

# G:GENESIS

- A Framework for Economic Regulation

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# Context

- Focus often on regulatory rules and not the design and processes of the regulator
  - Design matters enormously to success
  - Tensions between policy-maker and regulator
- Seek to draw on RSA experience to identify possible common desirable design features
- Key areas of debate
  - Role
    - Role of policy-makers and regulators
    - Independence of the regulator
  - Interaction with other institutions
    - Appeals
    - Co-jurisdiction with other regulators
  - Institutional design and own processes

# Role of economic regulators

- Sector regulators arguably there as full time ‘arbitrators of administered contracts’
  - specialist knowledge, uncertainty/complexity, ongoing nature, non-contractable aspects
  - If limited role – can use other mechanisms
- When and why is independence important
  - Ultimate goal – highest quality and lowest price
  - Private investments in services vulnerable to:
    - Short-term political incentives to influence pricing or competition with SOEs once investment is made
    - Incompetency in the oversight agency
  - Investor wants fair and predictable ‘arbitration’
    - If not, risk priced into investment and investment lower
  - Key rule – independence from line/shareholding Ministry

# Role of economic regulators

- Role of policy-maker and regulator
  - Independence there to prevent opportunistic deviations from the general policy framework and not to produce the general framework
    - Regulator takes policy as guide to decision-making
  - Contract analogy: policy-maker writes contract with investor & regulator arbitrates on given contract
  - Some sources of practical difficulties
    - Policy framework sometimes not specific enough and Regulator ends up 'making policy'
    - Policy should be defined and not easily altered
    - Co-operation required in unexpected circumstance

# Interaction with other institutions

- Auditing of decisions (appeal)
  - Rationale for an auditing process is to directly and indirectly improve the accuracy and independence of decisions
  - Judiciary in a good position to assess legality and procedural fairness of decisions
    - Critical for improving process and decision-making
  - Judiciary is less well positioned to improve accuracy on substantive regulatory decisions
    - Weigh up against cost of delaying beneficial regulation
  - South Africa automatic right of judicial review (not appeal)

# Interaction with other institutions

- Co-jurisdiction with the competition authorities
  - Differing institutional design of agencies
    - Competition authorities designed to resolve disputes where 'rule of reason' required. Separation of investigation and adjudication.
    - Sector regulators largely monitoring and enforcing an existing set of regulatory rules.
  - Separation on the basis of ex-post and ex-ante roles
    - Sector regulator should develop, monitor and enforce compliance with behavioural rules
    - Competition authorities should oversee disputes falling outside those rules and subject to the Act
    - Require means to formally decide on grey areas

# Design and processes

- Design matters
  - Solid decision-making processes in line with the Promotion of Administrative Justice Act
    - Predictability enhanced by outlining processes
    - Transparency and independence enhanced by public hearings and reasons for decisions
    - Procedures proportional to decision
  - Alignment of accountability and powers
    - Tensions between 'Council' and 'Secretariat'
    - Control over strategy and performance
  - Accountability to legislature
    - Performance must be monitored but cannot be used to undermine independence