

CONSUMERS AND UTILITIES REGULATION IN JAMAICA

The utilities regulatory process is new to Jamaica and was established legally by the Utilities Regulation Act of 1995, to protect the interests of consumers vis-à-vis the utility service providers and to foster an environment which promotes competition, efficiency and profitability, which are conducive to increased private sector investment. Prior to privatization, public utilities were characterized by direct Government intervention on pricing, management and investment and most importantly by non-transparent regulatory systems. Increased macroeconomic imbalances resulted in the public sector's provision of utilities becoming grossly inefficient and at the same time and despite Government's commitment to universal access for all, several segments of the population remained excluded.

Privatization therefore, represented an important change in the provision of infrastructure and associated services. Governments like that of Jamaica, were forced to raise the levels of efficiency of services delivery and therefore sought private involvement in sectors formerly dominated by state ownership – in Jamaica's case, these include telecommunications, electricity, water and sewerage and public passenger transportation (road, rail and ferry). While the privatization route attracted the required and necessary financing for infrastructural development, ownership alone did not and has not solved all the problems associated with public utilities. Competition needed to be strengthened and enforced given the history of monopoly utilities in Jamaica. The most effective solution was the establishment of a regulatory mechanism to monitor and control monopolies, ensure affordability to the poor and more vulnerable in the society and most importantly, to make sure that the benefits from liberalizing the economy and market, reach all consumers.

So if we agree that regulation is an enforceable mechanism designed to circumvent the monopoly power of utilities operators and maximize the consumers' welfare, then we agree that the three critical determinants of consumers' welfare are price, quality and access to services. Regulation therefore has to be a "public good", thereby engaging the regulatory tools of rules, meaning and outcome, which should enjoy public acceptance and must apply to all consumers. Regulation has to be non-excludable and if it is to be fair and transparent, then it must avoid regulatory capture – a "public bad".

In Jamaica, utility regulation is carried out by an independent regulatory agency – Office of Utilities Regulation (OUR) – and in that process there are three groups - the government, utility operators (foreign or local) and consumers. It is a well-known fact that globally, both the Government and the utility operators have enough bargaining power to manipulate the regulatory process in their favour. In supporting the idea of an independent regulator, we must be careful however, to differentiate between independence and accountability and implement measures such as transparency, open decision-making, publication of decisions, avoiding conflicts of interest, an effective appeals process, external audits and scrutiny of the regulator's budget, all of which provide the necessary checks and balances.

This is the entry point for the importance of the consumer in utility regulation. Consumers in general, are less organized and therefore have less influence in policy-making and regulatory decisions. It is therefore imperative that as part of an independent regulator's decision-making, the consumer plays an integral role, as effective regulation will only be produced through the inputs of each of the aforementioned groups. Up until 1995, the Jamaican consumer really had not been given a real voice in the process and regulation was therefore prone to "capture",

mainly political – the tariff structures were severely distorted and average tariffs were set below the long-run average costs. The results were disastrous for the utilities' financial viability and the resultant problems of underinvestment, congestion and exclusion emerged. The reasons for these actions were clear – in the private sector, consumers exercise their right with their dollars and in the public sector, they vote with their ballots. The conclusions are clear – in the public sector, votes control prices and the consumer determines the price in the private sector.

The primary role of the consumer in utility regulation is to provide a collective voice on issues related to utilities in order to receive greater attention from regulators, legislators and the utility companies. Although the technical aspects are often times left up to the regulator, the consumer plays a more active role in issues of quality of service standards, which have a direct impact on improving efficiencies within the operations of the utilities. Indirectly, the expectations of the consumers are raised in the regulatory process.

It is generally accepted that consumer groups are crucial to the regulatory process. Some of the ways in which their role is incorporated are as follows:

- Formulation and design of public policy: e.g. elected vs appointed regulators and the question of independence
- Influences the regulatory cycle
- Encourages and participates in the consultative process
- Facilitates easier public acceptance of the process and the results.
- The rules and results apply to everyone
- Decision making fair to all consumer groups given the wide-ranging inputs
- Responsibility in the enforcement process

- Monitors the regulator, thereby guaranteeing transparency and accountability

Additionally, consumer groups should effectively participate in developing quality of service standards and provide the regulator with information regarding the utilities' adherence of these standards. It is the responsibility of consumer groups to disseminate the regulatory rights and obligations of all consumers and to then educate and encourage consumers to exercise their rights and properly discharge their obligations.

Recognizing the importance of consumers in regulating utilities, the OUR established the Consumer Advisory Committee on Utilities (CACU) in January 2000. The CACU is an independent group of consumers, drawn from the public and private sectors. It provides the OUR with a forum through which it receives consumers' views on broad regulatory issues in addition to perspectives on issues which affect the relationship between the utility companies and consumers. To summarize, the CACU provides a strong advocacy role for all consumers and obtains and publishes information from the regulator and utility companies. It is important to note that while the CACU focuses on consumer-interests, the viability and efficiency of utility companies are also vital considerations for the consumer and to the success of the regulatory process.

The CACU has as its mandate, a) to advise the OUR on consumer priorities as it pertains to the quality of service provided by each utility, b) reports to the OUR, matters pertaining to the provision of utility services, which affect the interests of customers or potential customers, c) provides appropriate, considered and timely feedback and recommendations on issues referred by the OUR, d) acts as a

measure of public opinion and advises the OUR on its relationship with the public, e) advises the OUR and informs the Office about issues of public concern as well as offer solutions to specific issues, f) advises the OUR on the development of regulatory policy, especially in the areas of consumer concerns g) reviews the activities and reports of the Consumer Relations Department at the OUR and advises on the implications for customer service which might arise there from and h) publishes on a regular basis, reports, articles and releases on its deliberations and activities.

If consumers are to benefit from private/public participation in infrastructure, if our commitments to investors are to be protected and if the economy as a whole is to benefit from this process, then regulation will have to be competent and fair. The inclusion of the consumer, guarantees regulatory effectiveness and acceptance.