PROCEEDINGS OF
THE APEC-OECD SYMPOSIUM ON STRUCTURAL REFORM AND CAPACITY BUILDING

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

GYEONGJU, KOREA

9 September 2005
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I. INTRODUCTION TO THE PROCEEDINGS OF THE APEC-OECD STRUCTURAL REFORM AND CAPACITY BUILDING SYMPOSIUM

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

9 SEPTEMBER 2005, GYEONGJU, KOREA

Structural reform and regulatory reform were highlighted in the APEC Leaders’ Agenda to Implement Structural Reform (LAISR), approved in Santiago, Chile, in November 2004. Regulatory reform was selected for priority work, with special attention to capacity-building, together with other efforts to stimulate policy-oriented discussions, better reporting practices and sharing of good practices. APEC was asked to deepen and expand structural reform-related activities through co-operation and collaboration with OECD in particular. The APEC Economic Committee was given a mandate to implement this agenda for structural reform. A joint symposium held in Gyeongju, Korea, on 9 September 2005 was the first concrete step toward these objectives.

Regulatory reform is a strategic approach for structural reform. With the expansion of economic globalization and the fall of traditional trade barriers, the interlinkages between international economic relations and domestic regulatory policy appear increasingly important for achieving smooth and efficient adjustment. Governments need to consider the cumulative and inter-related impacts of regulatory regimes, in particular to ensure transparency and predictability. Regulatory reform helps to target efforts on areas of an economy where the gains of structural reform are potentially the greatest. Isolated efforts cannot take the place of a coherent, whole-of-government approach to create a regulatory environment favourable to the creation and growth of firms, productivity gains, competition, investment and international trade. Removing unneeded regulations is still important, but does not tell the whole story of how governments can create rule-based frameworks for markets. Regulation, which is often sector-specific, should be considered within a wider governance system whose policy objectives include a range of social and economic benefits.

To help economies make progress, APEC and OECD designed an Integrated Checklist for Regulatory Reform. A self-assessment policy tool, it integrates questions about regulatory quality, competition policy and market openness within a whole-of-government framework, and it integrates good governance principles of accountability, consultation and transparency. In combination with other efforts to identify sectors where structural reform can be expected to deliver net benefits and promote development, the Integrated Checklist should help governments to identify what they are already doing well, and how they can improve the regulatory framework for investment, trade and productivity. A more robust regulatory framework, supported by well-functioning institutions, should reduce the risks associated with structural adjustment, thereby contributing to a more stable path for growth. Completed in 2005 after three years of preparation, and endorsed at a senior political level in both APEC and OECD, the Integrated Checklist will support policy dialogue and exchange of good practice for years to come.
Co-operative work in the OECD and APEC emphasizes the benefits that come from a holistic approach to the reform agenda, including regulatory, competition and market openness policies. A co-ordinated approach requires explicit measures and leadership, for which capacity-building is often necessary. This co-operation leverages the strengths of both organizations, avoiding duplication, with a focus on concrete results.

**Symposium on structural reform and regulatory reform**

A symposium was attended by 20 delegations with nearly 80 participants, including government officials, academics and experts from the business and private sector. The symposium launched the third phase in the APEC-OECD Co-operative Initiative on Regulatory Reform. The symposium theme provoked a lively discussion about the benefits of structural reform, the importance of regulatory reform to an environment favourable to competition and trade, and the challenges of policy implementation on issues that are complex, and that take time to show results. The linkage between these two themes highlights the degree to which micro-economic issues have become important, rivalling macro-economic policy for impact on growth. Unlike macro-economic policy, however, this is a policy arena in which a few quantitative indicators sit side-by-side many qualitative assessments. In this field, institutional contexts, often shaped by historical experience and cultural values, matter. There is no single model to follow. But such considerations, however important, are not deterministic. Economies have demonstrated considerable flexibility, even creativity, in designing institutional settings that fit contemporary circumstances. Indeed, the central challenge for governments remains to increase their capacity to adjust so that they can better help their citizens to take full advantage of the opportunities provided by technological innovation and a growing world economy.

Following an introductory session in which the chairs outlined the main themes and issues of the symposium, two presentations contributed to a better understanding of why structural and regulatory reform matter. Prof. Urata (Waseda University, Japan) used OECD studies, complemented by his own research to make two points: that domestic policy settings are more important than foreign pressures for market access to realising the benefits of structural reform, and that competitiveness and growth correlate with a regulatory environment favourable to competition and market openness. His presentation raised a question about whether policy measures should be sequenced, or can be brought forward simultaneously. Dr. Konvitz (OECD) focused on the challenges of implementing regulatory reform, drawing on lessons of experience from 20 OECD country review to highlight how important political leadership and a whole-of-government approach are to overcome such obstacles as unco-operative ministries and vocal vested interests. As was pointed out in opening remarks, however, OECD countries today are in agreement as never before on what the objectives of regulatory reform are, and what tools such as RIA and administrative simplification are most useful.

Dr. Kim Shin (Korea) illustrated the dynamic nature of the regulatory reform process in a case study of the impact of the Asian crisis of 1997 on Korea. The crisis made the lack of a systematic approach to regulatory reform unacceptable. A centralised approach – one-stop shops, RIA, regulatory reform commission, etc. – involved a shift from a uni-dimensional to a multi-dimension approach, from supplier to consumer oriented, and from quantitative to qualitative variables. Political will in response to the crisis accounted for this critical and profound shift which has been sustained since.
Paul Carpinter, going back over the history of governance reforms in New Zealand since the 1970s, discussed how capacity to assess problems and find solutions can be developed. Margaret Arblaster discussed Australia as an example of an OECD country that in the past was hampered by a carapace of restrictive practices. A national policy of reform focused on public monopolies. A single body was created to assess coherence for competition and efficiency, to consider whether regulation inhibits investment. Both speakers emphasised the ongoing need to assess the role of regulation continually, a challenge that calls for regulatory models that can adapt to change.

Gerardo Gonzales (Peru) presented a convincing demonstration of the Integrated Checklist, applied to section B, on competition policy. For each item on the Checklist, evidence was gathered concerning what has been done in Peru, and identifying where effort is needed. Sufficient resources, staff morale, and effective communication with policy makers were all items calling for attention. Institutional mechanisms to get regulatory issues on to policy agendas are needed in many countries, a point reinforced by Dr. Syamsul Maarif (Indonesia).

The general discussion focused on a future work programme for the third phase of the APEC-OECD Co-operative Initiative on Regulatory Reform (future steps). This was an important outcome of the symposium. This joint effort should include public sector management as part of structural reform, and should help citizens to understand that structural reform has as its objective to maximize their opportunities. Alan Bowman (Canada) discussed co-ordination within APEC, proposing that the Co-operative Initiative should be lead by the APEC Economic Committee, in co-operation with other APEC committees, and in particular, the Competition Policy and Deregulation Group (CPDG) of the Committee of Trade and Investment (CTI), as well as the Coordinating Group for Strengthening Economic Legal Infrastructure (SELI). In the final analysis, this work plan should support clear messages for the political leadership of APEC economies and OECD Member countries.

Kyung Tae Lee
President, Korea Institute for International Economic Policy,
Chair of the APEC Economic Committee

Rolf Alter
Deputy Director
Public Governance and Territorial Development,
OECD
II. FUTURE STEPS:

THIRD PHASE (2005-07), APEC-OECD CO-OPERATIVE INITIATIVE FOR REGULATORY REFORM

1) APEC-OECD Integrated Checklist

The APEC-OECD Integrated Checklist for Regulatory Reform, developed in the second phase of the Co-operative Initiative, was approved in 2005 by the OECD Special Group on Regulatory Policy and endorsed by the APEC Committee on Trade and Industry and by APEC Ministers for Trade. It is a unique and concrete example of the practical benefits of co-operation between the members of these two organisations. Elaborated in a series of focused workshops, the Checklist is a policy tool for self-assessment that combines APEC and OECD principles, integrates competition, market openness and regulatory quality, and highlights good governance objectives of transparency, consultation and accountability. The horizontal dimension of the Checklist reflects OECD concepts and good practices.

Several APEC economies and OECD Member countries are taking a decision to apply the checklist on a voluntary basis, and to share the lessons of experience in a roundtable in 2006. Within APEC, this will be carried out under the guidance of the Economic Committee as part of its programme of work on Structural Reform and Regulatory Reform. The involvement of the OECD will help assure comprehensive treatment of all aspects of the Checklist, and comparability across different economies. The insights generated by the Checklist will also inform and improve the relevance and effectiveness of OECD outreach and development efforts. Specifically, the OECD will help Asian economies prepare for the self-assessment exercise by organising a workshop in early 2006 at the OECD-Korea Centre for Public Governance in Asia to provide guidance on the Checklist. The OECD will participate actively in the roundtable discussions. The results will help identify priority areas for capacity-building. It is expected that a second set of economies would follow in 2007, also concluding in a policy roundtable. Over time, economies can develop networks to exchange good practices to improve domestic and international regulatory co-operation.

2) Regulatory Reform in Specific Sectors

The OECD Secretariat and the Korea Institute for International Economic Policy propose to prepare a short paper to identify sectors significant for economic growth, trade and investment where change in regulatory frameworks affect the market. Such sectors could include financial services, telecommunications, energy and transport. This paper will be discussed at a meeting of the Economic Committee in the first part of 2006. On this basis, a small set of sectors will be retained for in-depth study using a focused set of questions developed out of the Integrated Checklist (e.g., financial services, infrastructure and network utilities). Beginning in the 2nd half of 2006, a series of symposia and reports based on the sectoral-specific questionnaire will help define the characteristics of a well-regulated sector. The objective is to see how regulatory reform works: what progress is being made, how administrative burdens can be reduced, what bottlenecks are looming, where the limits of policy are. This work will help economies take concrete steps toward structural reform where it can make a difference.
3) **Indicators**

The goal is to explore the development of a set of indicators of regulatory capacity and performance in 2006/2007 based on parallel work being undertaken in OECD that could be applied to APEC Economies in 2007 and after. Reports and papers being prepared by the OECD Secretariat could be shared with the APEC Economic Committee. The initial focus could be on the sectors selected (see above). This work will help focus and simplify the Integrated Checklist in ways that can help decision-makers to set targets (following the example of reducing administrative burdens in OECD Member countries).

4) **Future of regulation**

A reflective exercise to explore the future of regulations in a globalizing world: who regulates? How much harmonization? How to achieve regulatory co-operation without sacrificing standards in the pursuit of the lowest common denominator? What are the prospects for international regulatory co-operation? What will be the scope for alternatives to regulation? These forward-looking questions could well be of interest to the OECD Working Party and the PGC in their efforts to describe the characteristics of regulatory models that can adapt to change. This work will help inform the efforts of economies to take capacity-building measures and guide the development of policy.

In 2006, work on a related topic in the APEC Economic Committee, lead by New Zealand, will focus on the relation between line ministries and agencies or bodies at arms-length from the central government, including regulatory bodies. Key issues include policy co-ordination, accountability, autonomy and transparency. Key questions include what drives the establishment of agencies, how to avoid duplication between sectoral ministries and autonomous bodies, how to ensure clear accountability and whole-of-government co-ordination, and the measures to take for auditing, evaluation and monitoring, so that the strengths and weaknesses of regulatory institutions can be assessed. Information about the operating costs, financing methods, and cost savings, if any, associated with different organisational forms would add to the understanding. The results of the OECD 2005 London expert meeting on regulatory bodies, portions of the regulatory reform reviews of Norway, Mexico and Switzerland, the 2004 SGRP stocktaking paper, as well as other studies in GOV, could be inputs.

**Timetable**

→ **2006 – January-June**

- Identify economies using the Integrated Checklist
- Discuss and determine sectoral focus on basis of short exploratory paper
- Survey existing data sets for indicators

→ **2006 – July-December**

- First peer review results using the Integrated Checklist
- Sectoral-specific questionnaire, with indicators if possible
- First draft of paper on future of regulation
- Report on progress for OECD Group on Regulatory Policy
2007 – Economic Committee

- Further peer review results using the Integrated Checklist
- Sectoral synthesis report
III. APEC-OECD SYMPOSIUM
AGENDA
September 9, 2005, Gyeongju, Korea

9:00-9.30 Opening Remarks: Dr. Kyung Tae Lee, APEC Economic Committee Chair

Keynote Speech: Mr. Rolf Alter, Deputy Director, Public Governance and Territorial Development Directorate, OECD

Session 1 – Importance of Structural Reform and Regulatory Reform

09:30-10:30 Chair: Mr. Rolf Alter, Deputy Director, Public Governance and Territorial Development Directorate, OECD

1) How structural reform can contribute to promote trade and investment
   Prof. Shujiro Urata, Graduate School of Asia-pacific Studies, Waseda Univ., Japan

2) Link between regulatory reform and structural reform: OECD studies
   Mr. Josef Konvitz, Head of Division, Regulatory Policy, OECD

3) Open discussion

10:30-10:50 Coffee Break

Session 2 – Implementing Regulatory Policy to Support Structural Reform

10:50-12:40 Chair: Mr. Akira Kawamoto, Director, Office for Science and Technology, Cabinet Office, Japan

1) What should be the role of government to achieve effective regulation and structural reform?
   a) Current Regulatory Reform in Korea
      Mr. Shin Kim, Director, Regulatory Research Center, The Korea Institute of Public Administration

   b) Key points in the APEC-OECD Integrated Checklist
      Mr. Gerardo Gonzales, Head of the Institutional Policy Development Office of Indecopi

2) How can institutional arrangements and co-operation improve the quality of regulation?
   a) Public sector management – Building capacity for reform
      Mr. Paul Carpinter, Director, The Treasury, New Zealand

   b) Implementing Regulatory Policy to Support Structural Reform: Indonesia Experience
      Dr. Syamsul Maarif, Chairman KPPU, Jakarta, Indonesia

3) Open discussion
12:40-14:00 Luncheon hosted by the Economic Committee Chair

Session 3 – How Can Structural Reform Support Open and Competitive Markets?

14:00-16:00 Chair: Mr. Alan Bowman, Chair, APEC Committee on Trade and Investment, Canada

1) Market openness and structural reform

   a) Market Openness and Structural Reform of Infrastructure Sectors in China
      Prof. Xu Guangjian, Public Administration School of Renmin University, People’s Republic of China

   b) OECD work on regulatory reform for market openness: Supporting structural reform for open markets and enhanced economic performance
      Mr. Charles Tsai, Consultant, Trade Directorate, OECD

2) Competition policy

   a) Regulatory reform – competition policy, competition law and effective institutions – An Australian perspective
      Ms. Margaret Arblaster, General Manager, Australian Competition and Consumer Commission, Australia

   b) The role of competition policy in structural reform
      Mr. Edward Whitehorn, Head of Competition Outreach, OECD

3) Open discussion

16:00-16:20 Coffee break

Session 4 – Concluding Session – The Way Forward to Promote Structural Reform and Regulatory Reform – (Roundtable)

16:20-18:00 Co-chairs: Dr. Kyung Tae Lee, APEC Economic Committee Chair and Mr. Rolf Alter, Deputy Director, Public Governance and Territorial Development Directorate, OECD

1) APEC-OECD co-operation on structural reform and regulatory reform

2) Future studies on structural reform in APEC

3) Application to use the APEC-OECD Integrated Checklist

Lead discussant:

   Mr. Peter Thurlow, Deputy Director, International Economic Relations and Summit Division, Canada

4) Open Discussion
IV. SUBMITTED PAPERS

Keynote Speech

Mr. Rolf Alter, Deputy Director, Public Governance and Territorial Development Directorate. OECD

Structural policies complement macro-economic policies. While there is hardly any questioning of the potential contribution of structural adjustment to economic prosperity and competitiveness, structural policies remain a more complex policy instrument: their impact is more difficult to measure, typically to be felt rather in the medium-term, losers are relatively easily identifiable, while winners are more widely spread, and affected rather at the margin than fundamentally. The design and implementation of good structural policies depend on detailed data and economic and social analysis and require a skilful government, particularly to maintain support among citizens and the business community over the medium-term.

Structural policies cover a broad range of individual policy areas but their joint focus is to increase the functioning and performance of the market mechanism, whether it is for product markets, markets for services or labour markets. Regulatory reform is just one element of the improvement and extension of the market mechanism, albeit a crucial one. In the OECD perspective, regulatory reform covers three key disciplines, i.e. regulatory quality, market-openness across borders and competition policy.

Regulatory quality implies primarily a comprehensive analysis of the costs and benefits of any new regulation, but should be extended also to the stock of regulation. Secondly, it implies a consultation process in which all stakeholders are invited to participate. The third element of regulatory quality is to identify clearly the responsibilities within government and its regulatory agencies, thus providing for transparency in the decision-making process and for accountability in implementation.

Improving the market mechanism has to include competition policy and enforcement, for example, through the elimination of sectoral gaps in the coverage of competition law or by providing competition authorities with the mandate to advocate reform and raise awareness of the role and benefits of competition. In view of the globalising flows of FDI and trade, market openness is the essential third pillar, especially where “behind the border obstacles” can be removed or reduced, through, for example, internationally harmonised standards or through accepting foreign standards on the basis of clearly defined criteria.

The OECD welcomes very much the interest of the Economic Policy Committee of APEC in the APEC-OECD Checklist in order to explore further the close links between structural policies and regulatory reform and the implication for capacity building. When in 2001, APEC and OECD decided to open their dialogue on regulatory reform, the main objective was to exchange experiences between the two sets of member countries and economies in terms of regulatory concepts, policies and practices. For two years, APEC and OECD experts met in very well structured working groups in member countries of both organisations to cover existing experiences in terms of regulatory governance, market openness and competition and looked at the conditions for implementation of such policies.

By the end of 2002, APEC and OECD decided to engage in an even closer cooperation by setting the ambitious target of a joint Checklist for regulatory reform. The Checklist is in principle an instrument that allows countries to carry out a self-assessment of progress in regulatory reform.
What are the possible next steps? The workshop should enable the participants to position the OECD-APEC Checklist in the much broader debate on structural policies. It should explain the scope and contribution of the Checklist and help identify the implicit needs for capacity building. It would be desirable if the workshop could mark the starting point to a third phase in APEC and OECD cooperation. Ideally, this third phase would provide the opportunity for an in-depth discussion of country experiences on the basis of a self assessment carried out with the help of the Checklist.
Session 1 – Importance of Structural Reform and Regulatory Reform

The Impacts of Structural Reform on Trade, FDI, and Economic Growth

Prof. Shujiro Urata, Graduate School of Asia-pacific Studies, Waseda University, Japan

Structural reform has attracted a lot of attention of policy makers since the late 1970s, because it has resulted in revitalizing economic activities in many countries. APEC member economies have been no exceptions to this trend with mixed results showing that some members have been successful in achieving expected positive impacts while some have not. In light of these developments it is important to understand how structural reform impacted economic activities by analyzing the issue theoretically and empirically. This paper attempts to summarize the previous studies on the subject.

The objective of structural reform is to reform economic, social, and other structures and systems, in order to increase economic welfare of people by improving the use of resources such as labor and capital and by improving the quality of such resources. Structural reform achieves this objective by enhancing competition among the firms. Structural reform is undertaken in the areas of domestic policies and external policies. Domestic policies can be further decomposed and grouped mainly into regulatory reform and competition policy, while external policies into liberalization in trade and foreign direct investment.

Various studies have shown the substantial progress in carrying out structural reforms in OECD countries and APEC member economies. Several OECD studies found that structural reform has advanced substantially in the area of domestic policies such as reduction in state control. It further observed positive relationships between the progress in the area of domestic policies and external policies, indicating their close relationship. The impacts of structural reform on economic activities, such as foreign trade and production, are found positive in many studies, as expected.

Having presented the reasons and evidences supporting structural reforms, the paper concludes by pointing the issues of sequencing of domestic and external reforms as well as negative impacts of structural reform in the form of unemployment, which often arises as a result of increased competition from structural reform. The paper argues for the desirability of simultaneous implementation of domestic and external policy reform and the need of government support to the negatively impacted workers in the form of educational and technical assistance.
Session 1 – Importance of Structural Reform and Regulatory Reform

*Link between regulatory reform and structural reform: OECD studies*

*Mr. Josef Konvitz, Head of Division, Regulatory Policy, OECD*

Structural reform is a priority in the effort to promote sustainable economic growth. As a complement to sound macro-economic policies and when joined to good governance practices for transparency and accountability, structural reform can help shift economic activity to higher value-added production and services, encourage the use of appropriate and new technology, and make better use of human capital. Although there are always adjustment costs, an economy which generates more jobs and better jobs is able to offer more opportunities to people who may be affected.

Regulatory reform is key in structural reform. Consistent with evidence that improved governance precedes income gains, regulatory reform promotes a high quality legal and administrative environment needed for competition, investment and trade. Regulatory reform is not a one-off policy action; it must be sustained as a dynamic process in the search for better regulatory tools. The main objective is to put more emphasis on performance and *ex-post* evaluation than on *ex-ante* controls. Countries start at different points. In some, the emphasis on the legal quality of regulations needs to be tempered by greater consideration of economic criteria; in others where the rule of law and compliance with good public governance principles are weak, more emphasis on rule of law, not less, may be needed first.

The dynamic gains from structural reform have been seen in many countries in telecommunications, transport and energy: lower costs, greater reliability, more choice for users, and investment for future capacity. Sectors using these network utilities benefit for their own operations. If the gains can be so impressive, why is there resistance to regulatory reform? The costs would be felt in the short term, the benefits realised only in the future. Entrenched monopolistic interests and bureaucracies with an administrative control culture can be single-minded in their defence of the status quo, whereas those who would benefit from reform are often diffuse, poorly organised, and without a voice in government.

OECD countries have made progress simplifying complex requirements, making public policy goals explicit, identifying priority sectors for reform, building confidence for citizens and entrepreneurs, and providing leadership from and accountability at the centre. Gains have been uneven, however. The countries that have made the most progress are those that had been the most restrictive. There is a more coherent, whole-of-government approach in the most advanced countries, suggesting that the friction associated with reform is less. Countries with high levels of state control tend to maintain a lot of administrative and licensing procedures that discourage entrepreneurship; countries with barriers to trade and investment are more likely to have barriers to domestic competition. In the final analysis, good regulatory design matters.
Session 2 – Implementing Regulatory Policy to Support Structural Reform

Item 1) What should be the role of government to achieve effective regulation and structural reform?

Current Regulatory Reform in Korea

Mr. Shin Kim, Director, Regulatory Research Center, The Korea Institute of Public Administration

Since the 1960s, Korea made economic growth its top priority and embarked on a path towards rapid development. As the private sector matured in the 1980’s, excessive intervention by the government and the regulations that followed as a result of such intervention were seen as obstacles to productivity and national competitiveness. Consequently, the Korean Government started regulatory reform in the 1990s but had limited success because it lacked a systematic approach.

To pursue regulatory reform more systematically throughout the government, the Basic Law on Administrative Regulations was enacted in 1997. Based on this law the Regulatory Reform Committee (RRC) was established under the President in 1998. It plays a leading role in carrying out regulatory reform in Korea. Any new or amended regulations are subject to review of the committee. The committee decides whether or not to make any revisions.

Although the RRC has achieved a substantial progress in regulatory reform, the public and private corporations demanded more intense reform to revitalize Korean economy. To meet the demand, the Korean Government recently shifted its focus of regulatory reform from supplier-oriented to consumer-oriented reform, from quantitative to qualitative reform, and from uni-dimensional to multi-dimensional reform.

The Korean government, focusing on consumer-oriented regulatory reform, created the Regulatory Reform Task Force Team (TFT) in August 2004. The TFT is operated for two years with private participation (25 non-government personnel, 26 civil servants) to improve drastically bulk regulations (regulations that extend over many ministries) and improve entirely existing regulations from the users’ perspective.

Another effort to satisfy consumers is the creation of a Business Difficulties Resolution Center. In order to resolve difficulties faced by businesses in their activities due to unreasonable laws, ordinances and systems, or due to unreasonable actions by responsible civil servants, the center was established in the Office for Regulatory Reform in April 2004 with 11 working members.

In the meantime, to pursue better regulatory quality, the Regulatory Reform Ministerial Level Meeting presided over by the President in August 2004 decided that all regulations should be examined and improved from zero-base. As a result, a separate regulatory reform team was formed within the Office for Regulatory Reform in April 2005.

Finally, amid increasing regulations imposed by quasi-public organizations, regulations that give inconvenience to public life or unfairly burden to members in the operation process of such organizations will altogether be subject to examination and improvement from a zero base, starting first half of 2005 at the office for Regulatory Reform.
Session 2 – Implementing Regulatory Policy to Support Structural Reform

Item 1) What should be the role of government to achieve effective regulation and structural reform?

Using the APEC-OECD Integrated Checklist in Assessing the Competition Policy and Law: The Case of Peru

Mr. Gerardo Gonzales, Head of the Institutional Policy Development Office of Indecopi

This paper is aimed at exercising a self-assessment of the competition policy and law in an APEC member economy –Peru- on the basis of the combined competition policy and law principles and recommendations contained in the so-called APEC-OECD Integrated Checklist on Regulatory Reform.

This Integrated Checklist is a multilaterally-endorsed voluntary policy tool which emerged from a joint initiative of the member economies and countries of the Asia Pacific Economic Cooperation (APEC) and the Organisation for Economic Cooperation and Development (OECD) in the structural reform arena. The APEC-OECD Integrated Checklist on Regulatory Reform is helpful to provide a point of reference of best international practices and to identify areas for building enhanced capacities in order to improve domestic structural reform-related policies, including competition policies.

In addition to the self-assessment of the competition policy and law in Peru by using the principles contained in the Integrated Checklist, which is the core of the paper, this one also provides the general reader with an overview of the competition law and authority in Peru, as well as summarises the general scope and contents of the APEC-OECD Integrated Checklist on Regulatory Reform.

Peru is a developing economy with a relatively extensive experience in implementing a comprehensive competition law: the competition law was enacted in 1991, followed since then by a number of amendments; the competition authority was established in late 1992; and earliest cases dealt with go back to 1993. Over this period of time, strengths and weaknesses have emerged in the competition authority; indeed, while a major strength is autonomy and technical competence of the competition authority’s jurisdictional bodies, a major weakness is a remarkable shortage of resources, which can easily be demonstrated when compared with other developing economies with a similar or even smaller GDP size.

The self-assessment of the competition law in Peru shows that this is aligned to a great extent with many of the principles and recommendations of the APEC-OECD Integrated List. In effect, recommendations regarding having clear objectives, allowing autonomy, containing conventional provisions against hard-core cartel conduct, and respecting due process are widely fulfilled by the current law. However, some work is yet to be done in other principles recommended, notably an enhanced funding for the competition authority, the absence of ex ante merger control provisions, the need of strengthening competition advocacy, and the extent to which public/private competitive neutrality, decision-making transparency, and mandated coordination with regulators are explicitly stated in the competition policy and law.
Session 2 – Implementing Regulatory Policy to Support Structural Reform

Item 2) How can institutional arrangements and co-operation improve the quality of regulation?

Public sector management – Building capacity for reform

Mr. Paul Carpinter, Director, The Treasury, New Zealand

The address described how New Zealand went about building capacity for reform, focusing on public sector management.

Capacity has at least three dimensions:

- Capacity to define the problems correctly
- Capacity to derive effective solutions to the problems
- Capacity to implement those solutions.

Each step requires different skills and techniques

Capacity to define problems

For many years, New Zealand policy makers were concerned about what was often described as the balance of payments constraint on its growth rate. Deeper analysis suggested that the balance of payments constraint was a symptom of a much deeper set of problems. International experience suggested that economies that have efficient market-based mechanisms tend over time to be more successful than those have reliance on more administrative-based regimes.

Creating Solutions

New Zealand had to move from a very centralised economic regime to one that more effectively allocated risks and rewards. This was not deregulation – far from it. It was instead moving to a regulatory environment that allocated resources more effectively, and which allowed changes in the environment to be recognised by key decision-makers in a timely and efficient manner.

These reforms included:

- Effective banking regulation
- More efficient and effective government systems
- Strengthened competition policy and implementation
- Changes to exchange rate regimes
Implementing Effective Solutions

Public sector reform in New Zealand was based on some very simple ideas. These were:

- Greater clarity about what was to be done would materially assist in raising performance
- Greater accountability and responsibility for results meant that agencies needed to have greater freedom about how they went about their business.

Commercial activities were placed in limited liability companies, under the control of directors who were in turn required to operate under the Companies Act. For those agencies closest to Ministers, the reforms clarified the respective roles of Ministers and public service managers.

The practical consequences of that philosophy in the broad commerce sector were the following:

- Dedicated policy branches in the Ministry of Commerce
- Separate management of operational functions within the Ministry – including the Companies Register
- An independent Commerce Commission charged with the implementation of the Commerce Act.

New Zealand maintained a Companies Registry so that business could easily and rapidly check the identities of those behind the companies with which they might interact with. Ten years ago, that registry was decentralised, paper-based, expensive and very user-unfriendly.

Now the registry is internet-based, easily accessible, widely used, and amongst the cheapest in the world to use. It is very easy to establish a company, while the safeguards the registry provides are much more readily accessible.

To achieve that required clarity of purpose around the reasons for a Companies Registry, and around about what management could achieve It required careful management, business re-engineering, close interaction with the business community and a realistic appreciation of what ICT could deliver. It required the three kinds of capacity this paper has addressed, and it emphasised the close link between regulatory and structural reforms.
Session 2 – Implementing Regulatory Policy to Support Structural Reform

Item 2) How can institutional arrangements and co-operation improve the quality of regulation?

Implementing Regulatory Policy to Support Structural Reform: Indonesia Experience

Dr. Syamsul Maarif, Chairman KPPU, Jakarta, Indonesia

Although Indonesia has started a shift from a highly interventionist model of economic development to a market-oriented development model in mid of 1980s, a substantial move has started to be taken in 2000s following the enactment of Law No. 5/1999 concerning the prohibition of monopoly and unfair business practices, and the establishment of the Commission for the Supervision of Business Competition (KPPU) for enforcing the law. One of the KPPU mandate is to provide policy recommendation to the government regarding policies that have, or potentially, affected competition of the business in the market. In view of the mandate to undertake regulatory reform through the mechanism of providing policy recommendation to the government, the KPPU and Law No. 5/1999 might therefore be regarded as a basic infrastructure for reform after the 1997/98 economic crisis.

To bring about the mandate into implementation, various efforts have been made to internalize competition values into government policies. Some progresses have been made. Since 2000, for instance, KPPU has provided some 30 policy recommendations to the government regarding the policies which lessening competition in the market. But there is also further needed in the following areas: capacity building for staff especially those related to policy analysis, and the need to develop an institutional mechanism enabling the proposed changes to be effectively communicated.

As a country where its development paradigm has just been shifted in recent years from a highly interventionist to a market-oriented development model, a wide area of reform is needed. The availability of resources to conduct identification and assessment however is scarce, making efforts for reforms to be difficult to accelerate.
Market Openness and Structural Reform of Infrastructure Sectors in China

Prof. Guangjian Xu, Public Administration School of Renmin University, People’s Republic of China

In recent years, the market openness and structure reform of infrastructure sectors have had many new developments. The government has issued and implemented some new policies to encourage and support foreign-fund enterprises and domestic non-public enterprises to enter into the infrastructure sectors which used to be monopolized by state-owned enterprises (SOEs). Many domestic private enterprises and foreign-funded enterprises have made huge investment in infrastructure sectors. Most SOEs have been transferred to share-holding companies and some have listed in domestic and abroad capital markets. It is very helpful to improve the supply of infrastructure services. However, the openness of market and reform of structure are still behind the openness and reform in other industries in general.

The reform of government regulation system in the infrastructure sector has made also some progress. Reform of tariffs and price in water supply, civil aviation and telecommunication has also made remarkable progress.

It is necessary to speed up the openness of market and reform of structure in the future. First of all, it is very important to improve the legal system in the infrastructure sectors according to the principles of WTO. Secondly, the reform in railway sector should be speed up. Thirdly, it is needed to speed up price reform of telecommunication and improve the government price regulation, try to establish the incentive price regulatory system in these sectors. Finally, the state-owned commercial banks should improve their fixed assets loans system and improve the financing environment for non-public enterprises’ investment in infrastructure sector.
Session 3 – How Can Structural Reform Support Open and Competitive Markets?

Item 1) Market openness and structural reform

OECD work on regulatory reform for market openness: Supporting structural reform for open markets and enhanced economic performance

Mr. Charles Tsai, Consultant, Trade Directorate, OECD

In recent years several trends have reinforced the link between domestic regulatory environment and international market openness. First, increasing global flows of trade and investment mean that domestic regulations applied in a single country may increasingly impact economic activities globally. Second, as tariffs have receded over the course of successive rounds of trade liberalization, national regulations increasingly describe the contours of market access. In this light, the quality and efficiency of the domestic regulatory systems should increasingly be assessed in terms not only of their efficiency in securing stated regulatory objectives, but the degree to which they contribute to market openness. Reform of regulations to secure stated regulatory objectives in a manner no more trade restrictive than necessary, will maximise the contribution that market openness can bring to lower domestic price levels, increased selection and the competitiveness of the domestic economy.

The relationship between market openness and regulatory reform: Market openness is itself only one of three components within OECD reviews of regulatory reform. Reviews of regulatory reform include assessments of: 1) government capacity to assure high quality regulation, 2) competition policy and 3) market openness. Good regulatory policies aim to enhance the economic performance, cost-effectiveness or legal quality of regulations and related government formalities. Competition policy seeks to remove anti-competitive practices which protect inefficient economic activities. By removing inefficient economic activities resources are freed for use in economically viable activities. Market openness policies aim to ensure that a country can reap the benefits of market openings, globalisation and international competition by eliminating or minimising the distorting effects of border as well as behind the border regulations and practices.

Market openness in support of structural reform: Attention to market openness within processes of regulatory reform enable more rapid, complete and resilient structural reforms in support of global economic competitiveness. The six principles of efficient regulation to underpin regulatory reform are closely interrelated. Yet, we are conscious that “one size does not fit all”. The six principles of market openness include: transparency and openness of regulatory decision-making; non-discrimination (both national treatment: equivalent treatment to national and foreign suppliers) and MFN (no difference in treatment among foreign suppliers); avoidance of unnecessary restrictiveness for trade and investment; use of internationally harmonised measures; streamlined conformity assessment procedures; and application of competition principles from a market openness perspective.

Structural reform in support of market openness: Structural reform may directly support market openness by resulting in de facto liberalisation. For example, reforms applied in sectors such as finance and telecommunications infrastructure may enable foreign suppliers to compete in the domestic market as a by-product of structural reforms. (i.e. reforms can led directly to increased market openness). Foreign producers can facilitate domestic structural reforms by bringing the most advanced technologies into the domestic market.

Structural reforms provide an excellent opportunity to better integrate market openness throughout domestic regulatory systems. More open domestic economies will better enable foreign goods and investment to underpin progress by structural reform towards promoting more competitive domestic economies.
Session 3 – How Can Structural Reform Support Open and Competitive Markets?

Item 2) Competition policy

Regulatory reform – competition policy, competition law and effective institutions

An Australian perspective

Ms. Margaret Arblaster, General Manager, Australian Competition and Consumer Commission, Australia

National Competition Policy has provided clear benefits to the Australia economy through the economy wide application of competition law and the removal of regulatory and structural impediments to competition. Formerly, due to Australia’s constitutional law issues, competition law did not apply to state owned business enterprises or unincorporated associations.

Economy-wide application has enabled a consistent and uniform application of competition law. This creates a level playing field that fosters competition across all forms of business enterprise and not providing a regulatory benefit to a particular business class. Over the past ten years there has been a systematic review of existing legislation and removal of legislation that restricts competition, unless it could be shown that the benefits as a whole outweighed the costs and restricting competition was the only way to achieve those benefits.

When operating in markets where private operators are present, governments agreed to a set of competitive neutrality principles. Competitive neutrality was important as governments were increasingly removing themselves from the role of becoming the direct provider of services and were contracting with private operators to provide these services. This created a greater prospect of private enterprise and government entities competing to provide the same service.

As part of National Competition Policy it was necessary to implement structural reform of public monopolies to separate the contestable and non-contestable elements of vertically integrated government owned businesses. A national third party access regime for those facilities that could not be economically duplicated and were of national significance was introduced. The regime provided for access to infrastructure on terms that were ‘fair and reasonable’. The purpose was not to create competition in the infrastructure industry, but rather to preclude monopoly pricing from restricting the emergence of competition and more efficient outcomes in dependent industries.

These economy wide reforms were accompanied by a number of sector specific reform initiatives. In particular, sector specific structural reform and access regulation were introduced into a number of industries as part of the reform of public monopolies. These reforms were undertaken under the national access law to ensure consistency throughout the economy. Electricity, rail, and telecommunications demonstrate some of the challenges and successes which have occurred in regulating these sectors.

A review of national competition policy has recently been conducted by Australia’s independent Productivity Commission (PC). The report recommends that Australia continue with competition-related reform to sustain and extend our impressive economic performance.

There are challenges ahead for Australia to maintain the momentum of National Competition Policy reforms particularly within the Australian political framework involving both State and Federal governments. Issues flowing from the Productivity Commission’s review and significant changes in areas such as telecommunications and infrastructure regulation provide specific future challenges and opportunities for Australia.
Session 3 – How Can Structural Reform Support Open and Competitive Markets?

Item 2) Competition policy

The Role of Competition Policy in Structural Reform

Mr. Edward Whitehorn, Head of Competition Outreach, OECD

Competition policy provides insights into the design of structural reform, principally by focusing on economic efficiency. Competition and economic efficiency can provide a coherent policy framework for structural and regulatory reform. Although a competitive market will generally produce an economically efficient solution, there may be policy objectives which are important but will not be achieved by relying on the market. In those cases, regulatory intervention is necessary. Intervention is also necessary where the market does not function well, for example because of a monopoly supplier.

Introducing competition can bring real benefits, particularly in terms of lower prices, improved quality and more choice for consumers. A good example is the telecommunications industry where increased competition has brought prices down dramatically. Vertically integrated industries, such as the traditional utilities, can benefit from the introduction of competition in those parts of their business where competition is possible. One way of introducing more competition is by structural separation. The OECD issued a Recommendation on Structural Separation in Regulated Industries in 2001. The Recommendation recognises that separation has both potential benefits and potential costs. However, restructuring is an important policy option for promoting competition in public utility industries and should be considered as an alternative to behavioural measures such as regulation. Structural separation can be achieved by ownership or operational separation, separation into reciprocal parts, joint ownership of the non-competitive component of the industry or by regulation of the non-competitive component.

Capacity building in competition policy is important in ensuring that the benefits of competition are realised. This can lead to better regulatory and structural reform. The OECD has been involved in capacity building through its outreach work for many years.
V. SUBMITTED PAPERS

The Impacts of Structural Reform on Trade, FDI, and Economic Growth

Prof. Shujiro Urata, Graduate School of Asia-Pacific Studies, Waseda Univ., Japan

I. Introduction

Structural reform has attracted a lot of attention of policy makers since the late 1970s, when the British government under Mrs. Thatcher adopted a series of structural reforms to result in successfully reviving the British economy. The US government under President Reagan followed Mrs. Thatcher’s policy by pursuing structural reforms and successfully rejuvenated the US economy. Recognizing the beneficial impacts of structural reforms, many countries, both developed and developing, adopted structural reforms in recent decades. Some countries appear to have successfully achieved expected outcome of promoting economic growth, but some countries have not been successful. It is thus important to understand the impacts of structural reforms on the economies and to discern the mechanism, through which such impacts are generated.

With these observations in mind, I would like to make presentation on the impacts of structural reforms on foreign trade, foreign direct investment (FDI), and economic growth. The focus on foreign trade and FDI stems from the observation that structural reforms in the external sector play a very important role in promoting economic growth of the countries, especially those in the Asia-Pacific region, in a rapidly globalizing economic environment.

II. The Objectives of Structural Reform

At the outset I would like to discuss the objectives of structural reforms. In my view the objective of structural reforms is to reform economic, social, and other structures and systems, in order to increase economic welfare of people by improving the use of resources such as labor and capital and by improving the quality of such resources. Reforms can be undertaken by both public and private sectors, but in the policy discussions, it is the reforms carried out by the public sector that receive the most attention.

Since the resources are generally used most effectively under free and competitive environment, structural reforms typically involve policies to reduce government intervention such as deregulation and liberalization policies. However, it is important to point out that government can play an important role in increasing the quality of resources by providing technical assistance in the forms of education, training and others.

III. Methods of Structural Reforms

Structural reforms are carried out through several policies, including regulatory reform, competition policy, and liberalization of external policies. These policies are expected to result in an improvement in resource allocation and promotion of technical progress by enhancing competition among the firms. Regulatory reforms involve removing or reducing regulation on economic activities. A typical regulatory reform is the removal of entry restrictions in the field of public utilities such as generation and distribution of electricity. In the past, in many countries, electricity related activities were performed by a public monopoly, which is regulated by the government with an objective of minimizing the negative impacts of monopoly such as high prices. In recent year, however, the electricity related activities have been deregulated in many countries and private companies entered the market.
Competition policy is used to promote competition by constraining anti-competitive behavior of the firms such as collusion. Unlike the case of deregulation, where government intervention is reduced, in the case of competition policy the role of the government as a regulator is important. As such, fair, efficient, reliable, and transparent government is required to pursue competition policy effectively.

Regulatory reform and competition policy are generally considered as policies addressing domestic issues. Among the external policies promoting competition, liberalization of trade and foreign direct investment is a major policy. In the past, trade in goods accounted for a large part of international trade, but in recent years trade in services has been expanding rapidly. Liberalization of trade and foreign investment has been carried out under the multilateral framework, of the GATT/WTO as well as bilateral and regional frameworks such as free trade agreements. In some countries, trade and investment liberalization was pursued unilaterally, mainly as a condition when the countries borrow funds from the International Monetary Fund, the World Bank, or regional financial institutions.

In addition to liberalization of foreign trade and investment, international movement of labor, in particular professional labor such as engineers, has been liberalized as countries try to recruit capable engineers, who can contribute to improving technical capabilities of the firms and countries.

As noted above, effective formulation and implementation of structural reforms such as regulatory reform, competition policy and liberalization of external policies requires capable government, or government officials. It should also be noted that private sector needs capable workers to benefit from expanded opportunity and to compete effectively in highly competitive business environment, which is created by structural reform. Recognizing these points, countries have to develop capable human resources in order to promote economic growth by taking an advantage of the benefits to be resulted from structural reforms.

IV. Some Evidences of Structural Impediments

Regulatory reform is adopted to remove/reduce structural impediments, which discourage competition to result in inefficiency and slow economic growth. Identification of structural impediments is important to discern the impacts of structural reforms. Several studies have examined structural impediments in some countries. OECD (2005a) examined the level of product market regulations for OECD countries by measuring the level of restrictiveness in a number of areas or categories. This study looked at both domestically oriented policies and external policies. Domestically oriented policies focused on state control and barriers to entrepreneurship. These are further decomposed into a number of categories. External policies focused on barriers to trade and investment. In total, twelve categories are studied for domestically oriented policies and four categories are examined for external policies.

The study came up with a number of interesting observations. The study found that the level of restrictiveness for OECD countries as a whole declined from 1998 to 2003 in all three categories, state control, barriers to entrepreneurship, and barriers to trade and investment. Among the three categories, the largest improvement was found for state control. Another interesting observation is the positive relationship between restrictiveness in domestic policies and external policies. This finding appears to indicate the need to deal with both policies simultaneously to achieve freer business environment.

Sazanami, Urata and Kawai (1994) examined the level of trade barriers by estimating the difference in international and domestic prices for Japan. They argue that domestic prices can be raised higher than international prices if trade barriers exist and the extent of the difference reflects the level of restrictiveness of trade barriers. They found particularly high price differentials for food and beverage products. These findings are consistent with the expectation because food and beverage sectors are heavily protected in Japan.
V. Impacts of Structural Reform on Trade, Investment, and Economic Growth

Structural reforms are expected to promote trade, investment and economic growth, as structural reform reduces/eliminates barriers to trade, investment, and economic activities to result in increased competition. Under competitive environment, firms have to improve efficiency/productivity to survive. Increased efficiency and productivity in turn would result in economic growth.

Several studies have found these expected impacts from structural reforms. OECD (2003b) found anti-competitive regulations such as trade and FDI barriers curb foreign direct investment and trade with a strong negative effect on service trade by conducting regression analysis of OECD countries. It also found that service trade is particularly sensitive to labor conditions such as bargaining regime and tax and social security contributions, probably reflecting the fact that service trade involves labor-intensive activities.

OECD (2005b) derived the magnitude of the impacts of structural reform on export levels by estimating the impacts of regulation on exports for the United States and the European Union. According to its estimates, removal of tariffs, FDI restrictions and domestic regulation would result in expansion of exports by 22.4 and 29.4 percent in the US and the EU, respectively. The largest gain comes from domestic deregulation, as it leads to the expansion of exports by 17.5 and 25.6 percent in the US and the EU, respectively. The impacts of tariff removal on export levels are higher for the US at 3.5 percent export growth than for the EU at 1.4 percent, while the impacts of FDI liberalization has higher impacts for the EU at 2.4 percent compared to the case for the US at 1.0 percent. These contrasting patterns concerning the impacts of trade and FDI liberalization between the US and the EU reflect the differences in the restrictiveness of trade and FDI regimes in them.

The Cabinet Office (2004) of the Japanese government conducted a study to examine the impacts of domestic regulation on FDI inflows for OECD countries and found that domestic regulation had a significantly negative impact on FDI inflows.

Concerning the impacts of structural reform on economic growth, OECD (2005b) estimated statistically the impacts for the US and the EU. OECD found that structural reform by removing tariffs, FDI restrictions, and domestic regulation would result in economic growth by 3.1 and 3.5 percent for the US and the EU, respectively. Similar to the case for the impacts on exports discussed above, the largest impacts come from domestic deregulation, as it would increase US and EU GDP by 1.7 and 2.8 percent, respectively. Unlike the impacts on export levels of trade and FDI liberalization found for the US and the EU above, the impacts on economic growth of trade and FDI liberalization are both larger in the US (0.9 and 0.4 percent) than in the EU (0.3 and 0.3 percent).

Kawai and Urata (1999) examined the impacts of structural reform on GDP for Japan by conducting a simulation analysis by using a computable general equilibrium (CGE) model. They found that Japan’s GDP would increase by 12.2 percent from structural reform. Similar to the finding by the OECD, they also found that the impact from domestic deregulation was 9.3 percent, significantly higher compared to the impact from trade liberalization at 2.2 percent.

Before concluding my presentation, I would like to discuss two points, which are not discussed above. One is the sequencing issue concerning domestic and external deregulation, and the other is the possible negative impacts of structural reform. First, I have so far discussed domestic and external deregulation jointly, as if they were implemented simultaneously. However, in reality in many cases they are not applied simultaneously partly because different government branches are responsible for these two types of policies and/or partly because driving forces for domestic and external deregulation are different. External deregulation is often imposed by external forces such as international organization as mentioned above and influential country, while domestic deregulation is promoted by domestic forces such as private company.
Two types of arguments have been presented regarding the sequencing of the two types of policies. One argument is that domestic deregulation should precede external deregulation, because external deregulation would lead to unexpected negative impacts on the economy if domestic industries/firms are not competitive. A case in point is the Asian financial crisis, where external deregulation in the financial market was one of the major causes of the crisis because financial market was open to competitive foreign investors, which could take an advantage of weak domestic financial market.

Another argument claims that external deregulation can trigger domestic deregulation and therefore implementing external deregulation before domestic deregulation is justified. Both arguments seem to have valid points and thus it is not easy to identify the correct sequencing. Rather I think that these two types of deregulation policies should be applied simultaneously. Indeed, the impacts of these policies would be greatest when both policies are applied simultaneously.

Finally, I would like to point out the possible negative impacts of structural reforms. Structural reform may result in the loss of jobs for some workers, as it increases competition and in some cases competition forces non-competitive industries/firms to exit. Loss of a job certainly leads to a very difficult situation for unemployed workers. It also incurs the cost to the economy, because unemployed workers do not contribute productively to economic activity. To deal with the problem, the government should provide a safety net and also help unemployed workers improve human skills by providing education and training so that they could be employed again.

REFERENCES


The role of the State in relation to the economy and society is in transition. The 20th century saw a rapid growth in the role and presence of the State. War and economic crisis on the one hand, and a belief in technocratic rationalism and efficiency on the other, drove centralisation forward. Efforts were started in the late 20th century, both to “roll back the frontiers of the State” in order to free up market economies, and at the same time to redefine the relationship between the State, the economy and citizens. In terms of regulatory policy this has given rise to the concept of the “regulatory State”: a State still strategically responsible for the economy and society, but with a more arms’ length relationship to citizens and the economy. The reduced scope of macroeconomic policy today, means that regulation is relatively more important as a dimension of competitiveness. Less direct forms of intervention in place of command-and-control or direct provision of public services however pose fresh problems of co-ordination and coherence, with implications for the structures or institutions of policy, the main focus of my remarks. Regulatory policy helps define the interface between the State, society and the economy. In the final analysis, regulation is about two central aspects of the political sphere: 1) assuring that the interventions of government have a legitimate basis, and contribute to a regime which is based on and strengthens the rule of law; and 2) assuring that economic growth is sustainable over the medium term, the basis for individual and collective well-being, cohesion and peace. This is why the subject of regulatory policy is one of good governance.

Paradoxically, in this period of transition, regulatory inflation affects most OECD countries. Citizens seek better services, as well higher standards of social and environmental welfare, which are translated into mandates and regulations. But regulation also arises from the consolidation of market economies and the move away from direct economic intervention by the State. When the State acts directly in the economy, the rules governing its actions are either internalised or do not exist. Regulation emerges when others take over what used to be State functions. For example, specific rules are needed for liberalised network industries in order to deal with asymmetric market structures, natural monopoly cores, and technical complexities. The decentralisation of executive power has also resulted in a proliferation of rules from different levels of government.

Although the trends are global, they also have a European dimension. Change in the European Union has been more complex and far-reaching in the 1990s in matters affecting regulatory policy than in other regions of the OECD. Europe has changed institutionally and economically in ways that are not reflected in comparisons of the rate of growth in different regions of the world, a statistical measurement which cannot capture the scale and scope and future impact of these transformations. The distinctive feature of Europe in geopolitical and economic terms is that nowhere else have the key trends of globalisation and structural adjustment, including the privatisation of network utilities, coincided with massive institutional change – enlargement, and new measures for regional governance including devolution and decentralisation. These trends affect the larger and smaller states of the European Union asymmetrically, while affecting the European Community as a whole.

Let me present some comments on the broader context and relevance of regulatory policy, before turning to the question of the structures appropriate to the design and implementation of policies for quality regulation.
1. Regulatory policy: its context and relevance

The contribution of regulatory policy to the achievement of public policy goals

Regulatory policy is an explicit policy for a dynamic, continuous and consistent “whole of government” approach to pursue regulatory quality. Experience confirms that an effective regulatory policy needs to be made up of three components which are mutually reinforcing: policies, tools and institutions. Regulatory policy is not only about specific regulations for a sector, but about the process by which regulations are drafted, updated, implemented and enforced, set in a broader context of public policy objectives. The evaluation of policy therefore includes not only the social and economic impact of regulations, but the links between regulatory processes or systems on the one hand, and those outcomes on the other. Nothing contributes more to scepticism about regulation than regulatory failures: the impression that rules respond to special interest pressures, and the recognition that rules often do not achieve their objective. Mistakes can be avoided. A forward-looking perspective is also important: for example, planning ahead for the regulatory and other reforms that will be needed to facilitate the adaptation of economies to ageing. Will ageing societies be more or less open to change? Should regulatory reforms therefore be accelerated? Or postponed? Where will people want to live? And what are the implications of their choices for infrastructure and public services? We know something about the levers of change in societies that are young and growing; we know next to nothing about what happens in societies that are ageing rapidly.

At its broadest level, the existence of a strong regulatory quality framework can be linked with improved economic performance and higher levels of social welfare. An effective regulatory system can help to:

- Promote flexibility, innovation and new ideas.
- Encourage competition rather than protection. Bear down on costs from the accretion of rules over time, removing complexity, red tape, and inconsistencies.
- Encourage new or previously unheard stakeholders into the policy debate, so that policy is better grounded.
- Promote timely and necessary change to support economic and social renewal, so that this can take place more quickly and at least cost.

The quality of regulation is often key in achieving specific policy goals. But this implies making a link between whole regulatory regimes, not just individual rules, and policy goals. In our work at the OECD, we are putting an emphasis on work on indicators of regulatory performance, and on the feedback loop between evaluation and the design of better regulations. The cumulative effect of rules over time is an important consideration. Existing regulation and regulatory processes can block progress in meeting policy goals, if they are not adapted. Regulatory frameworks need regular review so that they can continue to meet original policy goals, as well as complete reworking to meet new policy goals. Regulatory policies are usually some way from integrating fully the concepts of dynamism and continuity. In order for this to happen they need to incorporate two dimensions: managing the flow of rules (appraising new rules) but also, crucially, regularly appraising the stock of rules (ensuring that rules remain relevant). The 2002 OECD report From Intervention to Regulatory Governance noted that “the need for regular review and renewal of regulation is a fundamental lesson that remains largely unlearnt to date, at least at the practical level”.

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Policy goals: clarity, complexity, overlap and trade-offs

The first question to ask is whether a government action is justified. From this follows questions about whether regulation is the best form of government action, considering issues such as costs, benefits, distributional effects and administrative requirements. In 2005 OECD will take up the question of alternatives to regulation. This topic, which includes self-regulation, performance-based regulation, and economic instruments, is particularly timely given the growing awareness of the importance of risk and risk assessment. Pressures for regulation often come in response to a dramatic event, be it a spectacular case of industrial pollution or of contamination in food, or a blackout, or property loss in a flood. Government regulation can reduce the burden of risk on business, even if it adds to their administrative burdens. But equally, government regulation can increase the responsibility of government when the unexpected occurs.

The Canadian government report Smart Regulation – A Regulation Strategy for Canada (2004; www.smartregulation.gc.ca), highlights risk as another lens through which to examine regulation, together with competition and market openness, and one perhaps more relevant to early 21st century concerns. The report states that at present, Canada lacks federal risk assessment standards and guidelines. Government regulations have cumulative and unintended impacts, making an interdepartmental perspective necessary if a co-ordinated strategy is to be achieved. This process will involve priority ranking, analysis of how and why risks are expected to evolve in the future, an understanding of the choice of instruments and of their impact when implemented, and measures to assure compliance. In the final analysis, risk management is about good judgement which over time builds trust between government and society.

Implementing an effective regulatory policy is complicated by the fact that it is a horizontal policy which cuts across other policies, and often comes up against a traditional “stovepipe” institutional architecture for policy making (that is, one in which horizontal connections between different ministries are relatively undeveloped). Competition from other, more established, easily identifiable and understandable policies (fiscal or environmental policy for example) can blur its importance. Regulation is not a specialized function; neither can it be pursued if each sectoral ministry considers that regulation is only a by-product of its activities.

Policy making increasingly requires solutions that cross ministerial boundaries, because of policy interactions, and the need for trade-offs to deal with policy conflicts. Dealing with these interactions and conflicts is difficult. Some interactions are not easy to spot or anticipate. Policy conflicts do, however, need to be managed. Achieving the right balance between different and sometimes conflicting policy goals is a recurring challenge. So rapid has been the expansion in the scope and objectives of regulatory policies that they may try to adopt too many quality criteria in pursuit of too many goals. The requirements of the policy may exceed the capacity of regulators to respond coherently and in a timely fashion. Moreover, many policy goals involve inherent conflicts. Which goals will be considered paramount? The problem of pursuing multiple objectives gives rise to pressures to put more emphasis, at least today, on improving the business environment. But is this a short-term objective which will be superseded by something else in two years’ time? How can consistency be achieved over the medium term? From this perspective, the title of this conference is itself an oversimplification: the challenge is to cope better with complexity and evolving agendas. I raise these questions because they cannot be answered at the technical level, but instead require political guidance.

Ways of doing this might include the identification of recurrent policy “trade-off” problem areas and developing a stronger awareness of how specific policy goals interact; strengthening the intra-governmental cooperative arrangements for dealing with these areas; and last but not least, ensuring that regulatory tools such as RIA are deployed to help find a way forward. Regulatory policy can help to tease out the balance which may need to be struck between policy goals.
2. Building capacities for regulatory quality: where do OECD countries stand today?

Regulatory policy

The 20 country reviews conducted by OECD since 1998 demonstrate that regulatory policy still needs recognition as a field in its own right. The scope and quality of regulatory policies across the OECD remains uneven. Though some countries have made considerable progress, many countries still only have fragmented elements of a regulatory policy in place, some dating back many years.

Regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and incorporate a regulatory management system that will track and promote regulatory quality. It is a core government policy with a legitimate place as a permanent, ongoing role of government.

To be effective and influential, regulatory policies need to link up a range of issues and processes. They should incorporate explicit goals or targets with regular reporting requirements. Key principles should be articulated, notably the broad scope of regulatory quality to support social welfare and public policy goals, not just sectional interests (when confined to the latter, regulatory policy is vulnerable to capture). Resources must be allocated to promote regulatory policy, for example to central oversight bodies, which need adequate authority for their tasks such as the formal oversight of RIA. Measures including sanctions must be built in to ensure compliance with regulatory quality processes and tools.

Regulatory institutions

Regulatory policy needs to find its place in a country’s institutional architecture, a context which remains complex and fragmented. The 20 OECD country reviews of regulatory reform carried out to date paint a picture of a wide range of institutions with regulatory functions or influence, which therefore need to be harnessed to the regulatory quality agenda. Many are long established, some are new, some have a new or evolving role. Some are helpful to regulatory quality, others less so. Fragmentation, both in terms of policy purpose and effective coordination arrangements, is often a problem. How can all relevant institutions be encouraged to support the regulatory quality agenda? What role should each have, taking into account accountability, feasibility, and balance across government? The need for some form of central mechanism to promote regulatory quality (which goes beyond the simple coordination of existing bodies scattered across government) appears to be essential if durable progress is to be made.

Central oversight bodies for promoting regulatory quality: probably essential but often difficult to establish

The relationship between an effective, comprehensive regulatory policy and the existence of a central oversight body appears to be strong. They are mutually supportive, and where one exists, the other is usually also present. Central bodies going beyond improved coordination between existing bodies are therefore probably essential in some shape or form. These bodies help to ensure that regulatory quality principles are successfully applied. They can perform a number of different functions to that end: an advocacy role, a challenge function (the critical assessment of RIA), and practical and technical support for the application of regulatory tools. Too much should not be expected of RIA. There is a political dimension to RIA. The selection of issues or effects to be assessed is a political decision. And the use of ex-post evaluation should imply that the results will influence the design or revision of regulations in the future.

Quality control of regulations needs improvement, through enhanced challenge and oversight functions. A central pillar of regulatory policy is the concept of an independent body assessing the substantive (rather than the legal) quality of new regulation, and working with ministries to ensure that they comply with the quality principles embodied in the assessment criteria. The regulatory challenge
function centres on this ability of the oversight body to question the technical quality of regulatory impact assessment and of the underlying regulatory proposals. To perform these tasks, the oversight body needs the technical capacities to verify the analysis of impacts, and the political power to ensure that its view prevails in most cases, rather than being over-ridden.

At the same time a careful balance needs to be struck: too much concentration of responsibility, authority and expertise in one place may undermine interest, commitment and responsibility in the different parts of government that occupy the regulatory “frontline”. The different functions may be split between a technical unit and a body with ministerial and/or external representation. Experience suggests that central units are best placed in (or report to) the centre of government, preferably close to traditional management functions such as budgeting, rather than in a line ministry which is likely to be too closely linked to specific policy and regulatory functions. Seconding staff from powerful existing ministries such as Finance ministries so as to establish “ownership” is often helpful.

Outsiders to government and ministers are powerful levers for increasing effectiveness, especially as regards advocacy. Advisory bodies have been created in some countries which are external to the administration and hence to vested interests. Ministerial committees may be set up with outside participation. But what these bodies look like and where they are will depend on the country context and the need to work with its existing structures. Different models exist and are evolving. Japan and Mexico provide interesting examples.

Some countries question the concept of central bodies for regulatory quality promotion as well as the need for an explicit comprehensive regulatory policy. In large countries they may be easily perceived as undermining or rivalling other more established centres, as well as raising a possible threat to the potential for ministerial discretion. In small countries, with small homogeneous societies, and close and informal networks of contacts within government and society based on mutual trust, central bodies may be seen as unnecessary.

Different approaches have been taken across OECD countries in recent years, which makes this an interesting arena of innovation in governance. Many countries have developed new specialist bodies, both inside and outside the administration. But these developments are far from universal. Even where they are set up, they usually have to fight their way in to existing structures and interests, and often lack adequate resources and authority. They occupy an uncertain place, somewhere in the executive, cutting across many different vested interests within the executive and elsewhere, as well as traditional conventions of ministerial and departmental autonomy and the direct political accountability of ministers. So they are necessarily controversial, and may face some hostility from established interests. Also their relevance and importance is often not clear to other players because of the lack of understanding of the nature and breadth of the regulatory quality agenda. The challenge is to find a balance between co-ordination and centralisation.

Central government institutions: understanding their perspective and contribution

The institutional architecture of central government raises key issues for the coordinated promotion of regulatory quality. With or without central oversight bodies the different parts of central government each have a key role to play in supporting the regulatory quality process.

• The executive. Strong existing central government institutions and traditions exist in all countries. This includes all individual ministries, but in particular ministries such as Finance, Justice, and Trade and Industry, which will continue to retain central responsibilities closely linked to the regulatory quality agenda. The executive is also a key source of regulation, both in terms of proposing new laws to parliament, and setting secondary rules to give effect to primary legislation. Other longstanding actors with an important role in regulation may also need to be taken into account.
• The legislature. Parliaments have a formal responsibility to vet and agree primary legislation. They need to be more closely integrated into regulatory quality systems and processes, which are generally much less readily available to the legislature. Approaches to this could be strengthened. Some countries for example have built up specialised committees for specific issues, such as EU legislation. Aligning the approach taken to scrutinising legislation with the regulatory quality approaches adopted in the executive is promising, as they should be mutually reinforcing. Parliament for example needs to be able to take account of information obtained through RIA. Parliaments can sometimes lead on regulatory quality issues, and appear generally to be taking a more active interest in regulatory quality and supporting tools such as RIA. The training needs of newly elected members may need to be reviewed and strengthened.

• The judiciary. They are an important influence on the regulatory process because of their key role in enforcing the rule of law. For example timescales for the judiciary’s decisions, and the relative ease or difficulty with which rules can be challenged, are relevant factors. A close working relationship with regulatory institutions helps to smooth out difficulties.

• Others. Two should be highlighted. National audit offices have emerged in many countries as valuable allies for the promotion of regulatory quality, progressively widening their role. They now often play an important role, beyond accounting for the efficient use of resources, in assessing the performance of the administration, including the effectiveness of implementing regulatory regimes. They focus on whole areas of policy and on outcomes, so they help to fill the gap of current regulatory quality approaches which often fall short on this. They have an advantage too in being independent from government (usually reporting to parliaments), transparent in their work and with a remit to operate in a wide range of areas. Secondly, national ombudsmen play an important role in reinforcing democracy, by promoting administrative accountability.

The importance of subcentral governments has emerged clearly in the reviews. Local governments are of increasing importance in unitary States, including historically strong ones. There is an increasing awareness of the importance of the federal/state interaction in federal States. These are positive general developments as they help to release local initiative in the management of the economy and society, and bring government closer to the citizen. Regulatory quality needs to be systematically cascaded through the different levels of government. Failure to carry out effective regulation at one level of government can undermine efforts elsewhere.

A multi-level perspective: increasingly important but a very imperfect link with the regulatory quality agenda

In a few countries local governments have been active agents for improving regulatory quality, sometimes even the drivers. But other countries still have some way to go in improving their regulatory framework at the local level.

Concerns about rule-making quality at the local government level do not get the attention they deserve. Businesses and citizens often encounter problems related to land use planning and construction decisions, which usually are taken within a regional or local regulatory framework. Public procurement, often carried out at local level, can raise issues for foreigners and others too, if processes are not transparent. The creation of new local rules is often not subject to central disciplines such as RIA. There is often a lack of resources and training to promote more effective rule-making. Procedural delays and gold-plating are two common phenomena. Compliance and enforcement are another issue. Who monitors compliance and enforcement of national rules at the local level? The number of local entities and the number of layers has been picked up as an issue in some countries. Are there too many local entities for...
efficiency? Is there an issue of duplication and overlap? Some overlap is unavoidable. Effective coordination/cooperative arrangements need to be in place. But the reviews suggest that there also a need to avoid too many arrangements, or too few.

What should be devolved? The importance of deploying appropriate levels of government for policy areas and articulating their role will differ according to the policy area. This is important both for the efficiency of the economy, and the effectiveness of government action. For example the OECD PISA study suggests that successful education systems are those which combine standardised central targets for educational outcomes, with decentralised flexibility and responsibility for how to achieve them such as teacher recruitment and school management.

At a more strategic level it is important to achieve the right balance between central authority and local autonomy. Decentralisation in unitary states inevitably saps some of the driving force behind action by central governments, as the levers of power must be shared. A strong and strategic direction for regulatory quality must be retained at the centre. At the same time, useful innovations are at least as likely to emerge in cities and regions.

Japan has launched a significant innovation in this regard. The creation of special zones for structural reform is intended to ease the regulatory burden on a given sector. Municipalities choose the measures they want to try out. Prefectures, businesses or local governments can submit proposals to the central government, which can grant a derogation. The objectives must be measurable, and they must be subject to evaluation. There is an ad hoc body, headed by the Prime Minister, responsible for promoting, coordinating, evaluating and monitoring experiments under the programme. Once a year, this body reviews the evaluations, and takes a decision whether to diffuse a local measure of deregulation – or exemption -- nationally, and permanently. This process could be accelerated. This promising combination of top-down and bottom-up processes meets the three criteria for an effective regulatory system: it has support at the highest political level; it contains explicit and measurable regulatory quality standards, and it provides for a continuing regulatory management capacity.

The multi-level dimension is especially relevant in the European context. Many regulations which are known to compromise labour mobility and entrepreneurship relate to housing, land use and the environment, regulations which are either set or are enforced at regional and local levels, where analytical capacities are often under-developed, and where compliance and enforcement can leave much to be desired. It is not unheard of for regional and local governments to use regulation to insulate their economies from competition. For political and sometimes constitutional reasons, national governments are often unwilling to tackle these regulatory obstacles to resource allocation and investment.

**Dealing with the challenges which may be raised by different governance systems**

Values, public policy goals, institutions and legal systems vary across countries and affect the way regulatory quality can be built up in practice. They have deep roots in historical, cultural and political development, as well as geography. They contribute to the democratic process and accountability of a country’s political and policy making system, and are the glue that binds societies together. Regulatory policy, tools and institutions must therefore be adapted, and differences acknowledged, as these are integral part of distinctive societies.

Regulatory policy is not therefore a question of “one size fits all”. But the value systems and governance of a country may be reflected and taken forward in regulatory systems and processes which can be unhelpful for regulatory quality. Issues include changes which are too slow and gradual for the needs of an evolving society and economy. For example consensus building, for all its other merits, may slow change and prevent the adoption of more radical but necessary options. Consensus based decisions
may also mean a relative disregard for the practical evidence of what might work best. The exclusion of outsiders from traditional consultation processes aimed at building consensus, often unintentionally, can be another issue. Another set of challenges arises from the different role traditionally attributed to the State in OECD countries, and different attitudes regarding the scope and influence of competition policy in managing the economy.

3. Implications for the European Community

The European Union does not need a structure for regulatory policy that mimics the structures of member countries, but it faces many of the same challenges in this policy arena which individual countries confront. In particular, it must address the low priority given to considerations of regulatory quality by sectoral departments. Are regulatory quality principles expressed clearly? Is there adequate institutional and strategic support to sustain the policy? How can co-ordination among different directorates which have separate policy and sectoral responsibilities be improved? In this regard, at the European as at the national level, there is a need to focus better on the complementarity between a legal approach, which emphasizes the basis for a regulation, and an economic approach, which emphasizes outcomes assessed against costs and benefits. This has implications for the process by which regulations are designed, including the framework for consultations, and for public information. Finally, the dynamic approach to regulation calls for systematic efforts to review existing regulations at the same time as new regulations are adopted. How are the lessons of evaluation incorporated into this process? And what mechanisms and criteria exist for evaluation? What regulations will be subject to regulatory impact analysis (RIA) and what units will have the responsibility for overseeing that the process is carried out to a high analytical standard?

Taken together, this agenda highlights a crucial challenge for regulatory policy: to encourage cultural changes within regulatory institutions. The adoption of a new or non-traditional approach, including the use of alternative tools to “command-and-control” regulations, may involve a risk to the regulator that is greater than his political comfort-level. Improving the policies and institutions for regulatory quality therefore depends in part on other measures to build regulatory capacities throughout an administration and to improve public understanding. The test of course comes when applying principles in practice: how can pursuit of regulatory quality lead to the choice of better policy instruments, those which are more efficient and effective?

Two interlinked issues will determine how progress is made toward regulatory quality in the European Union: how well regulatory systems function in member counties, and how well they function in the institutions of the European Communities. There is of course no single model for either. The experience of OECD countries is however telling in five respects: first, major change often comes only in response to a crisis; second, countries with a highly inferior regulatory policy and an inadequate set of regulatory institutions can make rapid progress; third, piecemeal reforms have less impact than a whole-of-government approach; fourth, member countries are increasingly engaged on similar issues, making the diffusion of international best practice and of innovation faster and easier; and fifth, institutions do matter.

4. Conclusion: structural reform and regulatory reform

Structural reform is a priority in the effort to promote sustainable economic growth. As a complement to sound macro-economic policies and when joined to good governance practices for transparency and accountability, structural reform can help shift economic activity to higher value-added production and services, encourage the use of appropriate and new technology, and make better use of human capital. Although there are always adjustment costs, an economy which generates more jobs and better jobs is able to offer more opportunities to people who may be affected.
Regulatory reform is key in structural reform. Consistent with evidence that improved governance precedes income gains, regulatory reform promotes a high quality legal and administrative environment needed for competition, investment and trade. Regulatory reform is not a one-off policy action; it must be sustained as a dynamic process in the search for better regulatory tools. The main objective is to put more emphasis on performance and *ex-post* evaluation than on *ex-ante* controls. Countries start at different points. In some, the emphasis on the legal quality of regulations needs to be tempered by greater consideration of economic criteria; in others where the rule of law and compliance with good public governance principles are weak, more emphasis on rule of law, not less, may be needed first.

The dynamic gains from structural reform have been seen in many countries in telecommunications, transport and energy: lower costs, greater reliability, more choice for users, and investment for future capacity. Sectors using these network utilities benefit for their own operations. If the gains can be so impressive, why is there resistance to regulatory reform? The costs would be felt in the short term, the benefits realised only in the future. Entrenched monopolistic interests and bureaucracies with an administrative control culture can be single-minded in their defence of the status quo, whereas those who would benefit from reform are often diffuse, poorly organised, and without a voice in government.

OECD countries have made progress simplifying complex requirements, making public policy goals explicit, identifying priority sectors for reform, building confidence for citizens and entrepreneurs, and providing leadership from and accountability at the centre. Gains have been uneven, however. The countries that have made the most progress are those that had been the most restrictive. There is a more coherent, whole-of-government approach in the most advanced countries, suggesting that the friction associated with reform is less. Countries with high levels of state control tend to maintain a lot of administrative and licensing procedures that discourage entrepreneurship; countries with barriers to trade and investment are more likely to have barriers to domestic competition. In the final analysis, good regulatory design matters.
Current Regulatory Reform in Korea

Mr. Shin Kim, Director, Regulatory Research Center, The Korea Institute of Public Administration

1. Historical Background of Korean Regulatory Reform

Since the 1960s, Korean made economic growth its top priority and embarked on a path towards rapid development. The development program was initiated by the government, because the private sector was unable to participate at that time. As the private sector matured in the 1980’s, excessive intervention by the government and the regulations that followed as a result of such intervention were seen as obstacles to productivity and national competitiveness.

As a legacy of the excessive government intervention, there are many outdated and redundant regulations. Some regulations were introduced decades ago and have now become obsolete. A large number of regulations are redundant, overlapping with other regulations. Many regulations are unrealistic, resulting in a low number of regulations being put into practice and a high cost of implementing them.

Consequently, regulatory reform is needed to reduce costs and improve Korea’s competitiveness by promoting creativity and fair competition. In addition, the quality of life needs to be improved by removing obsolete or redundant economic regulations while revising essential social regulations concerning health, the environment, and safety.

2. Goals and Strategies of Regulatory Reform

The Korean Government started regulatory reform in the 1990s but had limited success because it lacked a systematic approach. To pursue regulatory reform more systematically throughout the government, the Basic Law on Administrative Regulations was enacted in 1997. Based on this law the Regulatory Reform Committee was established under the President in 1998.

The goal of regulatory reform in Korea is to create a business-friendly and life-enriching environment through enhancing effectiveness and transparency of regulations. In order to obtain the goal, three main strategies are developed: 1) revising existing regulations, 2) reviewing new and amended regulations, and 3) resolving complaints. The details of strategies are shown at the following graph.
3. System of Regulatory Reform

The Regulatory Reform Committee (RRC) of the Korean Government took a centralized approach to regulatory reform. It plays a leading role in carrying out regulatory reform in Korea. Any new or amended regulations are subject to review of the committee. The committee decides whether or not to make any revisions. The RRC is co-chaired by the Prime Minister and a civilian. The committee consists of twenty members including two co-chairmen; seven from the government and thirteen from private sectors. There are three subcommittees (two economic and one administrative/social subcommittees).

Each government ministry and local government established their own regulatory reform group to review regulations that are either to be introduced or amended as shown in (Figure 2). The group plays an advisory role to help ministries make decisions regarding regulations.
An important role of the RRC is to establish comprehensive reform plans in order to improve existing regulations. In addition, the RRC reviews new or amended regulations either to secure their effectiveness or to curb the increase of regulations. The procedure of reviewing process is shown in Figure 3.
4. Major achievements and key success cases

1) Achievements and Outcomes

The Regulatory Reform Committee achieved the following outcome after its establishment in 1998.

- Radical Reform of Existing Regulations

Former President Kim Dae-Jung had a strong will to carry out regulatory reform. The RRC reviewed almost all the existing regulations and abolished more than half of nearly 11,000 existing regulations in 1998 and 1999. Soon, however, the number of regulations began to increase around 7,800 when the Korean Government worked to improve social welfare and safety standard.

- Revision of Redundant Bundled Regulations

Since 1999, redundant bundled regulations that had existed in 151 areas were selected for revision. Regulations were reformed for business associations and national licensing practices, redundant regulations were streamlined for industrial safety, and regulations for entertainment businesses were amended.

- Review of New or Amended Regulations

Every year, the RRC evaluates an average of 1,000 new or amended regulations and abolishes or streamlines 300 or 400 ineffective regulations. The preliminary review of regulations prevents unreasonable regulations from hindering businesses and the public and from weakening national competitiveness.

- System Providing One-stop Service

A system was created to deal with business difficulties or complaints effectively. Through discussions with five business associations and consultations with local entrepreneurs, the RRC finds and resolves corporate difficulties and complaints. From 2000 to April 2004, 635 suggestions were submitted to the RRC and improvements were made to 414(65.2%) of them. Since April 2004, Corporate Difficulties Resolution Center was set up and led by the Prime Minister to provide a one-stop solution service for clients. The center is primarily engaged in resolving long-standing corporate complaints involving several ministries.

- Complete revision of regulations without legal basis

The RRC is revising regulations that are not based on higher level laws, unclear regulations, or regulations exceeding the scope of the high-level laws on which they are based. The committee found 2,382 regulations without legal basis and abolished 2,048(86.0%) of these regulations and left 334(14.0%) to establish a legal basis.

- Removal of Quasi-regulations

Quasi-regulations are based on the statutes or internal regulations of public organizations and often cause inconvenience to people. Of these regulations, 1,857 were eliminated and 627 were revised.
2) **Key Success Cases**

- Revision of regulations hindering foreign investment

  The RRC encouraged foreign investment by removing a preliminary approval system for foreign investment, opening industries previously closed to foreigners, and loosening restrictions on factory construction in Seoul metropolitan.

- Improved customs procedures for trade

  By drastically reducing customs regulations for imports and exports and simplifying customs procedures, the RRC shortened the customs clearance period from 16 to 5 days. This reduced cost for businesses and helped improve national competitiveness.

- Relaxed licensing regulations for professionals such as lawyers

  The RRC loosened entry barrier regulations for professionals as applicant pools were widened and standards for creating corporations were relaxed. This led to the training of more professionals which spurred competition and better service.

  **Number of tax accountants:** 301 in 1998 to 717 in 2003
  **Number of CPAs:** 511 in 1998 to 1,003 in 2003

- Switching from a registration system to a reporting system in the movie industry

  A reporting system was adopted for the movie industry, while a deposit requirement was discarded. This helped raise the number of movie companies and increase the market share of domestic movies.

  **Movie companies:** 367 in 1999 to 1,535 in 2003
  **Market share of domestic movies:** 36.1% in 1999 to 48.1% in 2003

- Removing entry barrier regulations in the liquor manufacturing industry

  The RRC eased entry barrier regulations for liquor manufacturers by removing a ban on small beer manufacturers and new manufacturers of coarse liquors. This promoted the development of new alcoholic drinks, and led to a wider selection for consumers.

  - Introducing a nationwide system for car license plates

    The requirement for local license plates was replaced by national license plates, which would save car owners nearly 31 billion won a year and reduce unnecessary work for administrative organizations.

5. **Recent Focus of Regulatory Reform**

1) **From Supplier-Oriented to Consumer-Oriented Reform**

   The Korean government, focusing on consumer-oriented regulatory reform, created the Regulatory Reform Task Force Team(TFT) in August 2004. The TFT is operated for two years with private participation (25 non-government personnel, 26 civil servants) to improve drastically bulk regulations (regulations that extend over many ministries) and improve entirely existing regulations from the users' perspective. The TFT is headed by the Deputy Minister for Regulatory Reform, and separate from Regulatory Reform Committee, the TFT is reforming existing regulations.
Until now, based on suggestions made by businesses, 65 strategic tasks have been selected (see attachment). Quarterly implementation plans are established and reported concerning the selected strategic tasks. Especially, regulations related to reviving the economy and creating jobs will be improved before all else. Emphasis is placed on solving problems that are felt in the field, through field fact-finding surveys, and gathering of opinions of businesses and other interest holders.

Another effort to satisfy consumers is the creation of a Business Difficulties Resolution Center. In order to resolve difficulties faced by businesses in their activities due to unreasonable laws, ordinances and systems, or due to unreasonable actions by responsible civil servant, the center was established in the Office for Regulatory Reform in April 2004 with 11 working members.

As of June 20th, 2005, 598 cases were received and 557 cases have been resolved. Of this, settlement measures for 356 cases accounting for 64% of total cases have been found. Through the operation of the center, business satisfaction has been enhanced, and it has also been assessed to have contributed to encouraging active handling of civil applications by ministries and local governments.

In addition, to meet the demand of foreign companies in Korea, regular consultation with foreign businesses is set up. For example, working level meeting has been arranged with the American Chamber of Commerce in Korea. Such consultation will be expanded to companies from European Union and other countries.

In the future, difficulties felt by businesses will be actively identified by visiting business sites and through other measures, and procedural efficiency of receiving and handling difficulties will be enhanced and improved.

2) From Quantitative to Qualitative Reform

At the Regulatory Reform Ministerial Level Meeting presided over by the President in August 2004, with the participation of all ministries, it was decided that all regulations should be examined and improved from zero-base to improve regulatory quality. As a result, a separate regulatory reform team was formed within the Office for Regulatory Reform in April 2005.

Each ministries, based on tasks suggested and proposed by businesses and the public (569 cases), are selecting and reviewing regulations for self-reform among all regulations under their responsibility. Overall, a thousand or so cases have been selected for improvement, and major improvement efforts will be made in 2005.

As of end of April 2005, the number of completed tasks of the plans set up by the ministry reaches 403 cases. The progress of implementation will be checked quarterly, and the results will be comprehensively assessed at the end of the year. Through such efforts regulatory reform will be carried out thoroughly.

3) From Uni-Dimensional to Multi-Dimensional Reform

Amid increasing regulations imposed by quasi-public organizations that have real impact on the public due to increased administrative operations commissioned. Regulations that give inconvenience to public life or unfairly burden to members in the operation process of quasi-public organization will altogether be subject to examination and improvement from a zero base, starting first half of 2005 at the office for Regulatory Reform.
Of the various regulations such as the article of incorporation of organizations, all regulations with external effects are examined. They include restraints on members and unclear commissioned regulations, regulations for administrative convenience, and excessive regulation imposed on the public etc.

Five hundred twelve quasi-public organization's quasi-administrative regulations were identified, and 269 cases were abolished and 763 cases were improved. For example, free withdrawal of members have been allowed and approval system that was required by competent Ministry for election of executive at association were abolished. Furthermore, ministries will inspect and monitor the operation of articles of incorporation of affiliate quasi-public organization at all times so as to identify improvement measures.

6. Future Directions of Regulatory Reform

1) Regulatory Reform Tasks

Despite the progress made in regulatory reform, the government still faces a number of tasks as follows.

- Need for more perceptible regulatory reform

Business and the public do not appreciate the progress in regulatory reform and demand further effective reforms in areas of priority.

- Reducing cost and time due to regulations

The cost and time needed to implement regulations should be reduced even for necessary regulations

- Better quality control for regulations

Regulatory impact analysis should be more quantitative and systematic, and cost-benefit analysis should be executed through a more concrete and rational method for new or amended regulations.

- Seeking Alternative Means to Regulations

In order to achieve their goals, administrative organizations still prefer direct regulations to alternative means such as economic incentives or voluntary agreements. This tendency needs to be changed soon.

2) Improving Quality of Regulations

Rather than merely trying to reduce the number of regulations, the government will take a qualitative and strategic approach to regulatory reform.

- Zero-base approach to bundled regulations

The Korean Government will review regulations on a wide scale and will review existing regulations in particular from a zero-base. A “regulatory map” will be made to enhance public understanding on bundled regulations

- Reducing regulatory cost, time and procedures through business process re-engineering, and by applying the sunset law.
The quality of regulations will be improved through business process re-engineering even for existing regulations to reduce cost, time, and procedures, and direct regulations will be replaced with alternative means. Regulatory compliance surveys are conducted periodically and regulations with low compliance will be repealed or revised. In addition, a sunset law (3 to 5 years) will be strictly applied.

- Improving efficiency and professionalism in reviewing new and amended regulations

Regulatory impact analysis will be improved by operating a specialized research center and also by benchmarking case studies of western countries. The Regulatory Reform Committee will recruit more law specialists and conduct cost-benefit analysis to improve regulatory reviews and will expand cooperation with international organizations.

- One-stop service for resolving public claims

A system that provides one-stop service will help resolve complaints regarding regulations. The system will provide the basis for improving regulations. The Corporate Difficulties Resolution Center will actively pick up and resolve corporate difficulties of complaints.

- Strengthening the monitoring and evaluation of regulatory reform

To improve feedback, implementation of regulations and regulatory reform will be monitored at each level of government. In addition, to measure the effects of regulatory reform, a “regulatory reform performance index” will be developed and introduced in 2005.
Using the APEC-OECD Integrated Checklist in Assessing the Competition Policy and Law: The Case of Peru

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I. INTRODUCTION

Structural reforms have become a key component in building market-oriented economies conducive to sustainable growth and welfare patterns. An integral part of these reforms has been the design and implementation of competition policy and law aimed at enhancing economic efficiency and consumer welfare. In recent years, individual countries have made considerable efforts in implementing legal and institutional frameworks in the sought of discouraging anti-competitive practices and achieving an effective competition law enforcement. The era of globalisation has, in addition, favoured the surge of collectively endorsed principles and recommendations in order to support sound and coherent competition law across countries.

The benefits that may derive from an internationally-coordinated approach have clearly been recognised in the recent work carried out by the member economies and countries of the Asia Pacific Economic Cooperation (APEC) and the Organisation for Economic Cooperation and Development (OECD). In effect, a joint APEC-OECD initiative in the structural reform arena has led to the development of a voluntary policy tool helpful to provide a point of reference and share best international practices in order to improve domestic structural reform-related policies, including competition policies. This tool is the so-called APEC-OECD Integrated Checklist on Regulatory Reform.

This paper is aimed at exercising a self-assessment of the competition policy and law in an APEC member economy –Peru- taking into account the combined competition policy and law principles and recommendations contained in the APEC-OECD Integrated Checklist on Regulatory Reform. The paper is organised as follows. Section 2 provides the general reader with an overview of the competition law and authority in Peru. Section 3 summarises the general scope and contents of the APEC-OECD Integrated Checklist on Regulatory Reform. Section 4, which is the core of the paper, exercises a self-assessment of the competition policy and law in Peru by using the principles contained in the above-mentioned tool. Section 5 closes the paper by stating some concluding remarks.

II. COMPETITION LAW AND AUTHORITY IN PERU: AN OVERVIEW

Legislative Decree Nº 701, commonly known as the Free Competition Law in Peru, was enacted in November 1991. This competition law is intended, as stated in Article 1, to “eliminate monopolistic practices, controls and restrictions of free competition in the production and marketing of goods and services, so that private enterprise can flourish for the greatest benefits of users and consumers.” This law is applicable to all economic sectors.

1. The contents of this paper was originally presented by the author at the APEC-OECD Structural Reform Capacity Building Symposium, held in Gyeongju, Korea, on September 9, 2005.
2. Peruvian economist graduated at the Pontificia Universidad Católica del Perú with a master’s degree in economics from the University of Toronto, Canada. The author is currently Head of the Institutional Policy Development Office at Indecopi, the competition authority in Peru. The author is grateful to a number of his colleagues at Indecopi for their helpful comments on earlier drafts though the usual disclaimer applies.
3. This and below-referred legal instruments can be obtained from Indecopi’s website: www.indecopi.gob.pe
4. In the telecommunications sector, this law is also applicable but the sectoral regulator (Osiptel) exerts, at the same time, the role of competition law enforcement.
Articles 3-6 are the core of the law. Article 3 bans all conduct related to economic activity that constitutes an abuse of dominance or that restrains free competition which adversely impact on the general economic welfare. Article 4 defines dominance and Article 5 describes practices that may be considered as an abuse of dominance. Finally, Article 6 describes anticompetitive practices, that is, the agreements and other practices that do or may restrain free competition.

The current competition law does not have provisions that require advance notification of mergers or acquisitions, nor does it ban mergers or acquisitions that are or are likely to be anticompetitive. There is another law —Law No. 26876— which establishes a merger control regime exclusively for the electrical energy sector; this law is also enforced by the competition authority.

Law Decree No. 25868, enacted in November 1992, established the National Institute for the Defence of Competition and the Protection of Intellectual Property (Indecopi). This legal instrument provided Indecopi with the role of being the competition authority in Peru. It should be noted, however, that Indecopi is not only the competition agency in Peru; it also embraces a number of other roles: it is the national authority for the protection of consumer rights, and for the protection of intellectual property rights (i.e., patents, trademarks, and copyright), administers the national standardisation and accreditation system and the national metrology system, and investigates dumping, subsidies, and safeguards practices related to foreign trade. The organizational chart of Indecopi is depicted in Figure 1.

Within the organizational structure of Indecopi, there are two quasi-jurisdictional bodies directly related to the enforcement of the Competition Law: the Free Competition Commission (CLC, according to its Spanish acronym), which is the first administrative instance, and the Defence of Competition Chamber (SDC), which is the second administrative instance in charge of handling appeals from CLC. However, taking into account a broader definition, there are other first-instance commissions whose activities have competition-related implications, namely: Market Access, Unfair Competition, Consumer Protection, and Antidumping.

Considering not only the direct budget but also the corresponding share out of the total cost of Indecopi’s administrative organisational units, in 2005 the budget of the five competition-related commissions and SDC totals US$3.4 million. Upon breaking down these figures, CLC totals US$428.507, equivalent to 4.4% of total Indecopi’s budget, while SDC has an annual budget of US$1.195.504, or 12.3% of total 2005 budget. That is, both bodies directly related to the enforcement of the Competition Law account for as low as 16.7% of total annual budget. With respect to the number of personnel, considering

5. This Law Decree, known as Indecopi’s Organization and Functions Law, partially amended the 1991 Competition Law. In turn, the functioning of Indecopi has been amended by a number of other legal instruments, namely: (a) Legislative Decree No. 788, which declares Indecopi’s reorganization, enacted on December 31, 1994; (b) Legislative Decree No. 807, Indecopi’s Functions, Regulations, and Organization Law, enacted on April 18, 1996; and (c) Law No. 27146, Strengthening of Equity Restructuring System Law, enacted on June 24, 1999.

6. See Article 2 of such a Law Decree.

7. It should be noted that SDC also handles appeals from other six Commissions, namely: Market Access, Unfair Competition, Antidumping, Consumer Protection, Standards, and Market Exit.

8. All of these budgetary figures also include earnings of non-full time commissioners and SDC decision-makers.

9. If we add the budget of the Market Access Commission, which deals with anti-competitive government regulations as will be discussed later on, amounting US$370.708, these three bodies account for 20.5% of total 2005 budget.
only professional or quasi-professional staff, as of September 2005, CLC had 10 full-time staff members, while SDC had 23 full-time staff members. It should be borne in mind that the above personnel figures do not comprise non-full time members of CLC (six commissioners) and SDC (five decision-makers in addition to the President). The above-mentioned figures clearly denote that Peru devotes very limited financial and human resources to the work directly related to the enforcement of the Competition Law done by the competition authority.

Indecopi is governed by a three-member Board of Directors that has as one of its duties to select the people who serve as Indecopi’s non-full time Commissioners. Its Chairman and one other member are appointed by the President of the Council of Ministers (PCM), who depends on the President of the Republic, and the third member is chosen by the Minister of Economy and Finance (MEF). The Chairman is Indecopi’s highest officer and a full-time server. He is appointed for a five-year term though, being a position of trust, he is subject to removal without cause as stated by a 1994 amendment of Decree Law Nº 25868. He is in charge of overseeing the agency’s day-to-day operations (remember that Indecopi is not solely a competition agency) and implementing policies shaped by the Board of Directors. In addition, the organisational structure comprises an Advisory Council which has very recently restarted duties.

As stated above, the competition law enforcement is in the hands of two quasi-jurisdictional bodies within Indecopi. The highest one is the Defence of Competition Chamber (SDC, by its Spanish acronym), which is in turn a branch of the so-called Tribunal for the Defence of Competition and Intellectual Property. Members of the Chamber are nominated by Indecopi’s Board of Directors and appointed by the President of the Republic. Officially, the Chamber is an independent body of Indecopi with respect to the handling of cases. The original law protected this independence by providing that Chamber’s decision-makers could be removed only for cause, but a 1994 amendment allows removal without cause because they are positions of trust, provided that both the Board of Directors and the Advisory Council give a favourable opinion. The presidency of the SDC is a full-time position while the other decision-making positions within the Chamber are part-time.

In the case of CLC, which is the quasi-jurisdictional body on the first instance, the six commissioners are non-fixed term, part-time, non-wage servers. The Commission is independent from the Chamber in its handling of individual cases except that it must follow procedural guidelines and mandatory precedents. Commissioners are also nominally independent from Indecopi’s Chairman and Board of Directors, though the Board can remove commissioners without cause at any time.

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10. This figure is broken down as follows: one Technical Secretary (Head), who currently is a lawyer; one analyst (economist), four assistants (three lawyers and one economist), and four interns, known as *practicantes*, generally undergraduate students (two lawyers and two economists). On the side of the Market Access Commission, this body had seven full-time staff members: one Technical Secretary (Head), who currently is a lawyer; three analysts (all of them are lawyers), and three interns.

11. This figure is broken down as follows: one President, who is currently a lawyer; one Technical Secretary, who is currently an economist; one coordinator (lawyer); four analysts (all are lawyers), six assistants (five lawyers and one economist), and 10 interns (10 lawyers).

12. The autonomy of SDC in handling formal proceedings poses the need for a fine tuning relationship between the SDC President and the Indecopi Chairman as far as policy issues are concerned.
The so-called APEC-OECD Integrated Checklist on Regulatory Reform (hereafter the Integrated Checklist) is the result of a joint work, on the basis of a series of focused workshops, carried out by the Asia Pacific Economic Cooperation (APEC) and the Organisation for Economic Cooperation and Development (OECD) since 2000. The main foundation of this work is the recognition that regulatory reform is a central element in the promotion of open and competitive markets, and a key driver of economic efficiency and consumer welfare. The Integrated Checklist, which was approved in 2005, combines the APEC and OECD principles and policy recommendations on regulatory reforms, which in turn reflect the individual efforts of many economies within the APEC and the OECD areas.

The Integrated Checklist is intended to be a voluntary policy tool that member economies may use to self-assess their respective regulatory, competition and market openness reforms. The Integrated Checklist highlights key issues that should be considered during the process of design and implementation of regulatory policy, though it recognises diversity among economies and, consequently, flexibility in the methods of its application. In other words, the Integrated Checklist identifies crucial common elements of reform, but it is clearly understood that there is no a single model of regulatory reform across economies. The Integrated Checklist is a tool which may be useful to those economies interested in moving towards good international practices by assisting policy makers in identifying priorities and options.

The Integrated Checklist comprises four sections. The first is a horizontal questionnaire on regulatory reform which refers to changes that improve regulatory quality to enhance the economic performance, cost-effectiveness, or legal quality of regulations and related government formalities. The other three sections of the questionnaires focus on individual policy areas, and the factors that may be considered to improve their specific design and implementation. These policy areas are regulatory policies, competition policies, and market openness policies.

Regulatory policies are designed to maximise the efficiency, transparency and accountability of regulations. Competition policies seek to promote economic growth and efficiency by eliminating or minimising the distorting impact of laws, regulations and administrative policies, practices and procedures on competition; and by preventing and deterring private anti-competitive practices through effective enforcement of competition laws. Market openness policies are aimed at ensuring that a country can benefit from globalisation and international competition by eliminating or minimising the distorting effects of border regulations and practices. The Integrated Checklist also comprises an important room for government action in order to protect and promote public interest as an integral part of regulatory reforms.

As noted by the organisations supporting the Integrated Checklist, this can be seen as a structure whose “pediment”, or general issues on regulatory reform, is based on three pillars –regulatory policy, competition, and market openness-. The questionnaire comprises open-ended questions that national authorities should answer when considering the design or revision of regulatory, competition or market openness policies. Under each question, one or more paragraphs provide further explanatory elements or criteria. It should be noted that the Integrated Checklist does not either impose a hierarchy on the questions or weight importance to them.

13. This section is based on APEC-OECD (2005).
IV. A SELF-ASSESSMENT OF THE COMPETITION POLICY AND LAW: THE CASE OF PERU

This section uses the competition policy pillar of the Integrated Checklist in order to carry out a self-assessment of the competition policy and law in Peru.14

1. On promoting competition and minimising distorting impact of regulations

To what extent has a policy been embraced in the jurisdiction that is directed towards promoting efficiency and eliminating or minimising the material competition distorting aspects of all existing and future laws, regulations, administrative practices and other institutional measures (collectively “regulations”) that have an impact upon markets?

The idea underlying in this principle is that competition should be fostered to the greatest extent except in those cases of market failure or where other legitimate public interest objectives give room for a new regulation, in which case the competition distorting impact of the regulation should be minimised. The policy to which this principle refers goes beyond a competition law in strict sense. It may comprise a legislation to rule the access of private investment in monopoly sectors along with a regulatory policy,15 as well as to deal with anti-competitive government regulations.

In Peru, the competition law itself does not include provisions to ban anti-competitive government regulations, but there exists a legal framework intended to identify and abolish bureaucratic barriers to market access which ultimately refrain competition and is enforced by the competition authority, thereby meaning the latter compels a regulatory policy in this manner. This legal framework basically consists of Article 26 BIS of Decree Law Nº 25868 (Indecopi’s Organisation and Functions Law, which was enacted by Legislative Decree Nº 807 (Indecopi’s Functions, Regulations, and Organisation Law) in April 1996; Article 48 of the General Administrative Procedure Law; and Law Nº 28032 enacted in 2003 which is intended to the identification and abolition of bureaucratic barriers in favour of competitiveness of economic agents. Indecopi’s Market Access Commission (CAM, by its Spanish acronym) is in charge of its surveillance.

Currently, CAM is allowed to issue technical reports whenever it finds that national, regional or municipal governments have imposed unjustified barriers to access to the market.16 Its reports are sent to the responsible authority who can proceed to abolish or retain the barrier. In the latter case, CAM may carry out a legal action to require its abolition, directly in those cases related to the national government and indirectly, through the Office of the Ombudsman, in those cases related to regional or municipal governments.

A general assessment reveals that most of CAM technical reports led to the elimination of the bureaucratic barrier, either due to an inaction within the established term or a decision to abolish it. Particularly in 2005 the completion of ex officio investigations is higher than in the early years despite the small number of CAM staff members.17 On the contrary, some evidence shows it appears convenient to complement the possibility of CAM to carry out legal action directly, and not through a third party as is now the case, in order to require the abolition of bureaucratic barriers (regional regulations or municipal ordinances) retained by regional or municipal governmental authorities.

14. While this pillar embraces 12 open-ended questions, the last one is not applicable to the case of Peru since it refers to situations with absence of a competition law.
15. A more detailed discussion on this topic lies beyond the scope of this paper.
16. In the 2003-2005 (as of September) period, municipal bureaucratic barriers accounted for 79% of the total number of new investigations, while national government and regional governments did 15% and 5%, respectively.
17. In the 2003-2005 (as of September), one third of the total number of new investigations was ex officio.
2. On the objectives of the competition law and policy

To what extent do the objectives of the competition law and policy include, and only include, promoting and protecting the competitive process and enhancing economic efficiency including consumer surplus?

A competition law with clear, non-ambiguous objectives helps to guide decision-making, thereby enhancing its own effectiveness. Peruvian competition law complies with the explicit recognition of “core” objectives in the sense that the focus is on protecting the competitive process and not on protecting individual competitors. In the case of Peru, as was noted in section 2, the main objective of the competition law (Article 1 of Legislative Decree Nº 701) can clearly be read as intended to promote and protect free competition for the greatest benefit of consumers.

The competition law in Peru does not include non-“core” goals though it should also be said that it does not ban the possibility of including non-“core” competition objectives. The competition authority has shaped a proposal for a new competition law which reaffirms a “core” competition objective for the greatest consumer welfare, putting an explicit emphasis on enhancing economic efficiency.

3. On competition advocacy and resources for this function

To what extent does the competition authority or other body have (i) a clear mandate to advocate actively in order to promote competition and efficiency throughout the economy and raise general awareness of the benefits of competition, and (ii) sufficient resources to carry out any advocacy functions included in its mandate? There is no an explicit mandate in the Peruvian competition law for a competition advocacy function to promote understanding of the benefits of competitive markets, and the value of competition law enforcement. However, the competition authority in Peru –Indecopi- has indeed carried out the role of competition advocacy as an integral part of its functions.

This advocacy includes such tasks as wide dissemination of information on legal proceedings, explicit educational activities with different target groups, analyses and advice provided to governmental institutions on a number of topics, and reports on the subsidiary role of the State with respect to the private sector activity. Furthermore, the performance of other mandates –for instance, protection of consumer rights or fight against unfair competition or implementation of standards or protection of registered trademarks as a means of competition through product differentiation, just to mention a few- has served to complement competition advocacy.

An OECD-conducted peer review on the competition law and policy in Peru reports a research showing that Indecopi’s activities during its first seven years gave rise to economic benefits for the Peruvian economy as a whole as high as six times its operating costs, with the greatest relative contributions explained by the competition jurisdictional instances. However, the increasing number of private disputes involved in cases of unfair competition and consumer protection has in some manner been detrimental of a stronger strictly-speaking competition advocacy. The lack of sufficient resources has also play its part. Thus, there is a need to continue competition advocacy, with a stronger emphasis on strictly-speaking competition cases, for which the before-mentioned constraints should be tackled.

4. On the principle of competitive neutrality

To what extent are measures taken to neutralise the advantages accruing to government business activities as a consequence of their public ownership?

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The principle of competitive neutrality is one by which publicly-owned business activities should not have competitive advantages or disadvantages relative to their private competitors simply due to their public ownership. Competitive neutrality does not mean that government businesses cannot be successful in competition with private businesses but this success should be the result of their own merits and not a consequence of unfair advantages arising from public ownership.

In fact, Peruvian competition law does not explicit this emphasis of competitive neutrality. In Peru the economic model underlying in the Constitution prevents the government from entering a business role unless a number of legal requirements is met, namely the need of an expressed authorisation by law allowing the State to play a subsidiary role in order to fulfil a high public interest. An important share of Indecopi’s competition advocacy has been related to the analysis of to what extent government businesses meet or fail to meet the above-mentioned Constitutional provisions, which have been taken in order to avoid possible grounds for unfair competition from government businesses.

5. **On the autonomy and resources of the competition authority**

To what extent does the agency responsible for the administration and enforcement of the competition law (the “competition authority”) operate autonomously, and to what extent are its human and financial resources sufficient to enable it to do its job? The competition authority in Peru has shown autonomy and technical competence with respect to the handling of cases by both jurisdictional bodies for the enforcement of the competition law. Furthermore, CLC is independent from SDC in handling its cases but must follow procedural guidelines and mandatory precedents, which are absolutely transparent. This autonomy of the competition authority is, for instance, a clear-cut conclusion of the OECD-conducted peer review completed in 2004. However, this peer review also suggests the need of revising legislation for selecting and removing first and second instance decision-makers. The application of transparent selection criteria and removal only for cause applicable to jurisdictional bodies’ decision-makers are recommended so as to ensure Indecopi’s independence.

On the other side, as has been noted earlier in this paper, there prevails a shortage of human and financial resources which adversely affects competition law enforcement. It appears clear that Peru devotes fewer financial resources to the functioning of instances in charge of enforcing the competition law, both in absolute terms and when compared with the situation of other developing economies of similar size. It should be noted that Indecopi’s budget relies heavily on the proceeds from fines imposed and, to a lesser extent, from fees charged. In particular, this financial resource shortage poses severe constraints on an enhanced size and professional calibre of the staff and, consequently, on the possibility of a more extensive action in competition enforcement, particularly in *ex officio* cases.

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19. See Article 60 of the 1993 Political Constitution of Peru.

20. The above-cited OECD-conducted peer review maintains, for instance, that Peru’s GDP is about one-third that of South Africa, but it allocates only one-sixth as many work-years to its core competition mission.
As noted above, the organisational structure of Indecopi is singular in a manner that a single agency concentrates several mandates in addition to competition enforcement. This institutional setting has allowed to keep down administrative costs of small competition units on the grounds that these ones are an integral part of a larger agency. It also appears to be an advantage that this arrangement may be useful to enhance market reform efforts on the basis of a wider perspective. Despite this, seeking proper funding levels and sources for Indecopi remains to be a task to be done.

6. **On the transparency of the role of enforcement decision makers**

*To what extent is the role of enforcement decision makers transparent, especially when there are multiple government bodies involved in decision making, for example, regarding who the decision maker was, factors taken into account by such a decision maker, and their relative weighting?*

The main idea underlying this principle is that transparency in decision making enhances the predictability of enforcement decisions of governmental bodies involved which in turn contributes to promote pro-competitive conducts. Basically, transparency should allow, when there are multiple government institutions involved, to become acquainted with not only the grounds supporting a decision but also from where the decision emerged. As has been explained, the competition authority in Peru has a second instance jurisdictional body in which decisions of the first instance may be appealed.\(^21\) Particularly in recent times, it can be noted an effort to strengthen the degree of certainty and predictability within the administrative arena; moreover, there is a growing emphasis in establishing procedural guidelines and mandatory precedents on the side of SDC that must be followed by CLC.

With respect to regulated sectors, except for the telecommunications regulator, none of the other sectoral regulators exerts competition law enforcement. Even though they are supposed to have a role in promoting competition in their sectors (for instance, the sectoral regulators have exclusive jurisdiction over all access issues according to the Law on Access to Public Infrastructure), it does not appear conclusive how far their views are taken into account when relevant decisions (e.g., issue of licenses and approval of concessions) are made by other government bodies (e.g., ministries). Thus, as far as decisions of multiple governmental institutions are involved in this arena, some work is yet to be done.

7. **On the transparency of the relationship between the competition authority and sectoral regulators**

*To what extent is there a transparent policy and practice that addresses the relationship between the competition authority and sectoral regulatory authorities?*

The idea underlying this principle is that overlapping jurisdiction between a competition authority and sectoral regulators creates potential uncertainty for businesses, thereby being recommendable to clearly establish jurisdictions of these authorities or, at least, to shape protocols clarifying roles and responsibilities As far as the ability of enforcing the competition law, in Peru it is legally clear that this is applicable by the competition authority for all sectors, including infrastructure regulated sectors, with the sole exception of the telecommunications sector.

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\(^{21}\) It should be noted that the role of appellate bodies, as a guarantee of a due process, is dealt with later on.
However, it is perceived a need for a mandatory coordination. This seems to have been particularly the case of privatisation deals where government entities have been reluctant to involve the competition agency in providing advice in order to anticipate possible conflicting circumstances. Though it is possible to refer to a number of positive consultation processes (e.g., between Indecopi and the Superintendency of Banks, Insurance Companies and Pension Funds in a pension fund-related investigation), a framework to enhance this relationship (e.g., legal mandate, protocols, etc.) is needed to a greater extent.

8. On the provisions regarding anti-competitive conducts and mergers

To what extent does the competition law contain provisions to deter effectively and prevent hard-core cartel conduct, abuses of dominant position or unlawful monopolistic conduct, and contain provisions to address anti-competitive mergers effectively? To what extent does the broader competition policy strive to ensure that this type of conduct is not facilitated by government regulation?

Current competition law in Peru contains a conventional list of hard-core cartel conducts regarded as practices that restrain free competition, namely arrangements by competitors to fix prices, rig bids, output restrictions or quotas, and market division. The competition law also includes a list of practices that are defined as an abuse of dominant position. Most of the complaints that CLC has handled are related to abuse-of-dominance cases, while ex officio cases have focused on hard-core cartel in the form of horizontal agreements. On the other side, the current law does not contain any provisions to address anti-competitive mergers; thus, Peru is one of a diminishing number of countries with no merger control provisions.

The competition authority has shaped and sponsored a law proposal intended to introduce some relevant changes into the competition law. This proposal contains an integral treatment of the abuse of dominant positions by explicitly banning both exploitative and exclusionary or predatory conducts. But the main innovation of the law proposal is the inclusion of provisions to deal with mergers that are more likely to adversely affect general welfare because they could eventually give rise to anti-competitive practices. In effect, the law proposal includes relatively high thresholds for a compulsory ex ante notification so as to authorise only those merger initiatives which do not significantly lessen market competition. This law proposal has been under debate for some time and it faces somewhat strong opposition from some sectors, both governmental and private.

9. On the scope of applicability of the competition law

To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?

The idea underlying in this principle is that the effectiveness of a competition law will be directly related to the general application throughout potentially competitive sectors of the economy, and it should be applied to the activities of individuals, companies, government businesses and other economic undertakings.

Current competition law in Peru is applicable to all economic sectors. As said before, in the telecommunications sector, this law is also applicable but the “competition authority” is the sectoral regulator. As mentioned earlier, the electrical energy sector is the only one where a law with ex ante merger control provisions is applicable under the responsibility of the competition authority. The sectoral regulator in telecommunications, and also the competition law enforcer in this sector, has defined free competition guidelines that explain the criteria by which this authority defines markets and assesses

22. It should be noted that there is a separate law, only applicable to the electric energy sector, which demands ex ante notification and analysis about its impact on competition.
whether a firm is dominant. On the other side, Indecopi has authorised all the mergers it has analysed within the framework of the law applicable to mergers solely for the electrical energy sector.23

10. On the investigative powers and sanctions provisions

To what extent does the competition law provide for effective investigative powers and sanctions to detect, investigate, punish and deter anti-competitive behaviour?

The main idea underlying in this principle is that credibility of a competition law enforcement will heavily depend on providing the authority with effective investigative powers. Also, effective sanctions are key to induce compliance with the competition law.

In Peru the legal framework, namely Legislative Decree N° 701 and Legislative Decree N° 807, provides Indecopi with a comprehensive array of investigation powers, such as access to, or short-term immobilisation of, documents, written responses to questions, oral testimony that may be recorded, inspections with or without prior notification, computer records and other kind of evidence which may be deemed necessary. The competition law also allows to impose strict pecuniary sanctions for violation of law; when violation of competition law continues, Indecopi can double the fines and continue doubling them without limitation. Eventually, the competition authority can make a criminal complaint against the violator; when the competition authority considers that the Criminal Code has been infringed, the former may notify this case to the Public Prosecutor.

The competition law also comprises leniency provisions so as to obtain strong evidence of cartel conduct in order to sanction it and deter it from occurring in the future. The authority is allowed by law to negotiate the terms on which the exemption of responsibility is offered to the information provider.

11. On the respect of due process

To what extent do firms and individuals have access to (i) the competition authority to become apprised of the case against them and to make their views known, and (ii) to the relevant court(s) or tribunal(s) to appeal decisions of the competition authority or seek compensation for damages suffered as a result of conduct contrary to the domestic competition law?

Due process is respected within the competition authority in Peru. Firms and individuals whose conduct is being investigated or may have been adversely affected by anti-competitive conduct, can make their views known timely before the competition authority; that is, they have the right of being notified and providing evidence timely as well as being notified the reasons supporting the decision of the authority. Within the administrative arena, firms and individuals under investigation can appeal resolutions of the first instance before a second instance, a right which underlies the principle of due process. Revisions involved in appellations comprise both substantive and formal aspects of investigations.

In addition, it is also allowed a direct access to the judicial system. The fact that in 2004 only 13% of appellations resolved by the second instance of Indecopi (considering all the functions, not only as a competition authority) were submitted to the judicial system, and only less than 6% of these cases was reversed with respect to the decision of Indecopi, gives an idea of the credibility that Indecopi’s resolutions deserve.

23. For further details, see OECD/IDB (2004), pp. 31-33, 57-58, and 59-60.
V. CONCLUDING REMARKS

Peru is a developing economy with a relatively extensive experience in implementing a comprehensive competition law. The competition law was enacted in 1991, followed since then by a number of amendments. The competition authority was established in late 1992, and earliest cases dealt with go back to 1993. Over this period of time, strengths and weaknesses have emerged in the competition authority; indeed, while a major strength is autonomy and technical competence of Indecopi’s jurisdictional bodies, a major weakness is a remarkable shortage of resources, which can easily be demonstrated when compared with other developing economies with a similar or even smaller GDP size.

The self-assessment of the competition law in Peru carried out in this paper shows that the latter is aligned to a great extent with many of the principles and recommendations of the APEC-OECD Integrated List on competition law and policy. In this respect, recommendations regarding having clear objectives, allowing autonomy, containing conventional provisions against hard-core cartel conduct, and respecting due process are widely fulfilled by the current law. However, as noted, some work is yet to be done in other principles recommended in the Integrated Checklist, notably the absence of ex ante merger control provisions, the need of strengthening competition advocacy, and the extent to which public/private competitive neutrality, decision-making transparency, and mandated coordination with regulators are explicitly stated in the competition policy and law. In short, using this multilaterally endorsed policy tool has proven its value not only as a repository of best international practices, but also its potential to identify areas for building enhanced domestic capacities.

REFERENCES


Implementing Regulatory Policy to Support Structural Reform

Public Sector Management – Building Capacity for Reform

Mr. Paul Carpinter, Director, The Treasury, New Zealand

I have been asked to speak on how can institutional arrangements and co-operation improve the quality of regulation, focussing on the experience of New Zealand.

My address is intended to discuss how, in both a theoretical and practical way, New Zealand went about building capacity for reform, focusing on public sector management. I was involved in New Zealand’s economic and financial reform programme, first as a participant in the policy debates in the early stages of reform, and later as a CEO charged with implementation of some of those reforms in one of New Zealand’s most complex agencies. This is not intended to be a substantial treatise on the issues, but rather the observations of a participant in the policy analysis, decision making, and implementation of a substantial reform programme.

The title of this paper needs a little amplification. Capacity has at least three dimensions;

- Capacity to define the problems correctly
- Capacity to derive effective solutions to the problems
- Capacity to implement those solutions.

Each step requires different skills and techniques. Each is difficult, and there are linkages between all of them. From my perspective, the biggest challenge was around the derivation of effective solutions, but that is not to minimise the risks around successful implementation.

To put these remarks into some context, New Zealand has inherited its parliamentary system, legal system and public service ethos from the United Kingdom. We have a Parliamentary democracy, with the Executive accountable to the Parliament, and with an independent judiciary drawing on common law traditions as well as statute law. For a young country, we have a very rich vein of history to draw from.

Other countries have different histories, and different backgrounds. My comments will obviously reflect my experience in New Zealand and are not intended to suggest that New Zealand’s particular detailed approach should be followed by other countries.

Capacity to define problems

A cursory glance at the structure of New Zealand’s economy in the mid 1980s would highlight two opposing factors. The United Kingdom inheritance was undoubtedly strength. However, New Zealand had implemented a range of measures over many years that relied on the centre of the Government being heavily involved in all parts of the economy. Taken individually, many of these initiatives were respectable reactions to particular major events. Taken together, these policies stifled reform and limited the pace of change.

Reflecting those policies, and possibly other external factors, New Zealand’s economic performance had been far from stellar for many years. By the early 1980s, New Zealand had one of the most highly regulated economies in the OECD. All manner of prices were regulated from the centre – including wages, rents, interest rates, dividends, the exchange rate, as well as prices more generally. New Zealand’s relative living standards, as measured by OECD statistics, showed a marked and continuing decline.
For many years, New Zealand policy makers were concerned about what was often described as the balance of payments constraint on its growth rate. Put simply, the analysis worked from the observation that growth was inevitably curtailed by balance of payments crises. Imports would grow faster than exports, and capital inflows were insufficient to meet the financing gap. The result was a series of balance of payments crises, with devaluation of the exchange rate often the final result.

The initial reaction to that problem, in a fixed exchange rate regime, was built around policies aimed at increasing the flow of exports, through the tax system and other administrative regimes.

However, deeper analysis suggested that the balance of payments constraint was a symptom of a much deeper set of problems. International experience suggested that economies that have efficient market-based mechanisms at the border tend over time to be more successful than those have reliance on more administrative-based regimes. Prices set in competitive markets can send signals that administrative regimes cannot.

New Zealand had a regime of very high tariff protection, bolstered by the use of import licensing. In general, if a product was being made in New Zealand, competing imports were banned. Almost any economics text would point out that this was effectively a substantial tax on exports, a hidden and very considerable subsidy for industry servicing the local market, and a subsidy on imports. Taken together, the economic literature suggested that these policies would stifle competition and innovation within New Zealand. Our experience suggested that the literature was correct.

It was possible to apply similar analysis to the rest of the economy. Many prices were set by administrative means, and it is difficult to have confidence in the pricing mechanism to allocate resources and seek efficiency gains.

Creating Solutions

So the real problem in New Zealand was to move from a very centralised economic regime to one that more effectively allocated risks and rewards. This was not deregulation – far from it. It was instead moving to a regulatory environment that allocated resources more effectively, and which allowed changes in the environment to be recognised by key decision-makers in a timely and efficient manner. Given the scale of reform that was needed to meet that objective, that meant a widespread reform programme, spaced over some years, with significant lags before the reforms delivered measurable results.

These reforms included:

- Effective banking regulation;
- More efficient and effective government systems;
- Strengthened competition policy and implementation;
- Changes to exchange rate regimes;
- More effective use of the resources under Government control;
- Greater use of international standards and norms;
- Changes to transport licensing systems.
Implementing all these changes took time. Inevitably, there were problems with phasing of changes, and with the linkages between the various sectors.

I want to turn now to discussing how the initial economic and financial reforms were developed, because in many ways that is the core set of issues policy makers need to grapple with.

It was obviously impractical to attempt to derive solutions to all these problems by looking inwards. That would have meant, *inter alia*, ignoring the lessons from international experience and from the economics and financial literature.

In the work New Zealand did on protection reform, it drew heavily on World Bank analyses and data and on some of the excellent theoretical and practical work from the Australian Productivity Commission. Pure economic growth theory was also very useful, although somewhat limited in providing insights. Some time on looking back at why particular policies were chosen at different points of New Zealand’s history provided the insight that past policymakers grappled with the same problems. That work led to the proposition that both the form and the level of industrial protection mattered, and that moving to a tariff-based regime with a programme of phased reductions would materially assist New Zealand to adapt to world trading conditions, as well as leading to higher living standards.

Others working on the reform programme looked for their ideas in different forms of economics. Those working on financial systems and monetary policy developed the concept of an independent central bank charged with the goal of maintaining price stability. Those working on financial management reform decided to form a working partnership with private sector accounting theory and practice, through the concept of applying the same accounting standards that the private sector used to the public sector itself. Those working on public sector management borrowed heavily from principal/agency theory.

**Implementing Effective Solutions**

I want to turn now to how New Zealand implemented those reforms, with a sharp focus on the interaction between structural and regulatory reform. The key structural reforms within the Government were around public sector management.

Public sector reform in New Zealand was based on some very simple ideas. These were:

- Greater clarity about what was to be done would materially assist in raising performance;
- Greater accountability and responsibility for results meant that agencies needed to have greater freedom about how they went about their business.

Given the scope of the changes that were required, we also looked for off-the-shelf solutions where these were appropriate and practicable.

Applying those ideas to the government machinery led to major changes.

Commercial activities were placed in limited liability companies, under the control of directors who were in turn required to operate under the Companies Act. This allowed for, and in practice required, the introduction of high-level expertise from the business community. It also allowed for the introduction of long-standing commercial law and practice to help directors and managers best run the companies.

In some areas, it also required the derivation of new law and regulation. This applied particularly to telecommunications and energy.
For those agencies closest to Ministers, the reforms clarified the respective roles of Ministers and public service managers. In return for a much sharper focus on producing particular outputs, Chief Executives of Government agencies had much greater freedom in their choice of inputs. Staffing and employment decisions were delegated to individual Chief Executives, as was the use of ICT, and other key investment decisions.

The Treasury and Ministers kept agencies on a tight fiscal leash, and the Parliament demanded much higher quality reporting – as of course it should. Government accounting was changed to follow the same standards as those in the private sector – which meant in turn that business analysts and the media did not need specialised training to understand the Government’s fiscal impact on the economy.

Commentary

I want to turn now to some of the impacts of these changes to the way the Government operated in terms of regulatory reform.

One of the most interesting was the recognition of long-term liabilities. Cash accounting focuses on cash flows, while accrual accounting requires the crystallisation of liabilities when they are incurred. The Government-owned accident compensation scheme was found to have a substantial long-term liability, at least partly because there was insufficient attention paid to getting people back into the workforce after an accident. Policy changes, and a sharper focus on the rehabilitation function, substantially reduced the long-term liability over the following years, as the agency refocused its attention.

In other words, recognising a liability led to policy makers effecting substantial change.

Similar comments applied to the application of private sector accounting policies to the rest of the public sector. Accounting standards are primarily focussed on accountability and stewardship, and favour the substance of relationships over their legal form. For the Government, the introduction of the idea of “potential to control” entities provided much-needed clarity around the nature of the relationships between the Government and the entities Parliament has created. In many ways, this is the best example of how regulatory reform and structural reform within the Government itself are very closely related.

Recognising assets and liabilities, and creating an overall Crown statement of financial position brought attention to the relative scale of the Government’s own debt position, particularly as it related to its holding of assets. Successive governments have used the objective of reducing net debt as a fiscal anchor. And it is fair to say that the Government is now in a much position to deal with large fiscal risks than it was at the start of the reform programme.

From my perspective, the institutional arrangements and cooperation improved the quality of regulation. As already noted, the major administrative reforms in the machinery of government were based on a sharper focus on what agencies were trying to achieve, along with more responsibility and accountability for managers over how they reached their goals.

The practical consequences of that philosophy in my area of the economy – the broad commerce sector – were the following:

- Creation of dedicated and focused policy branches in the Ministry of Commerce, with a particular emphasis on general competition policy, and policy relating to network industries.
- Creation of separate management of operational functions within the Ministry – including the Companies Register and the management of property rights in minerals and the radio spectrum.
• Creation of an independent Commerce Commission charged with the implementation of the Commerce Act. This function had previously been in the Ministry, but there were clear advantages in having the decision-making processes one step removed from Ministers.

The policy groups in the Ministry led the reforms to the Commerce Act, the Companies Act and other core pieces of commercial legislation. In general, these reforms were about clarifying roles and responsibilities, and enhancing a legal environment that promoted business efficiency and more rapid reallocation of resources. The Ministry has developed policy processes that require in-depth discussions with interested parties before decisions are taken and legislation is drafted. Business has related well to those processes – there is often, although not always, a commonality of interest between the Government and business in developing effective legislative backing for business activity.

Once Parliament has passed the legislation, its enforcement is often the responsibility of the Commerce Commission. This body has the normal remedies for anti-competitive behaviour, and operates as a semi-judicial body well removed from Ministers.

Members of the Commerce Commission are appointed by the Government, and the Ministry traditionally plays a significant role in advertising positions and putting nominations forward to Ministers. There are also regular discussions between the Commission and the Ministry on legal points relating to generic issues. And there are staff interchanges between the two organisations, both formal and informal. Particular cases are not discussed, and the Commission makes its decisions without reference to Ministers.

The fact that there is greater clarity around the various roles that different actors must play means that the overall performance is better. Scarce resources can be used most effectively, clear decisions can be made, and enforcement through the Courts enables policies to be continually assessed.

In some ways, the changes to the operational functions were just as interesting. I want to spend a little time on how we changed the Companies Registry.

From first principles, we maintained a Companies Registry so that business could easily and rapidly check the identities of those behind the companies with which they might interact with. The Parliament allows individuals the opportunity to use the limited liability company form, because that has evolved into an efficient mechanism for spreading risk. In return for that opportunity, the individuals behind the company must supply information about themselves and about the company. The Government maintains that registry, which is open to search by members of the public.

Ten years ago, that registry was decentralised, paper-based, expensive and very user-unfriendly.

Now the registry is internet-based, easily accessible, widely used, and amongst the cheapest in the world to use. Some surveys have suggested New Zealand is now the easiest country in the world in which to establish a company, while at the same time the safeguards the registry provides are much more readily accessible.

To achieve that required clarity of purpose around the reasons we needed a Companies Registry. It then required clarity of purpose about what management could achieve, and the freedom to use resources to achieve that goal. It required very careful management, a dose of business re-engineering, a good deal of interaction with the business community and the legal community, and a realistic appreciation of what ICT could and could not achieve. In other words, it required in its own way the three kinds of capacity this paper has addressed.
For those involved, it was a very rewarding project – and it was one that would not have happened without all the reforms I have discussed.

Trying to draw these ideas together, the preconditions of effective structural and regulatory reform are much the same. From New Zealand’s experience, they are:

- Effective leadership, at political and public service levels;
- Clarity of objectives, so that participants in reform know what they should be doing;
- Close interaction with affected groups, so that there is a good understanding of the points of views of all concerned;
- Understanding of what can be achieved, and how long change might take;
- Understanding of the institutions of society and what they can and cannot do.

The last point might be the most subtle. New Zealand’s overall economic and financial reforms became broadly accepted, but the detail was designed around institutions that helped form the basis of society. A programme of reform in a country with different institutions could look quite different.

**Conclusion**

The record suggests that overall, New Zealand’s economic and financial reforms were successful. New Zealand’s growth rate has been at or above the average for the OECD, inflation has been contained, unemployment is at 3.6%, and the Government’s accounts are in much better shape. New Zealand’s economy has also had the flexibility to better absorb external shocks.

It is also fair to point out, though, that there are always new problems (or refurbished old problems) to address. The external environment keeps changing, and so do domestic priorities. Perhaps the biggest lesson from New Zealand’s experience is that a sharp and realistic focus on outcomes will always be important, no matter how good the policies of the last twenty years might have been.
Implementing Regulatory Policy to Support Structural Reform

Indonesia Experience

Dr. Syamsul Maarif, Chairman, Commission for the Supervision of Business Competition (KPPU), Republic of Indonesia

1. Introduction

Indonesia suffered from the economic crisis in 1997/98. Stabilization of the crisis and the recreation of the economic foundation for sustainable growth have been planned through a long list of program of regulatory, financial and structural reforms. As part of a rapid and profound reorientation in economic policies, the government of Indonesia has planned a substantial move from a highly interventionist and authoritarian model of economic development to a market-oriented model based on values of consumer choices, democracy, and rule of law.

Following the substantial shift in development paradigm, the government has undertaken various policy actions, among others, the enactment of Law No. 5/1999 concerning the prohibition of monopoly and unfair business practices. To supervise the implementation of the Law, Commission for the Supervision of Business Competition (KPPU) is established. One of the KPPU mandate is to provide policy recommendation to the government regarding policies that have, or potentially, affected competition of the business in the market.

This paper describes the roles of KPPU in regulatory and structural reforms. It explains the foundation of its mandate and the implementation as well. The effectiveness of the mandate is analyzed and factors affecting the performance of implementation are determined.

2. Indonesia’s Experience in Regulatory and Structural Reforms

The nature and progresses in regulatory and structural reforms in Indonesia might be divided into two period of development. First is pre crisis period and second is post crisis period of development.

2.1. Regulatory Reforms prior to the 1997 Economic Crisis

Before 1983, the government of Indonesia has been deeply involved in the country’s economic development through intervention in industrial, labor, and credit markets. Initially, the government tried to support development by directing scarce capital to what it believed were the highest productivity uses by protecting infant industries from foreign competition, and by encouraging cooperation between firms to improve productive capacities.

The Indonesian industry was developed merely for fulfilled domestic demand in line with an inward looking development strategy at that time, and so called import substitution strategy. Fertilizer, steel, shipping industry and others were constructed based on government initiatives without considering the competitiveness of the businesses. As a result of this government led industrial development is inefficient industries disable to compete in the global market.

The government has started to transform its development strategy when the oil global market became to be unstable in 1980s. By starting to adopt an export led development strategy in 1983, the government started to reform the regulatory system in fiscal, trade and industry, investment, and financial sector.
In 1985 for instance, the government has launched an economic policy package to simplify the application and procedure of foreign direct investment, and therefore started to enhance foreign competition for domestic market. To support this development, the government has expanded the reform to improve the export credit schemes for both local and joint venture companies in Indonesia. Furthermore, the regulatory reform was continued by simplifying the custom procedure. Further deregulation was continued by reducing negative investment list and opening stock market as well as the shipping industry and other sectors for foreign investor.

The reform, however, has been considered to be still very limited, left the government dominant role to be still in place. When the economic crisis was began in 1997, the government’s over-active role -- including over regulation of business in general, the ownership of vast state-enterprises, and the support of crony capitalism as manifested by government-granted import and trading monopolies as well as access to government contracts and state credit banks – has therefore been blamed to be one major source of turbulence.

2.2. The Post Economic Crisis and the Roles of KPPU

In an attempt to end the economic crisis, therefore, the Government of Indonesia has enacted the Law No. 5/1999 and established KPPU for enforcing the law. As it has been mentioned earlier, one of the KPPU mandate is to provide policy recommendation to the government with regard to policy affecting competition in the market.

To support the implementation of the mandate regarding the competition-related regulatory and policy reforms, KPPU has initiated the adoption of “Competition Policy Development” as one of its strategic program, and established one operational unit, namely Directorate of Competition Policy (DCP). One of the duties of the DCP is to undertake an analysis regarding policy that have or potentially affected competition.

In relation to the policy development program, various activities conducted by DCP, among others studies on various national primary industries, analysis of laws and regulations affected those industries and efforts for policy harmonization. The objects selected for study and evaluation are mainly industries related to public interests. In conducting policy studies, DCP may hold intensive discussion by inviting various stakeholders namely, among others, governments, independent regulators, business actors, observers, practitioners, academicians, and consumers.

Since 2000, KPPU has provided some 30 policy recommendation. These include the government policy discriminating the price of fuel, policy regarding the operation of taxi providing policy environment which enable business actors to fix the price, policy regarding ticket of airline and bus city transport providing policy environment which enable the development of an association-led price cartel, policy regarding the operation of the Jakarta International Container Terminal in Jakarta port harbor, the government efforts in coordination with airline operators to regulate the floor price of the domestic airline tickets, the government policy constrained competition in telecommunication sector, policy regarding the government initiative to issue an anti dumping tariff on import of carbon black and wheat, local government regulation regarding trade and distribution of salt, and many other policies that in effect lessening competition in the market.

1. Many kind of reforms have taken place in Indonesia. These may include the ongoing process of efforts for enhancing regulatory transparency through e-government, efforts to increase public accessibility and to reduce corruption practices through electronic government procurement, etc. These efforts of reforms however are beyond the KPPU mandate, and therefore will not take a part of this paper.
2.2.1. Regulatory Reform in the Airline Industry

Prior to 2000, the condition of the Indonesian airline industry was stagnated. In the absence of policy enabling competition in the market, the number of business actors in this sector was very limited and the growth of the sector was stagnated. The licenses for operations are only open for, and therefore dominated by, the state-owned enterprises. The government continuously implements policies impeding the entrance of new comers, determined flight routes, regulated types of airplanes and others related aspects of the industry.

The 1999 has become to be the beginning of the new era in Indonesian airline development where the government has started to reform the sector and vigorously tried to create a healthy industrial climate in the country. Law No.5/ 1999 served as a pillar for the application of market economy, including in the airline sector.

Upon the request and advice of KPPU, the Government performs deregulation of the industry commencing with revocation of the Indonesian National Air Carrier Association’s (INACA) authority to determine the price of domestic airline tickets. The government subsequently undertook concrete measures through the removal of floor prices followed by determination of ceiling prices. Through these policies the government has actually let the formation of prices through market mechanism.

These Government's policies have been proven to be able to attract investment in this industry. Based on data from the Ministry of Transportation, there were only six national airlines engaging in the business in 1996. However, within the following seven years, namely by 2003 the number of airlines operating was 21 with the following detail: 16 newcomers and 5 old players.

The number of passengers also grew rapidly from the average growth of 14% to 26%. It is estimated that the number of passengers in 2004 reached 20 million. This figure is double compared to the average number of passengers before 2000. Another interesting phenomenon is a drastic reduction of ticket prices enabling a new segment of consumer to enter the market. Such a change in the ticket price is a logical consequence of a fair and open business competition. These all things will eventually lead to provision of more varied product and price choices to consumers which also means expansion of markets for the aviation industry itself.

2.2.2. Reforms in the Telecommunication

The telecommunication sector has developed following the global development trend of this sector. The sector was previously managed in a monopolistic manner but now it has shifted to competition. This was attributable to the emergence of alternative telecommunication and information technologies which drastically reduce investment costs to become very cheap.

Such alternative telecommunication is no longer limited to fixed lines and satellites, but has expanded to other technologies such as cellular, VoIP, VPN and so forth that can be established with much lower investment costs. This condition has resulted in the emergence of new business enactors having the capability to invest in the telecommunication sector.

Such development also takes place in Indonesia. Law No. 36 Year 1999 on Telecommunication has opened up this sector for every business actor. The present structure of telecommunication sector has totally changed from being monopolized by PT Telkom (for local and long-distance calls) and PT Indosat (for international calls/SLI) in the fixed line to become duopoly, competition in cellular, VoIP and internet services and so forth.
The number of telecommunication operators after the competition era has greatly increased compared to the number of operators before that time. For example, previously monopolized fixed line business has at least three operators at present. In the cellular business, the number of operators has increased from two to 6 (six) operators. The telecommunication operators using the VoIP technology have even now emerged to around 10 (ten) operators.

In addition to the above-mentioned changes in structure, the performance of the telecommunication sector has also improved, as reflected by among others things as follows:

The telecommunication services are available at the price accordingly and tend to decrease significantly following the reform in the sector. Such decrease in tariffs can be viewed from among other things as follows:

a. There are operators in the fixed line business applying the tariff of Rp50/minute, far lower compared to the previous of Rp.260/minute;

b. Discounts of up to 40% for international connections;

c. The presence of VoIP alternatives offer reduction of tariffs up to more than 50%.

The teledensity rate which previously stagnated at 3.5% is now rapidly increased to become 18%.

However, even though the sector has experienced a relatively significant development, unfortunately fair business competition on it has yet to be completely realized. Efforts KPPU to encourage changes in line with the fair business competition are often hindered by the fact that new mechanism concerning KPPU's role in the context of encouraging emergence of regulatory reform in the telecommunication sector has not been established. In connection thereto, KPPU continually makes efforts to have coordination with the Government as the regulator and policy makers in the telecommunication sector.

3. Factors Affecting the Effectiveness of Efforts for Reforms: Lesson Learned

The KPPU mandate on providing policy recommendation to the government is non binding in nature. The policy changes recommended by KPPU are therefore not necessarily to be adopted by the government. The adoption of the proposed policy changes seems to depend on many factors. On supply side, the quality and comprehensiveness of the analysis seems to be instrumental to whether the recommended policy is adoptable or not. On the supply side therefore, the availability of data and qualified policy analysts will be detrimental to the effectiveness of efforts for reforms.

On the demand side, adoptability of the proposed policy changes seems to be more complex. It seems that the adoption of new policy will depend on some others factors, among others, including:

1. Political support upon issues underlying the proposed policy changes. In the absence of a wide range of political support from varied stakeholders, a possibility to bring about policy changes seems to be limited. A logical consequence of this is that strategic approaches for policy reforms need to develop;

2. Whether the benefits of the proposed policy changes can easily be understood;

3. The availability of staff having reform spirit and knowledge at the government level seems to be another crucial factor. Many of the proposed policy changes are failed because of bureaucratic constraints;
4. Institutional mechanism enabling communication to be effective is also becoming to be a crucial factor in making efforts for reform to be effective. The KPPU experience shows that in the absence of an appropriate institutional mechanism, it will be difficult for accelerating reforms on the institutionalized base of policy making. As we may aware that KPPU is not part of the executive branch. The way in which KPPU provide recommendation to the government is therefore not based on an institutionalized system, but rather on the ad-hoc base of policy dialogue. Based on the urgent need of an institutionalized policy dialogue between KPPU and the government, it has been proposed that in the future the government should initiate the development of an institutional mechanism enabling communication of policy matters to be effective. In response to this proposal, the Coordinating Minister for Economic Affairs reorganized his office and set up an expert staff unit which is responsible for coordinating the development of competition policy. Furthermore, to bring about this idea into implementation, there has been an intensive discussion regarding the development of a high level policy forum which may involve ministerial and high ranking official as well from related government agencies.

4. Concluding Remarks

One can easily recognize that Indonesia has established a relatively good infrastructure to undertake regulatory reforms. As part of this infrastructure is the KPPU mandate to undertake regulatory reform through the mechanism of providing policy recommendation to the government with respect to the policies that may affect competition in the market.

To bring about the mandate into implementation, various efforts have been made to internalize competition values into government policies. Some progresses have been made but there is also further needed in the following areas: capacity building for staff especially those related to policy analysis, and the need to develop an institutional mechanism enabling the proposed changes to be effectively communicated.

As a country where its development paradigm has just been shifted in recent years from a highly interventionist to a market-oriented development model, a wide area of reform is needed. The availability of resources to conduct identification and assessment however is scarce, making efforts for reforms to be difficult to accelerate.
Market Openness and Structure Reform of Infrastructure Sectors in China

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1. Introduction

In recent years, along with the rapid economic growth in China and China’s access into WTO, the market openness and structure reform of infrastructure sectors have had many new developments. The government has issued and implemented some new policies to encourage and support non-public enterprises, including foreign-fund enterprises to enter into the playfield for power, telecommunication, railway, civil aviation and urban utilities which used to be monopolized by state-owned enterprises (SOEs).

Many non-public enterprises, including domestic private enterprises and foreign-funded enterprises have made huge investment in production of electricity, gas and water, waster water treatment, road construction, urban public transportation and other infrastructure sectors.

Meanwhile the reform of SOEs in infrastructure sectors has made also remarkable progress in accordance with the principles of socialist market economic system. Some SOEs have been transferred to share-holding companies and listed in domestic and abroad capital markets.

The reform of government regulation system to the infrastructure sector has made also some progress. The State Electricity Regulatory Commission (SERC) was established and it became the first independent regulatory agency regarding the infrastructure sectors, for instance. Reform of tariffs and price in water supply, civil aviation and telecommunication has also made some progress.

However, it is needed to make the market open wider in infrastructure sector and further reform measures should be adopted in the fields of telecommunications, electric power, civil aviation, railway transportation, and public utilities. It is also needed to make further efforts to establish and perfect the institutions of regulation.

One recent change is that the government investment will decrease with the adjustment from the proactive fiscal policy into the prudent fiscal policy since the beginning of this year. The demand for non-public investment will be growing in the future. How to attractive foreign direct investment and domestic private investment into infrastructure sector has been an important task for China for a long-run.

This paper will briefly discuss some of the key issues related the market openness and reform in the sector of infrastructure. These issues include:

- Improvement of infrastructure services and trend of investment in recent years;
- The market openness of infrastructure sector;
- The reform of structure and regulation of infrastructure sector;
- The suggestions for further reform of infrastructure sector.
2. Improvement of infrastructure sectors in China

Basic definition of infrastructure

According to the World Bank’s development report (1994), there are two kinds of infrastructures, one is “economic infrastructure” and another is “social infrastructure”. The economic infrastructure refers to “the long-lived engineered structures, equipment and facilities, and the services they provide that are used in economic production and by households. This infrastructure includes public utilities (power, piped gas, telecommunications, water supply, sanitation and sewerage, solid waster collection and disposal), public works (major dam and canal works for irrigation, roads) and other transport sectors (railways, urban transport, ports and waterways, and airports). The social infrastructure refers to “education and healthcare”.1

In fact, there are several other concepts related to infrastructure, such as public infrastructure or urban infrastructure and basic industries in China.

This paper discusses only so-called economic infrastructure which includes transportation, telecommunication, production and transmission of electricity, gas and water, public utilities and public works (including flood control works).

However, it is difficult to get the accurate data of infrastructure. There is not a set of overall indicators in the official statistic yearbooks. We should collect data of investment in infrastructure sectors from different sub-sectors. It is also needed to use the statistics data from different sources with cautions in doing research on this subject.

According to China’s statistical system, the four industries or sectors could be included into the infrastructure sector: production and supply of electricity, gas and water; transport and post; telecommunication and other information transmission services; management of water conservancy, environment and public facilities.

Improvement of infrastructure since 1978

The shortage of infrastructure service was a long-run problem in China under the planned economic system from 1950 to 1978. In the planned economic system, the government put the so-called development of heavy industries priority, most of investment went to manufacturing industries. Investment on infrastructure, especially the urban infrastructure was very limited. Of course, the investment on the rural public infrastructure was even limited. Residents in urban and rural areas suffered the shortage of transportation, telecommunication and electricity, gas, even water. For example, there were 4.18 million telephones in 1980 and the number of telephone was only 1% in the total number of world then. The access to telephone was 0.15 set/100 persons in 1980 and ranked 161 in the 185 economies of world. The shortage of infrastructure is a key part of poverty and low level of living standard in that time. The shortage of infrastructure also has been the bottlenecks in the economic and social development for long time.

Since the beginning of reform and opening up to world policy in the end of 1978, China has experienced more than two decades rapid economic growth. The average annual growth rate from 1979 to 2004 is 9.4%. The level of infrastructure service has increased in accordance with the economic growth. The government has realized the key roles of infrastructure in the development since the early of 1980’s and made huge investment on production and supply of electricity power, railway and highway. In the 1980’s and the half of 1990’s, the energy and transportation were the two priority of government investment.

However, China has achieved rapid growth of investment of infrastructure has since 1998. China has adopted a proactive fiscal policy and issued billions long-term treasury bounds since then. The total bounds reached CNY910 billion to the end of 2004. This money largely was used to increase investment in infrastructure, including the rural electricity power network, flood protection projects along major rivers and lakes, environment protection projects, highways and public works. The proactive fiscal policy has played great roles in the development and improvement of infrastructure. For instance, the total investment in highway system since 1998 is about 2 times of period of 1950-1997. Many larger scale public projects were built and is under construction during this period or since then, including the Three Gorges Project, West-to-East Natural Gas Transmission Project, West-to-East Electricity Transmission Project, Qinghai-Tibet Railway Project and the South-to-North Water Diversion Project, etc. The level of infrastructure service has increased remarkably.

According to statistics, the average annual growth rate of investment in fixed assets is 20.9% from 1990 to 2004; average annual growth rate of output of electricity is 8.6% from 1979 to 2004; average annual growth rate of number of subscribers of local telephone at year-end is 21.6% from 1979 to 2004 and 30.65 from 1990 to 2004; average annual growth rate of number mobile telephone subscribers is 100.6% from 1990 to 2004; average annual growth rate of volume of coal gas and natural gas supply in urban areas is 12.1% from 1979 to 2004; the railway density increased from 54 km/10000 sq.km in 1978 to 78 in 2004; the highway density increased from 927 km/10000 sq.km in 1978 to 1949 in 2004; the access to telephone (include mobile phone) increased from 8.1 set/100 persons in 1997 to 50 in 2004; the percentage of households with access to tap water increased from 47.4% in 1989 to 88.9% in 2004; the percentage of households with access to tap gas increased from 17.8% in 1989 to 81.5% in 2004. These indicators could tell us the remarkable progress of level of infrastructure in China.1

General speaking, however, the level of infrastructure of China is still lower compared with the developed economies.

- According to statistics, the ratio of waster water treatment of domestic use is only 43.6% in urban areas in 2004, more than half of domestic water has not treated. According to Ministry of Construction of China, there is not any waster water treatment plant in 297 cities (the total is 661 cities in mainland China) in the end of June 2005. The ratio of waster water treatment of domestic use is only 23.6% in the urban areas of Jilin Province and 12% in the urban areas of Guizhou Province in 2004.

- Investment of production and supply of electric power increased remarkable in recent years; there were severe power shortage in many provinces and cities in 2004. The gap of demand and supply was above 30 millions kW in the peak of summer, according to a report; Railway transportation capability could not meet the rising demand in several key lines.

- There are severe traffic jams in many large cities, such as Beijjing, Shanghai. The development of urban rail transportation system (includes subway, light rail) is still in the low level compared with developed economies. Currently, there are only 5 cities where subway system is operating.

- It is needed to point out that there is a big gap between coast regions and western regions in the service level of infrastructure and there is not real public infrastructure in most rural areas.

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Analysis about the shortage of infrastructure

We should make analysis on the shortage of infrastructure from two sides. First of all, let us analysis the demand side. There are two factors with the rising of demand for infrastructure. One is the course of urbanization. It is obviously that the demand for infrastructure, especially for the transportation and telecommunication will increase along with the increase of urban population. The World Bank’s report pointed out ‘urbanization in itself is an important factor stimulating the demand for infrastructure.’

According to statistics, the proportion of urban in total population increased from 17.92% in 1978 to 41.76% in 2004. According to a forecast, the ration of urban population will increase 1.2% annually before 2020 and 60% of population will live in cities and towns in 2020. It is necessary to maintain an appropriate growth of investment of infrastructure in order to maintain current level of infrastructure service.

The rising of living standard is another main factor to stimulate the demand for infrastructure. Along with the increase of income level update of consumption structure, people will spend more money to buy cars, to travel in domestic or aboard, people also pay more attention to the environment quality. Many households have owned cars in recent years, in Beijing and other cities particularly. According to the statistics, in urban areas, number of automobiles owned per 100 households at the yearend is 2.18 in 2004 and it is only 0.34 in 1999. It is 12.64 in Beijing in 2004. It maybe is one of factors to contribute the demand of highways and urban roads. The increase of air conditioner use in families maybe is one factor for the shortage of electricity power.

Let us turn to supply side. There are two factors also. One is investment and another is economic institution. Although the investment of infrastructure increased dramatically in recent years, however, the investment on infrastructure sector is still lagged behind the demand. Another is the institutional factor. It is clear that without right institutional arrangement, there would be shortage of investment and low efficiency. In the traditional planed economic system, the government was only owner and investor and operator. As the largest developing economy in the world, China government can not put enough budgets into the investment on infrastructure. So the shortage of infrastructure and low quality of service were inevitable.

3. The market openness of infrastructure sectors

Analysis about the lower market openness

Since the reform and opening up started from 1978, non-public enterprises have developed rapidly and foreign investment has increased remarkably. These enterprises have played great roles in the development of China’s economy. However, the market openness of infrastructure has lagged behind other industries or sectors. The domestic private enterprises and other non-public enterprises and foreign investors are difficult or reluctant to make investment on infrastructure for long time. The SOEs has been the only player in the sector almost in past years. There are some reasons to explain the lower level of market openness.

First of all, the price or tariff has been lower than normal cost and there were huge deficit in many SOEs. The price or tariff of electricity, gas, water and transportation has been controlled by the government since the early of 1950’s. In order to control the inflation, government has to maintain the low prices for a long time and government has to subsidy the SOEs providing service of infrastructure to maintain the operation. Under such price policy, it would be very difficult to get investment from non-public resources. For example, in some cities, it is very difficult to collect fees of waster water treatment

and in some cities there are not any charges of wastewater treatment so far. Without reasonable price, the operation of wastewater treatment plant would be impossible. The non-public enterprises would not make any investment on the sector.

Secondly, many infrastructures have the characteristics of public goods and are not “rival” (consumption by one user reduces the supply available to other users) or “excludable” (a user can be prevented from consuming them). Private enterprises always are reluctant to investment in some sectors of infrastructure.

Thirdly and most important, the infrastructure is vital to national security and economic lifelines. The government was also reluctant to allow the non-public enterprises to enter the infrastructure sector in past years.

**Progress and types of market openness of infrastructure sector**

There were some cases of foreign investors involved the investment or construction of bridges and highways in some cities in 1980’s, such as the construction of bridges in Guangzhou and other cities, many investors were from Hong Kong. Since the early of 1990’s, the involvement of foreign and domestic non-public investors has developed gradually. In general, however, the market was usually open to foreign enterprises and Hong Kong enterprises and not open to domestic private investors for a long period.

There are several types of investment by non-public and foreign investors in infrastructure sector:

- **BOT (Build-Operate-Transfer)** is very popular in construction of highways and bridges, electric power plants or stations, water plant, subways as well. There are some successful cases, such as Shajiao B Electric Power Plant Project in Shenzhen in 1983, Laibin Electric Power Plant Project in Guangxi in 1995, Chengdu Water Plant and Beijing No.10 Water Plant, etc. The main investors are from Hong Kong or abroad.

- Selling shares to public in security market is another type. The first listing state-owned company in the sector of infrastructure is a water company in Shanghai. It was transferred into share holding company and listed in Shanghai security market in 1992. There are many listing company of infrastructure in domestic and abroad capital markets so far.

- Franchise system is a new type of market openness. Beijing municipal government adopted franchise bidding to select investors and operators for 5 wastewater treatment plants and new subway line (No.4 line) in 2004. There were many investors from domestic and abroad to attend the bidding. Hong Kong's MTR Corporation won the contract for subway operation in 30 years. This is the first joint public-private management project in China's urban rail transport construction program. The No.4 subway's estimated construction cost is 15.3 billion yuan RMB. The capital investment of MTR Corporation would be 735 million yuan RMB.¹

France-based Veolia Environment, a leading player in water sector in the world, won one contract which covers the construction and operation for 20 years of a wastewater plant in Beiyuan, one of the five wastewater treatment plants. Veolia now operates in 14 provinces of China.²

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¹ Chinanews.com February 10, 2005
² [www.veoliawater.com](http://www.veoliawater.com)
There are several cases in recent years:

- In the Hangzhou Bay Trans-oceanic Bridge Project began construction since June 2003, the domestic private investors account for 50.25% in total investment. The bridge is 36 km long and costs at least 11.8 billion yuan RMB.

- China's first private airline, Okay Airways Co. Ltd., has set up and launched operations in March 5, 2005. Under regulations released in January by the civil aviation regulators, any company with at least three planes can now operate an airline. Foreign investors can hold up to a one-fourth stake in such firms. There are 3 airlines are ready to launch soon.

- The first railway line to be built with private investment began construction in Zhejiang province in this year. A local privately owned cement company holds a 32.5 percent stake in the project.

New policies to open market of infrastructure sectors

China has been the one of top economies attracting FDI in recent years. According to World Investment Report 2005, China has been the largest recipient of FDI in the developing countries for 12 years, with flows reaching the highest level ($ 61 billion) and is number three in the world in 2004.¹ There are many factors help to explain the increase of FDI in China, but the most important factor is the stable policies encouraging and supporting the FDI.

Since the access to WTO, especially recent two years, China speeds up the market openness to foreign investors and domestic non-public investors as well. The major policies related with infrastructure sector are as following:

- Ministry of Construction (MOC) issued “Guidelines on Speed up the Progress of Reform of Market-oriented in Urban Utilities Sectors” in December 2002. The Guidelines encourages the domestic non-public capital and foreign capital to participate the construction and operation of urban public facilities. The sectors of water supply, gas supply, heat supply and wastewater treatment and public transportation as well will open to non-public investors.

- The Third Plenary session of 16th Communist Party of China (CPC) Central Committee approved “The Decision on issues regarding the improvement of the socialist market economic system.” in October 2003. The decision called for vigorously promoting and guiding the private sector of the economy and granting private enterprises the same treatment in investment, financing, taxation, land use and foreign trade. Non-public capital should be allowed to enter infrastructure, public utilities and other sectors not prohibited by laws and regulations.

- Ministry of Construction (MOC) released a “Management Measures on Franchise of Urban Utilities” in April 2004. The document encourages private and foreign enterprises to operate urban public utilities under franchise. Under MOC’s measures on franchise operation of urban utilities, the city government will grant franchises based on the market principles of transparency and fairness and through competitive methods such as public bidding and auctioning. Almost urban utilities are open to franchise, including water supply, gas supply, heat supply, water drainage, sewage treatment, solid waste treatment, toll roads, subways, urban railways and other public transport as well as other urban utilities.

Before the issuing of the policy of MOC, Beijing Municipal Government and Shenzhen Municipal government implemented similar policy already in 2003.

- State Council issued a document “State Council’s Decision on Investment Institution” in July 2004. The main objective of this policy is to encourage the social investment (non-public investment) to make investment in infrastructure sectors and fields as long as laws and regulations do not deny them to enter into these areas. Government will provide different preferential policy to the investors. This is one remarkable step in the reform of investment system.

- According to this policy, the government approval will not required for projects not funded by government and the new system of authorization and recording-filling is introduced. The Projects not using public funds only need government authorization for those important and restrict investment projects related to public social interests.

- The State Council also issued a Catalogue of important and restricted investment sectors. Other projects without state funds, only need to be on record, the investors will take decision and risk themselves. Thus the enterprises can decide the investment more freely.

- The National Development and Reform Commission (NDRC) and Ministry of Commerce (MOC) issued jointly a revised “The Catalogue for the Guidance of Foreign Investment Industries” and it’s Attachment in December 2004 and it is clear for foreign investors that almost industries, including infrastructure are encouraged and only several sectors are restricted or prohibited.

- According to this Catalogue, the encouraged Foreign Investment Industries in the sector of infrastructure include:

*Production and Supply of Power, Gas and Water:*

- Construction and management of thermal-power plants with a single unit installed capacity of 300 000 kW or above
- Construction and management of power plants with the technology of clean coal burning
- Construction and management of heat power plants
- Construction and management of power plants with natural gas;
- Construction and management of hydropower stations with the main purpose of power generating
- Construction and management of nuclear-power plants (Chinese partner shall hold the majority of shares)
- Construction and management of new energy power plants (solar energy, wind energy, magnetic energy, geothermal energy, tide energy and biological mass energy, etc.)
- Construction and management of urban water plants
Water Resources Management Industry:

Construction and management of key water control projects for comprehensive utilization (the Chinese party shall hold the relative majority of shares)

Communication and Transportation, Storage, Post and Telecommunication Services:

5. Construction and management of grid of national trunk railways (Chinese partner shall hold the majority of shares);

Construction and management of feeder railways, local railways and related bridges, tunnels and ferry facilities (equity joint ventures or contractual joint ventures only);

6. Construction and management of highways, independent bridges and tunnels;

7. Construction and management of public dock facilities of ports;

8. Construction and management of civil airports (the Chinese partner shall hold the relative majority of shares);

9. Construction and management of oil (gas) pipelines, oil (gas) depots and petroleum wharf;

10. Construction and management of the facilities of coal delivery pipelines;

11. Construction and management of storage facilities relating to transportation services.

Restricted Foreign Investment Industries include:

a. Production and Supply of Power, Gas and Water:

Construction and operation of conventional coal-fired power plants whose unit installed capacity is less than 300,000kW (with the exception of small power grid)

b. Social Service Industry:

Construction and operation of networks of gas, heat, water supply and water drainage in large and medium sized cities (Chinese partner shall hold the majority of shares).

Prohibited Foreign Investment Industries include:

1. Production and Supply of Power, Gas and Water:

   (1) Construction and operation of power network

2. Communication and Transportation, Storage, Post and Telecommunication Services

   (1) Companies of air traffic control.

   (2) Companies of postal services.
State Council issued a document “State Council’s Guidelines for Encouraging, Supporting and Guiding the Development of the Non-Public Sector of the Economy, Including Self-Employed Workers and Private Companies” in February 2005. The policy encourages private investors to enter sectors previously monopolized by state-owned enterprises, including power, telecommunications, financial services, utilities, oil, railways, civil aviation, military research, and arms manufacturing. According to the policy, private enterprises will now be able to invest in any sector, except for certain sensitive ones explicitly forbidden by law.

In general, according to current laws and regulations as well as policies, the market of infrastructure is open to all kinds of investors, domestic enterprises and foreign enterprises.

4. The reform of structure and regulation of infrastructure sector:

In regards of structure reform, remarkable achievements have made also. Main progresses are as following:

Telecommunication sector:

In the long period since 1950’s, there was only a state-owned operator in the telecommunication sector, it was the China Telecommunication. It was not a real enterprise in fact and it was operated directly by former Ministry of Telecommunication and Post for a long time. The reform has begun since the early 1990’s and government set up several new players, such as China Unicom which was set up and controlled by three government ministries (former Ministry of electronics Industry, former Ministry of Electricity and Ministry of Railways). Since 1999, there has been two round restructures in the sector. The objectives of restructures are separating the telecommunication enterprises management from the government department and introducing competitive mechanism into the sector. The main task is to split the former China Telecom Corporation into several independent companies.

At present, the market is shared by six corporations, namely China Telecom Corporation, China Netcom Communication Group Corporation, China Mobile, China Unicom, China Satcom and China Railcom. The new China Telecom Corporation is still entitled to retain the goodwill and intangible assets of "China Telecom", maintain business in 21 provinces and cities in southern and north-western China and hold 70 percent of the national trunk transmission network assets owned by the former China Telecom. The 10 northern provincial corporations of the former China Telecom including those in the provinces of Henan, Shandong and Northeastern provinces, together with the former China Netcom, and Jitong Communications Corporation, merged into the new China Netcom Communication Group Corporation, holding 30 percent of the national trunk line transmission network assets.

After the restructure, the Ministry of Information Industry does not operate any telecommunication enterprise directly and regulation is one of the main functions of the ministry.

Civil aviation sector:

The restructure of the civil aviation sector includes three parts. Part one is the reform and restructure of airlines enterprises and other transportation enterprises. Separating the state-owned enterprises management from the General Administration of Civil Aviation of China (GACAC) and transferring these SOEs to independent modern enterprises. Part two is the reform of airports system and all of airports are separated from GACAC and these airports are owned by local government or companies. Part three is the transformation of government functions from management body for the SOEs in the old system to the regulatory body. Generally speaking, a new civil aviation administration system has been basically established which can cater to China's socialist market economy and civil aviation development.
Electricity power sector:

The progress of reform and restructure is remarkable in the sector. The first achievement is the separation of the production and supply of the electricity power and transmission of the power. The State Power Corp's virtual monopoly came to an end with the establishment of five independent electricity generating and two transmission companies in 2002. The five generators, China Huaneng, China Datang, China Huadian, Guodian Power, and China Power Investment, have an equal share of the generating assets of former State Power, which used to control half of the nation's electricity generating assets and almost all transmission grids. On the transmission front, the State Power Corp of China also split some of its power grids to form the Southern Power Grid Co. The Southern Power Grid manages the grids in the southern provinces and regions of Guangdong, Hainan, Guangxi, Yunnan and Guizhou, while State Power controls grids in the rest of the nation.

The establishment of The State Electricity Regulatory Commission (SERC) in December 2002 is another result of the reform. It is the first government-sponsored regulatory agency in the infrastructure sectors in China so far. It was responsible for supervising and regulating market competition in the electricity industry. It will also issue licenses to operators in the industry, monitor their operations.

5. The suggestions for further reform of infrastructure sector.

First of all, it is very important to improve the legal system in the infrastructure sectors according to the principles of WTO. There are many laws or regulations in the infrastructure sectors, but some of these laws or regulations are not suitable to socialism market economic system and it is needed to make revise for some laws, such as “Railway Law” and “Electricity Power Law”; There is only a “Regulation of Telecommunication” and it is necessary to make a telecommunication law in near future.

Secondly, it is needed to speed up the reform in railway sector. The shortage of railway transportation in recent years is related with the lower market openness and slow progress of reform. Fortunately, the Ministry of Railway has increased the scale of market openness recently and the government encourages foreign capital and domestic non-public enterprises to make investment in railway system.

Thirdly, it is needed to speed up price reform of telecommunication and improve the government price regulation, try to establish the incentive price regulatory system in these sectors. The new price system has introduced into the telecommunication sector recently and it will benefit the competition and consumers.

Finally, it is very important to deepen financial reform. State-owned commercial banks should improve their fixed assets loans system and improve the financing environment for non-public enterprises’ investment in infrastructure sector.

REFERENCES

OECD Work on Regulatory Reform for Market Openness:
Supporting Structural Reform for Open Markets and Enhanced Economic Performance

Charles Tsai, Consultant, Trade Directorate, OECD

In recent years several trends have reinforced the link between domestic regulatory environment and international market openness. First, increasing global flows of trade and investment mean that domestic regulations applied in a single country may increasingly impact economic activities globally. Second, as tariffs have receded over the course of successive rounds of trade liberalization, national regulations increasingly describe the contours of market access. In this light, the quality and efficiency of the domestic regulatory systems should increasingly be assessed in terms not only of their efficiency in securing stated regulatory objectives, but the degree to which they contribute to market openness. Reform of regulations to secure stated regulatory objectives in a manner no more trade restrictive than necessary, will maximise the contribution that market openness can bring to lower domestic price levels, increased selection and the competitiveness of the domestic economy.

Enhancing the integration of market openness principles and pro-competitive product market policies into domestic regulatory systems reduces barriers to the inward flows of goods, services and investment upon which globally competitive export industries rely. Under the conditions of open global markets, when tariffs and quotas no longer significantly limit potential exports, costs imposed by unnecessarily heavy or divergent regulations will increasingly determine the success of enterprises both in their domestic and in foreign markets. In local markets, inefficient regulations can benefit foreign firms at the expense of domestic ones and can result in the loss of domestic markets to competitors from countries rooted in higher quality regulatory regimes. A domestic firm may have relatively low production costs, but face high costs when complying with regulations in its home country. If these costs are high enough, they can undercut efficiency and locational advantages and lead to losses of domestic and international market share to otherwise less efficient foreign suppliers. By the same token, enterprises operating in an efficient regulatory environment provided by home countries will be better placed to compete both in foreign and domestic markets. Increasingly, the competitiveness of the domestic economy will be anchored to the efficiency of domestic product market regulations and the quality of market openness reflected within them.

<table>
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<tr>
<th>Terms and definitions</th>
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<tr>
<td>Regulatory Reform is the reform of government institutions, regulations and regulatory processes that may entail structural reform.</td>
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<td>Structural Reform includes policies and/or regulatory reform designed to reform the structure of the government and/or domestic economy.</td>
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<td>Market Opening entails an explicit liberalization of a domestic market to foreign trade and investment (e.g. tariff liberalisation commitments under the WTO).</td>
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<td>Market Openness represents the degree to which a regulatory regime is open to trade and investment independent of existing liberalisation commitments (e.g. domestic regulatory environment that unnecessarily impede trade and investment).</td>
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Enhancing market openness can facilitate more complete, effective and durable structural reforms. Similarly, the implementation of structural reforms provides a perfect opportunity for enhancing the market openness of regulatory systems even in the absence of further market openings. OECD work on regulatory reform and market openness begins from the premise that good regulatory policies at home enhance market openness and market openness reinforces domestic economic performance.
The relationship between market openness and regulatory reform

Market openness is itself only one of three components within OECD reviews of regulatory reform. Reviews of regulatory reform include assessments of: 1) government capacity to assure high quality regulation, 2) competition policy and 3) market openness. Good regulatory policies aim to enhance the economic performance, cost-effectiveness or legal quality of regulations and related government formalities. Competition policy seeks to remove anti-competitive practices which protect inefficient economic activities. By removing inefficient economic activities resources are freed for use in economically viable activities. Market openness policies aim to ensure that a country can reap the benefits of market openings, globalisation and international competition by eliminating or minimising the distorting effects of border as well as behind the border regulations and practices.

These three elements are linked and increasingly so due to globalisation under which companies seek to optimise their corporate strategy and manage resource allocation from a global perspective (i.e. a company can choose a country based on the efficiency of its regulatory framework). As globalisation evolves, active use of global resources (goods, money, people, technology, information, etc.) becomes increasingly important for economic growth. Therefore countries need to ensure that their domestic regulations and anti-competitive actions do not impede cross-border corporate activities and domestic economic competitiveness.

The objective of regulatory reform is to improve economic performance by making domestic regulatory regimes efficient for achieving the objectives set by society, usually through the system of government and involving various degrees of private participation. Market openness is an important means for helping achieve the objectives of economic development, growth and improved standards of living. Policies contributing to market openness can help a country reap the benefits of globalisation and international competition by eliminating or minimising the distorting effects of regulations and practices both at and behind the border. The degree of market openness reflected in domestic regulatory systems will also influence the range of opportunities open to foreign suppliers of goods and services to compete with domestic counterparts in the domestic market, through trade and investment.

Neither regulatory reform nor market openness are policy objectives in their own right, but are rather means to these objectives. As such, they are mutually supporting in the sense that good regulatory practices enhance market openness. And, market openness reinforces domestic economic performance.

Market openness in support of structural reform

Attention to market openness within processes of regulatory reform enable more rapid, complete and resilient structural reforms in support of global economic competitiveness. The six principles of efficient regulation to underpin regulatory reform are closely interrelated. Yet, we are conscious that “one size does not fit all”.

Broadly, the market openness perspective entails considering reforms from the perspective of foreign producers who are unlikely to be familiar with the local business culture. Explicitly including the consultation of foreign producers within the reform process enhances the openness of the reform process from a market openness perspective. Such horizontal application of such procedures will enhance the quality of market openness reflected within the resulting reforms. Significantly, consultations with interested foreign parties in reform processes can contribute to the quality of the reforms themselves as regulators in Switzerland have indicated during a recent review.
The six principles of market openness

1. Transparency and openness of regulatory decision-making: reduces uncertainty in investment and/or imports thus facilitating efficient allocation of resources within the process of structural reform.

2. Non-discrimination (both national treatment: equivalent treatment to national and foreign suppliers) and MFN (no difference in treatment among foreign suppliers): supports more rapid entry by foreign goods and establishment by foreign enterprises thus allowing the domestic economy to benefit from the most efficiently produced goods and the most advanced technologies within the process of structural reform.

3. Avoidance of unnecessary restrictiveness for trade and investment: increases the efficiency of domestic and foreign businesses and is facilitative of successful structural reform.

4. Use of internationally harmonised measures: not only facilitates market access towards foreign goods, services and investment, but supports access for domestic goods, services and investment in foreign markets. It is also a potential catalyst for structural reform.

5. Streamlined conformity assessment procedures: accelerates entry by foreign goods and services thus enhancing the responsiveness of domestic value chains to the changing composition of inputs available on the global market.

6. Application of competition principles: enables structural reforms by removing anti-competitive actions that are most often undertaken by domestic actors.
   - Particularly important for foreign producers which are normally not part of domestic cartels.
   - Applied internationally, may be important to domestic consumers and producers impacted by anti-competitive practices administered from abroad.

Notably, some of these principles appear to varying degrees in other components of OECD reviews of regulatory reform. Attention to them from a market openness perspective can crucially determine the ability of domestic economies to meet the challenges of – and to benefit from – globalisation. In this light, the principles of transparency and avoidance of unnecessary trade restrictiveness can take on a new dimension for foreign producers unfamiliar with the local language and customs. Processes of form to increase transparency and reduce red tape should be considered with a broad constituency in mind and not be operated solely from domestic perspective. The strength and manner in which competition principals are enforced has dramatic implications for market access by foreign producers, particularly when cartels are typically composed of incumbent domestic producers. Some countries apply “rights of private action” laws under which foreign producers can challenge anti-competitive practices within the domestic market. Provisions such as these reflect attention to market openness in the development of competition policy regimes.

Structural reform in support of market openness

Structural reform may directly support market openness by resulting in de facto liberalisation. For example, reforms applied in sectors such as finance and telecommunications infrastructure may enable foreign suppliers to compete in the domestic market as a by-product of structural reforms. (i.e. reforms can led directly to increased market openness). Foreign producers can facilitate domestic structural reforms by bringing the most advanced technologies into the domestic market.

Structural reforms may also indirectly support market openness. For example, they can enhance competition policy regimes which disproportionately impact market openness. Elsewhere, programmes of technological upgrading for which benefits apply on a non-discriminatory basis to domestic or foreign invested producers (within a domestic economy) will strengthen a reputation for a level playing field that will increase the confidence of foreign investors. Considering market openness in this context facilitate the leveraging of inwards foreign investment to support successful structural adjustment. In short, decisions to invest normally consider the reputation of a host country in terms of market openness towards investment policy specifically as well as the market openness of its regulatory policy generally.
**Approaching market openness through structural reform**

Centralising responsibility for the market openness aspects of structural reforms is a good first step that not only provides an institutional focus for enhancing the market openness of reforms, but allow for the development of capacity with experience across different types of reforms. *Ex-ante* regulatory impact analysis (RIA) assessments should include analysis on the potential impact that structural reforms will have on market openness in terms of trade and investment, preferably including quantitative assessments. Oftentimes the value of RIAs reside in the process of simply thinking through the various potential impacts of regulatory reforms in light of the factors highlighted in this and other parts of OECD work presented at this conference. Reliance on the more the fully developed explanation of market openness elucidated within the *APEC-OECD Integrated Checklist on Regulatory Reform* will provide more a comprehensive approach for applying RIAs in support of market openness and regulatory reform overall.

Structural reforms provide an excellent opportunity to better integrate market openness throughout domestic regulatory systems. More open domestic economies will better enable foreign goods and investment to underpin progress towards a more competitive domestic economy.
1. Introduction

The most recent OECD economic survey of Australia acknowledged that the reform process undertaken by the Australian Government has now reaped benefits for its economy.¹

This success has been significantly attributed to a comprehensive competition based economic reform package that had its genesis with the release of the Independent Committee of Inquiry into National Competition Policy, chaired by Professor Fred Hilmer.²

A unique agreement between the Commonwealth and all State Governments in Australia in 1995³ was the start of what continues to be a long journey for the reform of many markets. Over the past ten years markets have been opened up to competitive forces and where that was not possible appropriate regulatory mechanisms have been adopted to ensure that there is a fair and level playing field through the implementation of competitive market structures.

Australia is now at the next stage, where we are looking at the reforms which have occurred over the past ten years, in particular the effect that these reforms have had on competition and infrastructure investment.

Whilst Australia has come along way since the Hilmer report was released, the issues and concerns surrounding competition and regulation are still keenly debated within the Australian political and business arenas.

One recent area of debate in Australia is that overregulation has stifled investment within infrastructure. More recently an announcement by the Government of its intention to sell its remaining share in Telstra, a statutory owned telecom, has also raised questions about the appropriate level and effectiveness of telecommunications regulations.

This paper briefly outlines some of the key regulatory and competition policy issues which the Australian Government and policy makers have dealt with and continue to consider to ensure that the Australian economy is competitive. They include:

- National competition policy;
- Industry specific regulatory reform mechanisms; and
- The identification of future issues that need to be identified to maintain the reform process.

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² The Independent Committee of Inquiry into National Competition Policy, chaired by Professor Fred Hilmer, was commissioned in 1992 to propose a National Competition Policy that would support an open, integrated, domestic market for goods and services.
2. National Competition Policy

The Need for Reform

During the 1990s, Australia embarked on an ambitious micro-economic reform program. This reform program was a response to concerns about Australia’s poor economic performance compared against other developed countries. Despite microeconomic reforms to Australia’s economy in the 1980s, a greater emphasis on fiscal responsibility and a commitment by the central bank to target inflation, Australia’s productivity performance continued to compare poorly to its international peers.

By 1990, Australia’s GDP per capita and GDP per hour were ranked 16th out of OECD member countries. Australian governments agreed to examine a national approach to microeconomic reform in order to improve Australia’s economic performance. Following the Hilmer review Australian governments agreed in 1995 to implement the National Competition Policy reform package.

The central focus for reform was competition. More specifically, the focus was upon the economy-wide application of law addressing anti-competitive conduct, and the removal of structural and legislative impediments so as to facilitate more competition in the non-traded goods sector.

National Competition Policy (NCP) opened up, to competition, formerly closed off areas of the economy, such as, state run electricity generation and transmission, gas pipelines, airports and rail links by bringing them under the jurisdiction of the Trade Practices Act.

Under NCP the Australian Competition and Consumer Commission (ACCC) were given new areas of responsibility as it was recognised that simply privatising or deregulating these monopolies would, on its own, do little to promote competition.

The Hilmer review and Australian governments recognised that competition policy was much broader than legislation governing market conduct, and encompasses all policy dealing with the extent and nature of competition in the economy.

The objectives of the review were:

- The creation of an economy wide competition law;
- Competitive neutrality between government and private enterprises;
- Removal of regulatory restrictions to competition;
- Structural reform of public monopolies;
- Access to essential facilities; and
- Prices oversight to constrain monopoly pricing.

Each of these objectives can be linked to the broader policy of enhancing market forces and economic efficiency.
The creation of an economy wide competition law

Laws designed to ensure that competition is not undermined by firms engaging in anti-competitive conduct are a common feature of many economies. In Australia, these rules have been embodied in the *Trade Practices Act 1974* (TPA). The TPA prohibits various anti-competitive agreements, the misuse of market power, and certain mergers and acquisitions.

NCP reforms gave these laws an economy-wide application. Formerly, due to Australia’s constitutional law issues, these laws did not apply to state owned business enterprises or unincorporated associations.

Economy-wide application enables a consistent and uniform application of competition law. This creates a level playing field that fosters competition across all forms of business enterprise and not providing a regulatory benefit to a particular business class.

Despite the economic benefits of a level playing field across all sectors of the economy, governments recognised that there may be situations where competition benefits may not be sufficient to offset other social costs. In these circumstances the Australia allows for authorisation of conduct that would otherwise be considered anti-competitive.

Australian competition law has the capacity to authorise anti-competitive conduct that is in the public interest. Through the reform process which has occurred, it was recognised that in certain circumstances restrictions on competition can sometimes be in the public interest, provided that there is a net public benefit in the face of any net detriment to competition. This authorisation process is conducted in an open and transparent manner to enable a full consideration of the relevant issues.

The use of this economy-wide authorisation process is seen as a more effective mechanism for allowing restrictions on competition in the public interest compared to legislative restrictions on competition. It is therefore important that legislation review continue to reform those restrictions on competition that have been enacted by legislation. If retention of that restriction is desirable the authorisation provisions of the Australia’s competition law provide a means for granting an exemption.

Competitive neutrality between government and private enterprises

To create a more level playing field, policy makers recognised that more was needed than simply applying competition law to all enterprises. In markets where government businesses compete with private businesses, governments could confer financial advantages upon their own businesses. Hence, despite neutrality at law, private businesses might suffer a competitive disadvantage. When operating in markets where private operators are present, governments agreed to a set of competitive neutrality principles. These principles expressly did not apply to non-business, non-profit activities of government businesses.

These principles included charging cost reflective prices, adopting corporate models, paying or making allowances for government taxes and commercial borrowing rates, and complying with the same regulations that apply to private businesses.

Competitive neutrality was important as governments were increasingly removing themselves from the role of becoming the direct provider of services and were contracting with private operators to provide these services. This created a greater prospect of private enterprise and government entities competing to provide the same service.
**Removal of regulatory restrictions to competition**

Policy makers also recognised that while an economy-wide competition law could protect existing competition, there may be regulatory barriers to competition in a market. For example, legislated monopolies for public utilities, statutory marketing arrangements for many agricultural products and licensing arrangements for various professions restrict the entry of competitors into various markets.

Over the past ten years there has been a systematic review of existing legislation and removal of legislation that restricts competition, unless it could be shown that the benefits as a whole outweighed the costs and restricting competition was the only way to achieve those benefits.

**Structural reform of public monopolies**

Industry structure may in some cases restrict the emergence of competition. For example, gas and electricity utilities in Australia were traditionally vertically integrated, and in many cases state owned monopolies. While an economy wide competition law can protect competition, it cannot create competition in industries that lack a competitive market structure.

As part of NCP it was necessary to implement structural reform of public monopolies to separate the contestable and non-contestable elements of vertically integrated government owned businesses.

While this policy did not require governments to privatisate their business activities, it did require introduction of a transparent process to identify functions or activities that should stay with government, if the business was privatised or corporatised. For example, regulatory functions should not be administered by private companies and were removed from entities to be privatised.

**Access to essential facilities**

While removing regulatory and structural impediments to competition created the necessary preconditions for the emergence of competition in many public monopolies, it was recognised that competition would still not be possible in markets with ‘natural monopoly characteristics’

An economy wide competition law would not alone achieve this objective and in response a national third party access regime for those facilities that could not be economically duplicated and were of national significance was introduced. This regime was to be implemented under the auspices of the TPA and to be administered by the ACCC, the National Competition Council and the Australian Competition Tribunal. The regime provided for access to infrastructure on terms that were ‘fair and reasonable’.

The purpose of this regime was to create competition in industries dependent upon that infrastructure, not the infrastructure itself. This could be a particular problem where infrastructure owners also own businesses in dependent markets. These businesses have an incentive to restrict access to the infrastructure asset to favour their business in the related market.

**Prices oversight to constrain monopoly pricing**

Similar to the issue of access, in markets that are not contestable, businesses may have the ability to charge prices above competitive market prices for extended periods of time. In these markets an economy wide competition law will not constrain ‘monopoly pricing’. Regulations were introduced to constrain pricing in a number of industries. These regulations often accompanied access provisions as ‘natural monopolies’ face both problems. Again, the purpose was not to create competition in the infrastructure industry, but rather to preclude monopoly pricing from restricting the emergence of competition and more efficient outcomes in dependent industries.
The Role of the ACCC under National Competition Policy

As a result of NCP, the ACCC had increased responsibility for the administration of a number of the industry specific access regimes created by the reforms.

A single entity that administers competition law and industry regulation is an institutional structure that is somewhat unique to Australia. A single body allows for the sharing of knowledge and expertise across the two functions and ensures that the two forms of regulation, that ultimately has the same objective of facilitating competition, do not cross purposes. Moves by Governments to further improve the efficiency and consistency of regulation across the energy sector has occurred with the establishment of a single energy regulator within the ACCC to administer the regulation of the electricity and gas markets.

3. Industry specific reforms

These economy wide reforms were accompanied by a number of sector specific reform initiatives. In particular, sector specific structural reform and access regulation were introduced into a number of industries as part of the reform of public monopolies. These reforms were undertaken under the national access law to ensure consistency throughout the economy.

As a result of the reforms, the ACCC is responsible for the access regimes to certain infrastructure. The examples below of electricity, rail, and telecommunications demonstrate some of the challenges and successes which have occurred in regulating these sectors.

Regulating the telecommunications sector raises a number of issues additional to ensuring third party access and it was necessary to adopt further specific legislation relating to telecommunications. The specific telecommunications regime enables the ACCC to obtain information to help monitor competition and specifically deal with anti-competitive conduct in the telecommunications sector.

Electricity reforms

Historically, the electricity industry was state-based and publicly owned. Each state was largely self-sufficient in terms of generation. There was excess generation capacity in each of the states with interconnection limited to Australia’s two largest states, New South Wales and Victoria. The infrastructure for generating, transporting and retailing electricity was vertically integrated.

As a result, governments agreed to:

- Placing utilities on a commercial footing through corporatisation;
- Vertically separating generation, transmission, distribution and retail businesses, and ‘ring-fencing’ these businesses from other activities;
- Allowing for customer choice of supplier through full retail contestability (FRC);
- Implementing a system of third party access to transmission and distribution infrastructure on fair and reasonable terms; and
- Establishing a wholesale electricity trading market known as the ‘National Energy Market’.
Overall electricity prices have declined in real terms since the creation of the National Energy Market. The two largest states of New South Wales and Victoria have experienced reductions of around 50% in wholesale prices, the fastest growing northern state, Queensland, has experienced reductions of around 14%, while South Australia, the smallest state in the National Energy Market, has experienced increases in wholesale prices. Each of the states in the National Energy Market has price controls for retail customers. Retail prices have, on average, remained fairly constant in real terms, but have fallen for some of the larger business customers.

The cost of energy and access to electricity infrastructure affects the competitiveness of users in all sectors of the economy. Lower, more competitive prices resulting from the reforms have helped industries compete in domestic and international markets, with beneficial outcomes for economic growth and employment. Australian electricity prices are now seen as amongst the lowest in the OECD.

Rail industry reforms

Substantial structural reform to the rail industry occurred during the 1990s through a number of inter-governmental agreements. Australia’s interstate track network was state based, with differences between states in the operation of these networks restricting competition across the entire interstate network. As an example, track widths varied between states making the operation of a rail company across the entire network difficult.

The reforms established a single corporation responsible for the management and operation of Australia’s interstate rail network. Reforms also introduced:

- Vertical separation of rail ownership from above rail businesses of some government entities;
- Corporatisation and privatisation of some government entities;
- Co-regulation of safety across states and mutual recognition of accreditation;
- Improving uniformity of technical standards and operating practices; and
- Implementing access regimes and ring fencing to cover various track networks.

Vertical separation and an access regime have facilitated above rail competition on the interstate rail network.

Over the past five years, above rail competition (as well as intermodal competition) appears to have driven technical efficiency improvements in the haulage of interstate freight. Examples of productivity improvements are expanded train lengths and heavier axle loads. In 2002-03, train lengths increased by approximately 5-6% on the east-west corridor. This appears consistent with reports that intermodal efficiency (gross mass per train) improved by 30% over the past five years, while average real access freight revenue yields have fallen by over 20%. Rail volumes have improved. Despite falling grain volumes, gross tonne kilometres have grown, on aggregate, by 14% over the past three years. Moreover, volumes on the east-west corridor increased by 6.7% in the March 2004 quarter on the same period in 2003 and almost 16% on the March 2002 quarter.

**Telecommunications**

Since the opening up of the telecommunications market to full competition in July 1997, new investment has totalled more than $19.7 billion since 1997.

There has also been a general downward trend in the prices of most call services with the price of an average basket of telecommunications services falling by 20.1% in real terms between 1997–98 and 2002–03.

The initial benefits of the current telecommunications regulatory regime were almost entirely due to competitors entering at the retail level and making use of regulated interconnection to drive down retail costs. While there have been some areas of relatively robust competition - such as in corporate markets and mobile services - it is still somewhat patchy in terms of service offerings and geographic reach, particularly for residential consumers.

But the overriding issue remains the dominance within the telecommunications sector of Telstra (a statutory monopolist 51% owned by the Government) - by virtue of it being the sole provider of the ubiquitous local access network connecting virtually every home and business in the country. This monopoly means that even in the more competitive markets, those seeking to compete with Telstra often must continue to rely on Telstra for some form of access to its network. This leaves those seeking to compete with Telstra with just two alternatives - either re-selling its services, or bypassing some or its entire network by investing in competing infrastructure.

It’s no coincidence that the more competitive markets are those in which competitors have built their own networks, rather than just reselling space on Telstra lines. For example, corporate and business customers have benefited to a much greater extent than residential customers, by virtue of infrastructure roll-out by newer players. Similarly, the development of competing mobile networks has created a structure for more sustainable competition in this area of telecommunications. And where there is more sustainable competition there is also substantially less regulation.

The current legislative arrangement involves an accounting separation of Telstra’s wholesale and retail arms. However, the accounting separation requirement does not require Telstra to reorganise its arrangements as if it were operating two or more discrete businesses.

Moving forward the ACCC has advocated a need for operational separation. An operational separation model, would in its view, maintain the balanced approach of the existing regulatory regime, and recognises that Telstra is in the unique position, through its monopoly over the local access network, of being able to stifle innovation by frustrating its competitors’ investment plans. In turn, operational separation would provide a superior means of detecting anti-competitive behaviour.

Internal separation between a ‘retail business’ supplying services to end-users, and a ‘network business’ that would supply wholesale services to all third party access seekers, would enable third parties to obtain prices and service levels that are effectively equivalent to those that are provided to the Telstra retail business.

Genuine arms-length trading arrangements that deal equally with all retailers, whether they are from Telstra or a competitor, would provide Telstra’s network business with stronger incentives to drive a hard bargain in maximising returns from all its activities, rather than favouring its own retail business. In a similar way, the Telstra retail unit would face the same commercial pressures as its competitors to procure its wholesale services.
Increased transparency from separate accounts also increases the likelihood of anti-competitive conduct being detected and punished. This should in turn act as a deterrent by reducing the incentives for Telstra to engage in such behaviour in the first place.

The future of Telstra as a government enterprise is the political issue today in Australia.

The Australian Government has announced its intention to sell its remaining share of Telstra. In making its announcement, the Government has also proposed a model for operational separation of Telstra between its wholesale and retail arms.

For this reason, the ACCC welcomes the proposed changes which should increase transparency and equivalence in the way Telstra provides key access services to its own downstream operations relative to those of its competitors. Most importantly, these changes should complement the checks and balances of the well-established and thoroughly reviewed regulatory regime.

If the final operational separation model reflects the Government’s intentions for increased transparency and equivalence, Telstra’s competitors will be in a better position to see the terms and conditions for network access that Telstra offers to its own retail units and compare these to the terms and conditions they themselves face. This will improve transparency and certainty for Telstra’s competitors, and is likely to be conducive to more investment in telecommunications services overall.

4. Future issues and challenges

Infrastructure Investment

A recent debate concerning infrastructure investment has arisen in Australia. This debate reflects issues arising from a number of areas of regulation involving State and Commonwealth regulations as they apply to bottleneck facilities. The debate had its genesis following delays in major export coal ports specifically relating to an ability to meet export demand. These delays also ignited major discussion about overall regulation cost and decisions of regulators hindering infrastructure investment.

The Australian Prime Minister commissioned a taskforce to examine these issues. The taskforce subsequently concluded there is no major crisis in infrastructure investment in Australia.

The report did note that businesses and regulators had taken appropriate steps to prevent these issues from re-occurring.

The resolution of the bottleneck facilities problems demonstrated the advantages of the ACCC’s role in authorising anti-competitive arrangements, where the detriment is outweighed by the net public benefit. The authorisation process enabled the businesses to implement procedures which quickly dealt with the short term capacity constraints and at the same time enabled industry to plan for the future.

The Australian competition law, in particular the authorisation process, provides an effective mechanism for resolving problems, as it recognises that there will be circumstances where conduct that may be anti-competitive should, nevertheless, be approved, because it provides an overall public benefit.

5. In March 2005 the Prime Minister, Mr John Howard, announced the establishment of a small taskforce chaired by Dr Brian Fisher, Mr Max Moore-Wilton AC & Prof Henry Ergas.

The authorisation process allows businesses to obtain protection from legal action under the TPA, but only where they can demonstrate that their proposal results in sufficient public benefits to outweigh any anti-competitive detriments.

One criticism that the Prime Minister’s taskforce made is that in some cases there are too many regulators and the multiplicity of regulatory systems imposes unreasonable impediments on businesses. It should be recognised that there are difficulties associated with implementing these changes within a Federal system.

The Federal Government has announced its intentions to examine and remove where appropriate the duplication of regulation overlapping due to Federal and State legislation. In relation to infrastructure concerns, the Federal Government, following the Prime Minister’s taskforce, has announced its intention to implement a streamlined regulatory system for ports and export infrastructure.

**A new Energy Regulator**

The need to continually assess and review the role of regulation has been demonstrated in the economic regulation across energy markets. A key announcement of the Australian Government was to lower the cost and complexity of regulation facing investors by the establishment, just two months ago, of the Australian Energy Regulator (AER).

The key principle behind the establishment of the AER was that a national energy market needs a national energy regulator.

The establishment of the AER is an important milestone for energy regulation in Australia. The AER brings under one umbrella, regulatory functions formerly conducted by the ACCC, the National Electricity Code Administrator and will cover some functions undertaken by state regulators.

So, as of now, the AER has responsibility for:

- Economic regulation for electricity transmission in National Electricity Market jurisdictions;
- Monitoring of the NEM wholesale electricity market; and
- Enforcing the National Electricity Law, Regulations and Rules.

In addition, gas transmission for all jurisdictions except WA will pass from the ACCC to the AER next year, following the passage of necessary legislation in the various States and Territories.

The transition of responsibility for energy distribution, that is, both gas and electricity, and non-price retail to the AER will create a single, consistent and independent regulator which will reduce regulatory costs to business and barriers to entry and allow both gas and electricity to develop in a way that encourages competition within, and between the two, to the benefit of industry, consumers, and ultimately the nation.

Up until then, however, the AER is an additional regulator rather than a replacement for the dozen or so State/Territory regulators. So the sooner the move to the national framework the sooner the benefits will be achieved.
Review of National Competition policy

National Competition Policy has been instrumental in delivering a number of clear economic benefits to Australia. After ten years, the Council of Australian Governments (COAG) undertook to review NCP arrangements by September 2005.

As part of this review there has been an independent, in-depth analysis of the success of competition related reforms, and to explore ways of increasing the gains from such reform going forward.

The review was conducted by Australia’s independent Productivity Commission (PC).7

In its report the PC estimated that the observed productivity and price changes in key infrastructure sectors (electricity, gas, urban water, telecommunications, urban transport, ports and rail freight) in the 1990s, to which NCP and related reforms have directly contributed, have served to increase Australia’s GDP by 2.5%, or $20 billion.

The report recommends that Australia continue with competition-related reform to sustain and extend our impressive economic performance. The report notes that Competition Policy has:

- Contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes;
- Directly reduced the prices of goods and services such as electricity and milk;
- Stimulated business innovation, customer responsiveness and choice; and
- Helped meet some environmental goals, including the more efficient use of water.

Whilst Competition Policy has delivered a number of benefits, the PC agreed with ACCC recommendations that further work is necessary in the areas of:

- Strengthening the operation of the national electricity market;
- Building on the National Water Initiative to enhance water allocation and trading;
- Developing coordinated strategies to deliver an efficient and integrated freight transport system; and
- Arrangements to screen any new legislative restrictions on competition.

The PC’s report will be considered by the COAG later this year.

The COAG review provides the opportunity for the Australian, State and Territory Governments to consider the future of competition and productivity related reform in Australia, and decide the best arrangements to ensure our continued economic prosperity.

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Review of Part IV of the Trade Practices Act

Along with competition policy reforms, competition law in Australia has been subjected to a number of key reviews over the past three years. The most significant was a review conducted by former High Court Judge Darryl Dawson which recommended a number of key changes to the competition provisions of the TPA. Some of the major changes recommended and supported by the Australian Government included:

- Tougher penalties for breaches of the competition provisions and criminalising hard core cartel conduct;
- Streamlining the merger approval process under the Act; and
- Establish a simplified method which will allow small businesses exemptions from the Act if they can demonstrate that the public benefit exceeds the detriment caused by the anti-competitive conduct.

Anti-competitive conduct will not be deterred if the potential penalties are perceived by firms and their executives to be outweighed by the potential rewards. Under Australia’s existing penalty regime, there was a real danger that the penalties were simply not a deterrent.

Under the new tougher penalties arising out of the Dawson review, the maximum civil penalties for all breaches of anti-competitive conduct for corporations will be the greater of $10 million, three times the value of the gain from the illegal conduct, or (if the gain cannot easily be determined) 10% of annual turnover of the entire corporate group. That last point needs to be stressed – that is 10% of the entire group, even including businesses not directly involved in the illegal activity.

Maximum penalties for individuals will remain at $500,000 – but this will now be a penalty they cannot pass on to shareholders. Directors and senior executives caught engaging in anti-competitive conduct will lose their legal protection and will be forced to pay the fines and their legal costs themselves.

For hard core cartel activity, criminal penalties will provide for jail terms for executives involved in hard core cartels of up to five years and fines of up to $220 000. The financial penalties for corporations under the criminal regime will be the same as the much tougher new civil penalties.

For assessing mergers, the Committee did not consider that any major amendments to competition law were necessary. However, it did recommend changes to the assessment process.

The existing informal merger clearance process will be retained with an additional formal clearance process being introduced.

The merger authorisation process will be amended to enable direct application to the Australian Competition Tribunal (the Tribunal) for clearance... These amendments will increase the speed and certainty of the authorisation process. No review on the merits will be allowed from Tribunal decisions.

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The review also recommended changes to the collective bargaining mechanisms under the TPA. Proposed changes will enable small businesses to negotiate more effectively with big businesses through bargaining collectively is often found to be in the public interest. This legislation is designed to provide a speedier and simpler 'notification' process for small businesses to seek immunity from the Act to collectively bargain.

By lodging a notification small businesses will be afforded the same immunity from the Act to collectively bargain as the current authorisation process allows.

Immunity will be automatic conferred after 14 days and will remain in place unless and until the ACCC is satisfied that it is not in the public interest. Essentially, the onus will fall onto the ACCC to demonstrate that immunity is not justified, rather than, as is the case under the authorisation process, on applicants to demonstrate that it is.

The notification process will be available in respect of collective negotiation including associated collective boycotts. The ACCC will still need to be satisfied that the arrangements are in the public interest.

5. Conclusion

National Competition Policy has provided clear benefits to the Australia economy, through the economy wide application of competition law and the removal of regulatory and structural impediments to competition.

NCP and related reforms have coincided with the most consistent and sustained period of economic growth in Australia’s history. In measurable terms, GDP per person has grown by 2.5% a year since 1990 compared with the OECD average in of 1.7%. Australia’s Productivity Commission estimates that household income is A$7,000 per annum better off as a result.

There are challenges ahead for Australia to maintain the momentum of National Competition Policy reforms particularly within the Australian political framework involving both State and Federal governments. Issues flowing from the Productivity Commission’s review and significant changes in areas such as telecommunications and infrastructure regulation provide specific future challenges and opportunities for Australia.

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The Role of Competition Policy in Structural Reform

Mr. Edward Whitehorn, Head of Competition Outreach, OECD

Competition Policy

Competition policy provides insights into the design of structural reform – principally by focusing on economic efficiency. Competition and efficiency can provide a coherent policy framework for structural and regulatory reform.

OECD’s 1997 Report on Regulatory Reform states that “reform should be built on a foundation of competition policy”.

In theory, market-based solutions will result in the best allocation of resources and will be economically efficient. The market ensures this outcome by responding to the demands of buyers and sellers, provided there are no distortions of the market.

Competition policy is concerned with making sure that markets work efficiently – mainly by removing distortions such as anti-competitive practices of players in the market. Large companies with a degree of market power can also distort outcomes and competition policy seeks to prevent this from occurring.

Other Objectives

However, competition is not the only policy objective. Other legitimate public policy objectives may require regulatory intervention. E.g., the maintenance of universal service which is not commercially profitable. Where the market cannot be relied upon to produce the desired outcome, intervention is necessary.

There may be market failure, or no market because of a monopoly provider. Regulations are then needed to produce the desired outcome.

Regulation should be designed so as to try to capture the efficiency gains which competition would produce.

Benefits of Introducing Competition

Classic case is that consumers enjoy lower prices, improved quality and more choice. Competition provides an incentive to improve the offer in the market in order to capture the business.

Competition also promotes innovation – striving to be ahead of the competitors. Companies also become more efficient as there is pressure to reduce costs.

Economic theory can show that a perfectly competitive market will produce the most efficient allocation of resources. This will result in higher economic growth and improved consumer welfare.
An Example: Telecommunications

Study of 23 OECD countries over period 1991-97 (Regulation, Market Structure and Performance in Telecommunications by Olivier Boylaud and Giuseppe Nicoletti). Analysis showed that:

- Prospective competition (proxied by number of years remaining to liberalisation) and
- Effective competition (proxied by share of new entrants or number of competitors)
  - both result in productivity and quality improvements, and
  - reduce prices of all telecommunications services considered (long distance – domestic and international - and mobile cellular services).

World Bank study of 30 African and Latin American countries over period 1984-97 (An Empirical Analysis of Competition, Privatization and Regulation in Telecommunications Markets in Africa and Latin America by S Wallensten, June 1999). Found that increased competition was associated with:

- Lower prices for local calls
- Increased mainline penetration and connection capacity
- More payphones
- Higher connection capacity.

But, privatising an incumbent monopolist without introducing greater competition and establishing a regulatory framework with an independent regulator was negatively correlated with mainline penetration and connection capacity.

Conclusion: “competition is the most effective agent of change, privatization without regulation may not improve service, and regulation is especially important when privatizing a monopoly incumbent”.

Structural Separation in Regulated Industries

Many industries, especially traditional utilities, are vertically integrated. Typically a non-competitive component is vertically integrated with a potentially competitive component or activity.

Problem arises when owner of non-competitive component has both the incentive and the ability to restrict competition in the competitive component. This can be done by controlling the terms and conditions on which rival companies in the competitive component have access to the non-competitive component.

OECD Council Recommendation on Structural Separation in Regulated Industries (2001)

The Recommendation explicitly recognises that separation has both potential benefits and potential costs. These costs and benefits should be balanced against the costs and benefits of behavioural measures such as the regulation of access to an integrated company. The balancing exercise should take account of a number of factors including:

- Effect on competition
• Impact on the quality and cost of regulation
• Transition costs (i.e. the one-off costs associated with a structural change)
• Economic and public benefits of vertical integration.

The balancing should also take account of the economic characteristics of the industry in the country under review. The balancing takes place in the context of privatisation, liberalisation and regulatory reform.

Recommendation does not provide clear, hard and fast rules for any particular industry. It suggests consideration of restructuring as a policy option in the promotion of competition in public utility industries.

How Can Structural Separation be Achieved?

Ownership Separation

• Eliminates the incentive for discrimination between downstream companies. This alleviates need for regulation.
• Disadvantage is potential loss of economies of scope from integration.

Operational Separation

• Largely eliminates the ability of the non-competitive component to act anti-competitively.
• Disadvantage is that the non-competitive component may not have an incentive to maximize profits or maintain efficient and responsive operation, maintenance and investment.

Separation into Reciprocal Parts

Separation of the non-competitive component into smaller reciprocal parts relies on network effects to offset the incentive to deny interconnection. Some degree of competition in the non-competitive component may be stimulated. Economies of scope are preserved.

Disadvantage is that usage is limited to certain industries (particularly those with two-way networks such as telecommunications, rail and air transport).

Joint Ownership of Non-competitive Component

Many of the advantages of separation and by maintaining a link with downstream customers, is kept responsive to their needs.

Disadvantage is that there may be an incentive to deter new entrants. It may also facilitate collusion among the joint owners. Number of joint owners is relevant.

Regulation of Access to Non-competitive Component

A regulator intervenes to fix the terms and conditions on which rival companies in the competitive component acquire access to the non-competitive services. Preserves certain economies of scope resulting from integration.
Disadvantage is that regulator is constantly trying to neutralise incentives of the integrated company to deny access to its rivals, and requires adequate resources, information and instruments of control.

**Capacity Building**

OECD has been involved in capacity building through its outreach work for many years. Work includes training seminars and commenting on draft laws and regulations. OECD and the Korea Fair Trade Commission have established a Regional Centre for Competition in Seoul which provides capacity building for the Asia region.

The Checklist provides a useful tool for discussion of capacity building initiatives. It also provides a starting point for an exchange of ideas on regulatory reform. Dissemination of best practice ideas can lead to fruitful dialogue and help to build capacity.

Increasing expertise in competition policy will lead to better regulatory and structural reform.
VI. PARTICIPANTS LIST FOR THE APEC-OECD SYMPOSIUM ON STRUCTURAL REFORM AND CAPACITY BUILDING

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