

# Realities of Regulation in a Changing World

## Regulatory procedures

Bill Wigglesworth

Yasmine Hammamet, Tunisia

12 November 2005

## Transparency and incentives

- the regulator is more effective the more open its procedures
- openness is an important means of creating the right incentives to improve performance and comply with regulatory requirements
- consultation at all stages should allow all interests to contribute to the regulatory process
- confidential discussions have a place, but decisions must be explained openly

## Regulatory challenge of compliance and enforcement

- securing and enforcing strict compliance is an essential element of regulation
- without it regulation will be ineffective
- direct inspection and enforcement by the regulator likely to demand excessive resources
- strong powers of enforcement are necessary
- but should only be used as last resort
- emphasis should be on companies in the sector ensuring their own compliance

## Relationship with incumbent

- main difficulty likely to arise with the incumbent: always in powerful position
- due to strategic importance, threats of drastic action (e.g. licence revocation) may be ignored
- need to create incentives to ensure compliance
- approach should be part of on-going relationship stressing mutual interest and advantage in success of regulatory regime
- relationship has to be managed on both sides

## Managing the relationship

- within incumbent, managing the relationship is the prime task of the company's Regulatory Affairs Department (RAD)
- the RAD needs to match the skills of the regulatory body and develop effective relations with it at working level
- the RAD must also command the respect of top management and develop good communications throughout the company
- should set up specific Compliance Unit

## Pressures on incumbent to comply

- this Unit will identify the need for compliance
- licence requirements and sanctions
- threat or opportunity
- virtue out of necessity
- company ethics and standing
- effective internal compliance avoids regulatory intervention
- compliance Unit responsible for enabling company to respond effectively

## Elements of an effective compliance programme

- well defined roles and responsibilities
- education and training
- monitoring mechanisms
- independent audit

## Roles and responsibilities

- Regulatory Affairs Department
- line Management
- internal audit (or other independent monitoring body)

## Regulatory Affairs

- specify levels of compliance
- develop and manage programme
- 'help desk' for advice
- represent incumbent before regulator on compliance issues
- commission internal and external audit/surveys of compliance
- investigate compliance failures

## Line management

- champion compliance: lead by example
- ensure implementation of compliance programmes
- ensure awareness of licence requirements and where to seek guidance
- include compliance in job descriptions
- take corrective action following breaches
- implement effective sanctions

## Internal Audit

- build compliance into operational audit processes
- carry out independent surveys as necessary
- provide independent verification to Board
- escalate breaches where identified

## Education and training

- awareness specific to needs of job
- guidelines to interpret licence
- select appropriate delivery mechanism:
  - handbooks
  - quick reference cards
  - desk training
  - distance learning (CDROM/video/audio)
- continuous training framework:
  - induction
  - generic
  - job specific

## Monitoring

- Internal
  - audit of implementation of programme
  - confirmation that compliance embedded through operational audit
  - reports to Compliance Committee; Board
  - escalate compliance failures
- External
  - mystery shopping

## Enforcement

- failures in compliance will occur
- prompt acknowledgement and corrective action will enhance respect for company
- graduated sanctions should be available to reflect seriousness of breach, e.g.:
  - reprimand; order (enforceable in the courts); fine; licence amendment; threat of licence cancellation
- maintain a positive approach towards future action

## Graduated sanctions

- a brief word
- formal letter (perhaps press statement)
- red frightener: “minded to make an order”
- order (plus press statement)
- enforcement in court: formal court order
- breach of court order: contempt of court (unlimited penalties)
- fine: up to 10% of annual turnover
- licence revocation (recommendation to Minister)

## Other powers

- Investigation:
  - full powers to obtain information from anyone
  - applied with discretion, subject to safeguards
- Publication:
  - power to publish information for the benefit of users or competitors
- Licence amendment:
  - may be need to change rules, without agreement of licensee
  - subject to appeal



## Appeals

- right of appeal to an independent body is an essential element in regulation
- mechanism should ensure that:
  - due process is followed
  - powers are not exceeded
  - decisions are essentially reasonable
- but it should avoid:
  - re-making the quasi- judicial decision by the expert regulator, unless this appears essential
  - becoming an automatic part of the process