Regulatory Burden, Competition and Growth

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Chapter 1

Regulatory Burden:

Causes, Impact and Assessment

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1.1. Introduction

During the 1990s, growth among OECD countries had been remarkably different. In some OECD countries (United States, Australia, and some small European economies) productivity growth increased while in others (most continental European countries and Japan) stagnated or decelerated, leaving these countries behind. This becomes apparent by comparing GDP growth in the second half of the 1990s when the average GDP growth in the United States was 4.3 per cent and just 2 per cent in the large economies of the continental Europe (Germany, Italy, France).[4] This caused an increase in the income gap between the EU as a whole and the United States which in turn caused confusion since it coincided with a period of policy convergence among OECD countries in many areas (i.e. macroeconomic stabilisation, trade and product market liberalization, and greater financial integration).

Several theoretical and empirical studies focused on these growth disparities and many of them identified stricter regulation of markets as a major impediment to faster growth in many European countries during the 1990s. Despite the fact that most OECD countries developed and implemented regulatory reforms, the timing, extent, nature, and starting point varied across countries. For instance, the United States was an early and decisive reformer. In 1977, 17 per cent of the U.S. GNP was produced by fully regulated industries and by 1988 this total had been cut to 6.6 per cent of the GNP.[5]

Thus, during the last decades, regulatory policy has emerged as a fundamental issue in OECD countries and the nature of regulation has rapidly and deeply changed. Regulations were initially introduced as a policy measure in order to promote economic and social welfare. They are vital for the effective function of modern societies either to uphold public order or to facilitate daily transactions. However, they had mainly been used as reactions to the changing objectives and requirements of different countries and industries and not as a part of a coherent government strategy. During most of the 20th century, regulatory interventions were rapidly increased, leading to growth and competitiveness of many countries to remain

[4] Alesina, 2005
[5] Winston, 1993

at low levels and forcing governments to re-examine many outdated and low-quality regulations.

Yet, while changes to the regulatory environment seemed to be necessary, indifference and lack of coordination and planning capacities from the government side hindered reforms and, consequently, progress. The problem was further intensified by the complexity of reforms and their uncertain outcome. Bureaucracy blocked the promotion of changes and the implementation of effective policy while the unqualified and not skilled government officials were not able to identify the cost of regulations and the optimal use of policy. At the same time, vested interests didn't allow the reform, modernization and reduction of unnecessary regulations even if benefits to society were significantly greater than the cost they would bear.

As a result, most of the current regulations were adopted decades ago under different economic, social, and political conditions. Regulations are often excessive and/or of poor quality and are thus imposing unnecessary burdens on business and, overall, on the economy. Further, they often serve short-term goals and interests of certain groups. Thus, governments in several countries set regulatory interventions at the heart of reforms. The first steps towards deregulation included identification of over-regulated areas or areas where regulations were poorly designed. These initial efforts were later replaced by more systematic approaches which involved a mixture of de-regulation, re-regulation and improving the effectiveness of regulations. Regulations started being introduced under certain regulatory standards and satisfied two general criteria: effectiveness and efficiency; namely achieving the planned goals at least cost. **Today, regulatory policy is regarded as one of the core government policies and almost all OECD countries have established explicit institutions and tools for its implementation**.[6] However, regulatory policy is still a key topic for governments around the world which have realized the significance of the impact of the regulatory environment on the economy and have put at the top of their agenda reforming existing regulations and reducing regulatory burden.

The structure of our analysis in this Chapter is as follows. Section 2 describes the rationale for regulation. Section 3 discusses the "regulatory market"; the demand

[6] Malyshev

for regulations and supply of regulations. Section 4 describes the regulatory burden and its measurement. Section 5 presents a summary of the tools for assessing and improving regulatory design. Finally, section 6 describes the impact of regulations on growth and reviews some empirical studies on this issue.

1.2. Rationale for Regulation

Regulatory interventions in markets are an issue of critical importance in modern economies. Regulation is a fundamental policy tool that creates incentives and disincentives and has a great impact on citizens' behaviour and interaction. Regulation also facilitates dealing with difficult economic, social and environmental problems. While the extent of regulation varies across countries, it is commonly accepted that some degree of regulation is essential for a properly functioning society and economy.[7] However, regulations include not only benefits but also costs. Regulatory measures can promote economic and social growth but can also generate significant economic and social cost. This cost causes problems to firms, which in order to comply with regulations, are forced to waste resources that could be invested to far more productive procedures. This entails cost not only for firms but also harms growth and welfare of the whole economy. Thus, it is crucial that regulations are well designed, justified, and enforced.

Regulations are justified using a variety of reasons and the rationale that lies behind regulations has attracted considerable interest among economists. The rationale for regulation varies from case to case and over time, as priorities change. During the 1980s and 1990s the rationale for market regulation was associated with concerns about monopoly and the promotion of competition. Though, these concerns gave way to new emerging concerns that shaped a more complex picture. For instance, greater attention is now paid to environmental issues than 20 years ago.[8]

The most common economic rationales supporting regulation is **to correct market failures or to promote considerations of equity**. According to Helm (2006),

[7] Argy & Johnson, 2003

[8] Helm, 2004

"there is some identifiable market failure considered to be so great that intervention to correct it will be efficient, in the sense that the costs of intervention will be lower than the costs of the failure". Market failures are related to monopoly, sunk cost investments, environmental externalities, etc. For example, economic regulation aims at improving production efficiency. If there are economies of scale or scope, production may be more efficient by one firm than by several competing firms. But then regulation may be necessary to restrain its monopoly power. Social regulation is imposed because, without government intervention, individual companies may not take into account the full social cost of their actions (i.e. a firm may pollute excessively unless it incurs some implicit or explicit cost for polluting).

In his study in 2006, Helm identified that market failure arises in three contexts: on the demand side, on the supply side, and in the coordination of markets. Market failure refers, first, to the demand side. Regulators intervene by imposing measures with a view to protect consumers since they often don't have all the necessary information and their choices are irrational. Hence, these measures provide information to consumers and prevent them from being deceived from firms (i.e. advertising, health and safety standards). Second, subject to regulations is the supply side via, for example, regulations on firms with market power, environmental regulations, etc. Third, regulations are necessary in the coordination of markets since markets have public – goods characteristics. Thus, in order to ensure the proper functioning of markets governments should adopt regulatory measures, such as protecting intellectual property rights.

The above goals of correcting market failures and ensuring equity are laudable but regulation does not always meet these goals successfully since there are reasons for inefficient regulation.[9] The first reason is economic and refers to information asymmetries between regulators and firms. A firm has better knowledge of its cost and demand structure than the regulator, who typically does not have access to such information, and bases regulation on very limited information. The second reason is political and refers to politicians' incentives. Many regulatory instruments (quotas, licenses, subsidies) redistribute resources and rents and politicians often use them as a means of securing political gains, by transferring significant amounts of

[9] Guasch, 1999

wealth to influential groups in society, and not as a means of correcting market failures. Of course, if regulation becomes very inefficient and visible there will be pressure for change.

While inefficient regulation is itself a cause of cost, arguably greater problems can arise from the nature and design of regulation. Overlap, duplication or inconsistency with other regulation, confusing use of terms, and unclear objectives are among the problematic features in the design of regulations.[10] However, more attention should be given to regulation since countries that perform well have common elements in their approach to regulation including simplification and deregulation in competitive markets, reduction of the court involvement in business matters, and making reform a continuous process.[11] The OECD enunciated the principles of good regulation which are presented in Box 2.1.

Apart from being based on certain principles regulation should also meet specific goals. These goals include, inter alia, consumer protection, labour market regulation, and equity and freedom. Although the primary objective of regulatory interventions is to improve efficiency and this drags the attention, effectiveness is not a necessary condition for implementing a regulatory measure. For example, deregulation of access to data on health of individuals would provide valuable information and give great impetus to medical research in favor of overall health. Therefore, in this case, privacy conflicts with efficiency.[12]

Box 2.1 Checklist for assessing regulatory quality

According to the OECD and other experts, regulations that conform to best practice design standards are characterised by the following seven principles and features.

- Minimum necessary to achieve objectives
  - Overall benefits to the community justify costs
  - Kept simple to avoid unnecessary restrictions
  - Targeted at the problem to achieve the objectives
  - Not imposing an unnecessary burden on those affected

[10] Regulation Taskforce, 2006

[11] World Bank, 2004

[12] Helm, 2006

- Does not restrict competition, unless demonstrated net benefit
- Not unduly prescriptive
  - Performance and outcomes focused
  - General rather than overly specific
- Accessible, transparent and accountable
  - Readily available to the public
  - Easy to understand
  - Fairly and consistently enforced
  - Flexible enough to deal with special circumstances
  - Open to appeal and review
- Integrated and consistent with other laws
  - Addresses a problem not addressed by other regulations
  - Recognises existing regulations and international obligations
- Communicated effectively
  - Written in 'plain language'
  - Clear and concise
- Mindful of the compliance burden imposed
  - Proportionate to the problem
  - Set at a level that avoids unnecessary costs
- Enforceable
  - Provides the minimum incentives needed for reasonable compliance
  - Able to be monitored and policed effectively

Source: Argy & Johnson, 2003

1.3. The Regulatory Market

For a better understanding of the mechanisms under which regulations emerge it is necessary to analyze the demand and supply for regulations.

Regulations involve benefits that motivate certain groups to demand their adoption in order to obtain them. These groups include consumers, unions, firms, media and politicians. Consumers ask for regulatory measures because they want to protect themselves against abuses by firms and market failures. These measures usually refer to prices of goods and services since prices significantly above marginal cost have an impact on consumer's real income, increase producer welfare and reduce consumer welfare. Thus, consumers through regulations seek to prevent reductions in their welfare. Demand for regulations from unions includes labour protection,

reduction of working hours, wage increases and safety standards while from firms refers to measures in order to recover sunk costs that include various investments, to promote R&D and innovation (i.e. patent protection) and to strengthen competition (i.e. removing barriers to entry, regulation of anticompetitive practices).

On the supply side, regulations are introduced by governments and competent regulatory authorities. Ideally, only regulations that bring a net benefit to society should be introduced. However, a variety of forces appears to work against this, contributing to excessive and poor quality regulation. The cost incurred by someone who demands the adoption of a certain regulatory measure is very small (marginal cost is close to zero) resulting to excessive demand for regulation. Everybody can ask for a regulation regarding a product or a service but the cost is borne by all the users of this product or service and not only by those who ask for the regulation. The problem is boosted as demand for regulations is often expressed through the political process driving politicians to introduce measures in favor of vote maximization. Politicians offer regulations in response to demand from their voters. Under the fear of losing votes, they adopt regulatory measures, satisfy their voters and promote their own careers. As a result, excessive demand for regulations is followed by a corresponding excessive supply.

Risk aversion in many spheres of life leads also to over-regulation.[13] In effect, regulation is seen as a panacea for many of society's ills and usually serves as a shield against an array of risks that arise in daily life. Politicians, who occupy occasionally specific positions, are influenced by current events (e.g., train crashes, deaths on school outings) and respond to them with a rapid supply of regulatory measures. However, this increase of regulations is not usually followed by a subsequent reduction when risks are eliminated. Thus, the result is an increase in unnecessary regulatory interventions. This issue has been discussed extensively. Typically, in one of his speeches, the British Prime Minister, Tony Blair[14], stated that:

> "In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to see as a normal part of life. This is putting

[13] Regulation Taskforce, 2006

[14] Blair, 2005

> pressure on policymaking [and] regulatory bodies … to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora of rules, guidelines, responses to 'scandals' of one nature or another that ends up having utterly perverse consequences."

Regulations are also provided by regulatory authorities, which have a direct incentive to resort to over-regulation in order to increase their budgets and the salaries of their staff.[15] Consequently, **there is a tendency for regulations to be continually increasing, with an excess demand for regulations being followed by a similar oversupply**.

1.4. Costs of Regulations and Measurement of the Regulatory Burden

As already noted, regulatory measures have economic and social objectives and entail many benefits. But this is only one part of the equation. Apart from protecting citizens' rights and promoting welfare regulations represent a significant cost for an economy since they can pose restrictions to increasing productivity, employment, and economic growth. Costs involved in compliance with regulatory measures are borne by firms, public sector organizations and, ultimately, tax-paying citizens. Undoubtedly, the problem is not caused by all regulations but only by those that create unnecessary costs. Hence, there is great concern for reducing this cost - the regulatory burden – which is now regarded as one of the leading problems among modern economies.

In the first place, it is important to define the regulatory burden since it influences the measurement and the quantification of the burden, and can potentially influence policy reactions. However, despite the great amount of interest and work on reducing the regulatory burden, there is no unambiguous definition of what is meant by this term. The explanation for this is probably the fact that regulatory burden can be broken down into several different components. There are numerous definitions of what constitutes the regulatory burden. A broad definition has been given in a report

[15] Helm, 2006

by the European Commission, according to which the regulatory burden "includes all costs that result from mandatory obligations placed on businesses by public authorities on the basis of a law, decree or similar act. The present interpretation of regulatory burden also includes costs that could be termed psychological costs or "irritation costs"."[16]

Regulatory burden is often confused with administrative burden and is defined as the direct administrative cost incurred by the company when it complies with a regulation. However, such definitions do not comprise the total regulatory burden for a company. Further, the highest costs of regulation are indirect costs (i.e. negative effects on investment, market dynamics, resource allocation etc) and affect overall economic growth. Thus, **regulatory burden includes the total economic cost to society generated by a regulation**.[17]

The regulatory burden has been divided into various different categories but there is not a single classification followed by everyone. For example, OECD, because of difficulties in measuring regulatory burden, focuses on administrative compliance costs for firms, which are both more easily measured and quite significant.[18] Another categorization proposed by the SCM Network, created in 2003 by a group of European countries when they decided to tackle problems caused by administrative burdens by a common approach - the Standard Cost Model. Under this classification regulatory cost is divided into financial cost (dues, taxes, fines) and compliance cost (administrative cost).

However, in general, **three different types of cost** are included in an assessment of the costs that ensue from a regulation: **compliance costs for business, direct costs to government, and broader community costs**.[19] The first category refers to costs in order to comply with regulations and includes the time and work that has to be expended on filling in forms, obtaining licences, and the like; investments on personnel (i.e. recruiting and training additional staff); investments on equipment or

[16] European Commission, 2007

[17] Swedish Agency for Growth Policy Analysis, 2010

[18] OECD, 2001

[19] Regulation Taskforce, 2006

material (i.e. purchasing and maintaining reporting and information technology systems); obtaining advice from external sources (such as accountants and lawyers) to assist with compliance, etc.

Compliance regulation obligations can distract a firm from its core business. Regulatory burden leads firms to inefficient allocation of resources. Complying with regulations requires time and money, which could be used in more productive procedures enhancing firms' activities and profitability. Beyond the burden on existing firms, excessive regulatory costs prevent also new firms from entering in a market. Excessive regulations can also stifle firms' innovative activity and creativity. This affects the extent to which they can develop and exploit new products, services and operating processes so as to maximize operating efficiency. According to a study by Industry Canada, "the Canada-US regulatory gap (including economic, social and administrative regulations) explains about 33% of the innovation gap between the two countries during the 1991 to 2003 period" (Rao and Sharma, 2004).[20]

Small firms seem to face more difficulties in dealing with regulatory burden. Small firms have a narrower revenue base over which to spread the fixed costs of compliance. They have much more limited resources than large firms and therefore face a disproportionate cost. Compliance with regulations requires keeping up-to-date with new regulations and certain actions by firms to avoid penalties of non-compliance. Furthermore, small firms usually don't have in-house regulatory expertise to help with compliance. Since administrative costs of compliance are fixed and independent of firm size, it follows that especially for small firms compliance costs represent a significant proportion of total cost and therefore net margin.

The second category involves direct costs to government and refers to management and maintenance of the regulatory framework and the regulatory authorities. Governments are responsible for the designing, implementation, and enforcement of regulation. They also incur the cost of reviewing and updating regulation. Although it is difficult to determine the government administrative costs

[20] PricewaterhouseCoopers, 2005

deriving from regulation, they can be measured with variables such as budget costs for these activities or number of staff involved.[21]

The last category of regulatory costs includes broader community costs. Apart from the cost on firms, excessive market regulation involves cost for the economy as a whole and reduces social welfare because it undermines a country's competitiveness and reduces consumer choice. Excessive regulation restricts willingness to start companies, deters the creation of new professions and jobs, and reduces employment growth. Further, increased business costs are often passed on to consumers in the form of higher prices for goods and services. A country's adverse regulatory environment discourages also foreign investors and, consequently, reduces the invested resources. Thus, these costs entailed by regulation lead to lower economic growth.

In conclusion, the regulatory burden creates several problems both at firm and at economy and society level and considerable benefits can be gained from reducing unnecessary regulatory burdens. As the Science Industry Action Agenda noted:

> "The economic cost of complying with regulations is a key determinant of national competitiveness and the investment environment for businesses. These costs can be direct, such as capital and operating costs. They can also be indirect, that is, opportunity costs, where the principal(s) of the businesses are taken away from their strategic roles of driving innovation, securing investment and increasing productivity."[22]

Therefore, the challenge lies not only in maintaining the benefits that regulations create for a country's economic environment and for its citizens but also in reducing the negative effects of these measures.

Despite the serious problems caused by the regulatory burden and the efforts of several countries to reduce it, this seems to continue increasing. The PLS RAMBOLL Management Institute for Growth Policy Studies (2003) identified a

[21] Swedish Agency for Growth Policy Analysis, 2010

[22] Regulation Taskforce, 2006

number of factors that restrict the ability to improve regulations and reduce regulatory burden:

i) dynamic development and complexity of advanced societies create an ongoing need for new regulations,

ii) lack of effective voices on the part of the business community,

iii) vested interests in maintaining laws within the business community,

iv) conflicting policy goals,

v) reducing "red tape" for businesses is not core business for lawmakers,

vi) lack of clear responsibilities on the part of public authorities,

vii) lack of coordination between public authorities,

viii) time pressure in the law process.[23]

However, reducing regulatory burden is vital as it has positive effects on productivity, competitiveness, employment and economic growth. More precisely, information from the United States and the Netherlands suggests that the total cost of regulation is 10% - 12% of GDP.[24] Moreover, a drop in regulatory burden will enable employers to respond more swiftly to changing market situations. This will subsequently aid a faster recovery in economic growth.

The most important step towards reducing regulatory burden is estimation. Measuring regulatory burden provides useful information to policymakers for both its level and evolution. However, there are considerable problems regarding measurement which are related to the problem of unambiguously defining the regulatory burden. Practical problems arise when measuring regulatory burden. For example, questions arise about whether the regulatory burden should include only costs required to comply with regulations or should include additional

[23] PricewaterhouseCoopers, 2005

[24] Better Regulation Task Force, 2005

costs for keeping up-to-date with new regulations. It is also likely to underestimate or overestimate regulatory costs and, especially, compliance costs. Firms, on the one hand, don't monitor and don't control these costs systematically and, on the other hand, might have an incentive to exaggerate or to underestimate them.

Based on a narrow definition of regulatory burden, **the Standardized Cost Model (SCM)** is often used in order to estimate the administrative burden. Compliance with certain regulatory measures requires specific administrative procedures that cost money. The SCM defines these processes and aims at quantification of administrative costs. According to OECD the quantification of administrative burdens in SCM is basically done in five steps:

i) "mapping" of regulations, identifying information obligations for businesses,

ii) identification of businesses affected by the given regulation; classification of businesses in relevant segments,

iii) identifying and interviewing businesses "typical" of particular segments to gain information on who performs the administrative activities necessary to comply with the information obligations,

iv) calculation of burdens using estimates of wage costs for businesses and information on how frequent the information is delivered and by how many companies, and

v) reporting of the results.[25]

However, SCM is based on a very narrow sense of regulatory burden. Although it is used successfully to measure regulatory burden in each individual country, problems appear when it is used for measuring and comparing regulatory burden between different countries. For example, differences in the legal framework and implementation of regulations among countries might lead to a misleading assessment of burdens.

[25] PricewaterhouseCoopers, 2005

Empirical studies are usually based on some **measures of regulatory burden. The most commonly used measures are the World Bank's Doing Business index** and **the Fraser Institute's Economic Freedom Index**. These measures constitute the most systematic attempts to measure the regulatory burden in an international perspective. The Doing Business index is based on an extensive database compiled by the World Bank that allows comparisons of the regulatory framework and bureaucracy between countries. In addition, the World Bank compiles a ranking table on how easy it is to run a business in a country. The ranking is based on ten components and the aggregated value is estimated from the mean value of the various components. The Fraser Institute's Index ranks countries according to their degree of economic freedom. It is constructed using several variables from five main areas: size of the public sector, regulations of and charges for trade, sustainable monetary politics, ownership and the rule of law, and finally, regulation of credit, labour and business.[26]

In addition, some other measures of regulatory burden are also used. For instance, the OECD has developed quantitative indicators (Product Market Regulation, PMR, indicators) for regulation and legislation that affect competitiveness. For the construction of the PMR indicators a database of regulations in product markets in the OECD countries is used based on questionnaire surveys which are carried out every five years. The IMD World Competitiveness Index is also used to measure regulatory quality. It is based on 20 factors and the ranking is done according to the countries' competitiveness. It is important to mention that while all these measures provide useful information they should be seen as approximations of the regulatory burden.

1.5. Assessing Regulations - Tools to Improve the Regulatory Design

Unnecessary regulations and increased regulatory burden restrict an economy's growth and have prompted many governments to improve the quality of

[26] Swedish Agency for Growth Policy Analysis, 2010

the adopted regulations. According to a study by Hall and Jones (1999) in 127 countries, differences in capital accumulation, productivity and output per worker emerge due to differences in institutional and government policies. Thus, in many OECD countries, shortcomings and inefficiencies in the existing regulatory framework have motivated governments to take actions aimed at reducing the amount of regulations and improving their quality, design and implementation.

However, there are many problems in the implementation of reforms, such as lack of clarity as to the results to be achieved, lack of guidance on policy implementation, lack of enforcement powers and mechanisms etc.[27] Moreover, improving the quality of regulations requires empirical evidence on regulatory practices and data to evaluate the positive and negative effects of particular regulatory measures. However, in the case of OECD countries, empirical evidence is limited due to lack of cross-country and cross-policy comparative data. It is, therefore, crucial to find tools, practices and certain approaches in order to evaluate the impact of regulations and to control their effects.

A useful tool to assess whether regulatory intervention is required is Cost - Benefit Analysis. Under the CBA, the benefit of an intervention is set against its cost (administrative cost, labour cost, capital cost). However, conducting detailed CBA studies is costly and, as a result, policymakers rarely use it. Besides the expected high cost of a CBA study, politicians and bureaucrats often turn to more subjective assessment techniques in order to obtain the desired for them answers.[28]

In developed countries, the CBA analysis to assess regulations has been replaced by **Regulatory Impact Assessment (RIA)**[29]. **RIA is a term used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation, with the aim of improving the quality of regulatory policy** (the term Regulatory Impact Analysis is alternatively used).[30] It is the main mechanism for comparing the estimated benefit and administrative costs of

[27] Malyshev, 2006

[28] Helm, 2006

[29] More information about RIA is presented in a later chapter.

[30] Kirkpatrick and Parker, 2004

regulations and is the preferred approach in OECD countries. Most of the OECD countries started introducing RIA during the latter half of the 1990s. At the beginning of 2001, 20 out of 28 OECD countries were applying this approach[31] and in June 2001 RIA was officially adopted by the European Commission.[32] The use of RIA was spread rapidly and today most OECD countries rely on at least some form of RIA.

The use of RIA indicates a trend towards more empirically based regulations. It is a very useful regulatory tool that improves cost-effectiveness of regulatory decisions and reduces low quality and unnecessary regulations. RIA enables policy-makers to assess their options and the impact of their decisions by providing them valuable empirical data and creating a comprehensive framework. Ideally, all regulations should be subject to RIA. However, countries usually apply RIA where regulation is expected to have a noticeable economic impact. Given that government action can potentially cause problems and lead to unintended results which result in regulatory failures, RIA is used to ensure that government action is justified and appropriate. According to Cordova-Novion and Jacobs (2004),

> "... RIA attempts to clarify the relevant factors for decision-making. It pushes regulators toward making balanced decisions and justifying that a solution (including the decision to do nothing) to specific problems outweighs wider economic costs and distributional impacts. RIA system is a powerful, evidence-based tool to improve transparency, accountability and efficiency in rule-making processes."

Although the importance of implementing RIAs is clear there is no single model that can be followed by all OECD countries. Differences in institutional, social, cultural and legal issues among countries require an individual design and implementation. Responsible for conducting RIAs are usually ministries and several quality-control bodies that have been established in many countries (Australia, Canada, Czech Republic, Hungary, Italy, Korea, Mexico, Netherlands, Poland,

[31] Kirkpatrick and Parker, 2004

[32] PricewaterhouseCoopers, 2005

Sweden, Switzerland, Great Britain, USA) with a view to more effective quality control of regulations.[33]

1.6. The Impact of Regulation on Growth: Empirical Studies

As we have already stressed above, assessing regulations and reducing regulatory burden has become a top priority for governments around the world. Regulation is perhaps the most pervasive form of government intervention in economic activity and is essential for the proper functioning of markets. It is a fundamental policy tool that is used to address market failures. During the last decades, however, the interest of policymakers has been attracted by the potential of regulation to impede the efficient operation of market mechanisms. Regulation of markets often drifts away from its original target and entails costs that exceed their benefits leading to government failure. Regulations have an impact on productivity, employment, innovation, technological progress, investment and, in general, affect an economy's growth.

Heavy regulation is generally associated with greater inefficiency and poor economic outcomes. According to Blanchard (2004), during the last decade, excessive regulation in European countries has led to restricted economic performance compared to United States. Furthermore, the World Bank (2005) included complex regulations and arbitrary implementation among the key impediments to growth in developing countries. Given this, most OECD countries have been reviewing and updating their regulatory environment.

The reform process has been closely linked to efforts for enhancing competition because deregulations that promote competition have a positive impact on GDP through various ways. For example**, deregulations that promote competition have a positive impact on productivity**. Given that regulation often stifles competition, removing competition restricting regulation and increasing the intensity of competition can boost productivity through better allocation of resources

[33] In the next chapters we provide a detailed analysis on institutional approaches towards RIA by the OECD and certain other countries.

and by pushing managers to intensify their efforts. These in turn will lead to efficiency gains. In other words, **competition friendly regulation increases productivity through a more efficient use of resources**. Under such regulation, managerial slack or reduced work effort is eliminated since competition allows performance comparisons and enables the owners to monitor managers even in cases of asymmetric information. In addition, anticompetitive regulatory environments and delays in implementing reforms have been associated with low Multi- Factor Productivity (MFP) performance. It is worth-mentioning that **many countries that maintained regulations unfriendly to competition didn't overturn the productivity slowdown of the 1970s and 1980s**. On the contrary, countries that proceeded to reforms achieved a significant increase in MFP growth.[34]

Excessive and poor quality regulation can also hamper an economy's productivity by affecting firms' incentives to innovate. Regulatory measures that promote competition are expected to bring benefits that are likely to be quite high since firms will introduce innovations that would not be feasible in a heavily regulated environment. Increased competition can lead to increased innovation either through the so-called "appropriability" effect that motivates new or incumbent firms to innovate in order to catch post-innovation rents, or through the "escape competition" effect that motivates incumbents to innovate in order to preserve their pre-innovation rents, when faced with the possibility that their rivals (new entrants or incumbents) may innovate.[35] Thus, improving regulation and enhancing competition and, consequently, productivity can stimulate firms' innovative activity.

Regulation can also influence entry conditions by raising entry costs or by posing other restrictions to entry. Further, regulation that results in a reduction in entry barriers has been found to be beneficial for employment (Haefke and Ebell, 2004). This happens because adopting looser regulation and removing entry barriers causes a series of changes. A reduction, for example, in barriers to entry will curb market power of incumbents and make entry of competitors possible. Thus, competition will increase, firms' rents will be reduced, activity will be expanded and labour demand and employment will be raised. In addition, competition puts

[34] Nicoletti et al., 2003

[35] Arnold et al., 2008

downward pressure on prices of goods and services thereby raising real wages, which stimulates labour supply.[36]

Further, **improving regulation and reducing regulatory burden is likely to spur investment**. Investment is affected by regulation through various ways. For example, a change in regulation can alter entry barriers and the number of firms and can, thus, affect the markup of prices over marginal costs. In the long run this is likely to affect capital formation. In addition, less red tape and lighter regulatory burdens lower the costs of adjusting the capital stock, thereby boosting the willingness of firms to react to changes in fundamentals by expanding their productive capacity. Further, in some sectors the rate of return on capital that firms are allowed to earn is determined under specific regulations. This affects the demand for capital relative to labor. Finally, in cases where regulatory changes are accompanied by privatization, investment can also be influenced through changes in the ownership structure.[37]

The above show that regulation affects an economy on various dimensions. Hence, the adoption and implementation of regulatory reforms requires special attention. Competition authorities should focus their research in questionable areas (i.e. in sectors where incidents of collusion are regular, and/or abuses of dominant position are common) as well as in cases where State aid severely hampers and delays the necessary regulatory restructuring. This requires a thorough analysis of the most harmful to consumers and competition regulation.

The impact of regulation on growth has drawn the attention of economists in recent years and incited them to conduct several empirical studies that correlate a country's regulatory environment with its economic performance. Empirical studies examine the impact of various forms of regulation on growth by incorporating an index of regulatory intervention to a growth regression like the following:

$$GYP = a + b\,(Y/P)_0 + c\,Z + d\,\text{Regulation} + \varepsilon$$

where GYP is the rate of growth of real GDP per person, $(Y/P)_0$ is the initial income level (a proxy for scope for catch-up), and Z is a vector of control variables.[38] The

[36] Wölfl et al., 2009

[37] Alesina et. al, 2005

[38] Crafts, 2006

estimation of growth is standard in the literature (through real GDP per capita growth). Alternatively other variables which are considered as long-term growth determinants, such as productivity, can be used. As regards the assessment of regulation, a number of indicators are used. Useful information for the construction of these indicators is provided by (a) various surveys of business evaluations and (b) estimations by international organizations (e.g. OECD). The former are considered as more subjective measures while the latter as more objective measures. These indicators capture market characteristics such as state control, barriers to business and investment, characteristics of fiscal, monetary and fiscal policy, labor market characteristics such as the cost incurred by firms because of benefits provided to workers and the extent to which labor relations impede firm activities. In total, **regulation indicators examine the extent to which the existing regulatory environment affects an economy's growth by quantifying qualitative data regarding laws and regulations that affect competition**. Thereafter, we present a series of empirical studies that rely on several measures of regulation mainly related to product market and labour regulation.

As already mentioned, a well-known measure is the Economic Freedom Index of the Fraser Institute. It indicates a market's friendliness and it is constructed using about 125 variables regarding the amount of regulations in an economy.[39] These variables involve both objective information on fiscal, monetary and tariff policy and also subjective survey assessments of aspects of institutions and policy such as property rights and regulation of credit, business and labour.[40] Subjective measures of business and labour regulations are based on answers by business seniors while objective measures of regulation by OECD concern measures of product market regulation, which indicate whether regulations favor product market competition, and measures of employment protection, which account for the cost incurred by firms due to provisions for employees (e.g. difficulty of dismissal).

These measures have been used in recent empirical studies regarding the effects of regulations on growth. These studies examine the impact of various kinds of regulation on proximate determinants of GDP growth – productivity, investment and

[39] Gorgens, 2003

[40] Crafts, 2006

employment – finding in most cases negative effects. Loayza et al. (2005) built a set of indicators and examined the impact of product market regulation, labour regulation and overall regulation on growth. These indicators are a mixture of the Fraser Institute index of economic freedom and other similar measures. They found that "a heavier regulatory burden reduces growth although these effects are smaller the higher the quality of the overall institutional framework". More precisely, they found that **if the level of a country's governance is equal to the world median an increase to the overall index of regulation by one standard deviation would decrease the annual rate of per capita GDP growth by 0.4 percentage points**. However, at OECD governance standards, they found that regulations don't hinder growth.

Similarly, Gorgens et al. (2003) used the Fraser Institute Index of economic freedom to measure the level of regulations and analyzed the relationship between public regulations and growth. They found that "high levels of regulation lowers growth, but there is no effect on growth for moderate to low levels of regulation". In particular, **heavy regulation reduces an economy's growth by 2 - 3 per cent compared to a liberal one**. Though, this effect holds for moving from high regulations to a moderate level while the effect is restricted when going from a moderate level of regulation to the laissez faire. These findings may explain why recent deregulation in heavy-regulated third world countries improved growth while it has not benefited as much the relatively lightly-regulated OECD countries.

IMF (2004) used also the above measures of regulation in a cross-country study for the OECD countries for the period 1975 – 2000. The study combines the above objective measures by the OECD with measures of regulation in credit markets and indicators of reforms to tax and trade barriers. They found that **reducing regulations, especially deregulating product markets, has a positive impact on growth**. In particular, "a one standard deviation increase in reform indicators was found to raise real GDP per capita after 4 years by 4.7 per cent for trade and 2.3 per cent for tax reforms, and by 7 and 1.9 per cent for product market and labour market de-regulation, respectively".

The relationship between regulation and growth has also been examined by Friedman (1995) who argued that the growth in regulation is at least, in part, responsible for the slowdown in economic growth. In adittion, Koedijk and Kremers

(1996) examined the relationship between market regulation and output growth. Based on a sample of eleven OECD countries, they constructed an index of regulatory intensity and they found that it was sharply negatively correlated to output growth.

A number of empirical studies examine the relationship between regulation and productivity and show that competitive product markets force companies to be more efficient and to increase labour or multi-factor productivity. Nicoletti and Scarpetta (2003) used total-factor productivity (TFP) growth at industry level and found that product market regulation lowers TFP growth in OECD countries. **According to their results, deregulation delays in European economies entailed a cost in terms of TFP growth. They also found that if European countries formed their regulatory policy according to that of the most liberal OECD country, TFP growth would raise over 10 years by up to 1.1 percentage points.**

Using firm-level data for a sample of European countries, Arnold et al (2011) also examined the effect of product market regulation on firm level TFP growth. For the approximation of regulatory burden, they used OECD indicators of sectoral non-manufacturing regulations. However, taking into account that policy-induced rigidities in non-manufacturing industries can potentially generate trickle-down effects into other sectors by raising the costs or lowering the quality of intermediate inputs (especially in the case of services inputs), they pre-multiply the sector-specific regulation indicators for services industries by a matrix of input-output coefficients for 39 sectors. This resulted in an indicator matrix that they called Regulation Impact (RI) indicators, calculated as:

$$RI_{jct} = \sum_{j'} w_{jj'} \cdot PMR_{j'ct}$$

where subscripts c denote countries, j and j' denote industries and t time. $w_{jj'}$ are input-output coefficients measuring the intensity with which industry j relies on services industry j′. They found that **product market regulations that curb competitive pressures tend to reduce the productivity performance of firms**. The negative effect is particularly strong on firms characterised by an above-average productivity growth.

Alesina et al. (2005), based on OECD measures, examined the relationship between market regulation and investment. They found that deregulating labour markets would increase investment and capital stock, specifically, that during the period 1975 – 1998 deregulation affected greatly investment in utilities, transport and communications. Their results indicate that if Italy's regulatory environment resembled that of United States then investment as a share of the capital stock would have been raised by about 3 percentage points in the late 1990s. Comparable findings resulted in the study by Javorcik and Spatareanu (2005). They found that strengthening employment protection discourages foreign direct investment (FDI), especially in the service sector.

Nicoletti et al. (1999) also constructed indicators of regulation that summarise information on regulations among OECD countries. They examine regulatory environments among countries and the interrelations between various sets of regulatory provisions. They found that, in countries with heavy administrative environment, regulations have a negative effect on competition and that public ownership appears to be often associated with legal limitations to the number of competitors. Further, they found that restrictive regulatory environments in the product market tend to be associated with restrictive employment protection policies.

There are also several studies, Brandt (2004), Cincera and Galgau (2005), Klapper et al. (2004), Griffith and Harrison (2004), Griffith et al. (2006), which did not examine the direct impact of regulations on growth but instead of that they used intermediate variables. Using the above subjective and objective measures of regulation, they examined the effects of regulation on entry rates and price-cost mark-ups and afterwards they examined the impact of these variables on innovation, investment and productivity. According to their results, strengthening of regulations reduces entry and increases mark-ups. Cincera and Galgau (2005) found that increasing firm entry or exit rates by 1 per cent would lead to an increase in labour productivity growth by 0.6 per cent. Yet, they found no strong effects on R&D or capital intensity. Brandt (2004) found a strong correlation between entry rates and labour productivity and TFP growth rates in the service sector while Griffith and Harrison (2004) and Griffith et al. (2006), using mark-ups, found that lower mark-ups improve investment and innovation respectively.

1.7. Conclusions

Regulatory burden constitutes a significant obstacle to an economy's growth and many countries have undertaken initiatives in order to reduce it. While focus is usually on the direct costs, in the form of firms' administrative costs, efforts should be broadened to include the indirect effects of the regulatory burden. Both theoretical and empirical studies show that these indirect consequences of the regulatory burden are considerable. It can undermine competitive pressures, affect production dynamics, cause allocation losses, discourage investment, and result in lower economic growth. However, these consequences do not entail full abolishment of regulation. Efficient regulation creates the conditions for the proper functioning of markets, solve problems with external effects, and increase efficiency. The central task is thus to find methods which ensure that the economic benefits exceed the costs. In conclusion, there is a continued need for further research concerning the regulatory burden and its implications and more light should be shed on how the institutional framework should be designed to promote the creation of economically effective rules in the best possible way.

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Chapter 2

Regulatory Reforms and Institutions for Reducing Regulatory Burden:

The Cases of Australia, Netherlands and England

Introduction

In this chapter we turn to an examination of how different countries have dealt with the need to create an efficient regulatory system, one that minimizes regulatory burden. We concentrate on the approaches and institutional designs chosen by three countries: Australia, Netherlands and England. In all these countries the issue of regulatory reform has been at the top of the policy agenda for many years and are now regarded as model economies with advanced institutional capacities and exemplary regulatory frameworks.

2.1. Australia:

Regulatory Reforms

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2.1.1. Introduction

Over the last two decades, Australia is one of the best performing economies and has experienced continuous economic growth. GDP per capita has substantially increased, unemployment and inflation have fallen and Australian living standards are now comparable to those of the wealthiest countries. This growth has been underpinned by wide-ranging regulatory reforms that improved Australia's economic prospects and strengthened its ability to capture large benefits from globalization. These reforms were driven by a disappointing performance and a significant slippage in the productivity growth in the 1970s and the first half of the 1980s. Thus, the changing nature of the economy and the tendency for over-regulation highlighted the urgency for regulatory reforms.[41]

2.1.2 The Three Waves of Reform

Most of the twentieth century, government interventionism was apparent in all aspects of economic life in Australia. Essential goods and services, such as water and transport services, were only provided by the State and product and labor markets were subject to regulation. The need for stability and security pushed governments to introduce measures that influenced greatly economic activities. While these measures were originally designed to serve economic and social objectives, and did so successfully for more than half of the twentieth century, they came at an economic cost. Regulatory objectives encompassed measures that often had undesirable effects including restrictions to competition, cost-increases for producers and consumers and distortions to industry structures.

From the 1950s, Australia's poor economic performance became clear as Australia started suffering losses in terms of GDP per capita which reached a historical low of 18th place in the global income ranking in 1989. However, Australia has undertaken several initiatives during the last decades and has progressively

[41] OECD, 2010

improved its position on the global income ranking.[42] **Wide-ranging reforms boosted efficiency and productivity improved the competitiveness of firms and industries and led to an overall increase in the national living standards.** Frequently microeconomic reforms involved measures to promote competition through reductions in government influence, deregulation of industries and privatization of significant areas of the public sector. Several reform initiatives have taken place in Australia and during this ongoing process of reform three major waves can be distinguished.

2.1.2.1. The First Wave of Reform

A clear starting date of the reform process in Australia cannot be easily identified. Efforts to change several areas of the Australian economy had already begun to take place during the 1970s and it was then when the first significant tariff reductions on manufacturing imports were implemented (the 25 per cent across-the-board tariff cut in 1973). But Australia's policy response to the growing concerns of previous years took actual shape in the 1980s under the first wave of reform. In the early 1980s, Australia introduced a comprehensive program of economic reform to open the economy. Throughout this decade landmark reforms were performed including the floating of the Australian dollar, the rapid reduction in tariff barriers and the deregulation of the financial sector.[43]

The Australian economy was exposed to international competition that stressed the need for more efficient provision of utility services. Thus, government business enterprises (GBEs) were pushed to adjust prices to actual costs and boost productivity. At the same time, reforms were targeted to foster efficiency and increase flexibility of capital and labor markets and to improve and modernize the public sector. Greater integration with the world economy was also beneficial for the Australian imports and exports. **A crucial point of this first wave of reform is that it highlighted a growing concern for unnecessary or costly business regulation at**

[42] Victorian Government, 2005

[43] Industry Commission, 1998

both state and federal level along with recognition of the costs imposed by differing regulatory regimes in different states.[44]

2.1.2.2. The Second Wave of Reform

Despite the important initial steps during the 1980s, that drove improvements in Australia's economic environment, there was still enough scope for action for governments and policymakers. Speculation on a lack of both competition and national coherence that was hindering economic growth took the form of **the second wave of largely microeconomic reform initiated in the early 1990s**. In this reform wave Australian governments showed their willingness to increase intergovernmental cooperation in order to overcome barriers to reform due to the federal government structure. In 1992, the Independent Committee of Inquiry into Competition Policy in Australia (the Hilmer Inquiry) was assigned to examine several areas and to identify problematic areas where reform was necessary and vital.[45] The Inquiry made several recommendations, including extensions to the range of competition policy and review of all legislation restricting competition, which would entail substantial increases to Australia's GDP.

During the second wave of reforms, several reforms were implemented aimed at improving national efficiency and international competitiveness but three major initiatives can be highlighted as they were at the core of this reform period. First, in 1995 governments agreed to implement **the National Competition Policy (NCP)**, which enabled federal governments to approach reform policies under a more nationally focused and systematic way.[46] Second, under this reform wave, **a considerable amount of reviews of regulations and related institutions was undertaken**. Third, important steps were made, such as the strengthening of the role of the regulatory impact statement process (RIS), in order to **establish more rigorous processes for introducing new regulations**. The first two refer to already existing regulations and, especially, to reviews of regulations and institutions while the third

[44] Carroll and Head, 2009

[45] Victorian Government, 2005

[46] See next section

refers to efforts so that new or modified regulations would impose a lower burden on the economy and businesses. These three major developments took different periods to implement and yielded different results.

As regards the organization and management of reform processes in Australia, it was difficult since in federal systems powers and responsibilities are shared between state and federal governments. In the early 1990s, the reform process was based mainly on a series of Special Premiers' Conferences (SPC) that provided the major directions of the reform process and offered guidance to the subordinate working groups of mainly public servants about specific proposals.[47] SPCs were followed by the creation of the Council of Australian Governments (COAG), in 1992, which was commissioned with policy development and reform regarding national issues. The second wave of reform was lengthy enough, entering the new century, and several of its processes were continued until recently. However, findings of surveys and reports undertaken all these years created new concerns about the future.

2.1.2.2.1. The National Competition Policy Legislative Programme

The National Competition Policy (NCP) legislative review programme is widely recognized as a landmark achievement in Australia's regulatory reform history. It has yielded benefits across the country and is considered to have made a significant contribution to Australia's welfare. **The NCP programme included thorough examination of all legislation that could potentially harm competition** and laid emphasis on reviewing 1800 pieces of legislation.[48] In 1992, the then Prime Minister asked the Independent Committee of Inquiry into a National Competition Policy to conduct a report under the direction of Professor Fred Hilmer (Hilmer report). In 1993, the report was delivered to the Australian governments and it stressed regulation as the most important obstacle to competition.

On 25 February 1994 the Council of Australian Governments endorsed the principles of the competition policy outlined in the Hilmer Report. According to the Hilmer report, governments should intervene by adopting regulatory measures only if

[47] Carroll and Head, 2009

[48] OECD, 2010

this is in favor of the public interest. Moreover, in cases where introduction of regulations imposes restrictions to competition it should be accompanied by a specific justification for the necessity of these measures. On 11 April 1995 the leaders of the Australian governments signed the Competition Principles Agreement and committed to a programme of economic reforms reflecting Hilmer recommendations. Under this agreement, each jurisdiction should review all legislation by 1996 and reform laws impeding competition by 2000. Assessment of the restrictions to competition was based on the RIS framework and governments' progress on implementing their reform commitments was assessed by the National Competition Council.

The NCP reform programme covered all sectors of the economy and involved several recommendations that would promote competition. It included general reforms as well as specific reforms in four key sectors of the economy. Between the general reforms were the extension of the anti-competitive conduct provisions in the Trade Practices Act (1974), reforms to public monopolies and other government businesses, providing access for third party to essential infrastructure services and reviews of all laws that restrict competition. The specific reforms were aimed at increasing competition in key infrastructure services of the economy and covered electricity, gas, road transport and water sectors.[49]

Under the Agreement to Implement the National Competition Policy and Related Reforms, those States and Territories that achieved satisfactory progress against their reform commitments received payments by the Australian government. These **incentive payments** served as a means of distributing gains from reform throughout the economy. They also motivated States to cooperate and promoted efficiency within each individual jurisdiction. Incentive payments were made by the Australian government under the supervision and the recommendations of the National Competition Council about each jurisdiction's performance on implementing the review programme. If the Council considered that a State hadn't successfully met its obligations then if it had indicated a preparedness to address non-compliance the Council suggested a temporary hold on payments while if it hadn't the Council suggested a permanent payments deduction depending on the significance of the non-compliance.

[49] Corden, 2009

The NCP programme was a broad comprehensive reform programme that allowed exploiting complementarities and reducing adverse distribution effects since those negatively affected from one reform could benefit from other reforms. The legislation was divided into priority and non-priority areas depending on the impact on competition and by 2004 nearly three quarters of priority reviews and 90% of non-priority areas had been completed. The programme had a great overall success and, according to the Productivity Commission[50], **it boosted Australia's GDP by 2.5%** (or AUD 20 billion).[51] Though, there were still some areas where competition was restricted including pharmacy ownership, agricultural marketing restrictions, liquor laws and taxis.

2.1.2.2.2. The Productivity Commission

The Productivity Commission (PC)[52] is the Australian Government's principal review and advisory body on several issues that affect Australians' welfare. The PC is promoted as a model body among OECD countries due to its organizational structure, standing function, skilled staff and the range of issues it covers. It has been a major contributor in Australia's regulatory reform as it has provided to the Australian government useful researches and reports advising on regulation. The PC was established with a view of developing and adopting better policies in the long term and with a special interest on raising the living standards of Australians by promoting productivity.

The PC is an independent statutory authority and it was created in April 1998 through the amalgamation of three prior bodies - the Bureau of Industry Economics, the Economic Planning Advisory Commission and the Industry Commission. PC performs under a more comprehensive framework and its role and functions have been greatly extended, outreaching those of the merging bodies. Crucial to the performance of the PC is its independent and skilled staff. The Governor-General of Australia appoints commissioners for periods of up to five years. There is a

[50] See below.

[51] OECD, 2010

[52] More information is available at the Productivity Commission website: http://www.pc.gov.au/

Chairperson, who heads the Commission, and 4 to 11 other commissioners. The commission also has a public-service staff.

The Productivity Commission has an advocate role that covers all sectors of the economy, public or private, and regardless of being under the Commonwealth, State or Territory jurisdiction. The Commission functions under a general guiding principle, the public interest, whether this refers to environmental, regional or social criteria, and with an ultimate goal of improving economic performance. The PC provides innovative recommendations both on the development and on the implementation of policies and most of the conducted studies have a regulatory dimension. The Commission has conducted in-depth reports on a very wide range of topics including performance benchmarking of Australian regulation and annual reviews on the burden on business from the stock of Australian government regulation. More precisely, the Commission is responsible for

- conducting and holding public inquiries and research studies on industry, regulation and productivity issues,
- making clear and understandable these issues to the public and advising the Treasurer on matters related to them,
- supervising and benchmarking performance,
- providing certain services to government bodies including secretariat and research services, and
- examining complaints on competitive neutrality government arrangements.

Research results of the PC on government performance are published in an annual reporting series ("the blue book") as well as in research papers, conferences and seminars.

2.1.2.3. The Third Wave of Reform

Systematic regulatory reform over the first two waves delivered great benefits to the Australian economy which is experiencing the longest period of

continuous economic growth on record. **Reforms during the last decades drove Australia from the 18th place in the global income ranking in 1989 to now be included between the top ten countries**.[53] Australia has enjoyed unprecedented prosperity in recent decades which is apparent in the significant increase of GDP per capita and productivity rates. Improved economic performance is mainly attributed to the microeconomic policy reforms since the 1980s. According to the OECD's growth project[54], government interventionism led to Australia's poor economic performance prior to the 1990s. The report also identifies the importance of the regulatory reforms in stimulating productivity performance thereafter. Microeconomic reforms encouraged domestic and international competition, promoted a more efficient allocation of resources and a more vigorous pursuit of productivity improvements and induced an overall upturn in the nation's economic performance.

However, exposure to a more competitive and rapidly changing global environment created new pressures for further reform initiatives to enable higher living standards across Australia. There were areas of regulation that had not been included in the previous reform waves or reforms had been imperfectly implemented and attention should now be drawn to those areas. Gary Banks, the Chair of the Productivity Commission, argued that the implementation process was not fully successful questioning the independence of the conducted reviews and the efficiency of the processes for the management of the regulatory quality and highlighted that existing regulations had not always been subject to public interest tests.[55] The urgency of further reforms was, also, evident in the volume of regulation which had dramatically increased in previous years. It is notable that since 1990, the Australian Parliament has passed more pages of legislation than were passed during the first 90 years of federation.[56]

In 2006 Banks, heading a Taskforce, was commissioned to "identify actions to address areas of Australian Government Regulation that are unnecessarily

[53] Victorian Government, 2005

[54] OECD, 2001

[55] Banks, 2004

[56] Regulation Taskforce, 2006

burdensome, complex, redundant, or duplicate regulations in other jurisdictions".[57] Banks noted that the volume of regulation has expanded rapidly over more recent years, especially in finance, corporate governance, superannuation, business taxation, workplace relations and in social and environmental areas, and that much regulation continued to be poorly justified and implemented. This trend in increasing regulations generated large and unnecessary compliance burdens on business and the community, as well as high administrative costs for government and increased the risk of regulatory failures to re-emerge.

With a considerable room for improvement in Australia's performance the need for a major new series of national, coordinated reforms was compelling. Bank's recommendations set in place a new phase of reform initiatives which formed the third wave of reform. **In 2006, the Council of Australian Governments (COAG) agreed to a new National Reform Agenda focusing at further raising living standards and productivity in Australia.** Heads of Treasuries argued that the new Agenda could potentially deliver over the next decade equivalent, or greater, benefits to those arising from the NCP programme. Governments agreed to undertake concrete, practical initiatives in the areas of improved health services, skills recognition, infrastructure regulation and planning and a lessened regulatory burden on business. COAG laid emphasis on enhancing the capability of the Australian workforce and removing disincentives and barriers to increased labour force participation since ageing of population poses a burden on those already in work. The National Reform Agenda also includes initiatives to improve markets' efficiency and to reduce the regulatory burden on Australian business.[58]

In particular, **the COAG National Reform Agenda consisted of three streams – human capital, competition and regulatory reform.**[59] The competition stream includes reforms in energy, transport, infrastructure and planning, and climate change areas. The regulatory reform stream is aimed both at promoting best practice in regulation making and review and at reducing regulatory burden generated by

[57] Regulation Taskforce, 2006

[58] Council of Australian Governments' Meeting, 2006

[59] Productivity Commission, 2006

overlapping and inconsistent regulations. Following the Banks review recommendations, the government focused on developing regulatory best practice by adopting certain principles of good regulatory processes, enhancing processes for assessing new regulations involving a strengthening of the role of the RIS analysis and by establishing the **Office of Best Practice Regulation** (OBPR).[60] Finally, the human capital stream includes initiatives in health (improvement of health services), education and training (increase workforce participation and productivity by equipping more people with the needed skills) and work incentives (provide incentives to that part of the workforce which can potentially increase to a greater extent the workforce participation rates).

2.1.3. Reducing the Regulatory Burden

Over recent decades, Australian governments have made substantial progress in microeconomic reform across many sectors of the economy. They undertook several reform initiatives in order to make businesses more competitive and the economy more efficient and productive. While Australia's reform programme is often considered as a model programme, there have been considerable delays in reducing the regulatory burden. Australia, like many other countries, has experienced problems of overuse of inflexible regulations and rapid growth in the bulk of regulation. Despite government efforts to limit these problems there is still considerable scope for policy action. Thus, an important policy challenge for governments has been the minimization of the cost imposed on businesses for complying with the regulatory regime.

The Commonwealth government has implemented a number of initiatives in recent years to deal with the regulatory burden. Since 1986, Australian government has established, as we noted above, **Regulatory Impact Statements (RIS)**, under which new or amended regulations are subject to consistent and systematic assessment against specific criteria in order to adopt best practice regulations.

[60] OECD, 2010

Moreover, the Keating government issued a white paper in 1994[61] aimed, inter alia, at making less complex and higher quality regulations and easing the burden of excessive paperwork relating to business licences while, during the 1990s, there were some attempts at reducing specifically tax compliance costs, such as the Tax Law Improvement Project in 1993.[62]

Special attention was given to small businesses through a number of initiatives such as the establishment of the **Small Business Deregulation Task Force**, which committed governments to several arrangements in order to reduce the burden on small businesses. Two important reports stand out in the 1990s regarding the regulatory burden on small businesses. The first is the *Small Business in Australia – Challenges, Problems and Opportunities* (the Beddall Report) issued by the House of Representatives Standing Committee on Industry and the second is the *Time for Business* (the Bell Report) issued by the Small Business Deregulation Task Force. The latter contained 62 recommendations on the paperwork and compliance burden facing small businesses and in 1997 the Commonwealth government in the *More Time for Business* statement argued that "the great majority of the [Task Force] recommendations had been adopted, either in full or in part"[63]. In response to the Bell Report, the Commonwealth government announced a set of initiatives to reduce the regulatory and compliance burden on small business including simplifying taxation compliance, provide easier access to government information and compliance requirements, making the regulation setting process more transparent and accountable, reducing complexity, duplication and delays in business approvals and registration processes, easier access to finance, putting into place client service standards for the public service, accelerating Commonwealth, State and Territory reform of rules and regulations, and providing mechanisms to monitor progress.

The most systematic and detailed legislative review took place in the second half of the 1990s. **In 1996, the Small Business Deregulation Taskforce was commissioned to report on measures to reduce the compliance and paperwork**

[61] Keating, 1994

[62] Bickerdyke and Lattimore, 1997

[63] Howard, 1997

burden on small business by 50 per cent.[64] The taskforce recommendations focused on better processes and an increased interest on the regulatory management. However, the Taskforce failed to recommend a robust measure of the total regulatory burden and it mainly concentrated on ex ante processes, like the RIS process, for minimizing the cost of regulations.

It should be recognized that efforts to reduce the regulatory burden had yielded some benefits. For example, in 2006, the Australian Securities and Investment Commission (ASIC), highlighted the achievements up to then in streamlining and reducing paperwork. ASIC argued that it had adopted a new Financial Services Licensing Kit and a streamlined approval process for licence applications causing paperwork for licensing to reduce by more than 50%. Lodgement of forms had been automated and companies could lodge online the most commonly used financial services forms, as well as all external administration forms. However, despite the decisions to free the market from regulation and restrictions there were still areas of the economy that needed major reforms in order to cut the red tape burden on business. Increasing regulation was still imposed on Australian businesses leading to waste of their resources and undermining of their competitiveness and restricting their ability to respond quickly to market opportunities and threats.

Recent Initiatives

In May 2005, the Business Council of Australia (BCA), an association of Chief Executives of 100 of Australia' leading corporations, released its **Business Action Plan for Future Prosperity** and recommended ways for reducing the unnecessary costs of poor regulation. BCA's proposals covered not only existing regulations but also provided advice to improve future regulations. More specifically, these proposals included a **three-step programme to face regulatory burden**. Step one referred to improving transparency and accountability of the processes for developing new regulations in order to ensure that they are adopted only in cases where it is necessary and in the most cost-effective way. Step two covered improvements of existing regulations including reviews and testing of regulations

[64] OECD, 2010

against specific criteria. Step three involved reforms to rationalise Commonwealth – State regulation to tackle the serious long-term problem in Australia of overlapping and inconsistent regulation of the different layers of government and achieve nationally consistent regulation.

The Australian government recognized the need to reform business regulation and keep their businesses competitive. The BCA report motivated the Commonwealth government to appoint a Taskforce on Reducing Regulatory Burdens on Business, headed by Gary Banks, to develop concrete proposals that would reduce inefficient regulation. **In the Rethinking Regulation report, the recommendations for reforms to existing regulations were classified into three broad categories** – to **immediate reforms** due to their definite required action and their unambiguous result, to **reforms that require further review**, and to **cross-jurisdictional reforms** that would require the cooperation of State and Territory governments. In particular, the Taskforce recommended that the COAG should rationalize the regulatory burden imposed by multiple regimes by reviewing areas where there is significant jurisdictional overlap and inconsistency and by developing an institutional framework for the national harmonization of regulation. The Taskforce, also, recommended the amendment of Legislative Instruments Act to provide for 5-year sunset clauses, regulation reviews after 1-2 years of implementation and the assessment of regulations not subject to sunset clauses every 5 years.

Moreover, the Taskforce recommendations included several **proposals for improving regulators' performance**. For example, it was argued, on the one hand, that legislation should provide clear guidance to regulators about policy objectives and, on the other hand, that regulators should develop a code of conduct covering regulators and regulatory entities, they should develop better performance indicators and reviews of decisions and they should establish standing consultative bodies. In addition, the Taskforce provided proposals to streamline the administration of regulation and improve efficiency across government. For example, the Australian Government should ensure that government information is presented in a business-friendly manner, including better form design and use of plain English, and encourage departments and agencies to systematically use information technology to reduce business compliance costs and consult with business in doing so.

The Taskforce, also made **recommendations regarding future regulations**. Among those recommendations was the endorsement by the government of six principles of good regulatory process[65], the strengthening of gatekeeping requirements for regulatory proposals, the elevation of oversight of regulatory processes and reform programme to Cabinet level and the amendment of the Legislative Instruments Act to include good process requirements. The Taskforce, also, recommended developing whole-of-government consultation requirements and producing policy "green papers" and/or exposure drafts for major and complex regulatory matters, improving and strengthening RIS requirements, undertaking cost-benefit analysis of regulatory options and mandating use of the Compliance Costing Tool in assessing regulatory options and developing in-house cost-benefit skills in departments and agencies.

The Commonwealth government recognised the need for action to reduce the regulatory burden and agreed, in full or in part, to almost 90 per cent of the Taskforce's recommendations (the Government agreed with 158 of the 178 Taskforce recommendations).[66] At the Council of Australian Governments (COAG) meeting in February 2006, all governments agreed to a National Reform Agenda to underpin Australia's future prosperity. The regulatory reform stream of the COAG National Reform Agenda focused on reducing the regulatory burden imposed by the three levels of government. COAG agreed that while effective regulation is crucial to promote efficient and fair operation of markets and protect consumers governments should undertake certain initiatives to reduce unduly high compliance and implementation costs that offset these benefits. Thus, **COAG agreed to seek best practice regulation making and review and to reduce burdensome regulation and red tape.** COAG agreed that all governments will:

[65] i) Governments should not act to address "problems" until a case for action has been clearly established, ii) a range of feasible policy options need to be identified and their benefits and costs assessed within an appropriate framework, iii) only the option that generates the greatest net benefit for the community should be adopted, iv) effective guidance should be provided to relevant regulators and regulated parties as the regulation is being implemented, v) mechanisms are needed to ensure that regulation remains relevant and effective over time, and vi) there needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

[66] Productivity Commission, 2006

- establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition;
- undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community;
- identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and
- in-principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden.

COAG also agreed to improve the quality of Regulatory Impact Analysis (RIS), mandate the use of cost-benefit analysis for significant regulatory proposals, and the use of the Business Cost Calculator[67] for the measurement of compliance costs of all regulatory proposals, ensure that Cabinet considers only regulatory proposals for which an adequate RIS has been prepared, unless there are exceptional circumstances, and undertake reviews of all regulation every five years. In addition, the National Reform Agenda highlighted six priority cross-jurisdictional "hot-spot" areas where overlapping and inconsistent regulatory regimes were impeding economic activity.[68] These areas included rail safety regulation, occupational health and safety, national trade measurement, chemicals and plastics, development assessment arrangements and building regulation. Overlap and inconsistency problems often emerged because of domestic and international inconsistencies, variation in definitions and operational reporting and requirements for repetitive information provision.

The Productivity Commission was requested to report to GOAG Senior Officials on the potential economic and fiscal impacts of the NRA and in December 2006 issued the "**Potential Benefits of the National Reform Agenda**" report.

[67] See below.

[68] Four more "hot-spot" areas were agreed at the July 2006 meeting of GOAG and included business registration, environmental assessment and approvals processes, personal property securities and product safety.

According to this report, full implementation of NRA's consistent regulatory reforms has the potential to reduce compliance costs by up to 20 per cent, which would result in a **saving of as much as $8 billion in 2005-06 values or 0.8 per cent of GDP per annum**. Under the NRA reforms, labour hours needed to comply with regulations will be reduced and inputs are expected to be used more efficiently. NRA reforms are, also, expected to yield efficiency gains through improved resource allocation. While these efficiency gains have not been estimated under the PC report, they may potentially be greater than those achieved through reduced compliance costs.

2.1.3.1. The Business Cost Calculator

Implementing regulations entails several complying obligations for businesses and imposes unavoidable complying costs on them. **The Business Cost Calculator (BCC)** was developed by the Office of Small Business in the Department of Industry, Tourism and Resources and **is a measurement tool designed to capture compliance costs of regulatory policies on businesses**.[69] It is IT-based and uses an automated process to quantify these costs. BCC classifies compliance costs in nine categories and uses an activity-based costing methodology to measure them. These cost categories include notification, education, permission, purchase costs, record keeping, enforcement, publication and documentation, procedural changes and an "other cost" category. BCC covers a wide range of compliance costs including, for example, costs related to staff time to fill in and lodge forms and undertake inspections and audits of premises or processes, recruiting and training staff in new processes or the use of new equipment, and obtaining advice from specialists, such as accountants and lawyers, to assist with compliance.

The estimation process of the compliance costs is initiated with a description from users of the problem and the possible policy choices for facing that problem. Then the BCC indicates the possible compliance costs of these policy options and users are asked to provide more details so that the BCC quantifies these costs. For example, users are asked to define the number of the affected businesses, the required compliance tasks, the duration and the frequency of each task, the associated labour

[69] Productivity Commission, 2006

and other costs. By using this information, the BCC estimates the compliance cost of each proposed option. The BCC estimations can be used as inputs to several reports, for example to the "BCC report" which is submitted to the OBPR to ensure that the best practice regulation standards have been met.[70]

2.1.3.2. State Regulatory Reform Initiatives

Apart from the Commonwealth regulatory reforms, the States and Territories of Australia proceeded to the introduction of their own reform initiatives to reduce the regulatory burden. [71]

- *New South Wales* established in 1992 an independent body, the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), to oversee regulation and initiated a series of regulatory reviews to face further the regulatory burden imposed on NSW businesses. NSW undertook several reviews focusing on the overall burden of existing regulation (IPART review), on administrative burden (NSW Government Red Tape review) or on the regulatory burden facing small businesses through specific industry reviews.
- *Victoria* is engaged in an ongoing program of regulatory reform, in particular through the work of the Victorian Competition and Efficiency Commission, which was established in 2004 to advise on business regulation reform and identify opportunities for improving Victoria's competitive position. Reviews by the Victorian government concern streamlining of the planning permit process and the transport congestion, merging several regulators, and introducing a number of new Acts to simplify and consolidate the legislative framework. The Victorian government, also, launched the Reducing the Regulatory Burden (RRB) initiative in 2006 and committed to a 25 per cent reduction of the compliance cost on businesses over the next five years.
- *Queensland* has commissioned a Red Tape Reduction Taskforce to undertake annual reviews of regulation. According to the 2004-05 Red Tape Reduction Stocktake in Queensland, compliance costs were reduced in the State by $14

[70] OECD, 2010

[71] Productivity Commission, 2006

million. The Government also undertook a review of regulatory "hot-spots" as well as industry specific reviews (manufacturing, retail and tourism).

- *Western Australia* established in 2009 the Red Tape Reduction Group (RTRG) to identify and report on opportunities to reduce the burden of existing State regulation and red tape on business and consumers.
- *South Australia* created a Competitiveness Council that will provide recommendations to reduce compliance cost on businesses and required that Council proposals are based on the Business Cost Calculator approach. South Australia, as Victoria, has committed to reduce compliance costs of regulation by 25 per cent and asked Government departments to submit to the Competitiveness Council action plans that specify their contribution to this reduction target.

2.1.4. Concluding Remarks

Australia pioneered the implementation of successful regulatory reforms and has progressively strengthened its international competitiveness and the welfare of its citizens. Since the 1980s, major reforms have induced fundamental improvements in the Australian economy. Australia stands as a model economy with advanced institutional capacities and an exemplary regulatory framework.[72] Australia is focusing not only on reducing regulation but also on addressing poorly designed and inefficient regulation. Australia is committed to an ongoing regulatory reform and is developing mechanisms and policies to support continuous improvement in regulatory quality. While many of the tools and policies that are recommended by the OECD to increase regulatory quality are already in place in Australia, there is always scope for further progress. The challenge for Australia is to establish a culture that promotes continuous improvement in regulation rather than achieving gains from periodic reviews and reforms.

[72] OECD, 2010

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2.2. Netherlands:

Regulatory Reforms

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2.2.1. Introduction

Over the last three decades, economic growth in the Netherlands has gradually increased ranking the country among the top OECD countries by many measures of economic performance. This economic improvement has been closely correlated to policies that promote high-quality regulations. The Netherlands was one of the Europe's pioneers in regulatory reform starting in the 1980s and can stand as a model for other OECD countries.[73] The re-examination of the Dutch corporatist system and the development of Better Regulation policies gained real momentum after a severe economic crisis in the early 1980s due to, inter alia, low labour force participation and unsustainable welfare policies. An additional impetus for policy reforms was the Dutch integration into the European Single Market.

During much of the post-war period, the Netherlands was praised for the flexibility and social stability of its corporatist system. However, flexibility deterioration in conjunction with the undermining of the external environment and an increase in rigidities' accumulation led to the re-examination of the corporatist approach and revealed the need for reforms. Since external commitments limited the Dutch policy options to achieve economic and social goals, the two remaining policy tools were fiscal and regulatory policy. Yet, these policy tools contained inherent contradictions that became apparent when strong external shocks hit the economy in the 1970s. This caused an immediate decline in economic performance, which was further deteriorated by an increase in government expenditures. The result was a deep recession and the beginning of a vicious circle. As recession was weakening the Dutch economy government was responding by spending even more, burdening further the private sector. In 1981-83, emerged one of the most devastating recessions in the Netherlands and showed that the need for a continuing process of reforms was imperative.

Initial reforms focused on reducing public deficit, restoring public finances, increasing labour market flexibility, moderating wage growth and raising competitiveness. The ultimate objective was to spur economic recovery and improve the Dutch economic performance. Indeed, investment was reinforced,

[73] OECD, 1999

productivity growth increased, competitiveness improved and employment rose causing a real GDP growth and an overall economic rebound. While this initial package of reforms didn't involve regulatory measures, the fundamental institutional reforms that were embarked in the '80s paved the way for regulatory reform. The next session presents the evolution of regulatory reform in the Netherlands during the last decades.

2.2.2. Developments in the Dutch Regulatory Reform Programme

2.2.2.1. The Dutch Regulatory Reform Programme: Prior to 2003

With an increasingly open economy, inefficiencies in the labour market, and strains in the public finances the Netherlands initiated regulatory reform in the late 1980s with a view to improve the Dutch economic structure and performance. The principal drivers of regulatory reform in the Netherlands have been, firstly, **the highly open economy and its export-led growth** which required increasing efficiency and reducing cost in all sectors of the economy. Secondly, **the need for increased adaptability of the economy to external shocks** required the adoption of regulatory reform measures. This would also improve growth and innovation and would align the Dutch employment growth and labour force participation to those of other OECD countries. Thirdly, **new customer needs** (i.e. longer shop opening hours) further accentuated the need for regulatory reform.[74]

From the mid-1980s onward various commissions and reports drew attention to the complexities and contradictions of the hitherto followed policies.[75] The first wide ranging report on the (then) weaknesses of the Dutch administrative and legal system dates back to 1984. According to the *Geelhoed* Commission report, a great part of the complex and burdensome Dutch regulatory structure was due to the corporatist nature of the administrative and legal system. The Report drew special attention to quality issues and legislative Directives were amended to cover these

[74] OECD, 1999

[75] OECD, 2010

issues. One year later, in 1985, the *Grapperhaus* Commission report argued that further reforms were necessary and highlighted the importance of introducing regulatory impact assessments. Several regulatory quality problems were also identified by the Council of State including institutional law/policy-making relationships, inter-ministerial co-ordination and the recruitment and development of law-drafting experts. In 1987, the Commission on Assessing New Legislative Projects (CTW) was introduced and in 1991-92 was established a quality framework to guide the development of new regulations. In 1993, the General Accounting Office argued that the majority of the problems identified by the Council of State in 1985 were still unsolved.

While the scientific community had identified the excessive cost of laws and regulations before the 1990s, regulatory reform reached its peak in 1994 with the launch of the so called *MDW* programme (*Marktwerking, Deregulering en Wetgevingskwaliteit* – Market Forces, Deregulation and Legislative Quality). A change of government at this time gave new boost to regulatory reforms. The new government identified the need for regulatory reforms in order to improve international competitiveness, enhance employment performance and increase the efficiency of government services. The Dutch government sought "a new balance between protection and dynamism" based on competition policy, regulatory reform, and market openness.[76]

The MDW programme was a multi-faceted programme targeting to improve cost-effectiveness of the extensive web of national and European regulations affecting economic activity. Up to then, reform focused on the public sector but **the MDW programme drew attention to the need for better functioning of markets, increasing competition in the economy, and improving legislative quality and deregulation.** The Ministry of Justice and the Ministry for Economic Affairs were in charge of the daily running of the programme. Among others the programme aimed at reducing administrative burdens – to streamline regulations to return to "what is strictly necessary".[77] It led to the first programmes aimed at reducing administrative burdens and to an overall improvement of the regulatory impact assessment

[76] OECD, 1999

[77] OECD, 2010

requirements. In 1993, it was estimated that the aggregate costs of administrative burdens on companies was more than 2% of GDP. The programme yielded many benefits: reduction of the time needed for obtaining a permit to go into business, improvement of competitiveness in a considerable number of markets, and addressing the inconsistencies in legislation.

The MDW programme set the reduction of the administrative burden at the heart of the Dutch Better Regulation policy. The importance of this issue was further emphasized by the Coalition agreement and the establishment of the Committee for Reduction of Administrative Burdens on Enterprises (the *Slechte* Committee, named after its chairman) in 1998, which set the stage for the current Dutch approach. By 1998, a 10 per cent cost reduction had been accomplished and a new 15 per cent reduction was set through the Coalition agreement.[78] Recommendations and comments on achieving this target were assigned to the newly created Slechte Committee which consisted of representatives of SMEs, large enterprises, lower levels of government, accounting firms, political parties, the European Parliament, and specialists in public administration, organisational consulting, and communication. Ministries were involved through a steering group.

In its report (1999), the Committee departed from the general international trend in regulatory quality management i.e. applying cost-benefit analysis to regulation and made a distinction between three types of costs: the compliance costs for enterprises, the costs of law enforcement by public authorities and the costs of information enterprises had to supply to make law enforcement possible**. The Committee argued that attempts to reduce costs should be concentrated solely on the third category and presented 60 projects to reduce it.** The Committee's recommendations were based on re-use of information already provided by enterprises to public authorities. It also proposed a systematic and independent monitoring and measurement of administrative burdens. The Cabinet and the Parliament accepted the majority of the Committee's recommendations with the focus being on the "general interest" issue of reducing administrative costs while maintaining the essence of the regulation. In other words: not less regulation, but smarter regulation.

[78] OECD, 2010

Coming into the next decade the development of policies continued with the introduction of the first formal reform programme (Framework Vision) for inspection and enforcement in 2001. During the same year, the Cabinet established an **Advisory Board on Administrative Burdens (ACTAL)**,[79] with an advocate role to the government's work on the basis of the Slechte Committee recommendations. While, before the 2003 elections, the reduction of administrative burdens was considered to be 7 per cent (compared to 1994)[80], this should be revalued taking into account the cost from new legislation, which had not been assessed and included in the above estimation. In other words, the 7 per cent reduction referred to the gross reduction and the net reduction would have been smaller due to the introduction of new burdens in new regulations. However, overall, the Netherlands, following some other OECD countries, had managed to develop Better Regulation policy as a strong policy field in its own right.

2.2.2.2. The Dutch Regulatory Reform Programme: 2003 – 2007

Despite the preceding reform initiatives, economic growth and competitiveness in the Netherlands were still hindered by bureaucratic procedures and information obligations. The Dutch model was consolidated and refined after the election in 2003. The new government presented its programme for public sector reform, Andere Overheid (A Different Government), which was foreseen to run until the end of the Cabinet term. The new Cabinet set at the core of its programme the administrative burden policy and intensified the efforts to reduce administrative burdens on businesses. The government's programme consisted of **four major action lines**[81]:

1. The government will improve its provision of services to citizens.

   To achieve this target the government adopted two separate initiatives: i) the development of key e-services such as the Citizen Service Number and the

[79] See, p. 13

[80] OECD, 2003

[81] OECD, 2007

DigiD public sector e-authentication system, and ii) the inducement of government bodies to deliver services electronically via the Internet.

2. The government will regulate less and differently.

   The focus was to reduce administrative burden by improving each ministry's legislation and regulations towards businesses and citizens. The government would also focus to reducing administrative burden in its relations with its institutions.

3. Central government will organize itself better.

   The government committed to review all government tasks in order to reduce duplication of work and strengthen horizontal cohesion in government operations. It would standardize commonly used processes and would establish a shared service centre for applications commonly used by ministries.

4. Central government will reform its relations with local municipalities and provinces.

   The central governmental agreed with the local governments to a new code of Intergovernmental Relations, which stated principles for "… administrative financial relations between the different levels of government".[82] In addition, the development of an action plan for the reduction of administrative burden was included at local level and the local governments committed to implement "Modernising Government" action plans.

These four lines of action were covered by an action plan which accompanied the reform programme and the Cabinet had to submit reports on its progress annually. **Administrative burden were defined as "the costs to the businesses of complying with the information obligations resulting from government-imposed legislation and regulations".** Based on the origin of the information obligations three categories arose:[83]

[82] OECD, 2007

[83] OECD, 2010

- Administrative burden imposed and implemented at international level – accounting for more than 40% of the total burden.
- Administrative burden imposed at international level, implemented at national level – accounting for approximately 10% of the total burden.
- Administrative burden imposed and implemented at national level – accounting for more than 40% of the total burden.

Administrative burden varied across ministries since some ministries had mainly international regulation, others almost purely national legislation, and others combined burden from the three categories.

The project cycle from 2003 to 2007 broadly consisted of **three phases**: measurement of the administrative burden (summer 2003 – January 2004), identification of the possibilities to reduce the administrative burden (spring 2004 – spring 2005), and implementation. The key elements of the Dutch approach were a systematic measuring of administrative burden against a baseline measurement of burden, a quantitative targeting of burden reduction, an overall management linked to the budget cycle, and a strong supporting institutional structure with the involvement of an independent advisory body (ACTAL).[84]

The government committed itself to reduce the burden by 25 per cent by year end 2007. The targeting was done against a zero-base measurement of administrative burden of existing regulation that started in mid-2003. This zero-base line measurement converted the 25 per cent government target into a clear and monetized reduction target. It also provided valuable information about the distribution of administrative burden across ministries, legislation, information obligations and activities businesses have to fulfill. This enabled the definition of certain reduction targets per ministry. The zero-base measurement was completed in January 2004 and was estimated at 16.4 billion euro, which equals 3.6 per cent of the Dutch GDP. It also showed that the four biggest ministries produce more than 75 per cent of the total administrative burden, that ten laws accounted for 53 per cent of the

[84] Nijland, 2008

total burden, and that the volume of the administrative burden is mainly determined by approximately 60 information obligations.[85]

On the grounds of these estimations and on inventories compiled by the ministries, the Dutch government made 190 proposals which added up to the 25 per cent reduction of the administrative burden. These proposals involved the amendment of legislation and the development of ICT-tools. In particular, the data businesses had to provide and the frequency of providing them were reduced, or it was made easier to provide them (i.e. by using Information and Communication Technology). The overall reduction target of 25% was subdivided into differentiated reduction targets per ministry. Put differently, burden reductions were not the same for all ministries and varied from 10 per cent (Ministry of Health) to 31 per cent (Ministry of Environment). Under the first package of initiatives the total reduction added up to 18 per cent while under the second package, which followed in 2005, the reduction target was raised from 18 per cent to 25 per cent, as originally planned.[86]

It is worth mentioning that **the quarter burden reduction was in net terms**. This means that any increase in administrative burden arising from new legislation had to be cancelled out by corresponding new, additional reductions. This limitation obliged the ministries to moderate the introduction of new burdensome legislation and to ensure a process of permanent monitoring over ministerial production of administrative burdens. Very important to meeting this limitation was the role of the advisory board of ACTAL, which checked if the administrative burden from new legislation was quantified correctly and if a less burdensome type of legislation was considered. Moreover, it organized a tight planning for the timely implementation of these measures, which was backed up by a strict monitoring of the progress. All ministries committed to a timetable for the implementation and had to inform the coordinating unit at the ministry of Finance about their progress on a regular basis.

Finally, the Dutch government set, during its EU Presidency, as a top priority the economic character of Better Regulation on the EU agenda, laying a special interest on the reduction of the administrative burdens for businesses. Within this

[85] Nijland, 2008

[86] OECD, 2010

context, it developed several initiatives such as the conference "Simple is better", the *EcoFin* paper "Fostering economic growth by reducing administrative burden for businesses in the EU" and the co-ordination of 300 simplification proposals for the EU administrative simplification programme.

2.2.2.3. The Dutch Regulatory Reform Programme: 2007 – 2011

A review by the OECD and the World Bank characterized the Dutch programme on reducing administrative burdens for businesses as world leading and innovative in its approach and identified as crucial the interaction between the main features of the programme (the systematic measurement of administrative burden and the quantitative target, the link to the budget cycle, the strong central coordination, the strong role of an independent advisory body, and the strong political commitment).[87] Via this review, they suggested the broadening of the policy and the confrontation not only of the administrative burden but also of other regulatory burden as well.

The Cabinet which came into office in 2007 reflected these recommendations by establishing a revised and broadened action plan for the reduction of business administrative burden and a revised programme for the reduction of the burden on citizens, on professionals and inter-governmental burden. **Within the new programme, burden reduction on businesses now refers to regulatory burden in general and not only to administrative burden.** Further the government decided to promote a more efficient, flexible, user-friendly and risk-based approach to enforcement by adopting an updated Framework Vision for inspections and enforcement. The government programme had also a local level dimension through the introduction of the action plan for the reduction of administrative burdens at local level. [88]

The 2007 Regulatory Burden Action Plan was designed in the light of the "3x4 objectives" of "Less, Simpler and Tangible". These objectives produced twelve indicators which would be used for measuring progress and under which

[87] Nijland, 2008

[88] OECD, 2010

several reports on the achieved progress would be conducted. More precisely, these objectives were[89]:

1. *Less*

    - Administrative burden for business:

      The Cabinet set a target of a 25 per cent net reduction in administrative burden by 2011. The target was additional to the already achieved reductions by previous initiatives was set against the zero-base measurement of administrative burden for business in 2007.

    - Compliance costs:

      Businesses identified 30 fields in which compliance costs were disproportionately high and the government was called to submit concrete reduction proposals and to determine the percentage of compliance costs reduction in these fields.

    - Supervisory cost:

      Supervisory costs were measured in 19 selected domains and it was decided to reduce them by 25 per cent in each domain.

    - Costs related to subsidies:

      Management and implementation costs of all national government subsidies should be reduced.

2. *Simpler*

    - More transparent:

      The government developed the *Antwoordvoorbedrijven.nl* to enable businesses to find quickly and simply up-to-date information and aimed at reaching 1.5 million visitors by 2011. By then, it would also develop "regulatory navigators" for 62 industries.

[89] OECD, 2010

- More predictable:

  The government would announce any changes in legislation in common commencement dates for all ministries by 2011. It would also use understandable language and readable forms.

- Faster:

  The government wanted to double the number of licensing systems that worked with *lex silencio* (silence is consent) compared to 2007 since broader application of *lex silencio* accelerates permits procedures and makes decision making faster.

- Better service:

  The government set minimum quality standards for services and 200 municipalities and the top ten implementing organisations (in the sense that play an important role in the perceived regulatory burden for business) had to meet these requirements by 2011.

3. Tangible

- Predictability:

  The target was that 15 per cent more businesses would say that they were not irritated by continually changing legislation and rules by 2011.

- Information obligations:

  The government wanted to reduce the number of businesses that were irritated from unnecessary information obligations by 25 per cent.

- Supervision:

  Irritation from strict requirements of supervisory bodies would be reduced so that 15 per cent more businesses would say that they were very little irritated.

- Lower costs to comply with regulations:

> The government aimed at increasing by 25 per cent the number of businesses that argued that they had very little irritation from high costs to comply with rules.

Beyond the above objectives, the new Cabinet aimed at improving law making and developing a stronger impact assessment policy for new regulations. It also aimed at reducing administrative burdens for citizens and inter-governmental burdens and restricting regulation inside government. To this end, the government developed a revised programme based on a qualitative approach, by distinguishing the 10 most irritating burdens for citizens. It was also planned that the programme would deal with "inside the government" regulation (i.e. regulation for professionals in public services) and regulation between different levels of government. In addition, the Netherlands Better Regulation Agenda targeted at reducing the administrative burden at local level and included a joint effort by the central government and the municipalities to promote best practices. Finally, the Dutch government aimed at promoting burden reduction policies, in cooperation with other countries, at EU level and at encouraging consultation on new regulations via the Internet.

2.2.3. Institutions for Better Regulation in the Netherlands

Over the years, the evolution of the Dutch regulatory framework has been strongly supported by the development of key institutions. These institutions were an essential element in the Dutch effort to improve processes, overcome inefficiencies, increase the effectiveness of the regulatory process and, overall, to streamline the regulatory environment. The most important institutional actors are described below.[90]

Advisory Board on Administrative Burdens (ACTAL)

ACTAL (Adviescollege Toetsing Administratieve Lasten – Advisory Board on Administrative Burden) is an **independent review body**, which was established in 2000 with an initial lifespan of three years. Since then, its validity has been renewed

[90] OECD, 2010

twice and was recently extended until 2011. It consisted of a tripartite board and a twelve-member secretariat. It was set up to work under the Slechte Committee's recommendations and to provide advice for the programme on administrative simplification. Originally ACTAL was planned to comment on the burden that businesses would bear from new regulations but its role was soon extended to cover several issues on Better Regulation policy including, for example, the reduction of administrative burden on citizens.

At present, ACTAL is commissioned to make recommendations on administrative burden emerging from proposed regulation, on the reduction of administrative burden from existing regulation and on several issues related to regulatory burden. ACTAL's annual work programme is endorsed by the Minister of Finance and the Minister of Interior and Kingdom Relations, who then submit it to the parliament.

Inter-Ministerial Unit for Administrative Burden (IPAL)

In May 2003, the government established a **special unit**, IPAL, **to deal with administrative burden** and, especially, to run the programme for the reduction of administrative burden on business. IPAL was initially located in the Ministry of Economic Affairs. However, after the election in 2003 with a view to reinforce IPAL's position within the government and its link to the budget cycle, IPAL was moved to the Ministry of Finance while maintaining its close cooperation with the Ministry of Economic Affairs. In 2007, IPAL was merged with three project groups in the Ministry of Economic Affairs into a single entity that reports simultaneously to both ministries.

The Regulatory Reform Group (RRG)

The above merger between IPAL and the three project groups in the Ministry of Economic Affairs in 2007 gave birth to the Regulatory Reform Group (RRG). The RRG is financed by the Ministry of Finance and the Ministry of Economic Affairs and

its staff originates from both ministries. RRG staff works into teams around ten themes:

- measuring targets,
- planning and control (monitoring),
- ICT,
- international co-operation (including the EU),
- municipalities,
- interaction with the business community,
- advising the Council of Ministers,
- communication,
- quality of service delivery, and
- overall management.

The RRG is charged with the daily coordination and monitoring of the business burden reduction programme. RRG also reports at the political level by submitting to the parliament four reports per year in order to notify progress to meet the pursued targets. In addition, the RRG is responsible for the coordination of the EU policy as regards with reducing administrative burden for business, which includes bilateral contacts with other member states and the European Commission. The RRG is also commissioned to develop certain methodologies (i.e. risk analysis of burden reduction initiatives) and to educate and train civil servants on related issues.

Programme on Regulatory and Administrative Burden (REAL)

The Programme on Regulatory and Administrative Burdens (Regeldruk en Administratieve Lasten - REAL) was set up in 2007 and is located to the Ministry of the Interior and Kingdom Relations. **REAL has a triple coordination mission**: **reduction of the (administrative) burden for citizens, reduction of administrative**

burden for professionals in the public sector, and the reduction of intergovernmental administrative burden. REAL's scope of action is similar to that of the RRG and covers: coordination and monitoring of the above three reduction targets, reporting at the political level (it submits one annual report to the parliament), dealing with administrative burden for citizens at the EU level (to a more limited extent compared with the RRG), and developing methodologies and educating and training civil servants.

Key Ministries

The responsibility for the Better Regulation policy is shared between four ministries. The Ministry of Finance and the Ministry of Economic Affairs coordinate and monitor the programme for the reduction of regulatory burden on business (through the establishment of a shared directorate, the RRG). The Ministry of Justice is responsible for ensuring legal quality and the Ministry of Interior and Kingdom Relations is responsible for several relevant cross-cutting issues.

2.2.4. Concluding Remarks

"The Netherlands have been a main driver in the trend towards more evidence-based programmes to reduce administrative burden on companies and was among the first to launch a 25% burden reduction programme. A similar exercise has been undertaken to reduce administrative burden on citizens. In both domains, the Netherlands is seen as a front-runner and has inspired other countries."[91] The Dutch regulatory reform has produced major benefits for the country including the reduction of costs in exporting sectors, the improvement of innovation and flexibility, the increase of employment rates, the reduction of fiscal outlays, and the enhancement of consumer benefits through lower prices and more choice.

However, despite the above presented initiatives and actions, the challenge now for the Netherlands is to maintain its momentum for reform. Within this context,

[91] OECD, 2007

the government, inter alia, has established a new 10 per cent reduction target in administrative and regulatory burden on business by 2012 (compared to 2010) and a 5 per cent reduction for subsequent years.[92]

[92] Ministry of Economic Affairs, Agriculture and Innovation website: http://english.minlnv.nl/portal/page?_pageid=116,4093799&_dad=portal&_schema=PORTAL

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2.3. United Kingdom:

Regulatory Reforms

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2.3.1. Introduction

The UK's recent macroeconomic performance has been robust. GDP growth has averaged 1.4% over the period 2002 – 2010, better than in the other major OECD economies. Growth has slowed only in the period 2008 - 2009, but recovered fully the last two years (2010 - 2011). Regarding regulation the UK has a reputation for having a regulatory environment that is among the most supportive of market openness and global competition in the world. Its regulatory actions have long supported this policy of open trade. It was a founding member of the GATT (now WTO) and has also played a key and proactive role in pushing forward European trade liberalization. It has rarely been at the center of trade or investment disputes. In a global environment where protection is often the more prominent policy stance, the UK deserves credit not only for sustaining this tradition of openness, but also improving on it.

UK governments have long attached great importance to effective regulation and have vigorously promoted regulatory reform in support of a sounder economy. The UK's economic turnaround of the last two decades rests on the successful implementation of regulatory reforms in support of deep structural and macroeconomic changes. Twenty years of continuous innovation and reform has made the UK one of the most experienced European countries in high quality regulation. Results are apparent when considering the situation in the UK in the early 1980s or when comparing today with many other OECD countries.

Given the above statement it is obvious that the UK's regulatory framework is one of the country's greatest economic advantages[93]. **According to the World Bank, the UK is the fifth best place in the world and the best place in Europe in which to do business (World Bank, 2009)**. It probably ranks even higher in its efforts to improve the quality of its regulatory system; the OECD recently concluded that the United Kingdom's Better Regulation policies are impressive. Indeed, many other countries look to Britain for leadership in the regulatory reform agenda and there is evidence that the UK's initiative has been crucial to the diffusion of good practice in Europe[94].

[93] Schwab, 2009

[94] Wegrich, 2009

2.3.2. History of Regulatory Reform in UK

The OECD traces the origins of the UK's regulatory reform agenda back to 1985, to the White Paper, *Lifting the Burden.* This was an early attempt to assess the economic impact of regulation. It was not until 1997 that regulatory reform made a shift towards **'better', rather than less, regulation**[95].

To this day, 2005 has been arguably the most important year for the regulatory reform agenda, with the combined publication of the Hampton Report[96], setting out principles of good regulation that are still in place today, as well as the Better Regulation Task Force report, *Less is More,* which started the UK's efforts to reduce the administrative burden of regulation by a net 25% (Better Regulation Taskforce, 2005). The same year saw the establishment of the Better Regulation Executive (BRE), with a mandate to oversee the UK's regulatory reform program.

In mid-2007, part of the former Department for Trade and Industry (DTI) became the Department for Business, Enterprise and Regulatory Reform (BERR), acknowledging regulatory reform as a priority at the highest level.

Since then, the UK's regulatory reform framework has been strengthened further with the publication of the first Code of Practice on regulatory guidance[97] (BIS 2009b), the launch of the Anderson Review of regulatory guidance[98] (BIS 2009c), and the establishment of the Local Better Regulation Office (LBRO).

By the end of 2009, the UK's administrative burdens reduction was on track to deliver its 25% net reduction target decided in 2005. A net reduction of administrative burden by £2.9 billion per year had already been achieved against the 2005 baseline, along with a reduction of the policy costs of regulation by £1.2 billion per year[99]. These savings compare very favorably with the £15.5 million per year that the Government was spending on the Better Regulation program at the latest estimate.

[95] OECD, 2009a

[96] Hampton, 2005

[97] BIS, 2009b

[98] BIS, 2009c

[99] HM Government, 200b

2.3.3. Regulation in the UK

The British Chambers of Commerce estimate that major business regulations passed since 1998 have cost UK business just under £66 billion. There is a cost to the taxpayer too. The 62 national regulators identified in the Hampton Review of 2005 cost over £3.2 billion in 2004, while local authorities spent just under £1 billion carrying out regulatory functions[100]. The total cost of regulation in the UK is unclear, but Sir David Arculus – former head of the Government's Better Regulation Commission – suggested in 2005 that it lay somewhere between 10 and 12 per cent of annual GDP, or around £150 billion, roughly equivalent to the yield from income tax. **This suggests that the UK's regulatory regime has now become too large, potentially limiting the economy's competitive edge**.

The number of regulations in the UK has increased massively over recent years. More than 23,000 new regulations were introduced between 1997 and 2003 alone – an average of nearly 15 per working day.1 Health and safety requirements have doubled between 1980 and 2008, from 5,932 to 10,360. Each new regulation brings with it an additional burden to UK businesses. The cause of the UK's regulatory burden is twofold[101]:

A. The European Union

A joint paper signed by the French, German and UK governments suggests that **approximately half of all new regulations affecting businesses originate in the EU**, a figure backed up by both the OECD and House of Commons Library[102]. Gunter Verheugen, the EU's Enterprise Commissioner, told the Financial Times in 2006 that the cost of EU laws to European business is £405 billion a year. The total bulk of active EU laws now stretches to over 170,000 pages and comes in three main forms.

- Decisions are the least significant, constituting a very small percentage of the total and often addressed towards specific members.

[100] Hampton, 2005

[101] TaxPayers' Alliance, 2008

[102] Vaughne Miller, 2007

- Regulations make up the bulk of EU law, with 1,564 being passed in 2007 alone. These become UK law automatically, without the need for members to translate into national law.
- Directives – 76 of which were adopted by the EU in 2007. These require members to transpose them into national law, making them the ideal vehicle for any potential gold-plating (see below).

The financial cost of EU regulation – and EU derived regulations – vary from one to three per cent of UK GDP. However, no entirely satisfactory measure has been developed that can provide an answer to "how much UK regulation comes from the EU". According to Open Europe many of the most burdensome regulations originate in the EU but it remains unclear if the burden is actually from the EU or rather from Whitehall's tendency to elaborate and over-enforce EU laws. UK governments use EU directives as vehicles for their own policy agendas, attaching numerous additional clauses and extending its scope (a practice known as "**gold-plating**").

B. UK gold-plating

Since joining the EEC in 1973, Whitehall and the UK government have consistently "gold-plated" EU legislation during its transposition into national law, **making regulations more burdensome than the EU intended them to be**. Gold-plating involves over-implementing an EU directive, going beyond the minimum necessary to comply with the requirements of European legislation by:

- Extending the scope
- Not taking full advantage of any derogations which keep requirements to a minimum
- Providing sanctions, enforcement mechanisms and matters such as burden of proof which go beyond the minimum needed
- Implementing early, before the date given in the directive.

2.3.3.1. Regulation and Small Businesses

Regulations typically apply to a diverse population of businesses which differ in the impact of their operations and the resources they can devote to compliance. Unsurprisingly, the evidence suggests that the outcomes of regulation

can often depend more on the knowledge and compliance resources of individual businesses than on the content of the regulations themselves, and are generally **more detrimental (or less beneficial) for those without adequate resources and support** (Anyadike-Danes et al. 2009).

The Forum of Private Business has estimated the total costs of compliance for UK Small and Medium Enterprises (excluding tax administration) at £7.5 billion and the costs of regulatory advice at £2.6 billion. More importantly, its estimates imply that compliance costs for micro enterprises are 10 times as high as a share of turnover and 8 times as high per employee as for a medium-sized business (Forum of Private Business 2009). Evidence also abounds of other disproportionate effects of regulation on small businesses, which are the norm rather than the exception in the UK economy.[103]

Perceived regulatory burden can prevent individuals from undertaking early-stage entrepreneurial activity, thus reducing the number of new start-ups. They can also divert would-be entrepreneurs to the informal economy, to the detriment of all concerned[104]. **In established small businesses, the costs and restrictions associated with compliance can discourage employment[105], investment or innovation.** Furthermore, because the unit costs of compliance are higher for smaller than for larger businesses, an implicit subsidy arises for big business which can limit competition.

To address these asymmetries, policy-makers are often prompted to 'Think Small First'.

2.3.4. Reducing Regulation

2.3.4.1. Better regulation and regulatory impact assessment

As mentioned above in recent years the emphasis has shifted **from deregulation to the overall quality of regulation**. "Better regulation" stresses the idea of continuing improvement of the quality of regulation through the introduction

[103] ACCA, 2010

[104] Batini et al., 2010

[105] Fialová and Schneider, 2008

of various instruments and tools that should change the way regulations are developed. While deregulation was about dismantling existing regulations (ex post), better regulation seeks to enhance the quality of regulation when those are developed (ex ante). Along with the formulation of the "principles of better regulation", the introduction of "regulatory impact assessments" is regarded as the core tool of the better regulation agenda[106]. Impact assessments seek to systematically assess (ex ante) the likely outcomes and unintended consequences of regulations. They are part of the broader move towards evidence-based policy making and seek to embed the drafting of regulations in the gathering, collection and analysis of as much evidence as possible. Impact assessments are widely seen as crucial for achieving better regulation since they would allow for improving the quality of regulation through the use of evidence in the policy process. Arguably, the design and practice of impact assessments varies substantially between countries. In the UK, impact assessments is seen as a generic tool for evidence gathering and analysis and as part of the early stage of policy development within government departments.

2.3.4.2. How to Reduce Regulatory Burden

Through eliminating the avoidable burdens of regulation and bureaucracy, the Government aims to promote growth, innovation and social action. Freeing businesses from unnecessarily burdensome regulation, and simplifying the complex regulatory system, can free up the capacity they have to innovate, diversify and grow. Achieving the right balance – "**a level of regulation that promotes competition and stability without being an obstacle on businesses' ability to operate**"[107] - is therefore a core element of the Government's strategy for supporting economic growth.

As mentioned above recent years have seen important developments aimed at improving the quality of regulation. Governments across the world have developed a variety of approaches to help simplify regulatory systems, bring greater discipline and more rigorous analysis to the design of regulation, and to reduce the burden on those affected by regulation. But in order to achieve the Government's aim of transforming

[106] Baldwin, 2005; Radaelli and De Francesco, 2007

[107] BIS, 2010

the role that regulation plays in the society, and to enable stronger economic growth, a new approach is needed.

Regulation can appear to be a solution with relatively low costs for government itself. It may seem the most familiar and lowest risk option available to policy-makers to address a problem. But the reality is that regulation is never cost-free, either for government or for those whose behavior is being regulated. It can be ineffective in achieving its intended outcomes if its effects on the system as a whole have not been properly considered. If the details of its proposed implementation have not been carefully thought, including the costs on the economy and the potential impact of enforcement, the burden of regulation can be much higher than necessary.

Bellow we present the ways chosen by the UK regulators in order to alleviate the burden on British businesses.

2.3.4.2.1. The Reducing Regulation Committee

The Reducing Regulation Committee (RRC), a Cabinet sub-Committee, has been established to take strategic oversight of the Government's regulatory framework. Its competences include **scrutinizing, challenging and approving all new regulatory proposals as well as proposals for transposing EU obligations**.

2.3.4.2.2. The One-in, One-out rule

The scope of the One-in, One-out (OIOO) rule means that **no new primary or secondary UK legislation which imposes costs on business or organizations can be brought in without removing an existing regulation with equivalent value.** Regulations which are required to implement EU obligations and public sector regulations are not within the scope of OIOO at this time, except any gold-plating of EU obligations, which will require an equivalent regulation to be removed. The introduction of the OIOO rule means that policy-makers will need to consider the net cost to business or organizations of any new regulations. Policy-makers will need to think about identifying a corresponding regulatory policy that can be removed early in the policy development process.

2.3.4.2.3. Independent scrutiny of impact assessments (IAs)

To support the effective operation of the One-in, One-out rule and to help make sure that collective management of regulatory policy is based on good quality evidence, the **Regulatory Policy Committee (RPC)** - an independent external body - provides **external scrutiny of the impact assessments of all new regulatory proposals** (and the associated proposed 'OUTs' under the OIOO rule) **being brought forward, including those implementing EU legislation**. The RPC looks at the accuracy and robustness of the costs and benefits in impact assessments. This can take time, especially with large-scale complex measures. Departments are therefore advised to engage as early as possible with the RPC so they can plan their work program effectively. The RPC does not comment on the Government's policy objectives, which are a matter for ministers, but focuses on the options which have been considered for implementation and the robustness and quality of the analysis and evidence used to inform the policy decisions.

While its role is advisory, the RPC's opinion is expected to be submitted alongside any regulatory proposals being submitted for clearance by the Reducing Regulation Committee. New regulatory proposals should only be submitted to the RRC for clearance once the RPC has agreed that the associated impact assessment is accurate.

2.3.4.2.4. Sunset clauses

"Sunset clauses" (or provisions) is a legal instrument which requires legislation to lapse after a specified period. At the end of the prescribed life of a regulation, the presumption is to abolish it or renew it**. Sunset clauses would force governments to constantly assess and justify the burden of regulation, providing opportunities for improvements to be made to the legislation**. The Government's own Better Regulation Task Force itself recommended the increased use of sunset clauses in 2005.

In the cases where ministers do not wish to allow the regulations to expire, they will have to renew or modernize the regulations. Sunset clauses are used to ensure that regulations that are no longer needed are removed and that regulations that are still needed are kept up to date and improved where necessary. They will also help

to generate the deregulatory measures that will be needed under the One-in, One-out rule.

2.3.4.2.5. Reviews of existing regulations

In addition to the sunset provisions, departments will be required to undertake reviews of their existing "stock" of regulation to identify opportunities to remove or revise regulations. This process will be critical to the successful implementation of the One-in, One-out rule.

2.3.4.2.6 Improving the system of enforcement

Where regulation is necessary, enforcement needs to be considered early in the policy-making process. Regulations that cannot be enforced are not just ineffective; they may actively harm businesses which do their best to comply, when their competitors fail to do so. In addition, regulators' resources are often wasted on the monitoring of the work of compliant businesses, and insufficient energy is given to dealing with those that choose to operate outside the system. The Government aims to move towards a culture where businesses are treated as partners in securing the right regulatory outcomes and play a role in the design and implementation of standards.

2.3.5. Conclusion

The UK is a global leader in regulatory reform and one of the best places in the world in which to do business. Nevertheless, the Better Regulation agenda as currently understood needs to get a step forward. Since the policy boom that started it in 2005, it has made a great deal of progress in terms of methodology and political learning, and has delivered on most of its explicit objectives – providing a good return on the millions of pounds invested in it. However, the approach to Better Regulation in the UK is still far from the targets, and the program has to be continued.

The Government has already undertaken a significant program of regulatory reform that will deliver real benefits for the private, public and third

sectors[108]. The actions that have been announced will take UK on its next steps forward, helping to ensure that frontline public services, businesses and third sector organizations all feel the benefits of the Government's regulatory reform program.

[108] A term used to describe the range of organizations that are neither public sector nor private sector. It includes voluntary and community organizations, social enterprises, mutuals and co-operatives.

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Chapter 3

Regulatory Impact Analysis

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3.1. Introduction

In the previous Chapters we saw that regulatory burden is costly in terms of productivity, innovation, investment, competitiveness, and growth. This has created a trend among OECD countries to reduce regulatory burden and to take action to avoid the emergence of new burdens. The ability to develop better policies depends largely on having robust analytical processes. OECD countries have adopted a wide range of tools and approaches depending on the features of each individual country as well as the government's main aim at reducing regulatory burden. A popular mechanism for assessing regulatory decisions is that of Regulatory Impact Analysis (RIA)[109]. RIA is a key element in improving regulatory policy making and contributes to the introduction of high quality regulation.

RIA is a fundamental tool in support of governments' efforts for developing better and more efficient policies. **The main target of RIA is to promote efficient regulatory policy and, thus, to improve social welfare.** This has induced OECD countries to expand its use over the last 30 years and a continuously increasing proportion of regulation is being shaped based in part on various forms of RIA. RIA falls within the empirical methods of decision-making and is designed to assess the likely benefits, costs, and effects of new or existing regulations. It can play an important role in strengthening the quality of regulation and should be seen as an adjunct to good decision-making.

3.2. What is Regulatory Impact Analysis?

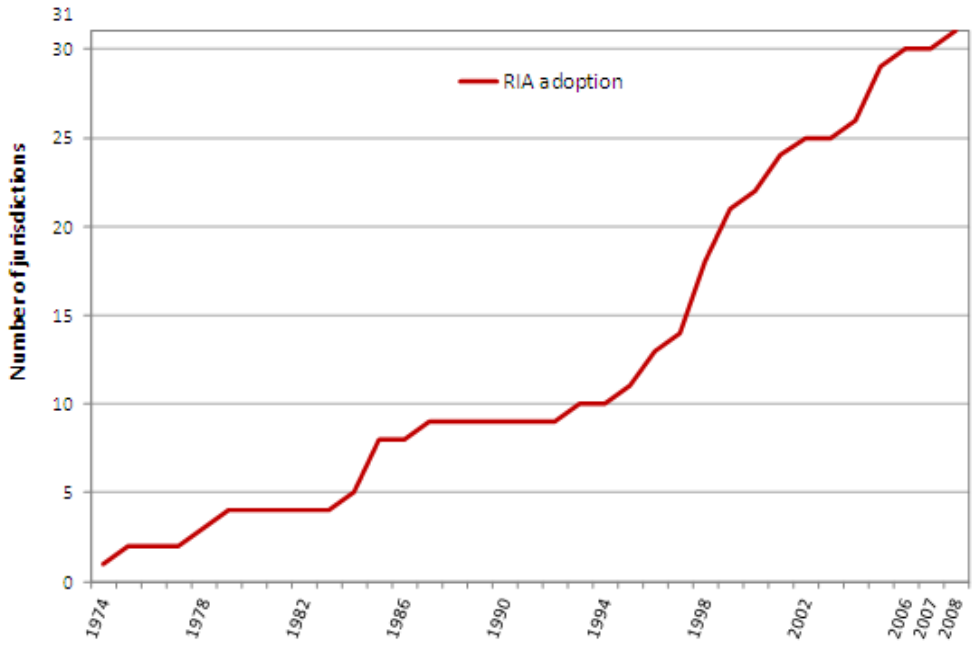
RIA underpins the ability of governments to ensure that regulation achieves its objectives effectively and efficiently. The OECD has identified that regulatory quality is crucial for economic performance and government effectiveness. The OECD is a long-standing advocate of the adoption of RIA and has conducted several reports. The 1997 OECD *Report on Regulatory Reform* provided recommendations on regulatory reform including that governments should "integrate Regulatory Impact Analysis into the development, review, and reform of regulations". In the same year

[109] RIA is also routinely referred to as Regulatory Impact Assessment.

the OECD suggested a list of RIA best practices in the report *Regulatory Impact Analysis: Best Practices in OECD Countries*. In 2002, the OECD report *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance* identified that RIA is a long-term goal that "must involve the progressive development and dissemination of specific expertise, the refinement of implementation and control mechanisms and the achievement of change in administrative culture". The 2005 OECD *Guiding Principles for Regulatory Quality* explicitly supports the use of RIA and the 2007 OECD *Competition Assessment Toolkit* is based on the integration of competition assessment in RIA.

The approach to RIA varies across OECD countries with regard to its objectives, design, and role in administrative processes. Though, **the use of RIA has widely expanded in OECD countries during the last decades.** The following figure shows an upward trend in RIA adoption between 1974 and 2008. In 1980 only two or three countries were using RIA and by 1996 around half of OECD member countries had already adopted RIA. The trend accelerated notably in 1997-1999 during the initial phase of the OECD regulatory reform programme and in 2004 26 out of 30 member countries had adopted RIA.[110]

Trend in RIA adoption across OECD jurisdictions



[110] OECD, 2009

It should also be mentioned that RIA implementation is not limited only to the OECD countries. The introduction of RIA is increasing even in emerging and developing countries. Countries with different political, legal, economic and social conditions (such as Serbia, Tanzania, Chinese Taipei, Bangladesh, etc) implement impact analysis with a view to improve the business environment. These countries usually adopt international practices but it is important to adapt them to the specificities and particularities of each individual country.[111]

As indicated in the report of Jacobzone S., Choi C., and Miguet C.(2007), in **Greece** "RIA is not standardized yet through unified instructions to all state regulators" (p. 77), there is "no assessment of impact on competition or market openness" (p. 83) and there is "no attempt to measure and control administrative and regulatory burdens" (p. 85)[112].

Definition of Regulatory Impact Analysis

RIA is an analytical tool as well as a decision process and both aspects are crucial. As a tool RIA systematically and consistently examines the possible impacts arising from each policy option by considering the costs and benefits of a government action, the potential to reach policy goals, and the alternative options. As a decision process, RIA, along with systems for consultation, policy development, and rule making, communicates information. It provides information ex ante to decision makers about the expected impact of proposed regulation and ex post to governments on assessing existing regulation. In essence, RIA aims at broadening and illustrating the relevant factors for decision-making and encourages and enables regulators to resort to more balanced decisions. RIA should not be seen as one more bureaucratic tool in the decision-making system but as a method for transforming the view of what is appropriate action, indeed, what is the proper role of the state.[113]

RIA depends on the political, cultural, and social characteristics of each individual country and there is no single "correct" model for its implementation.

[111] OECD, 2008

[112] This study also reports, inaccurately, that in Greece there is a "Central Regulatory Impact Unit at the General Secretariat of the Government, at Prime Minister's Office" (p. 65). Such a unit was indeed established in the middle of the previous decade but has never become operational.

[113] OECD, 1997

There are still being developed various refinements such as the inclusion of risk assessments, the evaluation of the impacts on competition, and improvements to data collection methodologies.[114] In addition, some countries use a two-step approach and make a distinction between a full RIA and a screening RIA. This approach involves a preliminary RIA to identify regulations which should be subject to a detailed RIA and is recommended for countries with limited human and technical resources. RIA equips decision makers with valuable information when designing and implementing regulation and allows the selection of the most beneficial option in terms of net public benefit. Overall, **RIA strengthens the transparency of regulatory decisions, leads to more credible regulation and increases public trust in regulatory institutions and policy makers.**

Basic Steps of RIA[115]

RIA is an analytical report aimed to assist decision makers. Typically, the core structure should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

There are certain steps that policy makers should follow in order to conduct a RIA. Starting point for practically applying RIA is analyzing the problem which gave rise to the regulation. Thus, the first step includes the identification of the problem that creates the need for a possible government action. Second, policy makers identify all the possible regulatory and non-regulatory options that will lead them to the desired policy goal. The third step refers to the identification and quantification of the impacts of these options. Further, every option should be enforceable and the affected parties should be able to comply with it. Thus, the fourth step regards such strategies. Then, fifth, there should be developed monitoring mechanisms to evaluate the success of the policy proposal. Finally, the sixth step includes enabling all stakeholders to

[114] OECD, 2004
[115] OECD, 2008

participate in the regulatory process through public consultation. The last step is very important as it can improve the initial frame of a RIA.

3.3. RIA: Benefits and Implementation Problems

Regulatory reform strategies are well organized and structured in most OECD countries. RIA, as a part of these strategies, has also been developed carefully. However, this is not always the case, especially in emerging and developing countries. These countries have not yet established efficient domestic regulatory frameworks in order to make the regulatory environment more transparent, effective, flexible and simplified. In such cases, policy makers should compare the potential benefits and costs of the implementation of RIA with the results of other possible reforms.

3.3.1. Objectives for Regulatory Impact Analysis

RIA improves the efficiency and quality of regulation and promotes a more empirically-based approach. It is a useful tool and governments that use RIA have identified four main objectives concerning regulatory costs and impacts:[116]

1. **Improve understanding of real-world impacts of government action, including both the benefits and the costs of action.**

   OECD countries are increasingly interested in efficiency matters. In that sense, regulation should be designed and implemented under the most cost-effective way. RIA can be used to assess the efficiency of a policy and the cost-effectiveness of its instruments and can provide valuable information to the decision-making process. RIA improves the basis on which the costs and benefits of regulations are compared and can establish regulatory priorities across regulations and regulatory areas. For example, the Norwegian State Pollution Control Authority developed the "Locally Adapted Regulatory Impact Analysis", which, after assessing all possible regulatory options for a specific problem, generates a priority ranking of projects according to the

[116] OECD, 1997

benefit-cost ratio. Thus, resources are reallocated from less efficient regulations to more efficient regulations, costs are reduced and effectiveness is improved.

2. **Integrate multiple policy objectives.**

   There are policy links and regulators should be aware not only of their own objectives but also of other effects (on economic efficiency, on the environment, etc). RIA can be used as an integrating framework to determine the impacts of policies and to reveal linkages among policies. It can give decision makers the ability to weigh trade-offs. Thus, RIA is not only an analytical tool but also a coordination tool that can bring different interests together.

3. **Improve transparency and consultation.**

   Given the trend towards more transparent decision methods, many OECD countries promote more effective and wider access to decision-making processes. RIA exposes the merits of decisions and the impacts of actions and, in many countries, is closely linked to processes of public consultation. Incorporation of RIA into consultation has enhanced the transparency of regulatory processes, has provided quality control for impact statements, and has improved the information on which decisions are based.

4. **Improve government accountability.**

   RIA facilitates the understanding of the impact of decisions and their benefit to society. It provides more extensive information and can improve the accountability of decision-makers. By emphasising openness, RIA favours policies that serve the interests of society as a whole, rather than just those of special groups.

3.3.2. Emerging Issues on RIA Implementation

There seems to be a "gap" between the theoretical principles of RIA and its practical implementation. There are cases where RIA fails to reach its goals because either it is not well integrated in the decision-making process or it does not fully assess

the costs and benefits of regulatory proposals or it does not give due weight to the potential alternatives to regulation. In addition, RIA is often criticized because it is not implemented to significant regulatory proposals. Further, the lack of adequate training in cost – benefit analysis or the lack of faith in the capacity of the analysis leads to incomplete analysis of the economic costs and benefits of regulatory proposals. This restricts releasing the full benefits of RIA and has an impact on its effectiveness.[117] Some procedural issues also arise. For instance, quality control is often poor, RIAs are often prepared too late in the regulatory process (after decisions are taken), and regulations are under constant pressure to make decisions more quickly while analysis and consultation can slow down the process.[118]

In general, most countries face common difficulties when implementing RIA, which are listed below:[119]

1. **Insufficient institutional capacity and unskilled staff.** Regulators should be actively involved in designing and implementing RIAs and should have the ability to produce high quality RIAs. Otherwise, RIA can become an incremental form-filling which will burden further the bureaucratic process.

2. **Public institutions have not fully understood and accepted RIA**. This undermines the potential improvements in regulatory quality.

3. **Reliable data to support RIA are often costly or non-existent.** There is also lack of appropriate indicators for the measurement of the possible impacts of regulation.

4. **Lack of a coherent, evidence-based and participatory policy process.** Apart from RIA, other processes should also be fostered (i.e. public consultation) in order to ensure results.

5. **Inertia or indifference by the public administration.**

6. **Politicians do not often encourage RIAs** due to fear of losing control over decision-making. An additional explanation could also be the pressure which is exerted to politicians from certain interest groups who benefit from other

[117] OECD, 2009
[118] OECD, 1997
[119] OECD, 2008

decision methods and are threatened by the new arrangements resulting from RIA.[120]

3.4. Best Practices for Introducing Effective RIA Frameworks

OECD countries were early adopters of RIA systems and the lessons learnt from their experience can be used to pave the way in countries which have not yet introduced them. The OECD has identified the best practices for introducing effective RIA frameworks, which are summarized in the following Box. These best practices can be used to form the conditions for introducing RIA, design the RIA framework, and prepare its implementation.

Getting maximum benefit from RIA: Best practices

1. **Maximize political commitment to RIA.** Reform principles and the use of RIA should be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance.
2. **Allocate responsibilities for RIA program elements carefully.** Allocating responsibility for RIA with regulators improves "ownership" and integration into decision-making. A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function.
3. **Train the regulators.** Ensure that formal, properly designed programmes exist to give regulators the skills required to do high quality RIA.
4. **Use a consistent but flexible analytical method.** The benefit/cost principle should be adopted for all regulations, but analytical methods can vary as long as RIA identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued to maximise consistency.
5. **Develop and implement data collection strategies.** Data quality is essential to useful analysis. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints.
6. **Target RIA efforts.** Resources should be applied to those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.
7. **Integrate RIA with the policy-making process, beginning as early as possible.** Regulators should see RIA insights as integral to policy decisions, rather than as an "add-on" requirement for external consumption.

[120] OECD, 1997

8. **Communicate the results.** Policy makers are rarely analysts. Results of RIA must be communicated clearly with concrete implications and options explicitly identified. The use of a common format aids effective communication.
9. **Involve the public extensively.** Interest groups should be consulted widely and in a timely fashion. This is likely to mean a consultation process with a number of steps.
10. **Apply RIA to existing as well as new regulation**. RIA disciplines should also be applied to reviews of existing regulation.

Source: OECD, 1997

3.4.1. Essential Elements for Introducing RIA

The introduction of RIA requires that certain basic conditions are satisfied. These basic elements are presented below.

3.4.1.1 Maximise Political Commitment

Given that, in most countries, RIA is a core element of the regulatory policy, political commitment to the use of RIA should come from the highest level of government. A clear statement on how to develop a RIA system is crucial especially when targeting at miximising the ability of RIA to affect policy outcomes. **High-level political support is of major importance to ensure that RIA will be accepted throughout the public administration as a policy tool that entails a change in the political culture of the system.** Identifying key stakeholders inside and outside the public administration that recognize the importance of RIA certainly enhances political support.[121] A good indicator of the political commitment is the legal basis upon which countries establish RIA. The 2004 RIA Inventory identified four legal forms of authority for RIA:[122]

- Based on a law (the Czech Republic, Korea and Mexico)
- Based on a presidential order (USA)
- Based on a prime ministerial decree or guidelines of the prime minister (Australia, Austria, France, Italy and Netherlands)

[121] OECD, 2008
[122] OECD, 2004

- Based on a cabinet directive, cabinet decision, government resolution, policy directive, etc (Canada, Denmark, Finland, Ireland, Japan, New Zealand, Norway, Poland, Germany, Portugal, Sweden and the United Kingdom).

3.4.1.2. Integrate RIA with the Policy-Making Process, Beginning as Early as Possible

The use of RIA provides valuable information to governments when taking decisions. As a result, it should be integrated into the decision-making process as early as possible. **The timing of implementing RIA is so important that affects the analysis itself.** Typically, a recent report of the UK National Audit Office states that "Our analysis showed that the RIA process was often ineffective if started late…".[123] The stage of the policy process at which RIA should start is often explicitly stated. In Australia, for example, "the RIA document should be prepared after an administrative decision has been made that regulation may be necessary, but before a policy decision is made by government that regulation is necessary".[124]

3.4.1.3. Allocate Responsibilities for RIA Programme Elements Carefully

External consultants have often carried out part of RIAs in some countries, especially pilot projects or initial steps. However, it is important that countries develop a special team for undertaking RIAs. **Ideally, responsibility for developing RIA should be assigned to specific experts inside the ministries.** In support of those experts should be other colleagues who have experience in drafting law proposals.

[123] NAO, 2006
[124] OECD, 2009

3.4.2. Designing the RIA framework

3.4.2.1. Coordination and Management

Attentive coordination and management are fundamental when designing a RIA framework. When an institution proposes a new regulation it has to conduct a preliminary RIA document. This document is supplemented by the analysis, especially on the potential impacts of the proposed regulation, of an extended network of policy makers around the public administration who work on RIA issues. It is apparent that **a careful coordination is very important both to prevent isolation between these units and to align and monitor efforts at various levels of government.** To this end, some OECD countries have established a central body, which oversees the RIA process.

3.4.2.2. Target RIA Efforts & Apply RIA to Existing as well as New Regulation

Regulatory proposals that are expected to have the greatest impact on society should be subject to RIA scrutiny. Selection of the proposals should be done carefully and efforts should concentrate on the most challenging regulatory areas. This is crucial especially after considering that on the one hand RIA requires an important degree of expertise and responsibility and on the other that there are limited resources. **Ideally, RIA should be focused where it will have a noticeable impact on regulatory outcomes.**[125] For example, Australia requires Regulatory Impact Statements (RIS) for primary laws, subordinate regulations, international treaties and quasi-regulations that have an impact on business or competition. In addition, in a survey by Kirkpatrick, Parker, and Zhang, which examines 99 countries, it was found that 30 were using RIA, of which 28 admitted to applying RIA to economic regulations, while 14 also included social and environmental regulations.[126] Further, RIA should be implemented for reviewing existing regulations as well as for assessing impacts of proposed regulations since **the possible unintended effects of the stock of regulations may undermine the efforts to introduce quality requirements on new regulations.**

[125] OECD, 2008
[126] Kirkpatrick, C., Parker D., and Zhang Y., 2003

3.4.2.3. Develop and Implement Data Collection Strategies

The quality of the data used in RIAs regardless of whether the data concern proposed or existing regulation has a great impact on the quality of the RIA itself and, consequently, to its usefulness. As a result, **governments should develop precise and straightforward strategies for collecting data and adopt a rigorous and systematic organization of data.** There is a direct and an indirect type of data collection. In the first, results arise from a specific survey designed and implemented as required to attain a precise objective, and in the second information derives from data previously collected for other objectives.[127]

3.4.2.4. Use a Consistent but Flexible Analytical Method

Several RIA methods are used in OECD countries including benefit/cost analysis, cost effectiveness or cost/output analysis, fiscal or budget analysis, socio-economic impact analysis, risk analysis, consequence analysis, compliance cost analysis and business impact tests. However, **the Benefit/Cost Analysis is the most comprehensive RIA method** as it includes all important impacts of the regulatory proposal and reflects society's different valuations of present and future benefits and costs.[128]

3.4.2.5. Involve the Public Extensively

One the main aims of RIA is to enhance transparency and participation in the regulatory process. This becomes feasible through involving the public extensively. **Public consultation procedures improve the efficiency of RIA and enhance its quality.** Consultation can furnish important information on the feasibility of proposals, on the alternatives considered, and on the degree to which affected parties are likely to comply with the proposed regulation.[129] The Australian Productivity

[127] Martelli, 2006
[128] OECD, 1997
[129] OECD, 2008

Commission has identified a number of preconditions for a good consultation process:[130]

- Consultation objectives need to be set.
- The stakeholders need to be clearly identified.
- Other departments and agencies may need to be involved.
- Methods of consultation need to be determined.
- The nature and form of questions included in written consultation documents need to be considered.
- Consultation risks need to be managed.

3.4.3. Preparing RIA Implementation

3.4.3.1. Developing Guidelines

Guidelines are especially useful when undertaking RIAs. Authorities in several countries have drafted guidelines concerning the use of RIA. **Guidelines provide significant guidance and they are continuously improved as experience and knowledge is accumulated.** Responsible for drafting guidelines are, in most OECD countries, central oversight bodies for regulatory reform.

3.4.3.2. Train the Regulators

Undertaking RIA requires special skills and knowledge and it follows that training the regulators is critical. RIA training programmes aim at supporting the preparation of RIA programmes. In the first place, these programmes aim at familiarizing officials with their obligations during the process and the use of guidelines while in the second they provide to regulators both the necessary skills to

[130] Productivity Commission, 2004

undertake high quality RIA and information on where to get help with complicated cases.[131]

3.4.3.3. Communicate the Results

Communication of the results of the use of RIA should be simple and concise. Communication of the RIA activities can provide important lessons as **it can improve the design and quality of RIA.** Communicating the results and benefits of using RIA can also enhance support for its implementation.

[131] OECD, 2008

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Chapter 4

Competition Assessment[132]

[132] This Section is based on the Competition Assessment Toolkit of the OECD.

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4.1. Introduction

There are many cases where government regulatory actions can potentially harm competition. However, competition can improve production efficiency, reduce prices, foster innovation and widen consumer choice. Broadly speaking, competition can deliver benefits to economic growth and consumer welfare. Given these benefits, most OECD countries have adopted some form of competition assessment in the process of evaluating regulations.[133] This is in line with the OECD recommendations on regulatory quality and performance. According to the OECD (2005) report, new and existing rules and regulations should be reviewed to assess regulatory quality, the impact on competition and the openness of markets.[134]

Competition assessment can be used to evaluate regulations, rules and/or laws by identifying those that may unnecessarily impede competition. It should aim to rank the regulatory options under the principle of maximizing the benefits for competition. The ultimate goal is finding the option that can meet the desired objectives of the regulation with the least cost to competition. The Council of the OECD recognizing both the benefits of competition and that, at times, public policies can hamper competition, recommended that governments should identify and review these public policies that unduly restrict competition. **The OECD issued the "Competition Assessment Toolkit", which provides a general methodology for identifying unnecessary restraints and developing alternative, less restrictive policies that still achieve government objectives.**

4.2. The Stages of Evaluation

The "Competition Assessment Toolkit" provides a practical method for regulators and legislators to proceed to the competition assessment process. This method consists of two stages. Stage one includes an initial evaluation of the potential effects on competition within a reasonable time-frame. Stage two is required if the

[133] OECD, 2004
[134] OECD, 2005

initial evaluation suggests that regulation has the potential to be harmful to competition. In such a case, a full evaluation is necessary.

4.2.1. Initial Evaluation

Stage one, includes an initial assessment of the scale and scope of the likely harm to competition without the use of data and its analysis. It is based on the use of a set of simple questions which do not require extensive industry knowledge. **The "Competition Checklist" shows whether proposed laws or regulations will have a significant potential to harm competition.** This initial evaluation focuses on the primary market under consideration without considering the effects to related – upstream and downstream – markets. The objective of this initial stage is to subject various rules and regulations to the above screen in order to examine their effects on competition. A possible "yes" to any of the questions in the "Competition Checklist" should create concern for a significant impact on competition and should signal the need for a full evaluation.

4.2.2. Full Evaluation

As stressed above, if the initial evaluation suggests that the regulation has the potential to be harmful to competition, then a full evaluation is required. Assessment, in the second stage, includes whether the regulation might:

1. Impose barriers to entry of new businesses.
2. Force certain types of incumbent businesses (e.g., smaller firms) to exit the market.
3. Increase the prices of goods and services.
4. Reduce product variety.
5. Significantly increase concentration in the relevant market.
6. Reduce innovation.
7. Affect upstream and downstream markets.

4.3. The "Competition Checklist"

4.3.1. Are there limits on the number or range of suppliers? (Checklist A)

A smaller number of suppliers might create market power and restrict competition. If the number of suppliers is reduced, then competition among the remaining suppliers is reduced (or collusion is more possible to occur) and prices are more likely to be increased. Reduced competition can also reduce incentives to meet consumer demands effectively and can reduce innovation and long-term economic efficiency.

Competition Checklist

Further competition assessment should be conducted if the proposal has any of the following 4 effects:

(A) Limits the number or range of suppliers
This is likely to be the case if the proposal:

1. Grants exclusive rights for a supplier to provide goods or services
2. Establishes a license, permit or authorisation process as a requirement of operation
3. Limits the ability of some types of suppliers to provide a good or service
4. Significantly raises cost of entry or exit by a supplier
5. Creates a geographical barrier to the ability of companies to supply goods services or labor, or invest capital

(B) Limits the ability of suppliers to compete
This is likely to be the case if the proposal:

1. Limits sellers' ability to set the prices for goods or services
2. Limits freedom of suppliers to advertise or market their goods or services
3. Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
4. Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

(C) Reduces the incentive of suppliers to compete
This may be the case if the proposal:

1. Creates a self-regulatory or co-regulatory regime
2. Requires or encourages information on supplier outputs, prices, sales or costs to be published
3. Exempts the activity of a particular industry or group of suppliers from the operation of general competition law

(D) Limits the choices and information available to customers
This may be the case if the proposal:

1. Limits the ability of consumers to decide from whom they purchase
2. Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
3. Fundamentally changes information required by buyers to shop effectively

Source: OECD, 2010

4.3.1.1. Grants of exclusive rights (Checklist A1)

Exclusive right to produce a certain good or service entails the establishment of a private monopoly and is considered as a means of encouraging substantial investments in infrastructure. However, exclusive rights are regarded as the ultimate entry barrier and increase the possibility of monopoly pricing and other problems associated with the exercise of market power.

4.3.1.2. License or permit requirements (Checklist A2)

License or permit requirements restrict entry and can reduce consumer choice and create artificial scarcity which, in turn, increases prices. Licenses and permits often protect also incumbent producers from competition.

4.3.1.3. Limits the ability of some types of suppliers to provide a good or service (Checklist A3)

When governments limit the ability of some types of suppliers to provide a good or a service (e.g. in some cases real estate brokers have to provide a government-mandated set of services and, thus, provision of services by low-cost minimum-service brokers or fee-for-service brokers is limited or prohibited) this can unduly restrict the number of suppliers, reduce competition between suppliers and result in higher prices or less desirable contract terms for customers.

4.3.1.4. Significantly raises the costs of entry or exit (Checklist A4)

Regulations that raise the costs of entry to, or exit from, a market (i.e. through rigorous product testing requirements and requirements to meet unnecessarily high educational or technical qualifications) discourage firms to enter to the market and so reduce the number of the participant firms in the market over time.

4.3.1.5. Restricts the geographic flow of goods, services, capital and labour (Checklist A5)

Limitations to the geographic flow of goods, services, capital and/or labour reduce the geographic area of competition for provision of a good or service which is likely to reduce the number of suppliers and can allow the exercise of market power and, consequently, increase prices.

4.3.2. Are there limits on the ability of suppliers to compete? (Checklist B)

Limits on the ability of suppliers to compete can restrict competition, increase prices, and reduce product variety. These limits include advertising and marketing restrictions, setting of standards for product or service quality, and controls over prices at which goods or services are sold.

4.3.2.1. Controls the prices at which goods or services are sold (Checklist B1)

Setting minimum prices prevents low-cost supplies from winning market share by providing better value to consumers while setting maximum prices reduces supplier incentives to innovate by providing new and/or high-quality products and can stimulate suppliers to coordinate their prices around the maximum price.

4.3.2.2. Restricts advertising and marketing (Checklist B2)

Advertising and marketing regulations aim at limiting false or misleading advertising. However, there are cases where such regulations unduly restrict competition (i.e. they might be particularly onerous for potential entrants by restricting their ability to inform potential customers of their presence in the market and of the nature and quality of the goods and services that they are able to offer).

4.3.2.3. Sets standards for product quality that provide an undue advantage to some suppliers over others or that are above the level that some well-informed customers would choose (Checklist B3)

There are regulations that set standards which provide undue advantages to some suppliers over others. For instance, environmental regulations for limiting emissions may require a particular technology or resources that give an advantage to a small number of suppliers. In addition, setting minimum quality standards can also have significant anti-competitive effects since there are consumers who prefer lower cost over increased safety and such standards can prevent them from buying cheaper, lower quality goods. As a result, consumer welfare can be reduced.

4.3.2.4. Raises the costs of some suppliers relative to others (Checklist B4)

Regulations that raise the costs of some suppliers relative to others can impede entry, reduce innovation, and lower the intensity of competition in the market.

4.3.3. Are there reductions in the incentives for suppliers to compete? (Checklist C)

Regulations may reduce the incentives for suppliers to compete because some regulations either facilitate co-ordination between suppliers or reduce the willingness, ability or incentive of customers to switch between different suppliers. In addition, some regulations may discourage suppliers to compete vigorously due to profit or market share limits that restrict the potential reward from competing.

4.3.3.1. Self-regulation and Co-regulation (Checklist C1)[135]

Industry/professional associations often adopt rules that reduce incentives or opportunities for vigorous competition between suppliers of goods or services, such as advertising restrictions and rules that prevent discounting.

4.3.3.2. Requirements to publish information on supplier prices, outputs or sales (Checklist C2)

Regulations that require publishing information on supplier prices, outputs or sale may increase the likelihood of cartel formation since they enable the participants in the cartel to effectively monitor their competitors' market behaviour.

4.3.3.3. Exemptions from general competition laws (Checklist C3)

Substantial exemptions from the general application of competition law increase the likelihood of cartels, pricing abuses and anti-competitive mergers.

[135] "Self-regulation" refers to regulations imposed by an industry or professional association to its members, without government legislative backing. "Co-regulation" is used when government provides legislative backing to rules that are developed at least in part by the industry/professional association.

4.3.4. Are there limits on the choices and information available to customers? (Checklist D)

4.3.4.1. Limits on ability of consumers to decide from whom they purchase goods or services (Checklist D1)

Limits on consumer choice reduce the incentives of the remaining suppliers to satisfy consumers by delivering products of desired quality and price.

4.3.4.2. Reduces the mobility of customers by increasing the costs of changing suppliers (Checklist D2)

There are regulations that affect switching costs (the explicit and implicit costs borne by consumers when changing from one supplier to another) and suppliers promote policies that create high switching costs in order charge higher prices for their goods or services.

4.3.4.3. Fundamentally changes information required by buyers to shop effectively (Checklist D3)

Deregulation can create new markets. In such a case consumers will have to choose between products, unknown to them up to then. For example, when deregulating electricity markets, consumers will be able to choose between alternative suppliers. However, lack of knowledge and information can block quick implementation of reforms.

4.4. Fitting Competition Assessment into Government Operations

Competition assessment is used for identifying regulations, rules and/or laws which unnecessarily impede competition and redesigning them to avoid restrictions to competition. It is, thus, very important to fit competition assessment into government operations and institutions. This process requires the consideration of five issues.

The first issue concerns the **identification of the policies which merit a competition assessment.** Subject to competition assessment are regulations, rules, and laws that implement measures of regulation. Effective competition assessment includes evaluating both new and existing policies. In addition, it includes performing competition assessment at national, regional, and local level. It is worth-mentioning that the depth of a competition assessment should be proportional to the extent of the potential negative competitive effects of a policy. A preliminary evaluation is provided by the Competition Checklist. However, most laws or regulations are not likely to unduly restrict competition and do not require a detailed competition assessment.

The second issue refers to **the stage of the policy development process at which a competition assessment should be performed.** As regards new policies, competition assessment should be performed early in the policy development process, before determining how to approach a given policy challenge. In case of a proposed policy that can potentially harm competition, competition assessment enables policymakers to examine alternative options early. As regards existing policies, given that the majority of the existing policies have not been subject to a competition assessment, prioritization of the policies to be first reviewed is crucial.

The third issue to be considered is **who should be involved with drafting and reviewing a competition assessment.** Competition assessment should be performed by the governmental body which develops the policy in question. This will ensure that competitive effects are properly considered because policymakers set on time the necessary questions in order to develop policies that take into account the competitive effects. The importance of policymakers' work is further enhanced if an external party, such as either regulatory gatekeepers or officials with competition expertise (i.e. those located in competition authorities) or a combination of the two, reviews their work. In such a case "frontline" policymakers are more likely to give due weight to the competition assessment process.

The forth issue is related to the **incentives that should be given to policymakers without responsibility for regulatory quality or competition to prepare an appropriate assessment.** While competition assessment improves a policy, policymakers often do not have the incentive to fully report the potential

problems to competition caused by a policy. Enhancing policymakers' incentives to perform properly competition assessments and to reinforce their skills can be achieved, inter alia, by:

- Integrating competition assessment in RIA. Competition assessment includes dynamic and market-oriented considerations. As a result, if competition assessment becomes part of RIA then policymakers, who perform RIA and seek to examine whether the benefits of a particular regulation outweigh its costs, can benefit from these considerations by obtaining important insights.

- Financial rewards. For example, in Australia, significant payments were given to states and territories depending on the extent of completing reviews and revisions of legislation. This yielded benefits to the economy which were estimated to be 2.5 per cent of GDP or 20 billion AUD.

- Best-practice training. Training policymakers on best practices is critical for a successful competition assessment programme and competition authorities, regulatory gatekeepers, or the OECD can help to this end.

The last issue regards the **resources that are required for the competition assessment.** Resource requirements are higher at the initial implementation stage (i.e. one-time initial expenditures for training. Of course, due to staff turnover, ongoing training will still be needed after the initial implementation but it will not be as high). While a high level of resource commitment can benefit a competition assessment programme, using limited resources can also generate an effective one. For instance, in the British competition assessment programme only two staff members from the OFT played a very active role.

4.5. Integrating Competition Assessment into Regulatory Impact Analysis

There is a very strong link between competition assessment and RIA. RIA is used to assess the relative performance of government interventions and competition assessment is used to prevent unnecessary restrictions to competition in order to

promote economic growth and social welfare. According to the OECD Guiding Principles for Regulatory Quality and Performance, competition assessment should be incorporated within the process of reviewing new and existing regulations. While, in practice, RIA and competition assessment are often conducted by different parts of the public administration, some countries make an effort to integrate competition assessment into RIA. **For instance, competition assessment has been part of RIA in the United Kingdom since 2002 and in the European Commission since 2005**.

It is worth-mentioning that these two analyses differ substantially. Under the typical RIA analysis, the likely benefits are compared with the likely costs based on the existing economic and regulatory environment without considering possible changes in the major parameters that affect these environments. On the contrary, competition policy analysis is a more future-oriented approach and focuses on dynamic market efficiency. It takes into account the impact of particular changes to market conditions on the intensity of competition and, consequently, the potential impact to economic efficiency and consumer welfare. In addition, competition assessment identifies all possible parties affected by a proposed regulation, especially those who will be affected indirectly. As a result, incorporating competition assessment into RIA can make it more efficient.

As already stated, the Competition Checklist provides an initial evaluation of the impact of a proposed regulation. Sometimes this evaluation suggests that a more thorough evaluation should be undertaken. Conducting a full competition assessment within a RIA includes, firstly, identifying the underlying objective of the proposed regulation. The second step includes identification and analysis of the existing restrictions on competition. Then, the adverse competitive effects of the proposed regulation should be examined. It is important to ensure that the evaluator considers both existing and potential competition. The final step includes the assessment and comparison of the competitive effects of alternative policy options. However, a full competition assessment should be conducted only when the initial evaluation suggests that the potential costs of the anti-competitive impact of a regulatory proposal are large enough to justify the necessary expenditure of resources that the full competition assessment will require.

A fuller understanding of the potential impact on competition can be achieved by examining the following issues:

- **Examine the effect on incumbent businesses:** examine whether the proposed regulation will affect different incumbent suppliers differently and whether, consequently, the different effects will alter competitive relations between these suppliers in a way that would reduce the intensity of competition in the market in a significant manner.

- **Examine the effect on the entry of new firms:** examine whether the proposed regulation will restrict entry of all types of new businesses or of a particular type of business. The degree of this restriction should also be examined as well as whether it is possible to significantly reduce competitive pressures in the industry in the longer term.

- **Examine the impact on prices and production:** examine whether the proposed regulation will raise prices by imposing new costs on producers or will facilitate exchange of information among producers and the prospect of collusion causing prices to increase or will make some incumbent suppliers to exit the market leading to lower output and higher prices.

- **Examine the impact on the quality and variety of goods and services:** examine whether the proposed regulation includes minimum quality standards that will reduce the range of price/quality combinations available in the market and whether it is possible to reduce product variety by restricting the entry of new suppliers.

- **Examine the effect on innovation:** regulations that restrict competition, such as grandfather clauses[136], prohibitions in advertising, restrictions on the flow of goods and services across regions etc, can encourage incumbents to be less efficient and reduce their incentive to innovate.

[136] Grandfather clauses offer significant and long protection periods to incumbent firms that may lead to reduced entry.

- **Examine the effect on the market's growth:** examine whether the proposed regulation will increase costs to all producers or limits the possibility of entry by new suppliers affecting negatively market growth.

- **Examine the effect on related markets:** examine whether the proposed regulation will have anti-competitive effects in upstream or downstream markets.

After examining the above effects, it is important to summarize the expected total impact of the regulation. The summary should include the likely effects of the proposed regulation on competition both in the primary market and in the relevant related markets. Focus should be directed to impacts on prices and production, product variety and quality, efficiency, and innovation.

In general, most regulatory proposals are not expected to significantly harm competition. However, in cases where a competition assessment identifies significant potential for a weakening of competition in the affected industry or related industries, decision-makers should search for alternatives that meet the desired objective by imposing fewer restrictions to competition. If this is not possible then the proposal should be adopted only if it yields a net benefit (including costs of the anti-competitive impact).

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