

## *RIA as a Tool from Chinese Taipei's Perspective*

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### **1. Methods Commonly Used by Regulators in Chinese Taipei to Reach Decisions**

There is no absolute method in Chinese Taipei used by regulators or government agencies to reach regulatory decisions, with the exception that some legislative requirements need to be performed. For example, there is a provision in the Administrative Procedure Law of Chinese Taipei enacted in 1999, which expects government agencies to conduct hearings before the administrative regulations delegated by any legislation having an effect on the rights and obligations of people are issued or amended. It is considered of great help in terms of gathering useful information for government officials to make decisions about regulations.

Other methods adopted by the agencies or regulators in Chinese Taipei are not requirements of laws or rules. This does not mean that, prior to the making of the decisions, the government agencies are not expected to take appropriate measures or steps useful for achieving consensus in the relevant sectors as well as among the general public.

When an agency needs to decide whether to establish or change any regulation having greater importance from any parameter, one of the most resorted methods is to call meetings inviting experts to express their views. The experts mostly invited are those teaching at universities and doing researches at academic institutes. People from the private sectors might also be invited as experts with special knowledge, especially technical ones. Regulators sometimes even decide to ask scholars to complete research projects for them for the purpose of collecting information and making recommendations. In many situations, the views expressed by these experts play important roles in the decision making process of the regulators.

Stakeholders are in most of the above-mentioned meetings invited to express their views. As a matter of course, their views tend to favor their own interests. The agencies need to balance the interests among incumbents, and between these incumbents and new comers. For instance, there was a meeting called by the Fair Trade Commission of Chinese Taipei discussing the requirements of allowing new refueling services in an international airport as well as the number of the new suppliers which could be allowed to operate at this airport. The sole incumbent petroleum company, the newly established oil refinery, and the importers were all invited. The Fair Trade Commission was to receive balanced information and to make balanced decision on such matter.

Another commonly used method is benchmarking, which include the reliance of rules under international organisations, such as the WTO, as well as those applied in other jurisdictions. It is sometimes very useful (or even very powerful) to cite the international requirements to show the need of having the reforms. For example, Chinese Taipei's engagement in its first major regulatory reform in telecommunication sector in 1996 was due to its commitments in the bilateral trade negotiations with the United States under its WTO accession framework. According to the commitments, Chinese Taipei separates the business operation from the regulatory function of the sector by establishing Chunhwa Telecom as an independent business and the Directorate General of Telecommunications. Another commitment was to liberalise its telecommunication markets by allowing foreign capitals to participate the mobile phone business and some other businesses. The later liberalisation steps in the telecommunication sectors are also more or less influenced by the WTO negotiations.

Another benchmarking approach is to look into the practices in other countries as indexes. It is very common for the government agencies and regulators to cite examples in other jurisdictions. For instance, quite a lot of studies conducted by agencies and regulators on sectors of electricity, petroleum, gas, gas stations, telecommunications, etc. are about the regulatory schemes and the reform methods in countries such as the U.S., Australia, the United Kingdom, Germany, France, EU, New Zealand, etc. Specifically, the liberalisation in the telecommunication sector in Chinese Taipei has been partly, but mainly, based on the market opening experiences in these countries and Chinese Taipei's commitments for the WTO accession. In this context, it could be of help to briefly explain the methods used in this sector.

## **2. A Brief Illustration about the Methods Adopted in the Liberalisation of Telecommunications:**

The change of the regulatory regimes in the telecommunications had been started since 1987 when the value-added businesses of telecommunications were liberalised. As indicated earlier, Chinese Taipei separated Chunhwa Telecom from the Directorate General of Telecommunications and opened up mobile phone business and satellite communication business in 1996 for domestic and foreign capitals. This was considered a major step of liberalisation of telecommunications. Later in 1999, the Directorate General started liberalising fix networks business as well as rental business of international cable lines. At current stage, there are four fix networks and three rental companies of international cables.

In order to further promote liberalization in the telecommunication sectors and to ensure administrative neutrality as well as to establish fair competition environment, the Directorate General has further endeavored in collecting various views from the industries, government officials and academia through various public hearings, seminars and websites.

In early 2001, the Directorate General started its further liberalization initiative. It invited persons representing various aspects to join the process of enacting the relevant rules governing the issuance of licenses and regulatory schemes. The purpose of the steps is to ensure a more circumspection with regard to the enactment of relevant regulations, to promote continuous growth of the telecommunication sector, and to enhance the international compatibility of the domestic telecommunication enterprises.

The Directorate General of Telecommunications was instructed by the Ministry of Transportation and Communications to establish the "Working Group on the Liberalisation of Telecommunication", which started its function on February 14, 2001, for the purpose of reviewing the current liberalisation situation and planning future policy direction of the liberalisation in telecommunications.

On February 20, 2001, the "Working Group" under the Directorate General published the "Consultation Document on the Review of the Liberalisation Policy of Telecommunications" for the purpose of soliciting opinions and comments from any individual or enterprise who was interested in or concerned with the development of future regulatory regime. In the "Consultation Document", there were a number of questions posted for discussions. These questions were presented with explanations. Among the questions are:

- 1. What should be the current policy objective and whether there is a need of adjusting previous policy objective?**
- 2. Whether the regulation should be made toward light handed or heavy handed one? Under what market conditions the sector-specific regulation can be replaced by the general competition rules?**
- 3. How to use incentive-based regulation to replace the traditional regulation of command and control?**

- 4. Whether there is still a need to regulate based on different categories, taking into consideration of the current trend of liberalisation and convergence?**
- 5. Whether to adopt general authorisation for most of the licenses?**
- 6. Whether to further lift the restriction on foreign share holdings of telecommunication companies?**
- 7. Whether to reduce the threshold for the application of licenses for certain telecommunication businesses?**
- 8. Whether to lift the restriction on the use of certain channels and what are the problems needed to be dealt with for such lifting?**
- 9. How to adjust the current technical regulations to cope with the environment after liberalisation?**
- 10. Whether to change the current asymmetric regulation on the enterprises with dominant market power?**
- 11. Whether to use the competition law (the Fair Trade Law) or the Telecommunications Law as a prime basis of regulating the anticompetitive behaviours?**
- 12. Facing the trend of convergence, should the regulator be more self-restraint or be more active in directing the development of such trend? And how to deal with the regulatory issues or competition problems arising from cross-sector service provision or cross-sector ownership?**

Between May 20, 2001, when the Consultation Document was published, and March 31, 2001, there were 25 comprehensive comments and opinions submitted by domestic and foreign telecommunication companies, associations, law firms, legislators and individuals. There was even the representative office of the US government in Chinese Taipei making its comments. The opinions thus collected are integrated into a single document, which was made available on April 4, 2001 to the general public on the Directorate General's website. Before May 31, 2001, there were nine meetings held in the Working Group to discuss above-mentioned related issues and the Working Group completed its task of making a comprehensive proposal for future liberalisation.

On June 18, 2001, the Working Group issued a 140-page Concluding Report explaining their suggestions; among which are to amend the Telecommunications Law to increase the maximum foreign shares of the fix networks companies from the current 20% up to 49%; to reduce the restrictions on the scope of the services that can be provided by the suppliers; to maintain the asymmetric regulations over the dominant suppliers with respect to the charges, inter-connection between different networks, accounting matters, etc, with the definition of the dominant power of a higher threshold; to simplify the license categories according to the trend of convergence; to conduct evaluation process on the quality of the services so as to encourage the investment on the research and development by the businesses; to replace the previous heavy handed regulation by light handed one; to establish a single independent regulator on the regulatory matters of telecommunications, while in the transition period, to enhance the coordination among various agencies having to do with the matters; to enact relevant rules to ensure public safety and consumer interests; etc.

In January of 2002, the Directorate General published the White Paper on the Liberalisation of Telecommunications. The White Paper is formulated mainly for the purpose of informing the general public about the sequence of the liberalisation in the telecommunication sector, the current policies and measures, and the future planning. It indicates the lifting of unnecessary regulations and the reliance on market competition mechanism. It also emphasises the trend of convergence among telecommunication, information and broadcasting, and the necessary reform of the regulatory framework to cope with such trend. The overall indication has been in line with the Concluding Paper of the Working Group. This has shown that experts and stakeholders have played extremely important role in the deregulation process of telecommunications.

### **3. Examples of Informal Impact Analysis:**

As explained earlier, there is no formal regulatory impact analysis required by any legislation in Chinese Taipei. However, similar practices in regulatory activities with respect to certain sectors still can be found. In competition related regulations, the Fair Trade Commission does more research on the benefits that could arise from the deregulations, including the higher quality of the supply, lower price and more choices.

A more apparent example of impact assessment is in the telecommunications. In order to show the need of further liberalisation, positive impacts had become the ones emphasised by the above-mentioned Working Group. In part, it states in its report that: Ever since the opening up of the telecommunication market, the mobile phone business was the fastest developed and the most successful one. In order to cope with the market competition, companies invested huge amount to construct basic telecommunication networks so as to provide more varieties and better services. This has also caused the relevant industries producing far more telecommunication facilities. Take 2000 as an example, the total worth of production of telecommunication equipments achieved USD 2.85 billion, among which the terminal equipments accounted for USD 1.25 billion, representing a 165% growth. The main contribution was from mobile phone production. The worth of the single mobile phone products achieved USD 0.86 billion, which represents 5.5 times of growth and almost 1/3 of the total worth of the whole telecommunication market.

Another apparent example of impact analysis can be found in the trade liberalisation. The trade and industries authorities conducted impact analyses in a more systematic way. They either carried out the analyses on their own or entrusted research institutes to do the analyses. Among the analyses are "A Study on the Impacts on the Economy as a Whole and the Import/Export Arising from the Accession to the WTO" (1995); "The Effects on Cross-Strait Trade Relations after the Accession to the WTO" (1998); "The Impacts on the Bilateral Trade between the Two Sides of Taiwan Strait after Lifting the Import Restrictions over the Products from Mainland China" (1999); "The Impacts on the Domestic Economy Arising from the Direct Interaction between Two Sides of Taiwan Strait" (2000); "The General Report of Impacts Analysis and Measures to Cope with Such Impacts" (2001).

### **4. Prospect of the RIA as a Useful Tool:**

Although Chinese Taipei does not have comprehensive experiences of the regulatory impact analysis, the impact analyses being made on a case-by-case basis can still be considered useful. Based on those analyses, the useful aspects of having such assessment include:

(1) To use it as a tool to communicate with the general public: Public support of the regulatory arrangement is important in that it ensures compliance and monitoring the compliance of relevant players. A proper impact analysis provides an accountable basis for the public to believe that a particular regulatory arrangement is the better way to achieve efficiency of the sector and thus benefiting the public. It is also a more transparent method than others in that the general public is able to perceive the contents of the assessment without being afraid of receiving distorted interpretation of the data. In the above-mentioned examples, the general public is able to understand the benefits arising from liberalisation and thus is more willing to support the liberalisation steps in telecommunications and foreign trade.

(2) To use it as a tool to consult with the stakeholders: Incumbents tend to expect regulators not to open up the market so as to maintain their market position; while new comers are apt to a more liberalised market so as to allow them to compete with the incumbents. A proper impact analysis could provide a sound basis for the stakeholders to consider accepting an arrangement based on more scientifically collected and analysed data. In the telecommunication example, the assessment coupled with the consultation process served as a good foundation to receive support from the current and potential competitors in the market.

(3) To use it as a tool to help the regulators in making their decisions: One of the most concerned aspects of a regulator could be to achieve effective regulation of which it is in charge. However, an effective regulation might result in over-regulation. An impact assessment could provide with accurate information as to whether a regulation has been overly designed and whether there is a need of reducing the level of regulation without compromising or lowering the effectiveness. In the telecommunication case, it was partly because of the Directorate General of Telecommunications' belief that further progressive liberalisation will contribute to the enhancement of the industry as well as the competitive situation in the market, the Directorate General was confident about taking further steps toward liberalising the regulations.

(4) To use it as a tool to consult with other relevant agencies: In order to achieve effective implementation of regulation, there sometimes need co-operation and co-ordination with other government agencies. It could be an endless debate about how to deal with the relevant sectors among agencies and regulators without precise data and assessment available for the decision-makers to refer to. A sound analysis serves to end unnecessary arguments about regulatory arrangement.

(5) To use it as a tool to consult and communicate with members of political community: Political aspects are the ones regulators could never avoid facing. If no proper justification, many regulatory arrangements can be politicised and thus jeopardised. Scientifically collected and assessed data is useful in neutralising the regulatory arrangement and accordingly in carrying out the proposed reform.

## **5. Potential Difficulties needed to be looked after**

Having explained the positive aspects of conducting impact analysis, perhaps some potential costs and difficulties from Chinese Taipei's perspectives with respect to the adoption of formal impact analysis program might also be worthwhile of mentioning:

(1) The maintenance of high quality review: In order to generate those positive aspects of impact analysis, it is important to have high quality review. To maintain high quality review, there need quite a number of experts skilful enough to do proper reviews. There is still a lack of such amount of experts capable of doing high quality impact analyses in Chinese Taipei.

(2) Resources: The carrying out of the reviews by an independent review body could be considered more independent and more expertise-oriented, but there will need additional resources to support the review process. Chinese Taipei is currently engaging in streamlining the government structure, the purpose of which is to reduce the need of manpower and resources in the government. It could be controversial to establish any form of independent review body responsible for conducting the impact analysis. While if the reviews are conducted by the relevant ministries or regulators, there will still be a heavy need of technical skills, which also require additional resources for the purpose of training people with required knowledge and skills to conduct useful and accurate reviews with proper cost-benefit analysis. Allocation of proper resource should be a first step to have a comprehensive type of impact analysis regime. And there could need a cost-effective analysis even with respect to the adoption of impact analysis scheme so as to build a consensus about necessity of having the RIA.

(3) The maintenance of independent reviews: It is important that the reviews are made with independence so as to assure that there will be accurate reviews and there is a trust by the public and the government agencies toward the review. If the reviews are made by regulators themselves, the task would be how to persuade the public that the outcomes are trustworthy. The design of a review scheme to ensure avoidance of political intervention and avoidance of incorrect and misleading information or data are essential.

(4) Avoidance of the misuse of the impact analysis: It could be very possible that an analysis shows that there will be great impact in the relevant sectors arising from deregulation, although there could produce greater welfare to the society and economy as a whole therefrom. Political forces having to do with the affected sector could use the negative portion of the RIA as its tool to support their counteraction against deregulation or liberalisation. The stakeholders might also find it useful to resist deregulation or liberalisation. Sometimes the impact analysis shows that there would be huge impact, but the government still considers that it is the unavoidable trend to have such regulatory reform. In case there is impact on particular sector according to the RIA, but the overall gain is greater, the way and skill of communicating with the general public about the positive aspects are extremely important.