



**REGULATORY POLICY AT THE CROSSROADS
TOWARDS A NEW POLICY AGENDA**

**REGULATORY GOVERNANCE THE NEW
FRONTIER: REGULATORS AND THE
REGULATEES - BEING FRIENDLY WITHOUT
BEING COZY?**

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ACKNOWLEDGEMENTS



- ❖ Good afternoon Ladies and Gentlemen.
- ❖ It is a great pleasure for me to have this opportunity to address the OECD and on issues of regulatory capture and how to ensure an efficient interface between regulators and the private sector
- ❖ My contribution to the above discussion will mainly focus on the experience of the Independent Communications Authority of South Africa (ICASA) in this field
- ❖ Before I get to that though, I feel compelled to acknowledge the work of the OECD's Public Governance and Territorial Development Directorate in general
- ❖ ICASA strives to create a conducive and predictable regulatory environment to achieve the stated objects of EC Act of 2005, section 2 (S2).
- ❖ It is for this reason that we continue to strongly support the OECD's efforts of bringing together world-wide regulators and regulatory experts to share their experiences/information and strengthening existing international collaborations/relationships as the best contributor ensuring and making regulatory policy predictable, effective, stable and secure.
- ❖ The results of your efforts and enhanced engagement on regulatory policy reform within BRICSA, will in good time be reflected in the evidence based quality regulations starting to emerge from these and other such countries



WHO IS ICASA?



- ❖ The Independent Communications Authority of South Africa (ICASA): The Independent Communications Authority of South Africa (ICASA) instituted in May 2000 by the Independent Communications Authority of South Africa Act No 13 of 2000 (ICASA Act);, is the convergence regulatory authority that monitors the electronic communications and postal sectors in the public interest of South Africans
- ❖ ICASA is overseen by the Ministry of Communications and Parliament which established the Authority: They both determine public policy for these sectors
- ❖ ICASA operates at arm's length from Government and Parliament on the basis of Government allocated annual budget, with 9 publicly nominated and appointed Council(Board) members
- ❖ The 2005 Electronic Communications Act No 36 of 2005 (ECA) lays out the regulatory structure for all electronic communication networks and services in South Africa



WHO IS ICASA?



- ❖ The passage of this new act strengthened and expanded the regulatory authority of the ICASA to open communications markets, promoting conditions for self-sustaining effective competition, intervene where market players with significant market power are hindering competition for services and facilitate the difficult transition from monopoly to full competition
- ❖ ICASA is a licensing body, a regulator and a quasi judicial body because it licenses, regulates, adjudicates and issues sanctions; and its mandate and functions include the following:
 - ❖ To license broadcasters, signal distributors, providers of telecommunication services and postal services;
 - ❖ To make regulations;
 - ❖ To impose license conditions;
 - ❖ To plan, assign, control, enforce and manage the frequency spectrum;



GENERAL OBSERVATIONS

- ❖ The Authority subscribes to the six principles which are generally accepted as good governance principles:
 - ❖ Regulation should be kept to a minimum
 - ❖ Regulation should be flexible to be able to respond to rapid market developments, through minimal procedure requirements and discretionary powers
 - ❖ Regulation should be objective and non-discriminatory, i.e. competition, services and technological neutrality
 - ❖ Regulation should be transparent: widely consult the stakeholders and make their information and decisions easily accessible to outsiders.
 - ❖ Regulation should ensure legal certainty and be consistent over time to allow companies to make investment decisions with confidence: having clear and stable strategy, and should follow strict procedures before taking decisions.
 - ❖ Regulation should be enforced as strictly as practicable on the activities being regulated.



A FEW LESSONS



- ❖ The regulators and regulatees can and should meaningfully coexist
- ❖ All regulatory regimes are vulnerable to capture by organised interest groups, particularly by those whom the regulation seek to control/regulate as they can use their resources of expertise to influence regulatory outcomes
- ❖ When regulators begin to identify with industry and ethic boundaries are breached they tend to suffer from appearances of capture. It is equally important to be independent from the organised interest groups, which means regulators should not be captured by the interests of the regulatees
- ❖ The risk of capture can increase if regulators are under-equipped and under-financed, if incumbent firms have political power and can intimidate regulators through the political system, and if regulatory systems allow excessive appeals and layers of decisions, so that regulatory decisions become delayed in years of controversy before they become effective



SITUATION IN SOUTH AFRICA



- ❖ Due to the technically complex nature of the regulatory issues that comes in front of the Authority, much of its decision-making and implementation involves the exercising of serious discretion and due diligence/process through dialogue with regulatees and other external interests
- ❖ This does not necessarily translate into a fact that the regulated interests have a strong say in the Authority's interaction with them
- ❖ But theory indicates that such interactions can:
 - ❖ provide access and potential for influence outside of more fair and independent processes
 - ❖ have distorting effects, breach ethical boundaries and show the regulator as suffering from appearances of capture.



REGULATORS AND THE REGULATEES: BEING FRIENDLY WITHOUT BEING COZY?



- ❖ No one should be under any illusion that the regulators and regulated entities should not have a close-cooperation.
- ❖ Regulators and regulated entities should interact with each other as no organisation can generate all needed resources on its own.
- ❖ This requires regulators and regulated entities to fulfill their separate but complementary responsibilities; where regulators continue to be strong, independent and developing the needed framework of regulatory stability and regulatees meet their obligations to the public as well
- ❖ Regulators and regulated entities should not pull in different directions to the detriment of the sector, both perspectives or insights should converge somewhere, but not always.
- ❖ As regulators, it is in our best interest that the regulatees have confidence in our regulatory regime where they are not burdened unnecessarily and can progressively make reasonable returns on their investments



REGULATORS AND THE REGULATEES: BEING FRIENDLY WITHOUT BEING COZY?



- ❖ Our regulations should positively contribute to making the electronic communications and postal sectors highly robust, dynamic, stable and innovative to facilitate the introduction of new applications and services that have made these markets an important engine for economic growth and job creation
- ❖ As regulators we should rely upon market forces, where necessary, by encouraging and allow the private sector to take the lead in its continued introduction of day-to-day expansion, dramatic changes and new developments in the sector: because innovation and progress should emanate from entrepreneurial and research activities, and not from regulators
- ❖ As regulators we should increasingly be aware of the possible distortions, multiple/secondary effects of the unintended consequences of actions, events and decisions that emanate from their offices
- ❖ The performance of the sectors we regulate should be the best indicator of our performances: we must support all initiatives that contribute to the expansion of networks for the development and competitiveness of our economies and provide the right incentives



CONCLUSIONS



- ❖ Ladies and gentlemen, as a last comment on this topic and before I step down, I would like to close today on a bit of a personal note.
- ❖ As evangelists for good public governance and creation of efficient, reliable, sustainable and robust regulatory frameworks and processes conducive to facilitating investment in the electronic communications markets, we must continue to expand the dialogue initiated by institutions like the OECD
- ❖ I would once again thank the OECD very much for their invitation and to all of you in the audience for your kind attention.
- ❖ That concludes my remarks today! Please enjoy the remainder of the conference.



THANK YOU

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