

**WORKSHOP ON REGULATORY FRAMEWORKS FOR CORE ECONOMIC  
SECTORS  
CO-ORGANISED BY SOUTH AFRICA'S NATIONAL TREASURY AND THE  
OECD**

**AGENDA**

**17 and 18 November 2009, Budget Council Room, 40 Church Square,  
National Treasury**

The issue of infrastructure regulation in core economic sectors, such as energy or communications, has been highlighted as posing significant challenges for South Africa's future growth (AsgiSA). The role of public intervention in several sectors might need to be clarified and redefined. This may call for some strategic thinking about regulatory design and oversight for specific sectors, including the need for sectoral regulation, coordination with competition and antitrust bodies and other government agencies, as well as implementation of principles of good regulatory governance, in terms of transparency, consultation and access to information. These are critical elements to foster investment in infrastructure, which represent a core framework condition for long-term economic growth.

The audience are senior officials responsible for regulatory oversight in these sectors, in coordination with core economic ministries, including the National Treasury, the Department for Trade and Industry, competition authorities and various other regulators. The workshop will facilitate the discussion of current challenges faced in South Africa, framing them in the light of the international experience. It will help focus the discussion on the institutional design for sectoral regulators, building a policy dialogue between South African officials and OECD and international experts.

The aim of the workshop is to bring the perspective of the OECD experience of these institutional aspects while using the outcomes of the 2005 seminar on "Designing Independent and Accountable Regulatory Authorities for High Quality Regulation" and bringing on the experience gained through the regulatory reform reviews of China, Brazil, Mexico, France, Norway, Switzerland and Sweden. While acknowledging institutional differences, and the need to adopt country tailored approaches, principles for quality regulation call for transparency, clarity and access to information, while also fostering competition when it can help to strengthen economic efficiency and increase consumer benefits through lower prices and increased choice.

	<b>DAY 1</b>
9:30-10:30	<p><b>Welcome &amp; Introduction (National Treasury and OECD)</b></p> <ul style="list-style-type: none"> <li>➤ TBC (National Treasury, South Africa)</li> </ul> <p><b>Why Regulation?</b></p> <p><i>To better design regulatory institutions, it is important to first convince ourselves that regulation is indeed necessary and to set upfront the welfare objectives of regulation as well as recognise its benefits and limits. We thus need to answer the following questions:</i></p> <ul style="list-style-type: none"> <li>• Why do we need regulation?</li> <li>• What is the market failure that regulation is expected to correct?</li> <li>• What are the objectives, benefits and costs as well as risks connected with regulation?</li> </ul> <p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Mr. Stéphane Jacobzone (Principal Administrator, Regulatory Policy Division, OECD)</li> </ul>
10:30-13:00	<p><b>Session 1: Institutional Design Issues, Independence and Accountability of Sectoral Regulators</b></p> <p><i>New arrangements for public governance may be needed for sectors to attract more investment and improve service delivery. Rule making and policy development remain the core remit of ministries, while the enforcement of regulation is devolved to an independent regulator. The provision of services is then secured through independent commercial companies and setting up sectoral regulators is one of the key and most difficult challenges to accomplish this process. These regulators need to be integrated within a supportive political, economic and social environment; receive specific powers and the opportunity to be truly independent, while still remaining accountable to the broader policy framework.</i></p> <p><u>Issues and questions to be addressed in this session include:</u></p> <ul style="list-style-type: none"> <li>• How to regulate - self-regulation, direct ministerial oversight or independent regulators?</li> <li>• How to ensure effective independence and why it is crucial (including implications for staffing, financing, divisions of roles between regulators, ministries and courts, investment, etc.)?</li> <li>• How to balance between independence and accountability?</li> <li>• How to minimise the risks of regulatory capture? What has the experience with multi-sector regulators been in this regard?</li> <li>• How to ensure accountability while respecting autonomy?</li> <li>• What recourse would a regulated entity have to deal with poor regulatory decisions?</li> </ul>

	<p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Prof. James Hodge (South Africa)</li> <li>➤ Mr. Stéphane Jacobzone (Principal Administrator, Regulatory Policy Division, OECD)</li> <li>➤ Mr. Daniel Trnka (Policy Analyst, Regulatory Policy Division, OECD)</li> </ul>
13:00-14:00	<b>Lunch</b>
14:00-15:00	<p><b><i>Session 2: Best Practice on Governance for Publicly-Owned Companies and Implications for the Public Sector Performance</i></b></p> <p><i>This session will discuss approaches to public ownership of network sectors across various countries in order to facilitate efficient management of companies and the transition to a market-friendly context. The aim is to understand what governance approaches are required and what the implications are for the public sector.</i></p> <p><u>Issues and questions to be addressed in this session include:</u></p> <ul style="list-style-type: none"> <li>• What is the extent of state ownership in network industries across various countries and how has it affected efficiency?</li> <li>• What are the practices followed in facilitating entry of private players to network industries?</li> <li>• Where private and state-owned entities coexist, what model have regulators put in place to deal with the different entities?</li> </ul> <p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Mr. James Colvin (Policy Analyst, Corporate Governance Division, OECD)</li> </ul>
16:00-16:15	<b>Tea Break</b>

15:00-17:30	<p><b>Session 3: The Experience of Specific Sectors in South Africa (Round Table)</b></p> <p><i>In South Africa, network industries are by and large controlled by state-owned monopolies (except for the telecommunications sector) and given the limited or non-existing competition in these sectors, they are subject to regulation by “independent” regulators. This session will discuss the experiences of various South African sectors (giving reference to progress in modernising the regulatory framework within them) and experiences with regards to modernising regulatory frameworks in network industries as a whole.</i></p> <p><u>Three different sectors should be introduced in half our each followed by a round of question and a panel discussion.</u></p> <p><u>Issues and questions to be addressed is this session include:</u></p> <ul style="list-style-type: none"> <li>• How sectors are regulated (Objectives, regulatory models, regulatory frameworks). What are the pressures on sectors and regulators?</li> <li>• How are the issues of independence and accountability addressed?</li> <li>• What concrete steps have been taken to ensure transparency, consistency and due process in regulating utilities in order to foster private investment?</li> <li>• What incentives have been given to competition and market opening, while ensuring consumer protection?</li> </ul> <p><u>Facilitator</u></p> <ul style="list-style-type: none"> <li>➤ Mr. Stéphane Jacobzone (Principal Administrator, Regulatory Policy Division, OECD)</li> </ul> <p><u>Presentations by</u></p> <p>South African officials:</p> <ul style="list-style-type: none"> <li>➤ Dr. Rod Crompton (National Energy Regulator)</li> <li>➤ Segwesi Thoko (Department of Water Affairs)</li> <li>➤ Paris Mashile (Icasa)</li> <li>➤ Andrew Shaw (Department of Public Enterprise) TBC</li> </ul>
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	<b>DAY 2</b>
9:30-11:00	<p><b>Session 4: Transparency, Trust and Setting up a Level Playing Field</b></p> <p><i>This session will consider the various ways in which regulators can facilitate investment in network industries and look at models that have been applied by different countries. The high level of fixed capital required in network industries makes investment decisions risky, thus prompting investors to require a level of certainty regarding return on investment.</i></p> <p><u>Issues and questions to be addressed in this session include:</u></p> <ul style="list-style-type: none"> <li>• What can regulators do to promote investment in the regulated sectors? Does this differ across sectors?</li> <li>• Is pricing the main incentive for investment?</li> </ul> <p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Francisco Giuseppe Donato Martins (Brazil National Audit Office (TCU))</li> <li>➤ Davi Baretto (Brazilian Court of Audit Regulation Unit)</li> <li>➤ Allastair Campbell (Director Project Finance Standard Bank)</li> </ul>
11:00-11:30	<b>Tea Break</b>
11:30 – 13:00	<p><b>Session 5: Regulatory Methodologies</b></p> <p><i>The effectiveness of regulation in meeting its objectives hinges in part on the regulatory methodology employed by the regulator. This session will discuss some of the methodologies employed in the regulation of network industries world-wide with emphasis on the ROR methodology, the incentive regulation and other regulatory methodologies. A discussion will highlight their strengths and shortcomings and more importantly, their applicability to the South African situation where most of the regulated enterprises are state-owned corporations.</i></p> <p><u>Issues and questions to be addressed in this session include:</u></p> <ul style="list-style-type: none"> <li>• What are the different methodologies that have been/are used in the regulation of network utilities worldwide?</li> <li>• In particular, how does the ROR methodology work and why should it work? What are the challenges and shortcomings?</li> <li>• What is incentive regulation and how does it work?</li> <li>• What lessons can be learned from OECD countries regarding the development of long term price paths?</li> </ul> <p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Mr. Stéphane Jacobzone (Principal Administrator, Regulatory Policy Division, OECD)</li> </ul>
12:30-13:30	<b>Lunch</b>

13:30-15:00	<p><b>Session 6: Defining the Interface between Sectoral Regulation and Competition Enforcement in Regulated Sectors</b></p> <p><i>A market framework requires institutional changes in order to encourage competition in network industries. However, even if network infrastructure markets are restructured to favour competition, and market entry is liberalised, competition is not necessarily guaranteed. The networks at the core of many infrastructure industries (e.g. the transmission and local distribution grids in electricity and natural gas) possess significant, durable market power. Where this is the case, well targeted regulation can be implemented to ensure that prices are kept in line with costs and provide incentives to lower these costs over time.</i></p> <p><i>This session focuses on exploring the pros and cons of various institutional approaches to providing both regulation and competition law enforcement. The session discusses the need to co-ordinate the work of regulators and competition authorities in situations where regulation and competition law enforcement functions are split between them, and also how to ensure efficient co-operation between the two types of institutions from a government-wide perspective. The session will offer practical examples of how of such relationships can be organised.</i></p> <p><u>Issues and questions to be addressed in this session include:</u></p> <ul style="list-style-type: none"> <li>• Should competition authorities be involved to help ensure that regulatory regimes are properly initiated, focused and wound up if no longer needed?</li> <li>• What benefits might be expected from close co-ordination and co-operation between regulators and competition authorities and how can this be facilitated?</li> </ul> <p><u>Presentations by</u></p> <ul style="list-style-type: none"> <li>➤ Mr. Declan Purcell (Irish Competition Authority)</li> <li>➤ Mr. Keith Weeks (Manager of enforcement and exemptions, Competition Authority)</li> </ul>
15:00-15:15	<b>Tea Break</b>
15:15 – 16:00	<p><b>Closing and Review of the Workshop</b></p> <p><i>The final session of the workshop will attempt to draw policy conclusions from the discussion that may be useful to South Africa in revising its regulatory oversight in core economic sectors.</i></p> <p><u>Facilitator</u></p> <ul style="list-style-type: none"> <li>➤ Mr. Daniel Trnka (Policy Analyst, Regulatory Policy Division, OECD)</li> </ul>