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GENERATING TRUST AND RESPECT THROUGH TRANSPARENT AND IMPARTIAL REGULATION

INTRODUCTION

Regulators have a tough job. Facing complex managerial and intellectual problems whilst being lobbied simultaneously to move in different directions by multiple competing interests means that regulators will never make everyone happy. However, regulators can still win the trust and respect of the public and regulated parties (stakeholders) through their regulatory approach even if not every stakeholder agrees with their decisions. Regulators which have secured trust and respect will have better quality interactions with stakeholders, have improved the regulatory debate, and will optimise regulatory decision making.

This article will take it as a given that structural independence of the regulator has been achieved and that there is at least a desire to be impartial. This article will concentrate on how regulators, given these two pre-requisites, can win the trust and respect of stakeholders by acting according to just four principles. We have arrived at these four principles based on Digicel's experiences as a mobile telecommunications provider in the Caribbean. Digicel is the fastest growing mobile telecommunications operator in the region, operating in seven countries including Aruba, Barbados, the Cayman Islands, Grenada, Jamaica, St. Lucia, St. Vincent and the Grenadines.

Digicel invites regulators to embed in their everyday activities the following four principles:

1. Do as few things as possible as well as possible;
2. Be scrupulously transparent;
3. Enable stakeholders to trust the fairness of the regulatory process;
4. Exercise regulatory powers with humility.

Let me discuss these principles in turn.

DO A FEW THINGS WELL

Generating trust and respect requires a transparent and impartial regulatory approach which enables stakeholders to see and understand that decisions have been arrived at thoughtfully and fairly. Regulating in a transparent and impartial manner takes effort and time. Lots of effort and time. The extent of the commitment required is generally not recognised. Even with the best will in the world, it will not be possible for a regulator to behave in a fully transparent and impartial manner if it has chosen to undertake too much work at once. Many regulators around the world have fallen into this trap. Caribbean regulators can avoid it.

Digicel recognises the special position of Caribbean regulators compared to regulators in large countries. Caribbean regulators have to deal with many of the same issues but have fewer resources at their disposal. It is also the case that even a company like Digicel will not have the regulatory staffing complement comparable to a mobile network operator operating in a large country. Consequently stakeholders will also be overstretched and be unable to respond properly if a regulator is not extremely careful to minimise the number of regulatory initiatives underway at any one time. A lack of response by stakeholders in respect of an issue may be perceived by a regulator simply to reflect a lack of interest. This is rarely the case, except in the case of niche market players.

Faced with the considerable risk of regulatory overload both for themselves and stakeholders Caribbean regulators must be more focused than their overseas counterparts in large countries. Large regulators may be able to afford the luxury of simultaneously tackling more peripheral matters alongside priority issues even if they should not be doing so. Caribbean regulators must in contrast prioritise more effectively and

concentrate on crucial issues alone. Unless they do so, Caribbean regulators will not have the time to be fully transparent. Without transparency they almost certainly cannot be impartial.

SCRUPULOUS TRANSPARENCY

Transparent regulation makes it possible to see whether regulatory justice has been done. Stakeholders have the opportunity to provide significant input at key points. Stakeholders can also clearly observe whether the range of arguments both for and against a particular regulatory intervention have been fully and properly considered, debated and analysed. Stakeholders can see whether a regulator has tried just as hard to disprove the case for intervention as to prove the case for intervention. Transparency therefore enables the regulator to behave impartially by ensuring that all arguments are properly addressed before decisions are reached.

STEP-BY-STEP CONSULTATION

Transparency is about more than publishing consultation documents. Consultation documents are highlights along a consultative path. However, by the time that ideas have entered print, even in the form of a consultative document, this can already reflect a hardening of views in the mind of a regulator; a path that will be followed in the absence of extremely strong counter arguments. Consultation documents do not provide sufficient transparency by themselves.

Effective consultation is a step-by-step process. As key issues arise and key policy forks are approached regulators should invite stakeholders to provide their views through whatever mechanism is most effective including holding regular brief meetings. Regulators should highlight where this has led to significant changes of direction so that they can be seen to be open minded. This kind of approach enables each issue and policy to be thoroughly scrutinised before opinions harden, and before individuals can fall prey to defending viewpoints because they have taken a personal stake in them.

Step-by-step consultation offers the best prospect for bringing the regulatory process closest to the ideal of a partnership between regulators and stakeholders. A full partnership seems unlikely to be attainable given the conflicting commercial interests involved but the closer this ideal can be approached, and the more constructive and less destructive the interactions between regulators and stakeholders, the better.

CONFIRMATION BIAS

Opaque decision making will usually result in regulatory decisions which reflect the pre-existing personal beliefs of those employed in the regulatory body. The regulator cannot behave impartially in these circumstances. This may result in sub-optimal regulatory decisions which are not in the best interests of the public.

It is human nature, given the absence of other view points, to suffer from confirmation bias. In other words, people with similar perspectives who keep talking to each other about any issue can persuade each other of the rightness of an argument even if to everyone else it appears, and turns out to be, wrong.

No matter how much we learn, and how careful we are, all of us are fallible. In a complicated field such as regulation, regular communication between the regulator and stakeholders is necessary to enable us to break out of set patterns of thinking and to consider issues from new perspectives. This is another reason why there is a need for frequent consultation in respect of each regulatory initiative. By forcing people to address alternative arguments as issues arise they can be drawn out of a particular mind set. In contrast, by the time a regulator has written a consultation document, individuals within the regulator may have spent so much time agreeing on the form of the consultation that they may, despite their best intentions, be unable fully to take on board other viewpoints and tend to dismiss them.

ENABLING STAKEHOLDERS TO TRUST REGULATORS

RELATIONSHIP BUILDING

Trust is vital to relationship building of all sorts. If regulators do not trust stakeholders and vice versa, relationships, and the quality of regulatory debate will suffer. Constant disputes are likely to occur.

CHOOSING WHEN TO TRUST

We all prefer to choose when to trust others. Consider your own experiences in life. Have the most trustworthy people been those who tried to persuade you or force you to trust them, or are the most trustworthy those who have gone out of their way to avoid requiring you to trust them. I submit that the latter is true.

If a regulator takes a decision, and does not provide stakeholders with the all the information and arguments that the regulator has considered in reaching that decision, the regulator will be forcing stakeholders to trust it. I invite regulators to consider how they would feel if they were in the shoes of stakeholders and were presented with this situation. I suggest that they would feel extremely uncomfortable at best.

That is why stakeholders need to be fully involved in the regulatory journey up until the point at which decisions are reached. Stakeholders need to see the information that is being considered, be involved in and see details of the debates that take place and be provided with a full explanation of the logic that has led to a regulator's decision. In other words stakeholders must be able to see and follow the evolution of thinking and not just significant outputs from that thinking.

EXERCISE REGULATORY POWERS WITH HUMILITY

I used to work for a regulator. But I did not fully grasp just how much power regulators had until I started to work for a regulated company. Regulatory decisions can be a blessing or a disaster for the regulated. Adverse regulatory decisions based on unseen information, broken logic, or which were unexpected, send shockwaves through the investment community. Undermining investor confidence is the last thing a regulator should do. All future investments necessary to maintain, improve and deliver new services are dependent on that confidence.

In order for those working within regulators to identify with the great concern that regulated companies can experience when regulatory decisions are announced, I invite them to imagine a particular situation. I invite them to imagine that they have invested their life's savings in a project, and were suddenly to discover that a regulatory decision would result in the loss of their entire investment. This is the kind of power that regulators can wield.

Regulatory decisions do not always make or break a company but they can have severe financial consequences. Regulators therefore have a tremendous responsibility. Regulators should recognise just how much power they have and how their behaviour is perceived by and can influence the nature of their interactions with stakeholders. Regulators should go to great lengths to make themselves just one voice in a debate up until the point at which it is time to reach conclusions.

THE REGULATOR IS ONE VOICE

The regulator has a unique institutional role. It is not similar to a court. A court does not usually initiate its own investigations or actions. It merely hears opposing sides and reaches a judgement. In contrast, a regulator often initiates a regulatory investigation. When it comes to reaching a decision therefore a regulator is not merely considering the arguments being put forward by others, it is also in effect judging its own views. Clearly, in these circumstances, it is difficult not to let the personal opinions of individuals within the regulator outweigh an analysis of the combined viewpoints of all parties.

There is a natural human tendency, in the absence of a scrupulously transparent and step-by-step consultative approach, for a regulator to give its own views excessive weight from the outset. In this situation, it is not performing its functions properly. Instead, in this situation, a regulator comes close to behaving as instigator, judge, jury and executioner. This results in regulation without proper consideration of the views of others. I think that anybody, in any field of activity, who believes that they are being ignored will feel that they are being treated discourteously. Clearly this would be detrimental to convivial and productive relations between regulators and stakeholders. This can and should be avoided.

While there is normally an appeals process against regulatory decisions, this is an avenue which is followed when something has already gone wrong. Using the appeals process is not supposed to be a regular event. Appealing can breed animosity. The existence of the appeals mechanism does not mitigate the need for regulators to have the humility to see themselves as just one voice in a debate up until the point at which they are obliged to draw conclusions.

IN SUMMARY

Caribbean regulators can best win the respect of the entire community and regulate most effectively by adhering to the four principles I have outlined: doing a few things at any one time and making sure those things are done very well; by being scrupulously transparent and following a step-by-step approach to consultation; by enabling others to trust them; and by exercising their significant powers with humility. I ask regulators to consider carefully how closely they are abiding by them.