



Accountability and Benchmarking - The Case of the Regulated Industries Commission of Trinidad and Tobago

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Structure of presentation

- Introduction.
- Accountability and Benchmarking –
Outlining best practice mechanisms.
- Best practice mechanisms– the case of the
Regulated Industries Commission (RIC).
- Conclusions and Recommendations.



Introduction

- Stern (2000) notes that the establishment of formally independent regulatory body is not a guarantee for effective regulation.
- Issue is one of regulatory governance (Levy and Spiller 1996).



What is Regulatory Governance?

- Regulatory governance concerns the way in which a transparent and predictable regulatory system can be put in place and sustained over time, in different countries and for utilities in different industries.
- Transparency and predictability are in turn built on accountability.



What do we mean by accountability?

- It involves regulators taking responsibility for their regulatory actions.
- It is the flip side of independence; that is it provides checks on the regulator's discretion.
- In essence the independent regulator must “answer” for the decisions its takes.



Continued...

- According to Stern (2000) accountability operates on two levels:
 - ◆ formal accountability – the legal basis within which the regulator operates; and
 - ◆ informal accountability – the extent to which there is participation, discussion, justification of decisions, and an understanding of the rules of the game.



To whom is the regulator accountable?

- The Regulator is accountable to all the stakeholders in the regulatory process:
 - ◆ To the regulated entities (Service Providers).
 - ◆ To those on whose behalf we regulate (Customers).
 - ◆ To Ministers.
 - ◆ To Parliament.
- In short to the public and country at large.



As we say at the RIC...



- The RIC considers transparency and openness of the regulatory process as the key to ensuring regulatory accountability and legitimacy of the regulatory regime in the eyes of stakeholders – customers, service providers and the State.



What does benchmarking to improve accountability mean?

- Benchmarking essentially involves learning, sharing information and adopting best practices to bring about changes in performance.
- Most utility regulatory bodies in the Caribbean are in their infancy. Thus benchmarking to improve accountability in the regulatory process involves looking outside of the region to regulators in other countries for “best practice”.



Ideas about what constitutes Best Practice

- Better Regulation Task Force UK (1997, 2001 and 2003).
- Department of Trade and Industry UK –A Fair Deal for Consumers- Modernising the Framework for Utility Regulation 1998. (Green Paper)
- World Bank
 - ◆ Warrick Smith (1997)
 - ◆ Martin C. Stewart-Smith (1995)
- Spiller and Levy (1996), Spiller and Tommasi.



Common themes...

- Financial Accountability.
- Transparency and the involvement of stakeholders in decision making.
- Appeals process.
- Oversight by external bodies.

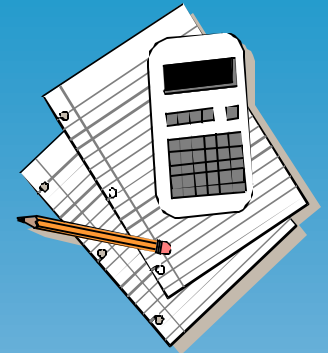


Best Practice Mechanisms

- Financial Accountability.
- Preparation of Corporate/Strategic Plans/Forward Work Programmes.
- Regulatory Impact Assessments.
- Open Consultation.
- Scrutiny by External Watchdogs.
- Effective Appeals Mechanisms.
- Licences.



Best practice mechanisms



- Financial accountability;
 - ◆ Having an accounting officer;
 - ◆ Producing annual reports; and
 - ◆ Appearing (as and when necessary before) appropriate Parliament Committees.



Best Practice - Corporate Plans

- Prepare Corporate/ Strategic Plans /Forward Programmes - outline the regulator's work plan for some specified period and are available to the public. Additionally, the regulator can consult on the Plan itself.
 - Plans allow for public scrutiny.
 - A useful tool against which the regulator's performance can be assessed.





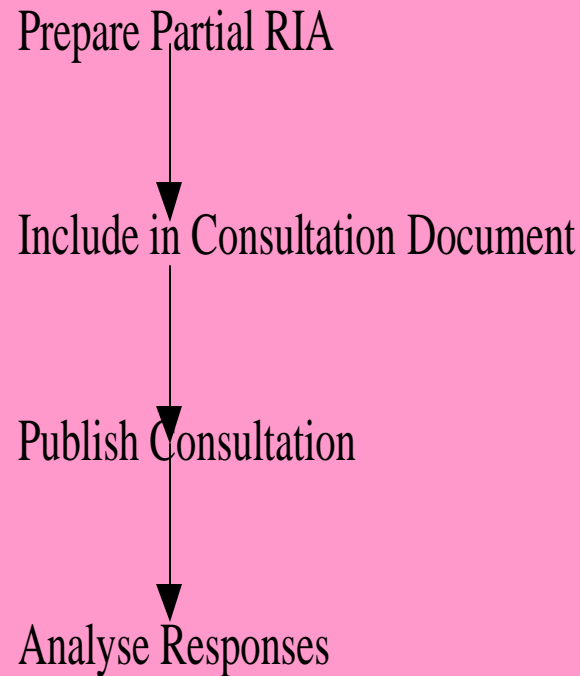
Best practice - Regulatory Impact Assessments (RIA)

- The purpose of the RIA is to explain the objectives of a proposal, the risks and the options for delivering the objectives.
- It makes transparent the expected costs and benefits of the options for the bodies involved, and how compliance with regulatory options would be secured and enforced through the publication of an RIA statement.
- When the reasons for a regulatory decision are made explicit, those affected are in a better position to understand and can challenge the decision if they so wish.



RIA are conducted in two phases- Partial RIA and Full RIA

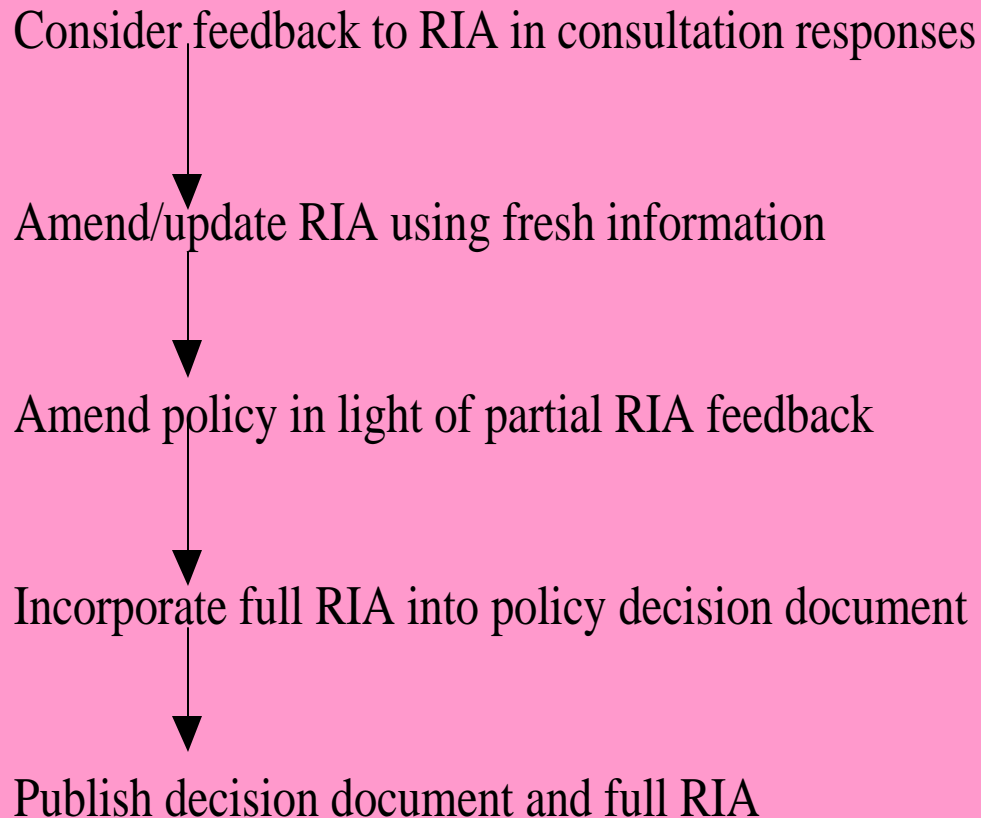
Stage 1 – Partial RIAs





Full RIA

Stage 2 – Full RIAs





Best Practice –Open Consultation



■ This includes:

- ◆ disseminate information (includes consultative documents) to all stakeholders utilizing traditional and other means, including websites etc;
- ◆ hold open meetings; and
- ◆ issue statements of proposed action in respect of issues.



Open Consultation...

- Where the regulatory framework has created Consumer Service Committees such as the UK, they provide a means whereby the views/needs of consumers can be incorporated into the regulatory process at an early stage. This is especially important in countries that have moved away from a Tribunal Type Setting for Ratemaking.
- Again Consultation allows stakeholders to question policies/provide alternate suggestions.



Best Practice – Scrutiny by external watch dogs



- External Watchdogs provide an opportunity for the performance of the regulator to be assessed by an independent third party.
- These reviews can take the form of efficiency reviews (focus here is on inputs that is procedures, processes and resources rather than outputs) or the reviews can assess regulatory effectiveness (outputs).



Best Practice – Scrutiny by external watch dogs

- This is sometimes under taken by Parliamentary Committees, Auditor General Department or by a consultant for these bodies. Examples:
 - the HM Treasury conducted an efficiency review in 2001.
 - the National Audit Office conducted a review 2002 on the use of RPI-X regulation by the Economic Regulators in the UK (effectiveness review).



Best Practice - Effective Appeals Mechanisms.

- ◆ Effective Appeals Mechanisms – important for improving on the public interest outcomes of regulatory decisions, where these are believed to have fallen short. For example there are two bodies responsible for appeals in the UK system:

- Competition Commission; and
- The Courts



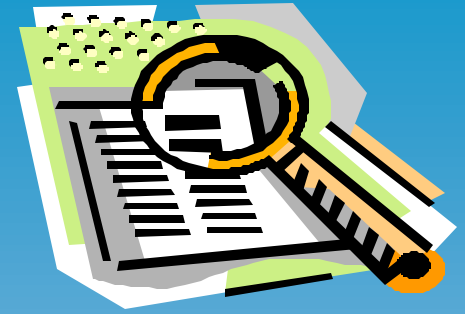


Appeals Mechanisms in the United Kingdom

Decision Area	Principal Avenue of Appeal
Price Determination	Competition Commission
Licence condition amendments	Competition Commission
Financial penalties, enforcement orders	High Court (limited grounds of appeal, sector specific)
Changes to industry codes	Judicial Review only
Regulatory statements of methodology or policy	Judicial Review only
Other Regulatory decisions	Judicial Review only



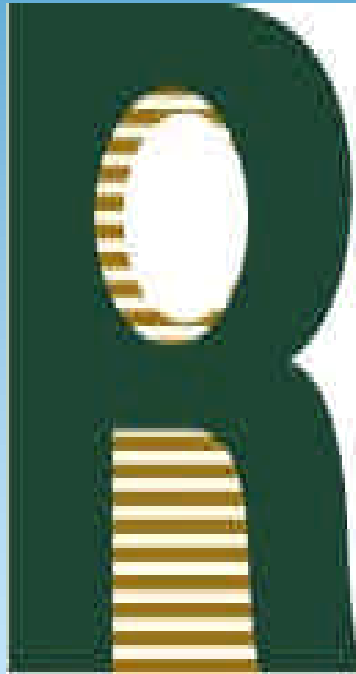
Licences



- In countries that have a unified form of government (the executive exercises considerable control over the legislature) regulatory governance structures are based on contract law - i.e licences.
- This is important because it provides the regulated companies with some amount of veto power over regulatory decisions.



Experience of the Regulated Industries Commission



REGULATED INDUSTRIES COMMISSION



Legal Mandate –The Provisions of the RIC Act No 26 of 1998

- Legal mandate - mechanisms for ensuring financial accountability under the RIC Act, include:
 - ◆ Preparation of a budget and a statement outlining plans for the period.
 - ◆ Audit of expenditure by the Auditor General's Department.
 - ◆ Submission of Annual Reports to Parliament.



Legal Mandate - Regulated Industries Commission Act – No 26 of 1998 also includes provisions for:

- Making the RIC accountable to Consumers through the establishment of Consumer Service Committee (to be appointed by Minister).
- Making the RIC accountable to Service providers through the licensing provisions.



Regulated Industries Commission Act – No 26 of 1998 also includes provisions for:

- Consultation with service providers, consumer interest groups or any other party it considers as having an interest in matters pertaining to price setting and the establishment of standards .
- An Appeals Mechanism - any party who is aggrieved by the decision of the RIC or the Minister can be made to the Fair Trading Tribunal of the Fair Trading Commission (FTC).



Financial Accountability

- RIC has an accounting officer i.e. Executive Director.
- The RIC submits a budget and a statement outlining the objectives and planned activities for each year to the Minister.
- Accounts are audited for each financial year by the Auditor General Department.
- However, no Annual Reports have been submitted to Parliament.



Preparation of a Strategic/Corporate Plan/Work Programme

- The RIC has a Strategic Plan which is updated/ reviewed annually. However, RIC does not publish or consult on the Plan.



Regulatory Impact Assessments

- The RIC, in preparing its consultative documents and as part of the consultation process, undertakes many of the steps outlined for the conduct of an RIA.
- However, at this time the RIC does not publish RIA Statements with its decision documents.



Open Consultation

- The most critical measure currently utilized by the RIC to promote accountability and transparency.



The Consultation Process

- The steps involved in the consultation process:
 - ◆ **Pre-Consultation;**
 - ◆ **Initial Consultation (Formal Consultation Paper);**
 - ◆ **Collecting input from the public (comment and reply comment period);**
and
 - ◆ **Final decision.**



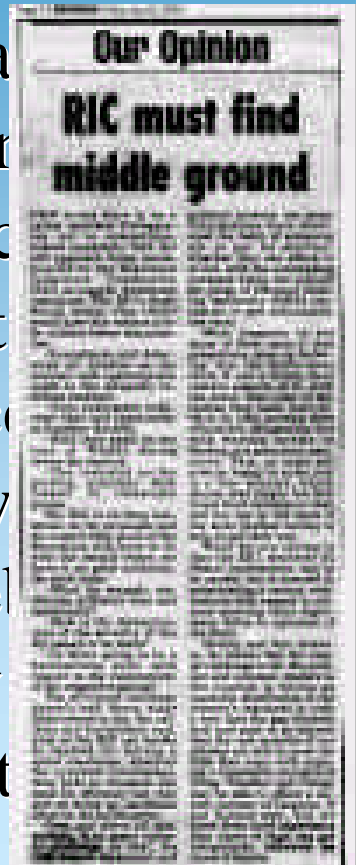
Consultation Process in Action – the RIC's Social Action Plan

- Met with key stakeholders prior to the preparation of the consultation document.
- Distributed the consultation document widely - The RIC sent a copy of the document directly to stakeholders, made it available on web site, advertised in the print media, held 19 workshops around the Country, appeared on talk-shows (radio and TV).



Consultation Process in Action – the RIC’s Social Action Plan

- The Consultation Process generated considerable interest, and on 15 July newspapers made the Plan the subject of an editorial, cautioning the RIC ‘.. whatever, it must find a middle ground... to be careful not to perpetuate a certain... to citizens meeting their obligations of the State...’” Additionally, the same newspaper featured a part series on the Plan.





Social Action Plan

THE REGULATED INDUSTRIES COMMISSION

SOCIAL ACTION PLAN and YOU

**THE PUBLIC IS INVITED TO PARTICIPATE IN THE RIC'S PUBLIC
CONSULTATION ON THE SOCIAL ACTION PLAN**
SEE NEWSPAPERS FOR DATES AND TIMES FOR
A CONSULTATION NEAR YOU!

What is the Social Action Plan?

The Regulated Industries Commission's Social Action Plan is a document, which identifies initiatives to protect consumers and in particular, those belonging to low income and other vulnerable groups. The Plan places emphasis on:

1. Recommendations for the Establishment of Priority Services for Vulnerable Groups

Service Providers would be required to maintain accurate records of customers or members of their households who are in need of specific assistance or services. Some of these include:

- Modification of buildings and recreational facilities;
- Redirecting bills to a nominated third party;
- Providing bills in an appropriate format; and
- The provision of facilities for speech and hearing-impaired customers

2. Initiatives to improve benefits from Price Regulation

- The development of special Tariffs and Subsidies;
- Levying standpipe revenues on Regional Corporations; and
- Extension of the Hardship Relief Programme to Tobago.

3. The Development of Codes of Practice as part of the Licences requirements which will include:

- Procedures for dealing with customers in default;
- Debt recovery and disconnection procedures and policies;
- Retroactive Billing Policies;
- A range of accessibility of payment methods;
- Handling of complaints; and
- Continuous consumer education.



Timetable for Consultation on the Plan

- Publication of Consultation Document – March 23, 2004
- The deadline for submission of responses - August 31, 2004
- Comments on Responses – September 30, 2004
- Responses to Consultation – October 29, 2004
- Statement by the RIC – November 26, 2004



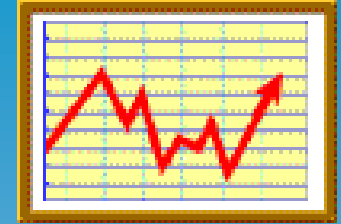
Scrutiny by external watchdogs

- The RIC has, to date, not appeared before any Parliamentary Committees nor been the subject of an efficiency review and or effectiveness review by the Auditor General Department or any other department.
- RIC's annual budget has been subject to the approval of Cabinet.
 - ◆ Hence, it is reviewed by the Ministry under whose purview the RIC falls that is the Ministry of Public Utilities and the Environment, and by the Ministry of Finance.



Appeals Process and Draft Licences

- The RIC has prepared draft licences for both WASA and T&TEC.
- The process has been stymied by the lack of an appeals mechanism. No FTC has been established to date. However, the Government proposes to bring to Parliament the Fair Trading Commission Bill 2004.
- Additionally there is a Judicial Review Act (No. 60 of 2000.).



Measure of RIC's Accountability

Measure of RIC's Accountability

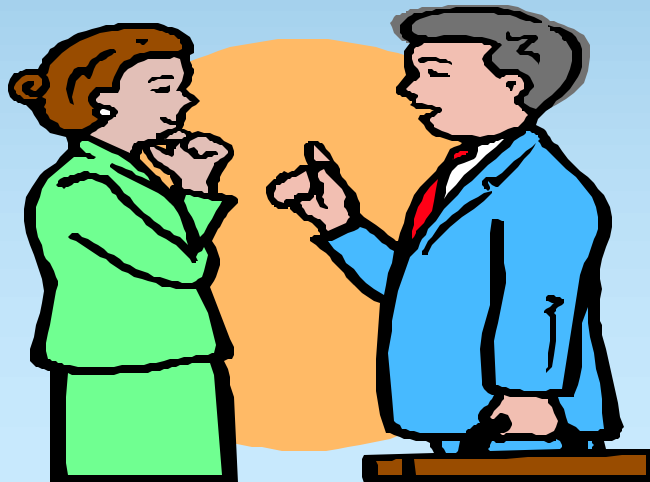
Financial Accountability	B+
Preparation of a Strategic/Corporate Plan/ Work Programme	B+
Regulatory Impact Assessment	B
Open Consultation	B+
Scrutiny by External Watchdogs	C+
Licences	C+
Appeals Mechanism	C+

A=Best Practice and E= Highly Unfavourable



Conclusions and Recommendations

- Regulator needs to be a listening organisation – mechanisms that facilitate accountability and transparency make this possible.





Recommendations for the RIC...

In the Act the Minister performs critical regulatory functions e.g. issuing licences on the advice of the Commission. However, he can choose to accept or reject this advice, but is under no obligation to provide reasons. The Act can be strengthened to make it a requirement for him to provide reasons in writing if he chooses to reject the advice of the RIC.



Recommendations for the RIC...

- Although the RIC Act (Section 49) implies that the RIC should explain its decision in a written opinion setting forth its reasoning and its calculations. The Act does not explicitly foreclose the possibility of short conclusive decisions. The requirement to give written explanations for its decisions will support good decision-making.



Recommendations for the RIC...

- Include a regulatory impact statement when an important decision is to be undertaken.



Finally...

- Consideration can be given in Trinidad and Tobago to the establishment of an Advisory Council (an entity with representatives from civil society) or Ombudsman charged with the specific responsibility of reviewing the performance of independent regulators such as the RIC, the Telecommunications Authority of Trinidad and Tobago and the Environmental Management Authority.