Alternatives to Traditional Regulation
A Principles Approach.

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Introduction

- Requirements of the RIA process
- OECD Principles of good regulation.
- Regulatory alternatives: the main features.
- Selecting the right approach.
- Criteria for assessing alternatives.
Requirements of the RIA process

• Clearly determine policy objectives
  • Case for regulation / Market failure / Policy goals

• Consideration of full range of available alternatives
  • Regulatory / Non regulatory

• Evaluate likely possibilities of success
  • Consider the role of government / characteristics of the sector
  • Discard unworkable proposals

• Cost benefit analysis of alternatives
  • Identify the alternative with the highest net benefit
“Good Regulation should…”

- Serve clearly identified policy goals.
- Have a sound legal and empirical basis.
- Have benefits that justify costs – promote net social welfare.
- Minimise costs and market distortions.
- Promote innovation through market incentives.
- Be performance based.
- Be Clear, simple and practical.
- Be Consistent with other regulations and policies.
- Be Compatible with competition, trade and investment principles.
Alternatives to what?
Command and control regulation

- Prescriptive Black letter law
  - May not promote good regulation
- Efficiency reducing
  - Dynamic/ allocative/ technical
  - Prevents innovation
  - Can create market distortions/ barriers
- Potentially Ineffective
  - Costly to business
  - Costly to government
  - May not ensure compliance
- A product of habit?
What alternatives to consider?

- **Question of context**
  - Industry structures / market characteristics / creativity

- **Regulatory alternatives**
  - Performance based regulation / Co-regulation / Economic instruments - market incentives

- **Non regulatory alternatives**
  - Voluntary codes / self regulation / information campaigns

- **Spectrum of regulatory instruments**

  Market driven solutions | Government driven solutions
  -------------------------|--------------------------
  Free market governed only by competition policy | Command-and-control
**Performance based regulation**

- Specifies outcomes or objectives, not the means and allows parties to choose means of compliance
- Flexible, promotes innovation, lowers compliance costs
- May create uncertainty, favor large companies, difficult to monitor compliance, detailed guidance can become de facto law
- Use when rate of technical change is high, incentives for compliance are strong and a clear understanding of the problem to be addressed
- Example of safety case regulation – duty of care requirement.
Co-regulation

- The regulatory role is shared between government and an industry or occupational body which can enforce breaches of an industry code.
- Utilises expertise of the industry or professional association and promotes accountability
- Reduces requirements for government resources
- May raise barriers to entry and unintended monopoly power which may restrict competition
- Best used when industry is strongly homogenous, professional independence is important and self enforcement is possible.
- Example of legal and accounting professions
Market incentives

- Economic incentives can be used to modify behavior, for example through creating a market, taxing activities which generate negative externalities, or subsidizing positive activities.
- Can be less costly than regulation, promote flexibility, innovation and be largely self-enforcing.
- Can be difficult to target and may generate unintended market distortions, structurally difficult to remove when no longer required.
- Useful when behavioral change is required across the community and sensitive to price signals.
- Examples of carbon tax, tradable permits, introduction of privatization and contestability.
Voluntary codes / Self Regulation

- Industry self regulation uses voluntary codes to describe the types of activities that they agree to comply with to ensure acceptable standards.
- Voluntary codes have no legal authority: compliance is achieved through the participants desire to uphold the reputation of the industry.
- Provides a market based solution to regulate ethical behavior – operationally practical.
- Relies on sufficient market power to deter non-compliance.
- Compliance may be low, can create barriers to entry.
- Examples of media code of ethics, supermarket code.
Negative Licensing

- Individuals and business that have demonstrated past bad behavior are precluded from operating in a particular industry
- Practical when governments seek to exclude persons with particular characteristics (e.g., criminals) rather than specify positive requirements
- Relatively low cost, does not require registration
- Exclusionary criteria may be difficult to specify and enforcement costs may be high
- Examples of real estate sub agents
Information campaigns

- An education program can be appropriate in cases where the market failure is an information problem. Depends on whether the target group can be identified and reached economically
- Can be very light handed
- May reduce costs of regulation and increase compliance
- May be conducted by government or business
- May not be successful in changing behavior
- Examples of advertising the effects of speeding, smoking or exercise
Some criteria for assessing alternatives

For all options, how does it rate on...

- **Effectiveness**
  - Promote compliance and meet objectives?

- **Efficiency**
  - Deliver a positive net benefit at lowest opportunity cost?

- **Equity and Fairness**
  - Transparent, inclusive, promote competition?
Conclusion

• Case by case approach
  • Consideration of characteristics of industry sector
• Clearly linked to policy objectives.
  • Will it achieve its policy aims?
• Incentives and institutional issues.
  • Do the approaches ‘work with’ existing incentives?
  • Can they be effectively monitored and enforced?
• Evaluation of risks.
  • Likelihood and consequences of regulatory failure
  • Possibility for return to status quo
• Be creative
  • Adapt to human behaviour, new technology, new tricks, opportunity for policy learning