MEETING OF MANAGEMENT EXPERTS ON "BENCHMARKING FOR REGULATORY REFORM: IDENTIFICATION OF APPROPRIATE STANDARDS FOR ECONOMIC GROWTH AND EMPLOYMENT"

DISCUSSION PAPER

Paris, 7 July 1997
MEETING OF MANAGEMENT EXPERTS ON
“BENCHMARKING FOR REGULATORY REFORM:
IDENTIFICATION OF APPROPRIATE STANDARDS FOR
ECONOMIC GROWTH AND EMPLOYMENT”

Monday 7 July 1997

Participants in the meeting will find attached a discussion paper prepared by Mr. Scott Jacobs, Principal Administrator in the Public Management Service of the OECD. Intended only as general guidance for the meeting, the paper does not constitute a rigid agenda and experts are therefore free to raise other questions relevant to the subject under discussion. The paper should be considered in conjunction with the descriptive note and agenda circulated as document number SG/RE/LMP(97)3.

**********
I. Summary

1. At their meeting in May 1997, Ministers of OECD countries welcomed the OECD Report on Regulatory Reform, and endorsed its policy recommendations. The OECD report, based on a series of sectoral and thematic studies carried out over the last two years (these are listed in Annex 1), concluded that there is ample evidence that regulatory reform, properly carried out and with an adequate understanding of policy linkages, can improve significantly sectoral and economy-wide economic performance, and at the same time can enhance the capacity of governments to protect important public interests such as environmental and consumer protection.

Ministers asked that the OECD conduct reviews of country progress on regulatory reform, beginning in 1998. The content and framework for such country reviews are currently being discussed within the OECD. However, it is clear that the framework for the country reviews will need to be constructed around the OECD policy recommendations. One could imagine that country reviews could be carried out using a framework consisting of:

   (1) selected benchmarks of good regulatory practices against which countries are systematically compared. The benchmarks could be based on an elaboration of selected (not all) recommendations in the Report to Ministers, and the sectoral and thematic reports.

   (2) expert interpretation (necessarily more subjective) of the benchmarks within the specific country context, and ad hoc and expert treatment of issues not benchmarked.

2. Outputs of the country reviews could consist of:

   (1) assessment of current situation and trends in countries against benchmarks and interpretation of general and sectoral contexts;

   (2) recommendations for specific actions in each country;

   (3) comparative indicators based on benchmarks;

   (4) revised sectoral and general benchmarks of good regulatory practices.

This note does not address the substantive areas that could be covered in the reviews.
II. Benchmarking good regulatory practices: some considerations

3. To establish the basis for reviews that are systematic, comparable, transparent, and credible, they should contain, where possible, concrete benchmarks describing good regulatory practices that will serve as starting points for assessment in each country. Development and refinement of such benchmarks is itself a substantive output of the review process (benchmarks can be distinguished from “indicators”, which are qualitative or quantitative descriptors that are comparable across countries).

4. The core principle for policy-relevant benchmarking is that inputs (regulations, processes, policies) should be associated with outcomes (policy effectiveness and economic performance). We would want to benchmark regulatory inputs that evidence shows are associated either with more desirable outcomes or less desirable outcomes. In either case, depending on the country context, one could make substantive policy recommendations (do this or don’t do that). This principle underlies the policy recommendations in the OECD Report on Regulatory Reform, which have already met this test.

5. This principle is a lesser standard than "best practices." Best practices -- e.g., those that produce the best outcomes -- are continually evolving, and probably differ from country to country. We are instead looking for general "good practices" or "quality regulation", based on the current state of knowledge. Our aim should be to bring everyone up to at least a basic level of good regulatory practices, and explore in each case how a good regulatory regime would look. Our ideas of "best practices" will change as the reviews go forward, and we should be open to continual learning and revision. As consensus develops about new best practices, our benchmarks may change.

6. Another consideration is "significance." It will be relatively easy to identify reforms that improve matters -- harder to know how significant the results will be. We should try to focus on big-ticket items of real significance. This is even more subjective, and here we must be guided by country experiences and expertise.

7. OECD recommendations will be necessarily directed at four basic regulatory inputs (because these are what governments control) that can be benchmarked. These four inputs are (i) regulatory and reform policies, (ii) regulations, (iii) regulatory processes, and (iv) related policies (such as competition policy).

8. We could also benchmark regulatory outcomes (i.e., various measures of performance in relevant areas), but the policy relevance of outcome measures to regulatory inputs would have to be very clear if governments were to react appropriately to these benchmarks. Outcomes against which inputs could be assessed are economic efficiency (various measures) and policy effectiveness (various measures). It is possible that other outcome measures could be developed -- i.e., business start-ups, investment, market openness measures, business perceptions of regulatory costs -- that would help us understand better the sectoral and general outcomes associated with regulatory regimes. But in very few cases do we have adequate measures of performance across countries that would make such development possible.

9. Given the state of knowledge and different country circumstances, some humility will be called for in country reviews. We have a general understanding of desired outcomes, and we have a general understanding of regulatory inputs, but the specific design of regulatory inputs is variable, and dependent in part on context.
III. What regulatory benchmarks are possible?

10. Developing "good practice" benchmarks that are both policy-relevant and significant is difficult, and in some cases is probably impossible due to variances in country contexts. Our understanding of the regulatory input-outcome relationship is usually not very good, and is highly inconsistent across thematic and sectoral areas, meaning that careful winnowing and selection of benchmarks are needed. The second problem is that measuring relevant regulatory inputs is not easy. The third problem is that benchmarks can unduly focus attention on selected issues, and neglect the larger regulatory and policy environment that may be more important. This suggests that benchmarks will be an important, but perhaps not the central, element of reviews.

11. Because we cannot connect specific reforms with specific outcomes, one way forward is to formulate general principles of input-income relationship based on best available evidence and to develop benchmarks applying those principles. The 7 recommendations in the Report to Ministers are precisely such general principles -- for example, Recommendation 5 (economic regulations should be eliminated unless there is good evidence of their need), Recommendation 6 (competition law should be extended to all sectors), and Recommendation 2 (regulations should be developed on the basis of regulatory impact analysis).

12. If this approach is taken, these 7 general principles must be elaborated into concrete benchmarks of specific regulatory inputs. Once we have assumed certain input-outcome relationships, the key is measuring regulatory inputs in a useful way.

13. Some of the seven recommendations lend themselves to elaboration of relevant inputs, and some do not. This is because some are more precise than others and some address regulatory inputs that are hard to measure accurately. In any case, some regulatory inputs are contextual (i.e., one country may rely on tort liability rather than consumer protection regulation, but in a country without broad rules of "standing" this approach would be disastrous).

14. The conclusion here is that three conditions are necessary and sufficient to develop concrete benchmarks of good regulatory practices:

   (i) there is enough agreement on regulatory inputs-outcomes relationships,

   (ii) relevant regulatory inputs can be feasibly measured, and

   (iii) context and linkages are either not significant or can be adequately assessed. In the latter case, the relevant context and linkage issues should be identified.

15. A careful vetting of the background reports and other OECD work is necessary to determine if condition (i) is met. Under these conditions, elimination of economic regulations is probably the easiest recommendation to benchmark. To illustrate: in the report on the economy-wide effects of regulatory reform, the OECD used broad indicators, such as sectoral labour and capital productivity levels and price levels, to demonstrate in general terms the regulatory input-outcome relationship, i.e., more competition produces more efficiency, absent important market failures. There is enough evidence of input-outcome correlation to push for elimination of specific regulations that block competition in some sectors (as the OECD has already done in, for example, the Jobs Study follow-up). On this basis, we can develop some concrete benchmarks of both good and bad regulatory practices in the telecommunications, electricity, professional services, and perhaps other sectors.
16. Another careful (and creative) vetting is needed to determine when condition (ii) is met. Considerable consultation with Member governments will be needed. Benchmarking of public sector regulatory processes is well-advanced due to the Regulatory Quality Review that PUMA has been developing for over a year, which contains a number of benchmarks associated with the reforms suggested in the recommendations. After much discussion, Member countries have agreed that such benchmarks are well-enough supported by country experiences to provide guidance for good practices, though they stress that such benchmarks must be rebuttable in specific cases.

17. Annex 2 presents the seven recommendations and subrecommendations (numbered as 1A, 1B, etc) from the Report on Regulatory Reform. This list can help us judge where it is possible to develop more elaborated regulatory benchmarks, using the following matrix, and keeping in mind significance:

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Type of Regulatory Input</th>
<th>Can OECD develop benchmarks?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation 1:</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>1A</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>1B</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>1C</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>Recommendation 2:</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>2A</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>2B</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>2C</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>2D</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>2E</td>
<td>Regulatory processes</td>
<td></td>
</tr>
<tr>
<td>Recommendation 3:</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>3A</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>3B</td>
<td>Regulatory process</td>
<td></td>
</tr>
<tr>
<td>3C</td>
<td>Regulatory process</td>
<td></td>
</tr>
<tr>
<td>3D</td>
<td>Regulatory process</td>
<td></td>
</tr>
<tr>
<td>Recommendation 4:</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>4A</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>4B</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>4C</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>Recommendation 5:</td>
<td>Regulatory policy, regulation</td>
<td></td>
</tr>
<tr>
<td>5A</td>
<td>Regulatory process, regulation</td>
<td></td>
</tr>
<tr>
<td>5B</td>
<td>Regulation</td>
<td></td>
</tr>
<tr>
<td>Recommendation 6:</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>6A</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>6B</td>
<td>Regulation</td>
<td></td>
</tr>
<tr>
<td>6C</td>
<td>Regulatory policy, regulation</td>
<td></td>
</tr>
<tr>
<td>6D</td>
<td>Regulatory policy</td>
<td></td>
</tr>
<tr>
<td>Recommendation 7:</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>7A</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>7B</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>7C</td>
<td>Related policy</td>
<td></td>
</tr>
<tr>
<td>7D</td>
<td>Related policy</td>
<td></td>
</tr>
</tbody>
</table>
IV. Using regulatory benchmarks within a broader review framework

18. The purpose and application of regulatory benchmarks would need to be carefully and clearly defined. Benchmarks could not function as a “report card” -- they would have to be supplemented with a good deal of expert judgment and contextual information to arrive at an understanding of the proper direction for reform in each country. But the benchmarks could function as the basis of consistent assessment and reporting in Member countries. Issues on which the OECD is unable to develop benchmarks could be dealt with through common questions, and expert judgment.

19. Information collected through the country reviews could also be used to develop comparative regulatory indicators for the final synthesis report.
ANNEX 1

Sectoral and Thematic Reports on Regulatory Reform

Sectoral Studies

1. Regulatory Reform in Telecommunications Services
2. Regulatory Reform in the Financial Services Industry
3. Regulatory Reform and Professional Business Services
4. Regulatory Reform in the Electricity Sector
5. Regulatory Reform and the Agro-food Sector
6. Product Standards, Conformity Assessment, and Regulatory Reform

Thematic Studies

1. The Economy-wide Effects of Regulatory Reform
2. Competition, Consumers, and Regulatory Reform
3. Regulatory Reform, Industrial Competitiveness, and Innovation
4. Regulatory Quality and Public Sector Reform
5. Market Openness and Regulatory Reform
ANNEX 2

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.

1A. 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.

1B. 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.

1C. 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.

2A. 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.

2B. 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.

2C. Review proposals for new regulations, as well as existing regulations.

2D. Integrate regulatory impact analysis into the development, review, and reform of regulations.

2E. Update regulations through automatic review methods, such as sunsetting.

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

3A. Ensure that reform goals and strategies are articulated clearly to the public.
3B. Consult with affected parties, whether domestic or foreign, while developing or reviewing regulations, ensuring that the consultation itself is transparent.

3C. 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.

3D. 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.

4A. Eliminate sectoral gaps in coverage of competition law, unless evidence suggests that compelling public interests cannot be served in better ways.

4B. Enforce competition law vigorously where collusive behaviour, abuse of dominant position, or anticompetitive mergers risk frustrating reform.

4C. 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.

5A. Review as a high priority those aspects of economic regulations that restrict entry, exit, pricing, output, normal commercial practices, and forms of business organisation.

5B. 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.

6A. 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.

6B. Reduce as a priority matter those regulatory barriers to trade and investment arising from divergent and duplicative requirements by countries.
6C. 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.

6D. 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.

7A. 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.

7B. 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.

7C. Ensure that programmes designed to ease the potential costs of regulatory reform are focused, transitional, and facilitate, rather than delay, reform.

7D. 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.