forward and real-time energy markets, congestion (transmission), ancillary services and others—were designed. Already in December 1999, the Federal Energy Regulatory Commission had pronounced that ad hoc market adjustments, made to respond to earlier problems, were “fundamentally flawed” and efforts had begun to address these problems. Unfortunately, these efforts were overtaken by events. The flawed design resulted in competition failing and prices being pushed up by an uncompetitive supply situation. The flawed design was exacerbated by features unique to California: despite a boom in state GDP, no new capacity had been added for more than a decade, water levels were low in the reservoirs behind the power dams, natural gas prices were high and environmental conditions were tight.  

It is in fact well known how to make markets work for the electricity sector—witness inter alia New Zealand and the mid-Atlantic region of the United States, where markets do deliver lower costs, innovative products and flexibility. But markets for electricity need to have rules designed specifically for the special conditions of electricity. Experience teaches us that certain co-ordination must be done and that mistakes must be addressed swiftly.

There also have been problems in the financial services sector that have caused some observers to question the wisdom of liberalisation and deregulation. The series of crises that have emerged in this sector (such as the Mexican crisis of 1994-95, the post 1997 Asian crisis, and the collapse of Long Term Capital Management) have fuelled this skepticism. The fact that financial systems remain prone to episodes of instability clearly indicates that efforts to make financial markets systemically sounder need to be enhanced. The good news is that there is an emerging view that the risks of future problems in the financial services sector can be significantly reduced by ensuring that each institution has adequate internal systems to measure and manage its own risks. Indeed, experts in many central banks, finance ministries and supervisory agencies have been trying to identify risks and to be sure that every effort is made to anticipate possible risks. Moreover, an international network of supervisors and international organisations has developed to share experience and to deal with the global dimension of risk.

While it is clear that the liberalised and internationalised financial system has created new risk, it has also opened many new opportunities and made our economies more adaptive. More sophisticated financial markets have allowed companies and consumers to have access to an enlarged range of products and services, usually at reduced cost. On the supply side, new and innovative competitors, especially in high tech sectors, have been able to obtain funding through techniques such as venture capital. Financial markets also have developed enhanced capability to align the interests of corporate management and their shareholders. Going forward therefore, it is a major challenge to continue to enjoy the benefits that financial liberalisation and innovation have produced while learning to deal with the new system risks that are presented when regulatory regimes are reformed and streamlined.

Conclusion

I would like to conclude by making a few short points.

First, competition generally leads to higher levels of efficiency and living standards; it helps deal with the unexpected; it provides resiliency and stokes innovation.

Second, unsupervised competition is not feasible everywhere. Accordingly, regulatory reform should promote competition where feasible, and use efficient regulation where necessary. For example, it is not feasible to have competing electricity transmission networks; instead, these must be regulated and the microstructure of the market regulation must be sensitive to the particular nature of the market regulated. The key is to strike the right balance between competition and regulation.

Third, a successful regulatory reform should reflect a number of general parameters and credibly address the structure of the industry, the rules that provide the regulatory framework, and the institutions that will enforce those rules.

Fourth, ensuring universal service is almost always a key concern of those responsible for designing regulatory reform in infrastructure sectors such as telecommunications, electricity, and water. However, regulation is not the only way of achieving universal service objectives. Competition can help make universal service easier to afford – as it has in Chilean telecommunications.

Fifth, there have been a few notorious failures in regulatory reform, such as California electricity. Experience has taught us that getting competition started and established in some industries is harder than we thought; learning is on-going. But this no reason to refrain from embarking on reform. Rather, we ought to learn from our mistakes to avoid the failures of the past.

In sum, regulatory reform is a delicate process. Follow-up and continued monitoring is crucial, as adjustments to deal with undesirable effects need to be swift. And things do go wrong. We all know of a few high profile examples from around the world. Fortunately, by sharing experience, by learning, we can avoid some mistakes, and avoid repeating others.
1. Introduction

During the last two decades, Korea has transformed the telecom industry into the engine of growth for the knowledge-based economy. Teledensity has grown from 7.2% in 1980 to over 48%. Mobile service subscriptions have quadrupled over last 5 years to more than 30 million, leading the mobile market in Korea to become the 8th largest in the world. Sixty-seven percent of all Korean households, or over 9.6 million families, have access to high-speed Internet services. Korea is the 10th country to develop digital switch exchange, and the first to commercialise 2G and 3G CDMA technologies. Korea is also a major supplier of CDMA handsets in the world (53% in 2001) and leads the construction of the CDMA belt. The OECD and ITU have officially commended Korea’s effort for its successful broadband rollout. These accomplishments and the significant role of the Korean government as well as strong policy initiatives have drawn the attention from the world.

Key factors of regulatory reforms differ according to the policy objectives of each country. There is no one country that can be held up as a successful model of regulatory reform. Nevertheless, the main regulatory functions assigned to and performed by regulatory authorities are generally similar throughout the world. Most countries have gone through similar development stages where relevant regulatory reforms are recognised as leading to improvements in social welfare by attaining lower service tariff, higher service quality and greater efficiency in the market.

This paper analyses regulatory reforms that contributed to the growth of telecom service industry during the last two decades in Korea. First, I characterise the regulatory reforms that Korea has taken and then illuminate various challenges the country has had to overcome on the way. In addition, I discuss a few lessons from the Korea’s experience that may provide valuable implications to other economies under similar circumstances.

2. Characteristics of the Regulatory Framework

2.1. Textbook Approach

First of all, it is fair to say that Korea’s regulatory framework followed the textbook method in adhering to the global standards of privatising, liberalising and deregulating/re-regulating the telecom industry.

In 1981, Korean government, by creating Korea Telecommunications Authority (now KT), separated its role as a service provider from its policymaking role as the first step to raise the efficiency in the provision of basic telephone services. KTA, under government leadership, carried out its first task of establishing a nation-wide telecommunication network and relieved the stagnation from growing telephone demand.
As the demand for basic telephone service was met and new types of services and technologies became available, the government introduced competition into the market since the monopolistic conditions were far less likely to provide efficient, innovative and inexpensive services to the public. In 1990, the value-added services market was opened for competition, followed by the basic voice telephony market, the international services market in 1992, the long-distance services market in 1995 and finally the local market in 1997. As a result, there were no longer any legal impediments for market entry of the provision of fixed telecommunication infrastructure and services. As of today, there are 32 facilities-based telecom service providers (FSPs) that compete fiercely in this competitive market structure.

Furthermore, Korea has taken further steps to open the telecom markets. The multilateral and bilateral negotiation process resulting in the 1997 WTO Basic Telecommunication Agreement has accelerated market opening. And as a direct result of the agreement, Korea has opened the resale market to foreign companies and raised the limits of foreign ownership to a ceiling of 49% for domestic FSPs.

After the introduction of competition in the market, Korea has introduced new regulatory measures such as carrier pre-selection, new interconnection rules, has restructured the licensing framework for entry into the fixed public telecommunications and value-added service markets, and has changed price regulation. These changes have had a positive impact on the opening of the market to competition, the introduction of new services and in price competition. At the same time, Korea also has placed continuous efforts in privatising the telecom sector. The government began the process of privatising Korea Mobile Telecom (KMT) in 1994, and sold off all government shares to complete the privatisation process of KT on May 2002. Privatisation is expected eliminate the conflict between ownership objectives and enforcement of impartial regulations resulting in non-discriminatory decisions.

2.2. Consumer Protection

While consumer interests are best enhanced through effective competition, which will lead to lower prices, improved choices and better quality, there is a continuing role for the government to ensure that consumer interests are protected. Korea has pursued the implementation of the best practices in terms of handling consumer complaints and providing universal services while the Telecommunications Business Act has laid down provisions for failing to remedy problems by service providers. Consumers may claim compensation from operators in a number of areas specified in the Consumer Protection Act, including double billing, property damage from telecommunication facility installations, and overpayment due to operator errors. For this purpose, the Korea Communication Commission (KCC) maintains a Consumer Complaints Center. However, complaints are not limited to consumers. The industry also has means to seek redress for complaints concerning unfair practices of other carriers, and consumer claims for indemnity. Currently, with 9.6 million households subscribed to broadband services, the government is evaluating a plan to include it as a universal service in order to reduce the digital divide.

2.3. Facility-based Competition

Market entry was generally executed through one of three methods, facility-based competition, unbundling of network elements, and resale. Every economy saw that the promotion of competition both in services and in the provision of alternative infrastructure were necessary to maximise the effect of competition. However, during the transitional phase, it was hard to achieve both due to the network externality, natural monopolistic character of the industry. In some cases, the government had to call priority between service competition and infrastructure build out since mandatory resale of networks hindered the incentive for further network build out.
When Korea faced those choices, Korea took the route of the facility-based competition method. Korea issued three facility-based operator licenses for PCS, which resulted in the fast rollout of wireless network and services. At the time, broadband services were classified as enhanced service, which allowed FSPs to provide high-speed Internet services without further license or approval. Also, the government provided public loans at the prime rate to FSPs in order to facilitate the roll out of the market by reducing the financial burden of investing into access networks.

Similarly, local loop unbundling (LLU) and wireless resale were introduced later than other OECD economies. It was only after witnessing the effective network competition that Korea decided to introduce LLU and to this day, Korea still does not mandate wireless network operators to wholesale their airtime.

2.4. Virtuous Cycle

Korea’s distinctive feature of regulatory reform in the telecommunications sector is its policy of complementing manufacturing sector with service sector, and vice versa. This policy objective was based on the firm belief that creating a virtuous cycle between vendor and operator would sustain competitiveness in an innovative industry. The government has urged for and has co-ordinated strong efforts in basic R&D and applications. For example, the development of digital switch exchange was challenging, but in retrospect, it was a valiant decision for its far-reaching influence on the future advancement of IT. Also, as a strategic but uncertain choice, the development of advanced CDMA technology has become the industry standard and has made Korea into the leading nation in CDMA technology.

With the value chain changing from network to contents due to broadband and 3G, Korea hopes to provide a competitive environment in which contents, network, and manufacturing industries can grow together and complement each other. As a result, Korea has announced various safeguards such as opening network to protect small content providers from large network operators and vendors.

3. Responding to the Challenges

3.1. Addressing Market Power

The results of regulation for the traditional telecom market are mixed. Contrary to the success in long distance and international markets, network competition in the local access markets has turned out to be ineffective. KT still remains dominant, whereas SK Telecom has increased its market power in the mobile sector through M&A. In Korea, an incumbent’s market dominance seemed inevitable due to the establishment of essential facilities, network externality, lock-in effect, and economies of scale. However, the existence of dominant market players requires regulatory attention to maintain a healthy competitive market environment.

In response, Korea has laid out a plan to implement an interconnection pricing framework using average long-run incremental cost from 2004. Taking OECD’s recommendations, Korea enacted a new obligation in December 2000 that outstanding telecom service providers should provide their unbundled elements to their competitors. Furthermore, the Korean government has finalised details of the obligation and a relevant pricing scheme in December 2001, so that unbundling obligations are now effective \textit{de jure} and \textit{de facto} in the Korean marketplace. Korea also addressed the plan for introducing number portability in fixed line services in the year 2003 and in wireless services when 3G services is expected to roll out.
3.2. **Designing Incentive Regulations**

Deregulation involves some transaction costs that would not be incurred in a fully competitive market or in a monopoly environment. Generally, deregulation measures have the tendency to regulate the incumbent more in the interest of greater competition. However, unnecessary regulations will cause market inefficiency and lay burden on investment incentives. Thus, the government’s role is gaining greater importance for maintaining effective competition, while boosting investment incentives for dominant players and lowering market inefficiencies.

To accommodate those needs, the government eliminated government intervention on KT’s decisions regarding their business plans, company direction and procurement by enacting the Privatisation Act in 1997 and announced its plan of implementing a price cap in the local telephony market in 2001.

3.3. **Conflict of Interest among Players**

As the telecommunication services market became matured and competitive, operators demanded that R&D contribution that subsidised the R&D in manufacturing be reduced. IT industry has brought its share of burdens to telecom operators including large entry barriers into the market in the form of contribution fees. As a result, the Korean government has abolished the initial payment system that is being imposed to fixed line operators and will improve the annual contribution fee payment system in order to ensure fairness among operators.

Also, the dual policy for industry promotion and regulation often caused conflicts of interest. The OECD made the recommendations to Korea of separating functions and transferring the regulatory functions over to KCC. Korea took necessary measures for strengthening KCC’s role, function and independence. KCC then became in charge of inspecting and reviewing activities on local loop unbundling, number portability and carrier pre-selection under the revised Telecommunication Business Act. The members including the chairman were appointed or commissioned by the President to carry out its duty independently and at its own discretion. Even though KCC is not a separate body from MIC (Ministry of Information and Communication), its role and function is independent.

3.4. **Digitisation & Convergence**

Digitisation brought a wide array of distinctive products, creative bundling and convergence between telecommunications and broadcasting. Innovative ideas of individual service providers created greater economic value, shifting the source of economic value from network to contents and applications. This paradigm shift in the telecom value chain and in convergence raised a few concerns to regulators.

First, the government needed to provide a regulatory guideline for providing new services. New and converged services were hard to classify, which caused conflicts between regulating bodies and conflicts between operators.

Second, the government had to design safeguards to maintain a competitive environment for contents and application service providers. As the cost of network expansion and upgrading increased, there was pressure for leading infrastructure providers to diversify into new application areas. This private sector initiative has shown a tendency towards vertical integration among key players in different sectors participating in the development of information infrastructures and multimedia.
To respond to those challenges, MIC has made a consistent effort in classifying new services based on the Telecommunications Business Act. Further, the Korean government has also addressed new plans on changing the classification system to encompass the new telecommunications environment.

To boost the converged service while maintaining a competitive environment, Korea has implemented reforms in horizontal and vertical integration allowing free entry but regulating the anti-competitive behaviour of dominant players.

4. Lessons

From the Korea’s regulatory reforms mentioned above, a few lessons can be drawn. First, the faithful adoption of the textbook approach resulted in changing monopoly conditions into competition in every sector and provided the incentives for firms to be innovative and value creating. These structural reforms were the main driver to the rapid development of the telecommunications infrastructure and provided benefits to consumers such as low tariff, and universal services. Moreover, Korea’s textbook approach signalled to the market where the regulatory reform would go, which avoided cost, confusion and delayed benefits.

Second, Korea’s success in broadband implies how important facility-based competition is in boosting the investment incentives at an early stage for new services. While some economies pursued service-based competition once the market is liberalised, Korea followed another path by opening up the market to facility-based competition. The natural monopolistic structure of the network market acts as a strong barrier against effective competition for the various economies wanting to introduce the competition in the network. In addition, the usage of economies of scale and the prevalence of network externalities resulted in the pre-emption of the market. This circumstance tends to force regulators to settle for network sharing in local access market.

However, the effectiveness of such a regulatory framework is limited in its magnitude and in its longevity. In the absence of the facility-based competition, the vertical structure allows the monopoly network operators to extract a downstream rent. There may be some criticism against the social cost of multiple network construction, but the potential value of the downstream sector far exceeds the social costs when effective network competition boosts the successful service competition. Also, facility-based network competition, not network sharing regulations, helps achieve the socially optimal level of investment because it allows the operators to internalise the return on the network investment.

Third, the design of concrete competitive safeguards for all contingencies is important. Even though Korea did an excellent job for establishing a new legal framework, Korea lacked the essential regulatory safeguards, which were necessary to achieve effective competition. Korea also lacks local competition and the penetration ratio of incumbents are higher compared to other OECD economies that implemented LLU, wireless resale, and interconnection charges based on long run incremental cost. Following OECD’s recommendations, Korea has quickly implemented the necessary safeguards and expects to see results in near future.

Fourth, as the markets are converged through at the technological, service and enterprise levels, it will be necessary to change the regulatory framework to accommodate the new changes. Convergence is a very complex issue and an inalienable building block to the information society that we all visualise. The diffusion of these new information infrastructures, the development of new services and the creation of new job opportunities, will depend crucially on regulatory reforms.
Korea has taken reasonable measures to promote converged services by allowing CATV to offer broadband services. KT and SKT could take shares in the broadcasting services market. In addition, MIC has continually made efforts in interpreting new types of converged services in order to enhance social welfare. Current debates over regulating converged services among regulators have received positive reactions in accommodating the paradigm shift.

Finally, since there is no cure-all policy and regulatory framework for all economic environments, it becomes important to share ideas with the rest of the world. Korea has endeavoured to develop and implement relevant policies to facilitate the growth of the telecommunications sector. In particular, Korea has implemented the commitments that were made in the context of the WTO’s agreement on basic telecommunications earlier than scheduled, and has reduced the foreign ownership restriction in FSPs and KT. Additionally, Korea has also accommodated OECD recommendations suggested on regulatory reform.

5. Conclusion

During the last two decades, Korea has implemented a series of essential regulatory reforms that has changed the telecom market environment into a pro-competitive one, contributing to the tremendous growth in the telecom sector. In addition, Korea’s further reforms based on economic principles against anti-competitive behaviour will enhance effective competition and will provide substantial benefits to consumers and end users. Continued regulatory reforms will be required in the future with the constant changes in the telecom environment resulting in the emergence of new and complex issues that will need to be resolved.
The evolution of telecommunications regulation and competition in Australia

Stephen Farago

1. Introduction

This paper describes the evolution of telecommunications regulation and competition in Australia since the commencement of a process of regulatory reform in the late 1980s. The focus is on changes in economic rather than technical regulatory arrangements. It considers the outcomes of reform to date by examination of key metrics such as the number of competitors, market shares and the prices of telecommunications services. It concludes by reviewing some issues of debate in regard to future reform.

2. Initial reforms

Up until the late 1980s telecommunications services in Australia were provided exclusively by three government-owned entities. These were Telecom Australia which provided fixed line services within Australia and a number of associated regulatory functions, the Overseas Telecommunications Commission (OTC) which provided telecommunications services between Australia and other countries and AUSSAT which owned and operated a national satellite telecommunications system used by the former two entities.

The process of regulatory reform aimed at introducing competition into the Australian telecommunications market began in 1989. The Telecommunications Act 1989 established an independent industry-specific telecommunications regulator AUSTEL. The satellite operator AUSSAT was permitted to compete on a limited basis with OTC in the provision of overseas telecommunications services. Competition by non-government entities was permitted in the supply of value-added services, customer equipment, cable installation and ‘private networks’. At the same time as this, Telecom Australia and the OTC were formally corporatised, transforming them into government owned companies.23 Retail price controls were introduced as a means of increasing the efficiency of these businesses and achieving equity objectives.

A second round of reforms commenced in 1991 under the Telecommunications Act 1991 and other related legislation. Telecom Australia and the OTC were merged into a single company, the Australian and Overseas Telecommunications Corporation (AOTC), which later changed its name to Telstra. The AOTC was granted a general carrier licence enabling it to offer national and international services, and a public mobile licence. The AOTC/Telstra emerged as a fully integrated incumbent operator of a ubiquitous copper/fibre public switched telephone network.

At the same time, the Government issued a tender for a second general carrier licence and a second public mobile licence. These were awarded to Optus Communications, the major shareholders of which were UK-based Cable and Wireless and US-based BellSouth. AUSSAT was sold to Optus in early 1992. In December 1992 a third public mobile licence was awarded to the UK-based Vodafone.

23. AUSSAT already operated under such a structure.
The *Telecommunications Act 1991* provided for interconnection and access rights for carriers to each other’s networks and some more limited rights for service providers. Carriers were free to negotiate access terms and conditions, but failing agreement could obtain a determination from the regulator AUSTEL.

The 1991 reforms created an environment of regulated or managed competition, with an emphasis on facilities based entry. As a reflection of this, Optus commenced roll out of a Hybrid Fibre Coaxial (HFC) local loop network in the metropolitan areas of major capital cities in early 1995. Its business case for this was predicated on a joint voice telephony, internet and pay-TV offering.

In response to Optus’s plans to develop a HFC network, Telstra commenced the roll out of its own HFC network at around the same time and in the same areas. Its network plans were centred on the supply of a competing pay-TV service though its half-owned affiliate Foxtel. Although this is understood to have been justified in part as a ‘technology hedge’ strategy, it has also been widely viewed as a ‘telephony defence’ initiative, to discourage its copper fixed line telephony customers from switching to the Optus network.

The *Telecommunications Act 1991* also saw the introduction of revised universal service arrangements whereby the industry as a whole was required to contribute to the net cost of unprofitable services supplied by Telstra. These were funded by a levy on all carriers in proportion to their share of timed traffic. Other consumer related protections included the continuation of a retail price control regime and the creation of an industry funded ombudsman to deal with billing related complaints.24

3. **The current regulatory environment**

The current regulatory environment emerged in 1997 with the *Telecommunications Act 1997*. The Act provided for open entry of carriers and carriage service providers. The technical regulatory functions of AUSTEL were merged with the separate Spectrum Management Agency to form the Australian Communications Authority (ACA). The ACA was also given responsibility for overseeing a number of specific consumer protection requirements, which includes administration of the universal service arrangements.25

In addition, under changes to the *Trade Practices Act 1974*, responsibility for competition regulation in telecommunications was transferred to the general competition regulator, the Australian Competition and Consumer Commission (ACCC). This involved insertion of telecommunications-specific access provisions (Part XIC) and anti-competitive conduct provisions (Part XIB) into the *Trade Practices Act 1974*.26 Retail price controls on Telstra were also continued under the new regime. Telstra’s compliance with these is overseen by the ACCC.

---


25. Legislative consumer protection measures include *inter alia*: the Universal Service Obligation that provides access to a standard telephone service to all people in Australia regardless of where they live or carry out a business; the Digital Data Service Obligation that makes provision for equitable access to high speed data services; and the Customer Service Guarantee which sets standards in relation to the timeliness of connections and fault repairs.

26. Content regulation is the responsibility of a separate media regulator, the Australian Broadcasting Authority.
The access provisions of Part XIC do not provide for a general right of access to telecommunications services. Access rights are granted following ACCC declaration of a service, although certain services were ‘deemed’ to be declared for the commencement of the new regime. In essence these were services covered by commercial access agreements under the 1991 access regime.

Table 1. Services declared for third-party access

| - Domestic public switched telephone network (PSTN) originating and terminating services; | - Local PSTN originating and terminating services; |
| - Domestic GSM and CDMA originating and terminating services; | - Local carriage service; |
| - Transmission; | - Integrated services digital network (ISDN) originating and terminating services; |
| - Digital data access service; | - Domestic transmission capacity service; |
| - Conditioned local loop service; | - Analogue subscription television broadcast carriage service; |
| - Analogue broadcasting access service; | - Line sharing service. |

In order for a service to be declared, the ACCC must undertake a public inquiry and be satisfied that declaration will promote the long-term interest of end-users. Alternatively it can declare a service on the recommendation of a specified industry self-regulatory body known as the Telecommunications Access Forum (TAF). The services declared to date (including the deemed declared services) are listed in Table 1 above.

Once a service is declared the ACCC can arbitrate terms and condition of access if parties cannot agree on the terms and conditions of supply. Access providers can also submit undertakings in which they can nominate terms and conditions of access. If the ACCC accepts such an undertaking, it cannot issue arbitrations at variance with the terms and conditions specified in the undertaking.

The Part XIB anti-competitive conduct provisions mirror reasonably closely general anti-competitive conduct provisions in the Act (Part IV) applying to other industries. A crucial difference, is that conduct which has the effect, or likely effect, of substantially lessening competition is prohibited under Part XIB, whereas under the misuse of market power provisions of Part IV, a breach occurs only if that is the purpose of particular conduct. This lower threshold reflects in part, the potential of incumbency control of upstream telecommunications markets to serve as a means of keeping competitors out of downstream markets. Part XIB of the Act also provides the ACCC with information gathering powers through the ability to issue record keeping rules and tariff filing directions.

Provision was also made in the 1997 arrangements for two industry self-regulatory bodies. These are the Australian Communications Industry Forum (ACIF) and the TAF mentioned above. The ACIF specialises in developing common technical and consumer standards for the industry. The TAF’s focus is on self-regulation for matters in relation to the economics of access. As mentioned above, the TAF can nominate access service declarations to the ACCC and has the power to develop voluntary access codes. It has developed a code covering certain non-price terms and conditions, but has not proved effective in
reaching agreement among industry on price related terms and conditions of access. Recently the current body constituting the TAF agreed to disband.\(^{27}\)

The year 1997 also saw the sale of one-third of Telstra to private investors. A further partial sell down in 1999 reduced the Government’s stake to the current level of 50.1%.

Amendments to the telecommunications specific parts of the Trade Practices Act in 1999 introduced additional flexibility to Part XIC arbitral processes in relation to access and a strengthening of the operation of the Part XIB competition notice regime.

In mid 2000, the Government initiated a review of telecommunications specific competition regulation by the Productivity Commission.\(^ {28}\) As a partial response to the Productivity Commission review, another set of amendments to the access provisions was introduced by the Government in September 2001. These included initiatives to improve information dissemination, extend provisions for backdating of arbitration determinations and to speed up arbitral processes. Key objectives were to reduce the incentive for early notification of arbitrations and to encourage greater commercial negotiation. The Government also proposes to introduce further amendments. These are outlined below.

To help encourage direct negotiations between parties the ACCC has moved recently to publish indicative access prices for a range of declared access services.

In summary, the current regulatory environment governing third-party access arrangements for telecommunications networks is best described as a co-regulatory framework, with reliance on various government regulators and self-regulation. Following a trend established under the previous regime, the emphasis is on the primacy of commercially negotiated access and interconnection arrangements. Arbitration is provided for where such negotiations fail to produce mutually agreeable outcomes.

**Outcomes under the current regime**

Since open entry in 1997, numerous carriers and carriage service providers have entered the telecommunications market. There are presently around 75 carriers – including four carriers operating mobile networks – and an even higher number of carriage service providers. Nevertheless, the market remains dominated by a couple of large carriers. There are around 900 internet service providers (ISPs) but again the main carriers tend to dominate this market.\(^ {29}\) In the CBD areas of major capital cities there are, in addition to Telstra’s infrastructure, between 7 and 10 alternative optical fibre or microwave networks. New entrants have carved out major market shares in the mobile, data services, and inter-capital transmission markets. The price of an average basket of telecommunications services purchased by Australian consumers fell by 21.4% in real terms over the period 1997-98 to 2000-01.\(^ {30}\) There has been a substantial rise in the number and diversity of telecommunications services available in the market.

\(^ {27}\) Legislative changes proposed to Part XIC of the Act include abolition of the TAF.


The growth of competition in particular market segments has seen the ACCC wind back some access regulation. Examples are the removal from the transmission declaration of major inter-capital routes and the imminent removal of Telstra’s obligation to provide a wholesale local call service with respect to the CBD areas of major capital cities.

Notwithstanding the above developments, the incumbent Telstra remains the dominant telecommunications supplier by market share in almost every market in which it operates. It is highly vertically integrated and is reputedly one of the most horizontally integrated telecommunications companies in the world, with a presence in the fixed network telephony, mobile, ISP, data services, printed and on-line directories and pay-TV markets. This gives it significant economies of scope and access to bundling opportunities that, in addition to economies of scale, can make it very difficult for smaller players to compete against it. Its market shares in some key markets are shown in Table 2 below.

Table 2. Telstra’s share of key markets

<table>
<thead>
<tr>
<th>Market</th>
<th>Market share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail basic access lines (June 2001)</td>
<td>83.2*</td>
</tr>
<tr>
<td>National long-distance revenue (June 2002)</td>
<td>75</td>
</tr>
<tr>
<td>International revenue (June 2000)</td>
<td>48</td>
</tr>
<tr>
<td>Mobile subscribers (March 2001)</td>
<td>45.5</td>
</tr>
<tr>
<td>ISP subscribers (July 2000)</td>
<td>23.7</td>
</tr>
<tr>
<td>Data services and enhanced voice retail revenues (2001)</td>
<td>38</td>
</tr>
<tr>
<td>Pay-TV subscribers (June 2001)</td>
<td>52.2</td>
</tr>
</tbody>
</table>

If resellers of Telstra lines are included the figure is 95.6%.  

In relation to the quality of services, an independent inquiry into the adequacy of telecommunications services conducted in 2000 concluded that Australians:

generally had adequate access to a range of high quality, basic and advanced telecommunications services comparable to the leading information economies in the world.

However, the inquiry indicated that in rural and remote areas of Australia many people were provided with services that they regarded as inadequate. Particular concerns were expressed in relation to:

− The timely installation, repair and reliability of basic telephone services;
− Mobile phone coverage at affordable prices; and
Up until recently there had been a steady increase in annual consumer complaints in regard to service standards for service provision and fault rectification, particularly in rural areas. The reversal of the rise in recent years may be in part attributable to the imposition of higher Customer Service Guarantee standards by the Government in July 2000 and possibly other initiatives relating to service provision in rural areas.

Telstra’s continuing dominance has reinforced the need for a strong access and enforcement regime to help nurture competition. It has also made the emphasis of the current regime in encouraging negotiated outcomes somewhat problematic at times. Indicative of this, the ACCC has been involved in a total of 40 arbitrations involving Telstra (out of 46 in total) since the commencement of the current regulatory regime. Many of these have taken years to resolve and involved considerable administrative cost.

In response to these and related difficulties, the Government introduced recently a bill into Parliament to amend further the Telecommunications specific parts of the *Trade Practices Act 1974* and the *Telecommunications Act 1997*. Among other things, the bill provides for:

- An enhanced accounting separation model for Telstra, providing for greater transparency of its wholesale and retail operations;
- A requirement for the ACCC to publish model terms and conditions of access for core services;
- Removing merits review with respect to ACCC arbitration decisions other than on points of law;
- Increasing the incentives for the provision of access ‘undertakings’ that provide for industry-wide terms and conditions of access; and
- Abolition of the industry self-regulatory access body (the TAF).

The ongoing strengthening of the telecommunications specific parts of the Trade Practices Act is contrary to what was envisaged when the regime was conceived. There was some expectation that the ACCC’s role would diminish over time and that the general competition laws could displace the need for

---

33. In 2001 the Government used a competitive tender process to allocate $150 million in direct funding to upgrade infrastructure to provide untimed local calls, access to an ISP at a local call rate and other services to people living in the most remote parts of Australia. The Government has also funded a range of telecommunication services projects through a dedicated Regional Telecommunications Infrastructure Fund. These included a $25 million tender to extend mobile coverage along major highways. In addition, competitive tendering for the provision of a standard telephone service (STS) has been introduced within two identified universal service areas under a pilot program. This entitles designated carriers and carriage service providers to compete to obtain the industry-funded subsidy previously only available to Telstra, for providing an STS in these areas.
34. The Bill constitutes the Government’s main response to a review of the telecommunications competition regime by the Productivity Commission.
an industry specific regime. On the other hand, due to major pricing work carried out over the past several years and perhaps partly as a result of previous legislative amendments, the level of access disputation brought before the ACCC has diminished in the past year.

4. **Current debate about future reform**

Some issues featuring prominently in the current debate about future telecommunications industry reform include structural separation, privatisation and service standards in rural areas.

The ACCC is cognisant that Telstra’s high level of vertical integration and its dominance in key markets places it in a unique position to leverage into related markets with the convergence of various telecommunications services. It has expressed the view that:

…”access regulation alone may not be sufficient to curb market power in converging markets such that it may be necessary to consider whether structural separation of ownerships of inputs to these services is required.”

The Government has not given any indication that it intends to pursue structural separation of Telstra. The opposition Labour Party has flagged it as a policy option with the possible objective among others, of maintaining the fixed network business under full government ownership.

Privatisation of the remaining 50.1% government shareholding in Telstra is a stated policy objective of the current Government. However this policy is contingent on demonstrated improvements in service standards in rural areas, and must also pass through the Senate where the Government lacks a majority.

The Government initiated an inquiry into telecommunication service standards in rural areas a couple of months ago. The inquiry is due to report its findings by the end of the year. This follows a previous inquiry in 2000, which indicated that services were deficient in many rural areas, and the introduction of recent initiatives by the Government to facilitate improvements.

5. **Conclusion**

Telecommunications regulation and competition in Australia has evolved substantially over the past ten years and is still evolving. There have been several positive market outcomes that have delivered benefits to consumers. Nonetheless the incumbent provider remains dominant by market share across a range of markets, which has served to test the access and enforcement regulatory regime. It has also meant that there has been a tendency towards regulatory tightening contrary to expectations when the current regime was put in place.

---

Regulatory reform in the Telecommunication sector in France

Michel Roseau

Ladies and Gentlemen,

Dear colleagues,

It is a great pleasure for me to join you for this debate on telecommunications reform and to address this eminent international assembly. I would like to congratulate both APEC, OECD and, of course, our Korean hosts, for the high-quality of talkings and organisation.

Firstly, I would like to give you some key-ideas about the process resulting in introducing more competition in the sector of telecommunications in France.

The French telecommunications sector has been considerably transformed over the past five years. Our basic organisation was traditionally based on the monopoly held by France-Telecom. This company had in charge the management of the fixed telephony network with tariffs decided by political authorities. The structure of markets changed radically due to the fall of networks costs, technological progress that led to the end of the natural monopoly that was the reason for the end of the legal monopoly, accelerated development of demand for new services. New operators emerged, causing a huge decrease in tariffs and a huge growth of volumes. Basically, the economic stakes moved from the heart of the network (the long distance communications market) to the borders (the local loop market).

Two main factors led the Government to give up the old system of legal monopoly:

− Firstly, technological progress that reduces fixed costs and allows the entrance of new players with real hopes for mid-term profitability;

− Secondly, faith in competition benefits in order to improve global economic efficiency and global welfare for providers as for consumers.

− Well, maybe, a third factor is the European Community regulations on Telecom;

The French Telecommunications Act of 1996 dismantled the old monopoly system, entrusting the authorities in charge of regulation the task of ensuring – I quote – “an effective and fair competition among network operators and telecommunications service providers, in the interest of users”. In the meantime, State authorities accepted a drastic change in their role, abandoning direct administration of the network and concentrating on regulation stakes.

The regulatory role is shared by three institutions:

− The Competition Council, which is keen on applying competition rules notwithstanding specific structures of telecommunications markets;

− The telecommunications regulatory authority, which aims at safeguarding and allowing for a satisfactory evolution of the structural economic equilibrium of the telecommunications sector;
And the telecommunications Secretary whose role is now very limited indeed, consisting in making a decision about prices for few segments still under monopoly.

A step-by-step approach has been implemented:

− *Stage one* consisted in the legal separation of the operating and the administrative functions. This was achieved by creating a company incorporated under ordinary law, in which Government still retains a majority interest.

− *Stage two* consisted in abolishing monopoly and exclusive or special rights. This stage was accompanied by a series of measures aiming at preserving a high-quality service to users. As you know, there is a strong public choice for universal service in France and the new operators have to support special duties as regards universal services.

− *Stage three* consisted in setting down legal rules designed to introduce competition in a market that remains dominated by the incumbent operator. These rules are related to interconnection, licensing conditions for network and service operators, tariff monitoring and technical provisions enabling newcomers to pursue their business.

This gradual approach has been successful. Opportunities of new businesses were offered quickly to new entrants as the incumbent operator was under growing pressure to share the networks and the data transportation facilities. Asymmetrical regulation on the incumbent operator was the key tool to reach successive competition equilibriums, imposing on France-Telecom cost-oriented interconnection tariffs.

**The fixed telephony market:**

During the period of public monopoly, the pricing of telecommunications calls was based on huge cross-subsidies, both between the various segments of market (network access and local communications Vs long distance calls) and the various segments of users (business Vs residential). The monopoly system was based on a huge discrepancy in pricing, with a very low pricing of network access compensated by a high fare for long distance calls. This system allowed an extensive coverage of the national territory with costly investments throughout remote areas. Access to the network was granted at a reasonable price for all the consumers, located in Paris or in a remote village of Brittany. As a consequence, the stress put on global social welfare hinders the system from reaching economic efficiency. Massive financial transfers between users of international services and local users made the system work but the lack of transparency led the sector far from the economic optimum.

The opening of markets in 1998 led to a new system of prices based mainly on real costs. New comers chose to enter the profitable segment of long distance calls and the fall of prices on this segment due to competition led the incumbent operator to raise the pricing of network access. As a consequence, an appropriate pricing of network access allowed new comers to operate successfully in the local loop market.

The available data on prices show that the monthly retail access network price increased from 7 € in 1995 to 13 € in 2002. In the meantime, the communications prices have been roughly divided by two. The telephone bill decreased by an average 30% for business customers and by an average 10% for residential customers. But we must acknowledge that there are winners and losers within residential customers. People consuming few communications have to fully support the raise of line rental without substantial benefits in communications. On the contrary, people consuming a lot of communications have a different structure of their telephone bill with a smaller part devoted to the line rental.
Nevertheless, for customers with special needs, the concept of universal service has been introduced with prices different from those resulting from normal market conditions. I have to mention that the universal service does not involve competition distortions as the net cost burden is shared by all operators either they have many universal service users or not.

The mobile telephony:

The mobile telephony market has experienced a very high growth for the past five years. The equipment rate evolved from a low 9% in 1997 to a quite high 62% in 2002. Each year, 7 or 8 millions people newly decide to connect with a mobile phone. This development has been accompanied by a decrease in prices by 20% between 1997 and 1999. The prices have been stable since 1999 but several measures tend to deepen the competition between operators. Three companies are operating with GSM licences. Two of them – France-Télécom-Orange and Vivendi-SFR – have been designated as powerful operators because they have the capacity to influence the interconnection market (i. e. their market share is over 25%). They are now compelled to propose cost-oriented prices for terminating interconnection services. Moreover the choice for the transportation operator is now completely free for calls from fixed telephony towards mobile telephony.

Internet:

Internet also experienced a huge growth over the past three years. Traffic has doubled between 1998 and 2001. In the last two years, prices for Internet access have decreased by an average 60%, ranging from 50% up to 75% depending on different kinds of pricing formulas. The main stakes now lie in the unbundling of the local loop which is necessary to strengthen competition in high-speed internet traffic. ADSL technology is now available and delivers reasonable hopes for a rapid development of the high-speed market. The incumbent operator took strong advantage of being the unique operator owning reserved phone lines to connect ADSL. But all Internet access providers should now be allowed to propose ADSL connection without competition disadvantage. Indeed the Competition Council made very important decisions in order to force France-Télécom to let other competitors order quickly and freely ADSL access thanks to an Extranet server.

As a conclusion, I must add that a new European regulatory framework recently enacted will strengthen competition in the next few years. This framework creates special duties for so-called powerful operators which proved to have a significant market power. These operators are under close control concerning their pricing policy for retail as for interconnection markets. As a consequence, the action of national regulation authorities throughout the European Union will be under close supervision if we consider that the common law of dominant positions and competition rules will apply more and more in the specific field of electronic telecommunications economy. We are now experiencing a new approach that is based much more on free competition rather than on a regulatory scheme. The strategic role of the fixed telephony network is no longer alive for international calls, data transmission markets and also for the local loop. And all the operators -small-size, medium-size or major companies- should fairly compete in order to deliver best services at a low price with satisfactory profitability in all the segments of the telecommunications markets.

Thank you very much for paying attention to this short disclosure of the regulatory and competitive stakes in telecommunications in France.
The Regulatory Reform in Telecom Sector in China

Cui Shutian

The regulatory reform in telecom sector is becoming a global trend along with the development of the telecom industry in recent years. How does the regulatory reform suit to the changes of the global economy and compel the healthy development of the industry? That is a problem that the regulatory entities should solve. This presentation will introduce some information on practice and experience of telecom regulatory reform from China telecom regulation authority with respects of the progress of the regulatory reform, the results and problems, and some key learning from the reform.

I. The progress of regulatory reform

China’s telecom regulatory reform can be seen from three aspects: the government institutional reform, the market structure adjustment and legal system establishment.

1.1. Reform of government institution

Like most of the countries in the world, the telecom regulation and operation functions were performed by a ministry – Ministry of Posts and Telecommunications in China before 1998.

In 1998, Ministry of Information Industry (MII), established based on the former Ministry of Posts and Telecommunications (MPT) and the former Ministry of Electronic Industry, became a telecom regulation authority independent from business operations. Besides telecom regulation, MII is also responsible for radio spectrum management, the software sector, the electronics manufacturing sector and informatisation.

By 2000, all of the provincial administration and regulation bodies were set up based on the separation of regulation and operation functions.

So far, a two-level, direct instruction regulation structure system is taking shape.

1.2. Market structure adjustment

Telecom market competition appeared in 1993. Before that time, China’s telecom market was monopolised by the Directorate General of Telecommunications (DGT) under MPT.

From 1993 to 1998, the value-added service market was opened, such as wireless paging, computer information service, domestic VSAT communications etc. In 1994, China Unicom established was permitted to set up mobile network and a few local telephone networks.

From 1998, along with the separation of government from enterprises, the market situation has changed significantly. The former DGT was divided into 4 entities, they are China Telecom, China Mobile, China Sat and Paging Group which joined in China Unicom in 1999.
In 2002, China Telecom experienced another division for the purpose of breaking up the fixed telecommunications monopoly. A new China Netcom Group set up based on the northern 10 provincial original China Telecom companies plus China Netcom Corporation Ltd and Ji Tong Communications Co.

Above is the evolution picture of telecom market structure. Now there are 6 basic telecommunications carriers and thousands of value-added service providers. Next step, we are facing to form an environment to promote effective competition in the telecom market.

1.3. Legal system establishment

With the respect of legal system establishment, we have enacted Telecommunications Regulation which is the first comprehensive statute to regulate the telecom market. In 2001, Regulations for Foreign Investment was issued by State Council to be consistent with the WTO commitments made by Chinese government.

Based on the above regulations, MII has issued a series of rules covering the fields of licensing, interconnection, number resources, spectrum management, Qos supervision etc.

Now Telecommunications Act is on the drafting process.

Generally speaking, telecom industry will go through from full monopoly to full competition or effective competition. China telecom industry is on the period of transition – limited competition period.
2. Outcomes of the regulatory reform

There are four points to show the results of the regulatory reform, namely, competition framework has been formulated initially, the industry keeps sustained, stable and rapid growth, the quality of service improved greatly, and telecom plays a prominent role in national economy and social informatisation. At the same time, we also have encountered some problems in regulatory reform.

2.1. Initial formation of competition pattern

As mentioned above, the China’s telecom competition structure has been taken shape yet. Among the 6 basic telecom enterprises, there are 4 fixed local telephone operators: China Telecom, China Netcom, China Unicom and Railcom Corporations. And 3 mobile operators: China Mobile, China Unicom & ChinaSat. ChinaSat is a satellite communications carrier to provide services to other operators as well as to customers. All of these operators except Railcom Corporations have been granted Internet Backbone Data Transmission service licenses and IP telephone licenses. By June this year, none of the above 6 operators has 40% of the whole market shares, that means the situation of only one market giant has changed into several players who are running neck to neck. I believe a few full services providers will be established finally.

Apart from basis telecom carriers, there are still thousands of value-added service providers including more than 1400 wireless paging service providers, around 1000 Internet Service Providers, more than 2000 Internet Content Providers, 43 Domestic VSAT communications operators, 45 Call Centers etc.

On the other hand, the heterogeneous competition becomes evident more and more. The rapid growth of mobile subscribers has prominently competing effects on the fixed communications. The number of mobile subscribers is expected to exceed the fixed telephone subscribers by the end of this year in China.

At the same time, competition in a great sense strengthened the capability and activeness of developing new services for the enterprises in the market.

2.2. Sustained, stable and rapid development

Another result of regulatory reform is that the telecom industry continued to keep a sustained, stable and rapid growth in the last few years.

Now China has become the No. 1 in terms of both fixed telephone subscribers and mobile subscribers in the world as well as the scale of networks.

By July 2002, there are 201 million fixed telephone subscribers and 180 million mobile subscribers and 41.7 million Internet subscribers. The teledensity increased from 8.11% in 1997 to 30.22% in 2002.

Compared with the higher penetration rate in developed countries, the teledensity in China is still lower. I believe there are still a huge potential market and brilliant prospects in the future.
2.3. Quality of service improved greatly

As far as the telecom quality of service is concerned, we believe it is a very important factor we need pay attention to after the introduction of competition. Because on one hand, competition will play a positive role in improving telecom Qos; on the other hand, profit maximisation might impair the rights and interests of the consumer. So, only market competition and government regulation combined can really protect consumer rights and interests. MII has issued the telecom service standards and a series of rules on which the enterprises should provide services to the customers.

For the time being, in China, only a few services price – mainly basic telecom services price is controlled by government. These services include fixed local telephone service, mobile telephone service and long distance telephone service of China Telecom and China Netcom which are lack of plenty competition. It is controlled with consideration of the balance of enterprise benefits and end users interests. This service prices have been going down continuously under control.

Also the advanced technology and enlarged network capability is helpful to improve the service quality.

Competition drives the telecom enterprises to pay more attentions to service quality. Meanwhile, the Telecom Service Standards issued by government also provide guarantees to the Qos.

According to the satisfaction survey to end users operated by MII this year, the satisfaction rate to the telephone service is 76.9, which indicates the telecom service quality by and large meet the requirements of end users.

2.4. A prominent role in national economy

As a fundamental and strategic industry, telecom has maintained a rapid development with 3 times GDP growth rate in recent 10 years. Now we regard it as a leading industry in national economy. It is the booster of national economy and social informatilisation.

In the past few years, we strengthened the investment on the infrastructure in the western areas. By setting up the basic networks, telecom industry has established a groundwork to lessen digital gap between eastern and western areas.

2.5. Problems in regulatory reform

Even though we have made a significant success in the telecom regulation reform, there are still some problems we are facing.

First, the power and responsibility of regulator are asymmetric. We have no sufficient authority to enforce the law. Sometimes we have no effective measures to keep market order.

Second, unfair & vicious competition occurs frequently, particularly in small cities, price battles happen often.

Third, the synthetic strength of the enterprises remains to be improved so as to become international first-level telecom companies.

Fourth, universal service mechanism has not yet been set up in China.
3. **Experience and key learning**

3.1. **Understand the basic laws and characteristics of telecom development**

What are the basic laws of telecom development? It is not a good question, but it concerns with the constitution of the industry policy and regulatory measures. So, we must have a good understanding of the basic laws and characteristics of telecom development.

In our opinions, telecom industry is essentially a traditional service sector which does not change its intrinsic law because of the introduction of new technologies and services.

Telecom networks are infrastructures of the national economy. Its basic attributes such as full coverage, joint operation and service to the entire society have never been changed.

Besides, this industry is a sector featuring gradual and steady growth and low profitability. It should not be considered as a sector which generates sudden huge profits.

So when making policies, we must abide by the laws to push the industry in a stable and healthy way instead of spoiling it by excessive enthusiasm.

3.2. **Clarify the purposes and principals of regulation**

We should understand and interpret the purpose of regulation correctly.

Like most countries, the first step we do the regulatory reform is to break up monopoly, and we also regard encouraging and protecting competition as one of the regulation principles.

Meanwhile we realise that the purpose of regulation is to maintain the healthy development, and provide supports to national economy by encouraging effective competition.

So, we should encourage competition while preventing from over competition.

3.3. **Interconnection focused**

Lastly, let’s talk about the problem of interconnection. Interconnection is one of the well-known difficult problems in the telecom regulation. There are at least 3 reasons: one is the interests related to the two parties hard to define; two is the evidence on which to arbitrate is not easy to collect; third is other complicated reasons behind interconnection issue such as competition behaviours. In China, the quality of interconnection is also a problem we have to face. We are preparing to establish interconnection quality supervision system to solve the problem of poor interconnection quality, meanwhile we should regulate the unlawful market competition, ensure market order.
I. Summary of the Framework of Electricity Industry Liberalisation

I) Total liberalisation of the integrated businesses of power generation, transmission, and distribution, as well as the generation, transmission, and distribution businesses, to free competition.

The business area of the integrated electricity business and distribution businesses shall be based on that approved by the central authority. The central authority may, based on the applications filed by integrated electricity business or distribution businesses or based on its authority, review the following issues to allocate and adjust the business areas: administrative zone, population distribution, economic benefit, natural geographic conditions, fair competition, and other special requirements.

The electricity generated or purchased via wholesale trade by the integrated electricity business shall be sold, via the electricity grid, to consumers within its business area or sold via wholesale trade to electricity companies outside of the transmission industry. Electricity generated by the generation businesses may, in accordance with Article 12, paragraph 2, be supplied either via electricity grid or directly to consumers or sold via wholesale trade to electricity companies from outside of the transmission industry. Distribution companies may purchase via wholesale trade electricity from electricity companies from outside of the transmission industry, and sell such electricity to consumers or other electricity distribution companies in its business area through its own electricity grid or that of the integrated electricity business at its location.

II) Establishment of an Electricity Dispatch Center to ensure fair and open distribution of electricity.

To enforce the aforementioned regulation on power distribution, the central authority shall, within two years after the enforcement of the amended Electricity Law, provide guidance and financial assistance for the establishment of an Electricity Dispatch Center. The Center, which shall be a judicial person, shall have duties and responsibilities to be determined by the central competent authority. Prior to the establishment of the aforementioned Center, allocation of power resources shall be carried out by the integrated electricity business. The Center may commission its power distribution operations to professional agencies selected and approved by the central competent authority.

The Electricity Dispatch Center shall carry out operations in a safe, fair, open, and economical manner consistent with the government’s energy policies. The electricity dispatch operations shall include at least high-voltage transmission lines for 69,000-volt electricity. The range, scope, procedures, standards, and emergency handling of electricity dispatch shall be regulated by the guidelines on electricity dispatch as formulated by the central authority.

The electricity grids of the integrated electricity business and distribution businesses shall be inter-connected. The following electricity grids and electricity generating plants shall operate in conjunction with the Electricity Dispatch Center; provided, however, that those with just cause and approved by the central authority shall be exempted:
1. Electricity grids and power plants owned by the integrated electricity business.
2. Electricity grids owned by the electricity distribution businesses.

Where electricity grids are required by the electricity generated from generation companies, the Electricity Dispatch Center may be requested to carry out distribution operations in accordance with electricity dispatch regulations.

III) Establishment of an Electricity Dispatch Monitoring Committee.

The central authority shall establish an Electricity Dispatch Monitoring Committee to monitor the electricity dispatch activities and handle relevant disputes. The Committee shall be composed of representatives from government agencies, electricity businesses, consumer protection groups, relevant professional organisations, scholars, and experts. Electricity dispatch activities shall be carried out in accordance with electricity dispatch regulations. In the event of disputes arising from such activities, the Electricity Dispatch Center shall request for mediation assistance from the Committee. In the event of failure in mediation, a determination shall be made by the central authority.

IV) Liberalisation of transmission and distribution grids for public use.

Where electricity grids are required by the electricity generated from generation businesses, the Electricity Dispatch Center may be requested to carry out electricity dispatch activities in accordance with electricity dispatch regulations.

Integrated electricity business and transmission businesses shall not refuse requests for interconnection with their electricity grids from other electricity businesses or operators with their own generators. The electricity grids of the integrated electricity business and distribution businesses shall be provided for use to other electricity businesses consistent with the principle of fairness and openness, and shall not be discriminatory against specific parties. Requests for the provision of such services shall not be refused without just cause and approval from the central authority. The fares to be collected from the electricity businesses requesting such transmission services shall be in accordance with the fares approved by the central authority.

V) Progressive increase of the consumers’ options.

Consumers may request for electricity supply from the integrated electricity business or distribution businesses at their locality. The integrated electricity business or distribution businesses shall not decline such requests without just cause and approval from the central authority. Consumers may request electricity businesses to supply electricity either via electricity grids or directly. The appropriate scope of use of electricity transmitted via electricity grids shall be determined by the central authority.

VI) Ensure a steady supply of electricity.

To satisfy the electricity of consumers’ demand within their business areas, integrated electricity business and distribution businesses shall be responsible for the planning, construction, and maintenance of electricity grids within their respective business areas. Public utility electricity shall be available at all times each day. However, such period of electricity supply may be limited in the event of special circumstances and upon approval from the central competent authority.

VII) Regulation of public electricity rates.

The method of calculating the electricity rates of the integrated electricity business and distribution businesses, along with the fees of the electric utilities and Electricity Dispatch Center, shall be
determined by the central competent authority and approved by the Executive Yuan. Changes to such fees shall likewise take effect after undergoing the same processes. When formulating or revising the different rates and fees, the electric utilities and Electricity Dispatch Center shall carry out calculation based on the aforementioned method of calculation. The calculated fares shall be announced publicly after approval by the central competent authority.

The central authority may create an electricity price and fares review committee to review the public section’s electricity prices, fares, method of calculation, and other relevant issues. The review committee shall be composed of representatives from government agencies, electric utilities, Electricity Dispatch Center, consumer protection organisations, relevant professional organisations, scholars, and experts.

VIII) Long-term measures (five years after the passage of the Electricity Law) include providing guidance to the electricity businesses for the establishment of a voluntary electricity pool.

The Council for Economic Planning and Development under the Executive Yuan in the year 2000 invited the Fair Trade Commission and Ministry of Economic Affairs to convene a meeting to discuss the Draft Amendment for the Electricity Law. During the meeting, it was resolved that five years after the passage of the Electricity Law, guidance will be provided to the electricity businesses for the establishment of a voluntary electricity pools, the operations of which will be governed by bilateral agreements. Based on market requirements and upon consent of the majority of the electricity businesses, a further determination will be made whether to establish a single electricity pool.

II. Role of the Fair Trade Commission During the Process of Electricity Industry Liberalisation

In conjunction with the government priority on “competition policy supplemented by industry policies,” the Fair Trade Commission has actively participated in the planning of electricity market liberalisation. To expedite competition mechanism within the electricity industry and establish fair competition, the Commission forwarded timely recommendations on major issues such as industry restructure, market structure, and the creation of relevant agencies in the electricity market.

In the event the electricity market attains full liberalisation from its current status, the different rights and obligations of the electricity businesses and consumers will become increasingly complex. Relationship between electricity businesses and consumers will become different compared with that which existed in the past within a simple market structure and a single supplier. Creation of an independent monitoring and regulatory agency can help monitor market operations and foster a fair, competitive environment to prevent businesses from abusing market power and raising electricity prices. This will ensure fair and just allocation of resources and resolution of disputes in a timely, efficient, and fair manner.

In the future, the independent monitoring and regulatory agency will be in charged of the enforcement of the Electricity Law while the Fair Trade Commission is in charge of Fair Trade Law enforcement. The intents of the two agencies are different. The Electricity Law aims to develop and conserve national electricity resources, while the Fair Trade Law aims to safeguard order in trade and ensure fair competition. Since the Fair Trade Commission is the authority on competition, it is mandated to exercise its authority in accordance with the relevant provisions of the Fair Trade Law without restriction from the Electricity Law. Within the confines where the Electricity Industry Law is consistent with the spirit of the Fair Trade Law, the Fair Trade Commission, understanding that each administrative agency has its own authority, will respect the administrative decisions of the independent monitoring and regulatory agency of he electricity market.
VIII. APPENDIX II: LIST OF PARTICIPANTS

Australia

Mr. Rex DEIGHTON-SMITH
Director
Jaguar Consulting
P.O.Box 505
FLEMINGTON
Vic 3031
Australia

Tel: 61 3 93725722
Fax: 61 3 93725733
Email: jaguar@bigpond.net.au

Mr. Stephen FARAGO
Assistant Director, Telecommunications Regulatory Affairs
Australian Competition and Consumer Commission
GPO Box 520J
Melbourne 3001
Australia

Tel: 61 3 2901832
Fax: 61 3 96633699
Email: stephen.farago@accc.gov.au

Mr. Ian HARPER
Dean of Faculty
Melbourne Business School
200 Leicester Street
Carlton
Victoria 3053
Australia

Tel: 61 3 9349 8165
Fax: 61 3 9349 8227
Email: i.harper@mbs.edu

Belgium

Koenraad ROUVROY
Ambassador of Belgium
CPO BOX 4406
Seoul
Korea

Tel: 82 2 749 0381
Fax: 82 2 797 1688
Email: seoul@dipLOBel.org
Brunei Darussalam

Haji Rosli Haji MUSTAFA
Director
Policy and Administration Division
Ministry of Industry and Primary Resources
Jalan Menteri Besar
Brunei Darussalam BB 3910

Tel: (02) 382 822
(08) 741 955
Fax: (02) 382 807
Email: pdt@brunet.bn

Canada

Mr. Stuart CARRE
Counsellor
Permanent Delegation
15 bis, rue de Franqueville
75116 Paris
France

Tel: 331 44 43 20 11
Fax: 331 44 43 20 99
Email: stuart.carre@dfait-maeci.gc.ca

Mr. Mark RONAYNE
Senior Competition Law Officer
Industry Canada
Competition Bureau Civil Matters Branch
50 Victoria Street
K1A 0C9 Hull
Canada

Tel: 1 819-953-4259
Fax: 1 819-953-8546
Email: Ronayne.Mark@ic.gc.ca

Chile

Miss Tania HERNANDEZ
Advisor
Ministry of Economy
Market Development Division
Teatinos 120 Piso 11 of. 41
Santiago Centro
Chile

Tel: 56 2 6961707
Fax: 56 2 6988648
Email: thernandez@minecon.cl
China

Mr. Shutian CUI
Division Deputy Director
Telecommunications Administration Bureau
Ministry of Information Industry
13 West Chang An Ave.
Beijing
China
Tel: 8610 66033870
Fax: 8610 66024197
Email: cuishutian@mii.gov.cn

Ms Yang WANG
Senior Official
Ministry of Foreign Trade and Economic Co-operation (MOFTEC)
Treaty and Law
N° 2, Dong Chang An Avenue
100731 Beijing
China
Tel: 86 10 6519 8742
Fax: 86 10 6519 8905
Email: wanyang@moftec.gov.cn

Chinese Taipei

Mr. Fadah HSIEH
Vice chairman
Council for Economic Planning and Development
Office of the vice chairman
No. 3, Paoching Road
100 Taipei
Chinese Taipei
Tel: 886 23700405
Fax: 886 23700376
Email: maggiewu@sun.cepd.gov.tw

Mr. Shing-Daw TSAI
Senior Specialist
Fair Trade Commission
The Second Department
13Fl., No. 2-2,
Chi-Nan Rd., Sec. 1
100 Taipei
Chinese Taipei
Tel: 886 02 2397 5010
Fax: 886 02 2397 4788
Email: sdtsai@ftc.gov.tw
Mr. Ming-Yen TSENG
Deputy Director
Fair Trade Commission
Planning Department
14th Fl.
2-2 Chinan Rd. Sec.1
Taipei
Chinese Taipei
Tel: 88 6 223975005
Fax: 88 6 223975075
Email: myteng@ftc.gov.tw

Mr. Chih-Yu WANG
Staff
Center for Economic Deregulation and Innovation
No. 9, Lane 85,
Sung-Chiang Rd
104 Taipei
Chinese Taipei
Tel: (886) 2-25087966
Fax: (886) 2-25092683
Email: cdwang@sun.cepd.gov.tw

Mr. Chia Hsing WU
Senior Specialist
Council for Economic Planning and Development
International Economy Division
No. 3, Paoching Road
100 Taipei
Chinese Taipei
Tel: 886 23165839
Fax: 886 23700395
Email: chwu@sun.cepd.gov.tw

Czech Republic

Mr. Daniel TRNKA
Government Advisor
Government Office
Unit for Co-ordination of Regulatory Reform and Reform of Central State Administration
Nabrezi Edvarda Benese 4
Prague 1
Czech Republic
Tel: 420 2 24002212
Fax: 420 22231 4382
Email: trnka@vlada.cz
France

Mr. Michel ROSEAU
Chargé de mission affaires internationales
DGCCRF
Sous-Direction B
59 Bd Vincent Auriol
Télédoc 03
75013 Paris

Tel: 33 1 44 97 23 28
Email: michel.roseau@dgccrf.finances.gouv.fr

Mr. Jérôme Rivoisy
Counsellor
French Embassy in Seoul
CPO Box 1808
100-618 Seoul

Tel: 82 2 3149 4319
Fax: 82 2 393 9852
Email: jerome.rivoisy@diplomatie.fr

Germany

Mr. Thomas SCHMITZ-LIPPERT
Bundesanamt für Finanzdienstleistungsaufsicht (BaFin)
Referat BA 16
Graurheindorfer Str. 108
53117 BONN

Email: Thomas.Schmitz-Lippert@bafin.de

Greece

George ASSIMAPOULOS
Ambassador
Embassy of Greece
1 Jangayo-dong
Chung-ku
Seoul 100797
Korea

Tel: 82 2 729 1400/1
Fax: 82 2 729 1402
Email: greekemb@kornet.net
Hungary

Mr. Tamas VENEKEI
First Secretary
Economic and Commercial
Commercial Section
Embassy of the Republic of Hungary
1-103 Dongbinggo-dong
Yongsan-ku
140-230 Seoul
Korea

Tel: 82 2 792 2105
Fax: 82 2 797 2110
Email: selhucom@shinbiro.com

Indonesia

Mr. Andriana SUPANDY
Deputy Director
Ministry of Foreign Affairs
Directorate of Intra Regional Cooperation for Asia Pacific
Jalan Taman Pejambon N° 6
Jakarta 10110
Indonesia

Tel: 62 21 3811083
Fax: 62 21 3844867
Email: dithenb@dfa-deplu.go.id

Ireland

Mr. Robert JACKSON
Deputy Head of Mission
Embassy of Ireland
51-1 Namchang-dong
Chang-ku
100-778 Seoul
Korea

Tel: 82 2 774 6455
Fax: 82 2 774 6458
Email: irelandkor@kornet.net

Italy

Mrs Maddalena FILIPPI
Conseiller du Ministre pour la Qualité de la Réglementation
Presidenza Del Consiglio Dei Ministri
Dipartimento Funzione Pubblica
Corso Vittorio Emanuele II, 116
00184 Roma

Tel: 39 328.0416042
Fax: 39 06.6899.7245
Email: mad.filippi@libero.it
Mr. Roberto MENGONI  
First Secretary Commercial  
Embassy of Italy  
1-398, Hannam-dong  
Yongsan-ku  
Seoul 140-884  
Korea  
Tel: 82 2 796 0491/5  
Fax: 82 2 797 5560  
Email: roberto.mengoni@esteri.it

Japan

Prof. Tetsuzo YAMAMOTO  
Professor of Economics  
Waseda University  
1-6-1 Nishi-Waseda  
Shinjuku-ku  
169 50 Tokyo  
Japan  
Tel: 81 3 52862009  
Fax: 81 3 32037067  
Email: yama7@waseda.ac.jp

Mr. Takeshi SUGIYAMA  
Deputy Consul-General  
Consulate General of Japan  
977-1 Nohyeong Dong  
Jeju 690-180  
Korea  
Tel. 82 64 743 9501  
Fax. 82 64 743 5885  
Email. Consujp2@kornet.net

Korea

Mr. Suk-soo KIM  
Prime minister  
Korea

Mr. Moon Suk AHN  
Professor and Co-chairman of Regulatory Reform Committee, Korea  
Korea University  
5-1, Anam-dong Sungbuk-ku  
Seoul  
Korea  
Tel: 82 2-3290-2274 (office)  
82 2-403-3488 (home)  
Fax: 82 2-929-6023  
E-Mail: ahnms@korea.ac.kr
Mr. Yung Taek KIM  
Lieutenant Governor, Jeju Province  
312-1, Yeon-dong,  
Jeju City  
Korea

Mr. Key-Chong PARK  
Deputy Minister  
Prime Minister’s Office  
77-6 Sejong-ro  
Chongro-gu  
110-760 Seoul  
Korea

tel: 82 2 734 9342  
Fax: 82 2 732 7155  
Email: park6978@hanmail.net

Mr. Junsok YANG  
Associate Research Fellow  
Korea Institute for International Economic Policy (KIEP)  
300-4 Yomgok-Dong  
Socho-Gu  
137-747 SEOUL  
Korea

tel: 82 2 34601125  
Fax: 82 2 34601133  
Email: yanjuna@kiep.go.kr

Mr. Won Bae KIM  
Deputy Minister  
Ministry of Labor  
#1 Jungangdong, Gwacheon-city  
700-714 Kyonggido  
Korea

tel: 82 2 503 9704  
Fax: 82 2 504 6709  
E-mail: wbkim@molab.go.kr

Mr. Seung Hun CHUN  
Vice President  
Korea Institute of Public Finance  
79-6, garakdong, songpa-gu  
138-160 Seoul  
Korea

tel: 82 2-2186-2110  
Fax: 82 2-2186-2109  
E-mail: sychun@kipf.re.kr
Mr. Hyun Seok LEE  
Executive Director  
The Korea Chamber of Commerce and Industry  
#45 4ga Namdaemoonro, Jung-gu  
100-743 Seoul  
Korea  
Tel: 82 2 2-316-3441  
Fax: 82 2 775-2919  
E-mail: hslee@korcham.net

Mr. Yun Won KWANG  
President  
The Korea Institute of Public Administration  
701, Yeoksamdong, Kangnam-gu 135-080 Seoul  
Korea  
Tel: 82 2-564-2001  
Fax: 82 2-564-0664  
E-mail: ywhwang@kipa.re.kr

Mr. Yi Chong KWON  
President  
The Korea Institute for Youth Development  
142, Woomyundong, seocho-gu  
137-140 Seoul  
Korea  
Tel: 82 2-2188-8811  
Fax: 82 2-2188-8809  
E-mail: youthkyc@youthnet.re.kr

Mr. Chong Jae LEE  
President  
The Korea Educational Development Institute  
92-6, Woomyundong, seocho-gu  
137-140  
Korea  
Tel: 82 2 3460 0200  
Fax: 82 2 3460 0115  
E-mail: cjlee@kedi.re.kr

Mr. Jin Soo KIM  
Deputy Minister  
The Korea Food & Drug Administration  
5, Nokbundong, Eunpyung-gu  
122-020 Seoul  
Korea  
Tel: 82 2 380 1876  
Fax: 82 2 388 6452  
E-mail: jskdj@kfda.go.kr
Mr. Bong Hyup CHUNG
Director General
Ministry of Gender Equality
520-3, Banpodong, Seocho-gu
137-040 Seoul
Korea
Tel: 82 2 2106 5159
Fax: 82 2-2106 5172
E-Mail: bhchung@moge.go.kr

Mr. Ki Chul KIM
Vice President
Science & Technology Policy Institute
395-70, Shindaebangdong, DongJak-gu
156-010 Seoul
Korea
Tel: 82 2-3284-1804
Fax: 82 2-849-1195
E-Mail: Kchlim@stepi.re.kr

Mr. Chong Hoon PARK
Research Fellow
Korea Information Society Development Institute
1-1, Juarmdong, Gwacheon-city
427-710 Seoul
Tel: 82 2-570-4390
Fax: 82 2-570-4386
E-Mail: chpark@kisdi.re.kr

Mr. Suk Nam MOON
Chairman
Korea Council Economic & Social Research Institutes
1376-1, Seocho2dong, Seocho-gu
137-072 Seoul
Tel: 82 2 571 2051
Fax: 82 2 571 2050
E-Mail: suknamoon@hotmail.com

Mr. Yong Chul KIM
Director General
Ministry of Justice Republic Korea
#1, Junganddong, Gwacheon-city
427-720 Kyonggido
Korea
Tel: 82 2 503-7035
Fax: 82 2-503-7037
E-Mail: yck@moj.go.kr
Mr. Jong Hyuk KIM  
Director General  
Cultural Properties Administration  
920, Dunsandong, Seo-gu  
302-701 Daejeon  
Korea  
Tel: 82 42-481-4610  
Fax: 82 42-481-4881  
E-Mail: Officer1@ocp.go.kr

Mr. Taik Hwan JOENG  
Director General  
Korea National Statistical Office  
920, Dunsandong, Seo-gu  
302-701 Daejeon  
Korea  
Tel: 82 42-481-2030  
Fax: 82 42-481-2461  
E-Mail: taikjyoung@nso.go.kr

Mr. Hong Jae IM  
Director General  
Ministry of Foreign Affairs and Trade  
77-6, Sejongro, Jongro-gu  
110-760 Seoul  
Korea  
Tel: 82 2-720-2045  
Fax: 82 2-720-2046  
E-Mail: hjim77@mofat.go.kr

Mr. Oh Kab KOWN  
Deputy Minister  
Ministry of Science & Technology  
1, Jungangdong, Gwacheon-city  
427-715 Kyonggido  
Tel: 82 2-503-7623  
Fax: 82 2-507-0801  
E-Mail: okkwon@most.go.kr

Mr. Dong Phil LEE  
Director  
Office of Planning and Co-ordination  
Korea Rural Economic Institute  
4-102, Hoikidong, Dongdaemun-gu  
130-710 Seoul  
Tel: 82 2-3299-4342  
Fax: 82 2-959-6110  
E-Mail: ldphil@krei.re.kr
Mr. Dong Woo LEE
Reserch Fellow
Korea Research Institute for Human Settlements
1591-6, Kwanyangdong, Tongan-gu, Anyang-shi
431-712 Seoul
Korea

Tel: 82 31-380-0198
Fax: 82 31-380-0485, 6
E-Mail: dwlee@krihs.re.kr

Mr. Jeong Sup CHA
Director General
The Commission on Youth Protection
77-6, Sejongro, Jongro-gu
110-760 Seoul

Tel: 82 2-735-2645
Fax: 82 2-735-2644
E-Mail: jscha@youth.go.kr

Mr. Myung Gae PARK
Deputy Minister
Ministry of Government Administration and Home Affairs
77-6, Sejongro, Jongro-gu
110-760 Seoul

Tel: 82 2-3703-4030
Fax: 82 2-3703-5505
E-Mail: mjepark@mogaha.go.kr

Mr. Lae Gue LEEM
Vice Minister
Ministry of Commerce, Industry and Energy
1, Jungangdong, Gwacheon-city
427-723 Kyonggido
Korea

Tel: 82 2-503-9402
Fax: 82 2-503-9297
E-Mail: laegue@mocie.go.kr

Mr. Lark Jung CHOI
Deputy Minister
Ministry of Maritime Affairs & Fisheries
139, 3ga chungjuangro, Seodaemun-gu
120-715 Seoul
Korea

Tel: 82 2-3148-6400, 1
Fax: 82 2-3148-6402
E-Mail: ljchoi@momaf.go.kr
Mr. Chin Heon PARK  
Director General  
Korea Customs Service  
920, Dunsandong, Seo-gu  
302-701 Daejeon  

Tel: 82 42-481-7640  
Fax: 82 42-481-7669  
E-Mail: chinheon@customs.go.kr

Mr. Dong Soo KOH  
Senior Research Fellow  
Korea Institute for Industrial Economics & Trade  
206-9, Chongryangridong, Dongdaemun-gu  
130-742 Seoul  

Tel: 82 2-3299-3288  
Fax: 82 2-3299-3226  
E-Mail: erichoh@kiet.re.kr

Mr. Geun Pyo LEE  
Senior Superintendent General  
Korea National Police Agency  
209, Migeundong, Seodaemun-gu  
120-704 Seoul  

Tel: 82 2-313-0470  
Fax: 82 2-313-8669  
E-Mail: gplee@npa.go.kr

Mr. Jong Ha BAE  
Director General  
Ministry of Agriculture & Forestry  
1, Jungangdong, Gwacheon-city  
427-719 Kyonggido  
Korea  

Tel: 82 2-500-2006  
Fax: 82 2-503-2095  
E-Mail: jhbac@maf.go.kr

Mr. Sam Chul SHIN  
Deputy Minister  
Public Procurement Service  
920, Dunsandong, Seo-gu  
302-701 Daejeon  
Korea  

Tel: 82 42-481-7001  
Fax: 82 42-472-2274  
E-Mail: 3-shin@hanmail.net
Mr. Seong-Uh Lee
Professor
Hansung University
389-2 Ga Samsun-dong Sungbuk-gu
136-792 Seoul, Korea
Tel: 82 822-760-4079
Fax: 82 822-760-4217
E-Mail: leese@hansung.ac.kr

Mr. Dong-Joo Joo
Staff Commissioner
Prime Minister’s Office
#206 Gov’t Complex, 77-6 Sejong-ro, Jongro-ku
110-760 Seoul
Tel: 82 2-3703-3941
Fax: 82 2-720-2056
E-Mail: djjoo@opc.go.kr

Mr. Byung-Chin Kim
President
The Korean Association for Policy Studies
Kyung Hee University
1 Hoeki-dong, Dongdaemoon-ku
130-701 Seoul
Tel: 82 2-961-0130
Fax: 82 2-962-1213
E-Mail: kimbc@khu.ac.kr

Mr. DoHoon Kim
Senior Research Fellow
Korea Institute for Industrial Economics & Trade
206-9 Cheongnyangni-dong, Dongdaemun-gu
130-742 Seoul
Tel: 82 2-3299-3299
Fax: 82 2-3299-3226
E-Mail: dhkim@riet.re.kr

Mr. Dong Soo Kim
Director General
Prime Minister’s Office
#909 Gov’t Complex, 77-6 Sejong-ro, Jongro-ku
110-760 Seoul
Korea
Tel: 82 2-3703-3933
Fax: 82 2-720-1162
E-Mail: Kimds333@opc.go.kr
Mr. Byung-Sun CHOI  
Professor  
Seoul National University  
San 56-1, Shilim-dong, Kwanak-gu  
151-742 Seoul  
Korea  
Tel: 82 2-880-5632  
Fax: 82 2-884-0172  
E-Mail: bschoi1@snu.ac.kr

Mr. Tae-Yun KIM  
Professor, Director  
Hanyang Univiersity  
Haengdang-dong, Seong-Dong-Gu  
133-070 Seoul  
Korea  
Tel: 82 2290-0838  
Fax: 82 2290-0838  
E-Mail: Tykim1004@hanyang.ac.kr

Mr. Chan-Hyun SOHN  
Senior Fellow  
Korea Institute for International Economic Policy  
Department of Trade and Investment Policy  
300-4, Yomgok-Dong, Socho-Gu  
137-747 Seoul  
Tel: 82 2-3460-1150  
Fax: 82 2-3406-1133  
E-Mail: chsohn@kiep.go.kr

Mr. Jong Seok KIM  
Professor  
Hong Ik University  
Mapo, Sangsoo-dong 72  
121-791 SEOUL  
Tel: 82 2-320-1707  
Fax: 82 2-6352-0032  
E-Mail: profkim@profkim.com

Mr. Jin Hwa JUNG  
Research Fellow  
Korea Institute for Industrial Economics and Trade (KIET)  
206-9 Cheongryangri-dong, , Dongdaemun-gu  
130-742 Seoul  
Korea  
Tel: 82 2-3299-3130  
Fax: 82 2-3299-3226  
E-Mail: jhjung@kiet.re.kr

181
Mr. Jang Han KIM  
Vice President  
Korea International Trade Association  
Trade Tower, 159-1, Samsung-dong, Kangnam-gu  
135-729 Seoul  
Korea  
Tel: 82 2-6000-5016  
Fax: 82 2-6000-5602  
E-Mail: jangkim@kotis.net

Mr. Kwang Hyun SEO  
Director General  
Ministry of Information and Communication  
Ministry of Information and Communication, 100, Sejong-ro, Jongro-gu  
Seoul  
Korea  
Tel: 82 2-750-1350  
Fax: 82 2-750-1369  
E-Mail: khseo@mic.go.kr

Mr. Kyul-Ho KWAK  
Deputy Minister  
Ministry of Environment  
#1 Jungangdong, Gwacheon-city  
Seoul  
Korea  
Tel: 82 2-504-9230  
Fax: 82 2-504-9233  
E-Mail: Kyulho@me.go.kr

Mr. Nam-Woong LEE  
Deputy Minister  
Ministry of Environment  
#1 Jungangdong, Gwacheon-city  
Seoul  
Korea  
Tel: 82 2-504-9233  
Fax: 82 2-504-6183  
E-Mail: woong@me.go.kr

Mr. Kyu Chang CHUNG  
Director General  
Small and Medium Business Administration  
#2, Joongang-dong  
Kwachun  
Tel: 82 2-509-7008  
Fax: 82 2-503-2512  
E-Mail: Kc4304@smba.go.kr
Mr. Soo Yon SHIN  
Chairman  
Korea Staefa Co., Ltd.  
Room#1610, Kyobo Bldg., 1-1Ga, Chongro Chongro-Gu  
110-714 Seoul  
Korea  
Tel: 82 02-720-3654~8  
Fax: 82 02-720-3650  
E-Mail: kostarss@chollian.net

Mr. Jung Kil HAN  
President & CEO  
Kyonggi Small Business Center  
#San 111-8, Iui-dong, Paldal-gu, Suwon  
442-766 Kyonggi-do  
Tel: 82 31-259-6006  
Fax: 82 31-259-6009  
E-Mail: jkhan@ksbc.or.kr

Mr. Kun Ho CHO  
Vice Chairman & President  
Korea International Trade Association(KITA)  
Room 5002, 159-1 Samseong Dong, Gangnam Ku, Seoul  
Tel: 82 2- 6000-5005/7  
Fax: 82 2- 6000-5008  
E-Mail: Khcho@kotis.net

Woon Sup PARK  
Staff Commissioner  
Regulatory Reform Bureau  
Prime Minister’s Office  
#910 Gov’t Complex, 77-6 Sejong-ro, Jongro ku 110-760  
Seoul  
Tel : 82-2-3703-3930  
Fax : 82-2-732-7155  
Email : woonsuppark@hanmail.net

Daeyong CHOI  
Deputy Director General  
Regulatory Reform  
Gov’t Complex, Jongro-gu 110-760  
Seoul  
Tel : 82-2-3703-3925  
Fax : 82-2-732-7155  
Email : dayyoung @opc.go.kr
Youngrak CHOI
President
Science and Technology Policy Institute (STEPI)
395-70 Shindeabang-dong
Tongjak-ku,
156-714 Seoul
Korea

Tel. 82 2 3284 1801
Fax. 82 2 849 1159
Email. yrchot@stepi.re.kr

Kyusik KIM
Deputy General Manager
Trade Promotion Team
Korea Int’l Trade Association
Trade Tower 604, Samsung-dong, Kangnam-gu
Seoul
Republic of Korea

Tel : 82-2-6000-5203
Fax : 82-2-6000-5237
Email : Infoway@kotis.net

Daehee LEE
Staff Commissioner
Regulatory Reform Bureau
The Office Of Prime Minister
77-6 Sejongro Chongrogu 110-760
Seoul
Korea

Tel : 82-2-3703-3945
Fax : 82-2-734-5720
Email : dhlee@kist.re.kr

Kyung-Ouk CHUN
Director General
Research Support Bureau
Prime Minister’s Office
#77-6, Sejong-ro, Jongro-gu 110-760
Seoul
Korea

Tel : 82-2-734-8791
Fax : 82-2-733-6634
Email : Kochun4@opc.go.kr
Tea Hwan Kim  
Staff Commissioner  
Regulatory Reform Bureau  
Prime Minister’s Office  
#910 Gov’t Complex, 77-6 Sejong-ro, Jongro ku 110-760  
Seoul  
Korea  
Tel : 82-2-3703-2176  
Fax : 82-2-732-7155  
Email : thkimor@opc.go.kr

Malaysia

Ms. Shila Dorai RAJ  
Principal Assistant Secretary  
Ministry of Domestic Trade and Consumers Affairs  
32nd floor, Dayabumi Complex  
Jalan Sultan Hishamuddin  
50623 Kuala LUMPUR  
Malaysia

Tel: +603 22747723  
Fax: +603 22747049  
Email: shila@kpdnhq.gov.my

Mexico

Mr. Carlos ARCE MACIAS  
Director General  
Ministry of Economy  
Federal Regulatory Improvement Commission – COFEMER  
Alfonso Reyes No.30  
Col. Hipodromo Condesa  
Deleg. Cuauhtémoc  
06179 Mexico  
Mexico

Tel: 52 5 7299231  
Fax: 52 5 7299240  
Email: carce@economia.gob.mx

Mr. Ali B. HADDOU-RUIZ  
Co-ordinator/RIA  
Ministry of Economy  
Federal Regulatory Improvement Commission — COFEMER  
Alfonso Reyes 30, Piso 8  
MEXICO  
Mexico

Tel: 52 55 57299416  
Fax: 52 55 57299240  
Email: ahaddou@economia.gob.mx
Mr. Adalberto GARCIA-ROCHA
Commissioner
Federal Competition Commission
Monte Libano 225
Lomas de Chapultepec
11 000 Mexico
Mexico
Tel: 52 555 283 6546
Email: agarcia@cfc.gob.mx

Netherlands
Miss Georgie FRIEDERICHS
Senior Policy Advisor
Ministry of Economic Affairs
Competition Directorate
2500 EC
The Hague
Netherlands
Tel: 31 70 379 7231
Fax: 31 70 379 7170
Email: g.s.friederichs@minez.nl

Norway
Ms. Elisabeth DROYER
First Secretary
Royal Norwegian Embassy
258-8, Itaewon-dong
Yongsan-ku
140-200 Seoul
Korea
Tel: 795-6850
Fax: 798-6072
Email: elisabeth.droyer@mfa.no

Peru
Mr. Armando CACERES
Consultant in Competition and Regulatory Policies
Former Convenor Competition Policy and Deregulation
Group of APEC
Cruz del Sur 251-C
Chacarilla de Estanque,
Surco
33 Lima
Fax: (51 1) 372 23 63
Email: caceceb@terra.com.pe
Mr. Freddy FREITAS  
Technical Secretary  
National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)  
Court of Defense of the Competition  
Calle de la Prosa 138  
San Borja  
Tel: 51 1 2247800  
Fax: 51 1 2240348  
Email: ffreitas@indecopi.gob.pe

Mr. Mario GALLO  
Commission Member  
National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)  
Free Competition Commission  
Calle de la Prosa 138  
San Borja  
Tel: 51 1 3451565 ext. 2261  
Fax: 51 1 2240348  
Email: mgallo@esan.edu.pe

Ms. Margarita TRILLO  
Technical Secretary of the Antidumping and Countervailing Measures Commission, INDECOPI, Peru  
Acting Convenor of the APEC Competition Policy and Deregulation Group  
Instituto Nacional de Defensa de la Competencia y de la Proteccion de la Propiedad Intelectual (INDECOPI)  
Calle de la Prosa 138  
San Borja  
Lima 41  
Peru  
Tel: 51 1 2247800 ext. 1221  
Fax: 51 1 2240348  
Email: mtrillo@indecopi.gob.pe

Philippines

Mr. Adelardo ABLES  
Economist  
Department of Finance  
Bangko Sentral ng Pilipinas Complex  
Roxas Blvd. – Ermita  
Manila  
Philippines  
Tel: 632 5268459  
Fax: 632 4356313  
Email: adelables@yahoo.com
Ms. Margarita SONGCO  
Assistant Director-General  
National Economic and Development Authority  
National Development Office  
12 St Josemaria Escriva Drive  
Pasig City  
Philippines  
Tel: 63 2 6313734  
Fax: 63 2 6313734  
Email: mrsongco@neda.gov.ph

Poland  
Ms. Katarzyna URBANSKA  
Specialist  
Ministry of Economy  
Department of Economic Strategy  
Plac Trzech Krzyzy 3/5  
00-507 Warsaw  
Poland  
Tel: 48 226935645  
Fax: 48 226934025  
Email: urbkat@mg.gov.pl

Portugal  
Maria Ermelinda DA SILVA AREDE  
First Secretary  
Embassy of Portugal  
2nd Fl, Wonseo Bldg.,  
171, Wonseo-dong  
Jongro-gu  
Seoul  
Tel: 3675 2251-5  
Fax: 3675 2250  
Email: embport@chollian.net

Russian Federation  
Mr. Andrey TSYGANOV  
Deputy Minister  
Ministry for Antimonopoly Policy and Promotion of Entrepreneurship  
11 Sadovaya-Kudrinskaya str,  
D-242, GSP-5  
123995 Moscow  
Russian Federation  
Tel: +7 095 2527085, 7095 2520943  
Fax: +7 095 2547521  
Email: gak1@infpres.com
Switzerland

M. Steffen Erik MILNER
Délégation Permanente
Swiss State Secretariat for Economic Affairs
Effingerstrasse 11
3003 Berne
Switzerland

Email: Steffen.milner@seco.admin.eb

Singapore

Mr. Piamsak MILINTACHINDA
Deputy Executive Director
APEC Secretariat
438 Alexandra Road
#14-00 Alexandra Point
119958 Singapore
Singapore

Tel: 65 6276 1880
Fax: 65 62761775
Email: pm@mail.apecsec.org.sg

Thailand

Dr. Suchit BUNBONGKARN
Member of Constitutional Court
326 Chakphet Rd.
Pranacorn
10220 Bangkok
Thailand

Mrs. Penpun KEOFANAPADON
Director
Bureau of America Pacific and APEC Affairs
Department of International Trade Negotiations
Thanon Ratchadamnoen Klang
Bangkok 10200
Thailand

Tel: 66 2 2821438
Fax: 66 2 2826429
Email: penpunk@mocnet.moc.go.th

Mr. Visoot PHONGSATHORN
National Project Coordinator
Gesellschaft für Technische Zusammenarbeit GmbH (GTZ)
Advisory Services for the Thai Government on Implementing the Commercialization and Privatization of Public Sector Institutions
Office of State Enterprise Policy Committee
Ministry of Finance
Rama 6 Road
10400 Bangkok
Thailand

Tel: 66 2271 4228
Fax: 66 2271 4227
Email: Visoot@StateEnterprises.in.th
Ms. Aramsri RUPAN
Ministry of Commerce
Maharaj Road
Pranakorn District
10200 Bangkok
Thailand
Tel: 662 22258323
Fax: 662 2250519
Email: Aramsrir@dit.go.th

Mr. Vorawat SAIBOUR
Senior Director
TOT Corporation Public Company Limited
Office of Law
89/2 Moo 3 Chaengwatthana RD., Lak Si
Bangkok
Thailand
Tel: 66 2 5748308
Fax: 66 2 5749542
Email. vorawats@tot.co.th

Ms. Suda SANTRAKOON
Trade Officer
Ministry of Commerce
Department of International Trade Negotiations
Thanon Ratchadamnoen klang
10200 Bangkok
Thailand
Tel: 66 2 02 282 1438
Fax: 66 2 02 282 4629
Email: sudas@mocnet.moc.go.th

Mr. Aree SAWASDEE
Manager
TOT Corporation Public Company Limited
Regulatory Affairs Office
89/2 Moo 3 Chaengwatthana RD., Lak Si
Bangkok
Thailand
Tel: 66 2 5754655
Fax: 66 2 5754650
Email: areed@tot.co.th
Mr. Wutt SRIKHAM  
Consultant  
Chulalongkorn University Intellectual Property Institute  
Office of Business and Consultancy Services/Public Policy and Sector Reform  
344 Chula 22, Banthadthong Rd.  
Bangkok  
Thailand  
Tel: 662 6116928 ext 124  
Fax: 662 6116927  
Email: wsrikham@hotmail.com

Mr. Viroj TOCHAROENVANITH  
Director  
The Communications Authority of Thailand  
Telecommunications Business Development  
99 Chaeng Watthana Reoad, Lak Si  
Bangkok  
Thailand  
Tel. 66 2 506 3528  
Fax. 66 2 573 7093  
Email. Viroj.t@cat.or.th

Prof. Sudharma YOONAIDHARMA  
Professor of Law  
Chulalongkorn University  
Faculty of Law  
Phya Thai Rd.  
10330 Bangkok  
Thailand  
Tel: 66 1 8289304  
Fax: 66 2 2182034  
Email: Ysudharm@yahoo.com

Turkey

Mr. Ekrem NUR  
Deputy Undersecretary  
Prime Ministry  
Tel. 90 312 419 7270  
Fax. 90 312 424 0037

Mr. Budak DILLI  
Deputy Director General  
Energy Affairs Directorate  
Ministry of Energy and Natural Research  
Tel. 90 312 223 6216  
Fax. 90 312 223 6984  
Email. budakd@tedas.gov.tr
Ms Müberra GUNGOR  
Telecommunications Expert  
Telecommunications Authority  
Tel. 90 312 550 5272  
Fax. 90 312 50 51 52  
Email. mgungor@tk.gov.tr

Mr. Peter LARGE  
Executive Director  
Professional Standards  
Association of Chartered Certified Accountants (ACCA)  
29 Lincoln's Inn Fields  
London  
WC2A 3EE  
United Kingdom  
Tel: 44 20 7396 5907  
Fax: 44 20 7396 5957  
Email: p.large@accaglobal.com

Mr. Richard MARTIN  
Head of Financial Reporting  
ACCA  
29 Lincoln's Inn Fields  
London  
WC2A 3EE  
United Kingdom  
Tel. 44 20 739 65 748  
Email: richard.martin@accaglobal.com

Ms. Joanna R. SHELTON  
Director (Interim)  
The Maureen and Mike Mansfield Center  
University of Montana  
Missoula, MT 59812  
United States  
Tel: 1 406 243 2988  
Fax: 1 406 243 2181  
Email: joannashelton@montana.com

Mr. Carl WILLNER  
Attorney  
Telecommunications and Media Enforcement Section  
Antitrust Division  
U.S. Department of Justice  
1401 H Street N.W.  
Room 8004  
Washington, DC 20530  
United States  
Tel: 1 202 514-5813  
Fax: 1 202 514-6381  
Email: carl.willner@usdoj.gov
Asian Development Bank (ADB)  
Mr. John LINTJER  
Vice President  
Asian Development Bank  
6 ADB Avenue  
0409 Mandaluyong City  
Philippines  
Tel: 63 2 632 5015  
Fax: 63 2 632 5016  
Email: jlintjer@adb.org

Business and Industry Advisory Committee (BIAC)  
Mr. Korkmaz ILKORUR  
Director  
Ilkorur Danismanlik Ltd. Sti. International  
Yaren Sok. Ozderici Sitesi  
A Blok Daire 4  
80630 Akatlar/Istanbul  
Turkey  
Tel: 90 212 351 31 51  
Fax: 90 212 351 31 27  
Email: korkmaz@turk.net

European Commission  
Mr. Manuel SANTIAGO DOS SANTOS  
Principal Advisor – Head of Sector  
European Commission  
DG Enterprise Regulatory Coordination Unit  
Rue de la Loi/Wetstraat 200  
B-1049 Brussels  
Belgium  
Tel: 32 2 296 2072  
Fax: 32 2 295 9784  
Email: manuel-maria.santiago-dos-santos@cec.eu.int

OECD  
Mr. Donald J. JOHNSTON  
Secretary-General  
OECD  
General Secretariat  
2, rue André Pascal  
75016 Paris  
France  
Tel: 01 45 24 80 10  
Fax: 01 45 24 79 31  
Email: Donald.JOHNSTON@oecd.org
Mr. Rolf ALTER
Deputy Director Public Governance and Territorial Development and Head of the Regulatory Reform Programme
OECD
Public Governance and Territorial Development Directorate
2, rue André Pascal
75016 Paris
France
Tel: 01 45 24 14 10
Fax: +33 (0) 1 45 24 87 96
Email: Rolf.ALTER@oecd.org

Mr. Anthony KLEITZ
Head of Division
OECD
Trade Directorate
2, rue André Pascal
75016 Paris
France
Tel: 331 45 24 89 27
Fax: 33 1 45 24 89 41
Email: Anthony.KLEITZ@oecd.org

Mr. Cesar CORDOVA NOVION
Deputy Head of the Regulatory Reform Programme
OECD
Public Governance and Territorial Development Directorate
2, rue André Pascal
75016 Paris
France
Tel: 331 45 24 89 47
Fax: 33 1 45 24 87 96
Email: Cesar.CORDOVA@oecd.org

Mr. Paul CRAMPTON
Head, Outreach Unit Competition Division
OECD
Directorate for Financial, Fiscal, and Enterprise Affairs
2, rue André Pascal
75016 Paris
France
Tel: 331 45 24 19 72
Email: Paul.CRAMPTON@oecd.org
Mr. John K. THOMPSON  
Financial Counsellor  
OECD  
Directorate for Financial, Fiscal, and Enterprise Affairs  
2, rue André Pascal  
75016 Paris  
France  
Tel: 33 1 45 24 76 16  
Fax: 33 1 45 24 91 51  
Email: John.THOMPSON@oecd.org

Mr. Kee Jo CHEY  
OECD  
Public Governance and Territorial Development Directorate  
2, rue André Pascal  
75016 Paris  
France  
Tel: 33 1 45 24 80 34  
Fax: 33 1 45 24 87 96  
Email: Kee-Jo.CHEY@oecd.org

Ms. Jennifer STEIN  
OECD  
Public Governance and Territorial Development Directorate  
2, rue André Pascal  
75016 Paris  
France  
Tel: 33 1 45 24 96 80  
Fax: 33 1 45 24 87 96  
Email: Jennifer.STEIN@oecd.org

**Trade Union Advisory Committee (TUAC)**  
Mr. Roy JONES  
Senior Policy Advisor  
Trade Union Advisory Committee to the OECD  
26, avenue de la Grande Armée  
F-75017 PARIS  
France  
Tel: +33 1 47 63 42 63  
Fax: +33 1 47 54 98 28  
Email: jones@tuac.org

**World Bank**  
Yukio YOSHIMURA  
Vice President  
World Bank  
Washington, DC  
USA  
Email: yyoshimura1@worldbank.org