

**PUBLIC GOVERNANCE DIRECTORATE
REGULATORY POLICY COMMITTEE**

Summary Record

3rd NER webinar: “Beyond the short-term pressures created by COVID-19 on regulated markets”

24 June 2020, 14:00-15:30 CET

This summary record is provided to NER delegates for information.

Ana Simion (Ana.Simion@oecd.org)

JT03464198

Summary Record - 3rd NER webinar “Beyond the short-term pressures created by COVID-19 on regulated markets”

1. The OECD Network of Economic Regulators (NER) organised the 3rd NER webinar entitled “Beyond the short-term pressures created by COVID-19 on regulated markets” on 24 June 2020, in collaboration with the Water Industry Commission for Scotland (WICS). The webinar forms part of the wider OECD effort to support countries as they tackle the health crisis and its economic and social ramifications of the pandemic¹. The webinar aimed to provide a platform for discussion and exchange in relation to the long-term effects of the COVID-19 crisis, including how regulators are foreseeing changing their ways of working. A total of 51 delegates from 12 OECD member countries and 4 non-OECD countries joined the session.
2. Regulators have introduced a number of short-term or emergency measures to tackle the immediate effects of the COVID-19 pandemic. While the short-term resilience of economies still faces many uncertainties, it is time to ask how regulators can prepare for the new future. This includes looking at how the massive disruption caused by the pandemic to policy objectives, regulatory practices and ways of working can be used to build back better. Opportunities exist, for example, with regard to upgrading approaches to the sustainability of investment and infrastructure, modernising regulatory frameworks, learning from the agile adjustments to regulatory practices and maintaining effective communications and engagement with stakeholders in the post-crisis period. The webinar offered an opportunity to hear perspectives from regulators and exchange views on these questions.
3. The disruption caused by the COVID-19 crisis amounts to a reset point for practices and values. There has already been a *defacto* shift in regulator’s regulatory approaches (e.g. some easement of rules), the pace of implementing regulatory changes and the ways of engagement with the operators and consumers. This happened more easily where there already was a relationship of trust between the regulator and the operators. Nonetheless, in the long-term, regulators can use

¹ See the OECD webpage Tackling the Coronavirus (COVID-19) : Contributing to a global effort : <https://www.oecd.org/coronavirus/en/>

this experience to continue to improve practices and put into place more collaborative and behaviourally-informed decisions.

Regulators' perspective

Adjustment of rules, approaches and methodologies to new market realities

4. Most regulators introduced short-term measures in order to deal with the aftermath of the COVID crisis. Some regulators are now looking at the effects of lockdown easing, government intervention in their own country and abroad, but also at how consumer behaviours might change over time.
5. There is an anticipated long-term effect on ways of working, which will in turn, means greater dependency on the telecommunications sector and higher demand on retail energy use. It is a priority of regulators to ensure security and reliability of networks in such industries.
6. Some regulators have developed scenario and regulatory implication mapping, in order to assess future developments (e.g. changes in demand, cash-flow risks, investment requirements, access to and cost of capital, etc) and their respective impact on specific sectors. The results of the assessment dictate the level of implication that is required on the part of the regulator (e.g: from no action at all, to consider changes to rules/requirements, engaging with government for possible law changes, etc). Airport regulation was identified as a challenging area because the level of activity has declined significantly, and strict regulation of airports can be seen to be disproportionate in the context of this downturn.

Regulators' response to national and international legislative changes

7. The transport sector was severely impacted by the COVID-19 crisis, as due to travel restrictions, there was minimal or no supply of service for a number of months. Quite particular for the rail sector in Europe, a large number of state-owned operators form the market, or there is significant government intervention through subsidies or rebates. Therefore, in the longer term, there is expected to be a high degree of state involvement – either through direct investments and decisions about future infrastructure needs, or through a protectionist approach to national transport policy.
8. The European Commission issued in June 2020 a proposal to adapt the regulation of the rail sector, to allow national authorities to deal more swiftly with the negative consequences of the pandemic. The new regulation proposes the waiver, deferral or reduction for track access charges for users of infrastructure for an initial period of March to December 2020, but which can be extended as necessary. If adopted, this regulation would be a shift in regulatory approach at EU level. Over and above the substantive policy changes, it shows that EU legislation can adapt quickly in a fundamental manner.
9. In the longer term, transport regulators continue to facilitate a level-playing field across all types of operators, and to uphold and promote regulations aimed at increasing competition in the market. This arises in a context where competition in the transport sector is currently very concentrated - and will probably become even more so in the aftermath of the COVID-19 crisis.
10. Market monitoring and in-depth analysis is another area of focus. This will enable regulators to analyse the effect of government intervention – the level of investment, changes in consumer prices, changes in consumer behaviours and preferences, etc.
11. The fundamental principles of regulation (such as independence, consistency in regulatory decisions, etc) remain paramount, in the short and long term, because this affects the regulators' credibility of decisions and maintains certainty in the markets.

Regulatory approaches based on collaboration and openness

12. In the water industry in Scotland, there has been a move from a traditional economic regulatory approach where the regulator reviewed the company's detailed business plans and then set efficiency targets expected levels of service improvement and price caps based on an assessment of the needs of the industry over the regulatory period. The new approach is based on establishing a long-term view of industry requirements through an open dialogue with industry stakeholders (including customers) which is based on trust and moves away from regulatory 'gaming'.
13. The traditional regulatory approach relies on establishing a hard budget constraint on the company. Thus, through a regulatory restriction on cash available, the industry was incentivised to deliver efficiencies. The immediate consequence is that operators seek to limit the amount of spending, especially in relation to longer-term spending. Therefore, the policy can create a time asymmetry, whereby the operators would maximise short-term performance at the expense of long-term investment and the interests of future customers.
14. The shift in regulatory approach has led to a far more productive, collaborative and open discussion amongst the regulator, the regulated company, the wider industry participants and consumer groups. The principals involved are those associated with Ethical Business Regulation and Ethical Business Practice which seek to establish a productive and collaborative approach between regulator and regulated, leading to better outcomes for customers and society more generally.
15. While this approach leads to a better understanding amongst stakeholders of the route to a sustainable industry in the long-term – and helps identify a realistic path to achieving it – it was noted that it does require the regulator to think about how to maintain the same degree of incentives on the regulated company to deliver continuous improvement over the long-term.

Academic perspective - Effective behaviours and approaches between regulators and market operators

16. There has been a longstanding academic interest in the way industries are regulated and whether regulators could do this differently. This approach is linked with the application of behavioural science, and aimed to determine why companies behave in a certain way, and why regulators follow a particular approach in response.
17. Regulators and governments are encouraged to look at the outcomes sought post-COVID-19 crisis, and consider the wider societal and economic implications, such as maintaining a good level of employment, and preserving social structure. The crisis provides an opportunity and a context for redefining what the societal values are. This can to be done in a collaborative environment, where all actors, including consumers, participate.
18. One aim of Ethical Business Regulation is to have effective collaboration between the regulator and the regulated entities. This enables the regulator to obtain access to information in a timely manner, so that market deficiencies are identified and rectified. In turn, a collaborative and open relationship gives market operators the confidence to be to discuss with regulators the issues affecting their business and consumers, so that solutions are be developed in a co-operative and trustworthy manner.
19. Anecdotal evidence suggests that in the context of closing down systems as demanded by the COVID crisis, some transport regulators have also considered what measures need to be in place so that these systems can be reopened easily enough in the future. In taking these decisions, relationship with industry and awareness of resilience and sustainability of the operators played an

important part. Some regulators were confident about the attributes of the sector due to the close relationship they have with the industry - for instance, being part of the risk management committees of regulated firms gave regulators a unique perspective. This presupposes a relationship of equality relationship between the regulator and the regulated, and leads to a form of regulation through positive culture.

20. The basic objectives of business have broadened to focus on long-term issues, encompassing other societal values (such as climate change, etc), beyond the traditional objective of maximising shareholder value. Alongside this, there is scope in expanding the purpose of regulation, so that it supports the delivery of good outcomes for business as well as the society as a whole.

Annex A. Agenda

Introduction

- Anna Pietikainen, Senior Policy Advisor, Organisation for Economic Co-operation and Development
- Ian Tait, Deputy CEO, Water Industry Commission for Scotland

Perspectives from regulators

- Andy Burgess, New Zealand Commerce Commission
- Anne Yvrande-Billon, French Transport Regulatory Authority and Chair of the NER Bureau
- Alan Sutherland, Water Industry Commission for Scotland

Open Forum Discussion Part 1

Transformations in Values, Business and Regulation

- Christopher Hodges, Centre for Socio-Legal Studies, University of Oxford

Open Forum Discussion Part 2

Closing

- Anna Pietikainen, Senior Policy Advisor, Organisation for Economic Co-operation and Development