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

OECD Principles (1995-2005) "Good Regulation should…"

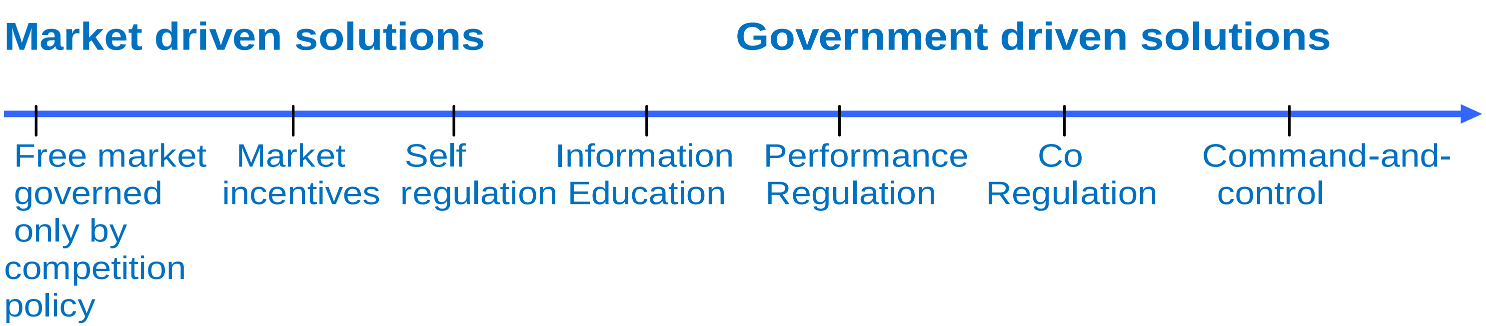
- Serve clearly identified policy goals.
- Have a sound legal and empirical basis
- Have benefits that justify costs – promote net social welfare
- Minimise costs and market distortions
- Promote innovation through market incentives
- Be performance based
- Be Clear, simple and practical
- Be Consistent 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**



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 (eg 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