

CRC Workshops for Regulators and Staff of Competition Agencies

Workshop No.2, 29 October 2002

National Institute of Public Administration, Malaysia (INTAN)

Purposes of Workshop

1. To generate an exchange of views between regulators on issues faced in making regulation and competition policy effective.
2. To understand the types of capacity building measures necessary for effective regulation.
3. To identify ways in which research on regulatory practice and competition policy may assist regulators in resolving problems faced.
4. To promote a continuing dialogue between regulators on good practices in regulation.

The Nature of the Workshop (as addressed to participants)

- Focussed on your learning needs, practical in approach.
- Reflects an avoidance on our part (the resource persons) to pre-judge the type of issues you face, and are aware of.
- "Kickstarts" a networking process between yourselves and the CRC to allow our own research and capacity building activities to be more directed at practitioner needs.
- As the day proceeds and the issues emerge, the resource persons can more actively engage in dialogue with you.
- Hopefully, the workshop puts the CRC in a position of being able to offer advice to your organisations in the longer term, if required.

Participants

Resource Persons

- Dr. Noorul Ainur Mohd. Nur, Centre for Economic Development and Business Management (EKONOMI)
- Professor Paul Cook, Centre on Regulation and Competition, University of Manchester
- Derek Eldridge, Centre on Regulation and Competition, University of Manchester
- Dr. Cassey Lee, Faculty of Economics and Administration, University of Malaya
- Martin Minogue, Centre on Regulation and Competition, University of Manchester
- Professor David Parker, Aston University and Centre on Regulation and Competition, University of Manchester

Participants

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Opening Arrangements

- Welcome Remarks – Ms. Lee Meng, Deputy Director, National Institute of Public Administration, Malaysia
- Introduction of Participants
- Overview of the Workshop Purposes – Professor Paul Cook, CRC, University of Manchester
- Arrangements for the Workshop – Derek Eldridge, CRC, University of Manchester

Report on the Workshop

Given the purposes of the workshop it was essential for participants themselves to initially identify the types of issues that their own organisations are facing. This they accomplished

in the first round of discussions which then enabled a focus to be established in the second round of discussion on ways in which their own regulatory systems could be made more effective. Resource persons were mainly “listeners” in the first round of discussion but active members in the second. Four groups were formed to progress the work, organised along sector lines.

In terms of the issue analysis groups were informed that issues can relate to the whole spectrum of regulatory work, e.g. conception of policies; political, economic and institutional factors; impacts and their measurement. For the time allotted for Discussion Round 1, it was suggested one third could be devoted to group introductions and the initial identification of issues, and the remaining two thirds to achieving a deeper understanding of the key issues. If some issues only affected some members of the group this fact should be made known.

Group 1

Group 2

Group 3

Group 4

DISCUSSION ROUND 1 “Identify issues you face in making regulation and/or competition policy more effective”.

Findings

Group 1 – Privatisation of saloon car transport in government

Issues

1. Monopolistic market (all 4,500 cars allotted to one contract).
2. Concessionaire constrained by type of car purchased.
3. No benchmarking.
4. Thin line of difference in the roles of the Regulator (regulator/operator in one role).
5. Competition not encouraged.
6. High maintenance cost by concession, i.e. certain categories of car.
7. Political interference.
8. Weak vendor development programme.

Group 2 – The need for Higher Learning Institutions to be more competitive

Issues

1. How to achieve competitiveness (447 higher education institutions).
 - a. Accreditation
 - regulatory terms to be identified and defined
 - required academic guidelines
 - quality assurance, e.g. regulation product vs. regulation process.
 - b. Ranking
 - ranking according to merit
 - lacking a body to give ranking.
 - who is the regulatory agency?
2. Approach towards effective monitoring.
 - a. Licensing
 - b. Enforcement.

- c. How? Role of Public Service Department?
- d. How is appropriate data to be collected?

Group 3 – Achieving effectiveness in the Malaysian Communications and Multimedia Commission

Issues

1. Capacity building – lack of skills, expertise.
2. Legacy → unfair competition policies.
3. Transparency – policy and regulation.
4. Mergers and acquisitions – incorporation into the Communications and Multimedia Act.
5. Governmental constraint – conflicting policies/objectives.
6. Competing agencies – policy and regulation.
7. Legal impediments – no general competition law.
8. Lack of convergence indicators.
9. Issue of pricing versus competition.
10. Issue of USP (Universal Service Provision) vis a vis role of competition/penetration.
11. Identifying the primary objective of the regulator.

Group 4 – Land matters and land use

Functions

- Land acquisition
 - National Land Code
 - policy/procedure.
- Land conversion and subdivision
 - financial
 - legal.
- Land title
 - premium
- Landuse
 - housing
 - Street, Drainage and Building Act, 1974
 - Federal Territory Building by-Law, 1985
 - Housing Developer Acts
 - Housing Developer Licences
 - Sale and Purchase Agreements.
- Industries and commercial
 - Factories and Machineries Act.
- Recreation
 - Town Planning Act.
- Education and social amenities
 - Town Planning Act
- Forest Reserve/Native Land/Reserve Land
 - National Land Code.

Issues

Land Matters

1. Inconsistent application of regulations and too time consuming
 - lack of knowledge
 - lack of skills
 - lack of personnel
 - system weakness

- political interference
- 2. Overlapping of functions from various agencies/departments from same agencies, and the need to look at coordination between different regulatory agencies.

Land Use

- 3. Dealing with conflict of interests, e.g. planning laws vs. demand of competition
 - buyers
 - developers.
- 4. Lack of enforcement
 - personnel issues
 - legal loopholes.

DISCUSSION ROUND 2 From the Round 1 findings which were presented and reviewed in a plenary session, a series of possible areas were identified for further workshop focus.

Focus areas established after the first round of discussion

Arising from the transport case

- regulation within government, e.g. role of regulator, what kind of market
- specification in privatisation bidding/contract process
- preparing companies for bidding process
- arising from the higher education case
- information flow from regulatees
- monitoring, e.g. regulation, product or process.

Arising from the multi-media regulatory group

- capacity building – skills, etc.
- government constraints
- development competition law.

Arising from the lands analysis

- capacity
- enforcement.

In the plenary discussion it was agreed to allocate topics to three new groups as follows:

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|---------|--|
| Group 1 | Lack of capacity, including leadership of regulatory organisations
<i>group members to be inserted</i> |
| Group 2 | Role of competition agencies in promoting the competition process
(regulation of competition)
<i>group members to be inserted</i> |
| Group 3 | Legal aspects of regulation and competition
- drafting appropriate laws
- enforcement/prosecution.
Regulation within government
- institutional overlaps, etc.
- independence (an it happen in the regulatory function?)
<i>group members to be inserted</i> |

In dealing with these issue areas groups were asked to address these points:

- Confirm/define further and deepen understanding of the chosen issue, e.g. explore cause/effect relationships.
- Identify concepts/comparative practice that may be helpful in resolving the issue.
- Make suggestions for regulatory practice in your own situation as result of the discussion, i.e. what capacity building measures are necessary?
- Recommend possible research activities that would enhance capabilities to handle the issue.

Findings

Group 1 – Building Capacity

Definition of Capacity

- Knowledge of industry.
- Knowledge of policies/instruments.
- Knowledge of international comparison/best practice.

Activities Required

1. A need to adopt continuous training (re-learning organisation).
2. To promote an exchange programmes/internships/graduate programmes.

Areas for Research

Establishing the nature of convergence for regulatory bodies like the Malaysian Communications and Multimedia Commission → target setting, measurement.

Group 2 – The role of competition agencies in promoting the competition process

Aim

To ensure healthy and fair competition while also taking account of social objectives.

Actions

1. Regulation for competition – creating the environment for competition
2. Regulation of competition – regulating the amount/number of competitors.
3. How to balance the two depends on needs and circumstances.

Research

Comparative studies on this subject based on different models vis-à-vis country specific experience.

Group 3 – Regulation and regulatory functions

Overall approach required

As an outcome of privatisation there is a need to regulate. In the beginning there was a modest set-up but it is now changing with the demands of the industry concerned e.g. setting up of Commissions on Multimedia and Energy (a few more in the pipeline). This development needs evaluating carefully. A debate needs to be promoted on whether RA's should be autonomous or 'guided' by government policies.

Suggested Activities

- RA's should be strengthened with the right professional skills: integrity, transparency, commitment, fairplay.
- Undertake market research of the relevant industries.
- Enhance negotiation skills.