

Independent Regulators in the Czech Republic/ Regulatory Capture

Workshop on Regulatory frameworks for Core
Economic Sectors
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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

Two parts

1. Experience of the Czech Republic
2. Regulatory capture



Experience of the Czech Republic



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Basic characteristics

- A central planed economy transferred into a market based democracy in the 1990s
- Complete overhaul of the regulatory framework
- Existing monopolies – liberalisation and privatisation
- As in many other countries most successful in telecom
 - Full competition in mobiles, land lines, Internet connections, former monopoly fully privatised with obligation of service in general interest
- In the energy sector – several companies, former monopoly semi state-owned (revenues used to co-finance budgetary deficits) with a major share of the market
- In railroad transport, still state-owned monopoly, separation of tracks and operator problematic (strong unions)

Regulators – non-systemic approach

- Regulatory authorities created, however ad hoc, without any systemic approach
- Problems with:
 - Statute
 - Relations with Government, ministries, Parliament, Competition Office
 - Administrative procedures (decisions, appeals)
 - Management and organisation
 - Financing

Regulators – examples

- Telecommunications Office – highly independent, good co-operation with the ministry, relatively successful staffing
- Energy regulator – out of the capital, problems with staffing, relative independence from the government, regulatory capture
- Railroad regulator, part of the ministry, problems with independence, not functioning very well, attempts to strengthen independence unsuccessful
- Former Securities Commission – created very late, highly independent, problems with management – not well defined procedures, very well staffed – now part of the Central bank
- Mining Office – independent but politicised, mostly inspection and licensing, satisfying performance

Statute of Regulatory Authorities

- Part of State Administration, therefore reporting to the Government
- Central State Administration Authorities?
- Not headed by a member of Government
- Legislative power?

Relations with the Government

- Regulation of a given sector delegated by law
- Charged with various tasks by Government decisions
- Head of RA does not have a right to participate in the Government sessions
- However, comments of RA to legislative drafts obligatory

Relations with ministries and CO

- Partnership, not superiority and inferiority
- Consultations and co-operation
- Issue of staffing
- Clearly defined rules
- Relations with the Competition Authorities problematic in the past, usually division *ex ante* vs. *ex post* based on mutual agreement

Relations with Parliament

- Reporting to the Parliament
- Annual Report discussed by the Parliament
- Public scrutiny

Administrative procedures – decision-making

- Independence
- Transparency
- Impact assessment
- Consultation

Administrative procedures - appeals

- Not to the Ministry
- Appeals inside the RA?
- Appeals to courts
 - problems – time, capacity

Management and Organisation

- Individual or collective executive authority
- Appointment and Removal of the Head/Board
- Human resources management
- Organisation

Financing of RAs

- State Budget only vs. multi-source financing
- Financial control
- When financed by regulatees – right of control?



Regulatory Capture



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Definition of regulatory capture

- Term used to refer to situations in which a state regulatory agency created to act in the public interest instead acts in favor of the commercial or special interests that dominate in the industry or sector it is charged with regulating
- Form of a government failure, one of the possible reasons for the current economic crisis

Problem of regulatory complexity

- Demand for higher social and economic welfare and more and stricter government oversight may lead to regulatory complexity
- This complexity makes the regulatory environment more vulnerable to regulatory capture
- Evidence-based decision-making, transparency & consultations, administrative simplification

Alternative methods of regulation

- Co-regulation, self-regulation
- Flexibility & efficiency vs. potential to protect interests of specific groups

Regulatory authorities

- (Semi-)independent status
- Regular contact with regulated subjects, sometimes on a day-to-day basis
- Problem of staffing – revolving door phenomenon
- Significant danger of regulatory capture

Anti-capture implications

- Multilateral approach needed
- Control-sanction-reward scheme
- Independence vs. discretion → transparency (reducing informational asymmetries) & accountability
- Transaction costs approach
 - Merging of regulators
 - Rotating regulators
 - Meetings in teams (possibly rotating)
 - Relationships anonymous if possible
 - Cooling-off periods
 - Protect whistleblowers
 - Corporal liability



Thank you for your
attention!

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