



INTRA-DEPARTMENTAL COOPERATION AND GOVERNMENT SUPPORT IN REGULATION

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Abstract

Many regulators in developing economies face the challenge of inadequate financial and human resources to effectively implement their mandate. It's therefore imperative that the regulators ensure that resources are utilized efficiently and effectively. One of the ways in which this can be done is by ensuring that the regulators investigative departments collaborate with the legal departments on cases from the start. This would ensure success on case investigation and implementation of the law.

The other challenge regulators face in small economies is that the markets are concentrated and some market players have political power through lobbying that they can use to defeat regulatory interventions. Thus, the challenge for regulators is to ensure that the state leaders and the public at large understand the role of regulators and actions that they may take in order to ensure regulatory interventions and objectives are achieved.

This paper looks at how departments should cooperate in order to ensure rigorous economic, technical and legal analysis from the commencement of investigations and other regulatory interventions until they are concluded. The paper draws on the experiences of the Competition and Consumer Protection Commission in Zambia.

The paper also proposes high level regulatory advocacy activities to ensure state leaders understand the benefits of regulation. This involves workshops for officials from the executive, legislative and judicial wings of state.

1. INTRODUCTION

Following the fall of socialism across the world in the 1980s and 90s, the idea of state control or central planning of the economy fell out of favour. Many developing countries liberalised their economies and privatised state owned enterprises and commercialised public water, railway and power utilities for example. Developing countries underwent these reforms in order to spur economic growth through investment and promoting market efficiency. Developing economies have become reliant on the capabilities of

individual firms making their own decisions about the production of goods and services based on market signals.¹ Developing economies had to do this whilst ensuring that consumers were protected from unfair trade practices and excessive price increases for newly commercialised public services.

The change entailed that developing countries had to come up with new policies and laws to regulate the public utilities and the economy in general as well as provide for the creation of regulatory bodies. Thus, the state left the task of regulating of different sectors of the economy to its agents as opposed to government ministries or departments.

In most instances the regulatory agencies are largely funded by the state in addition to statutory fees and fines but the resources are usually not enough to effectively implement the agencies mandate. The general economic problems faced by developing countries affect regulators as well. These problems may manifest in form of lack of expert training required, insufficient manpower and other operational requirements. Therefore it is imperative that the agencies utilize the meagre resources efficiently and effectively. One of the ways in which this can be done is by fostering close cooperation between the agencies legal department and the departments that do the actual investigations. Regulators sometimes lose cases on procedural grounds and not necessarily on the substance of the findings. These legal technicalities can be avoided if the legal department is involved from the start in order to serve resources in terms of material and time being wasted and also to avoid public embarrassment.

Furthermore, regulators in some countries face political pressure not to act in certain instances if the action is perceived to be unpopular by the politicians or if the action affects politically connected firms. Regulators in this instance have to keep working consistently through advocacy initiatives targeted at decision makers and also demonstrate the benefits to society of regulatory intervention.

¹ Joeques, J & Evans, P 2008, *Competition and Development : The Power Competitive Markets*, International Development Research Centre, Ottawa

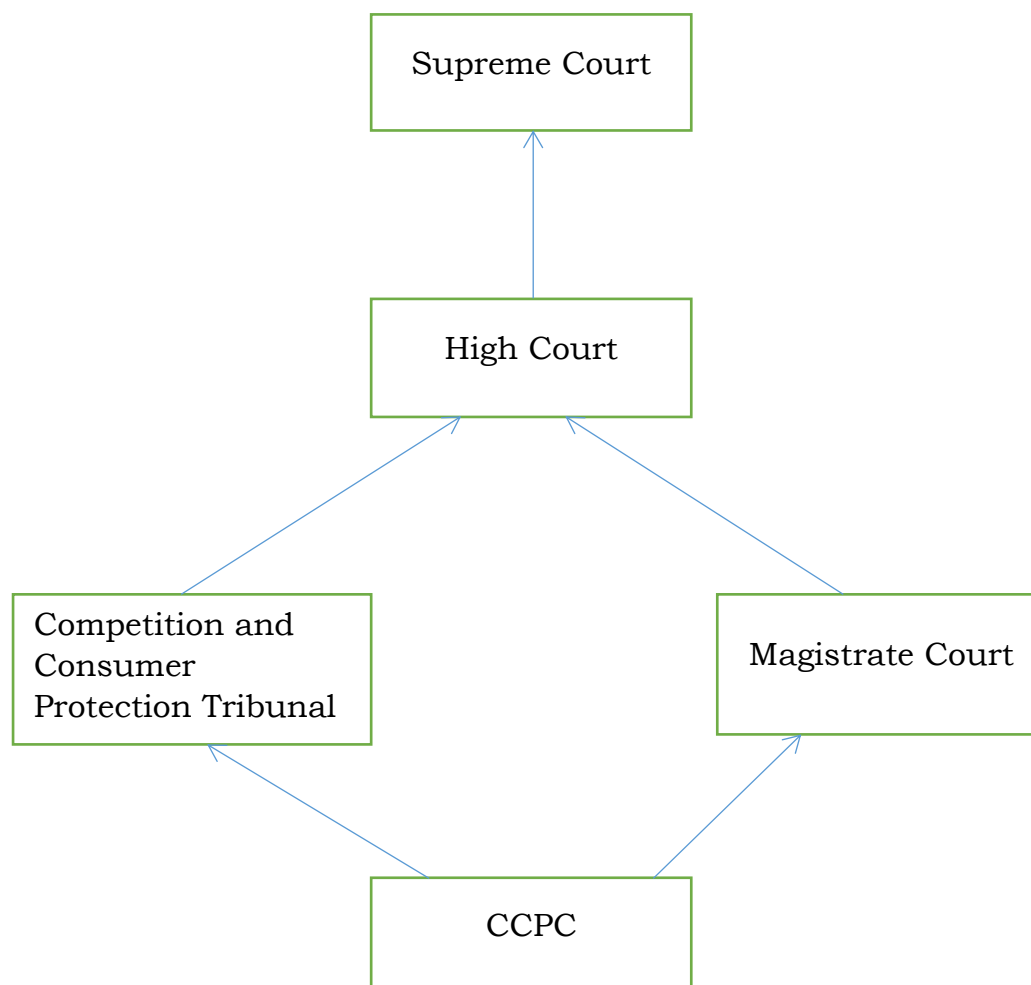
2. DEPARTMENTAL CO-OPERATION

2.1 Regulatory Framework

Economic and technical regulation frameworks are basically generic across the world. It involves laws being enacted to govern the conduct of market players, that is, standards to be adhered to, prohibitions and establishment of the regulatory body for each given sector and the body's functions and how these functions shall be carried out, and the regulatory bodies operations are to be funded. The laws also stipulate the penalties and remedial actions that the regulatory agencies can impose on firms they regulate. For example, in Zambia, there is the Energy Regulation Board (ERB) that regulates the energy sector; the Zambia Information and Communication Technology (ZICTA) that regulates the ICT sector; the Zambia Bureau of Standards (ZABS) that is in charge of drafting standards; the National Water and Sanitation Council (NWASCO) that regulates the water utilities; the Competition and Consumer Protection Commission (CCPC) that regulates competition and consumer welfare; the Pensions and Insurance Authority (PIA) to name a few.

The decisions of regulatory agencies may be subjected to the courts of law if parties are aggrieved or by the agencies themselves for matters that require the courts actions, for example, criminal matters. The diagram below illustrates the regulatory framework using CCPC as an example.

Figure 1: Regulatory Framework²



The role of the courts in the regulatory framework is to ensure that the regulatory bodies are correctly carrying out their mandate through correct interpretation of the given regulatory laws. This provides a means of checks and balances and also helps in the development of the law.

2.3 Departmental Cooperation: CCPC Experience

Regulatory body corporate structures are usually composed of investigative departments, legal department and support departments such as Finance and Administration. In the case of CCPC the two investigative departments

² CCPC Strategic Plan: 2011-2016

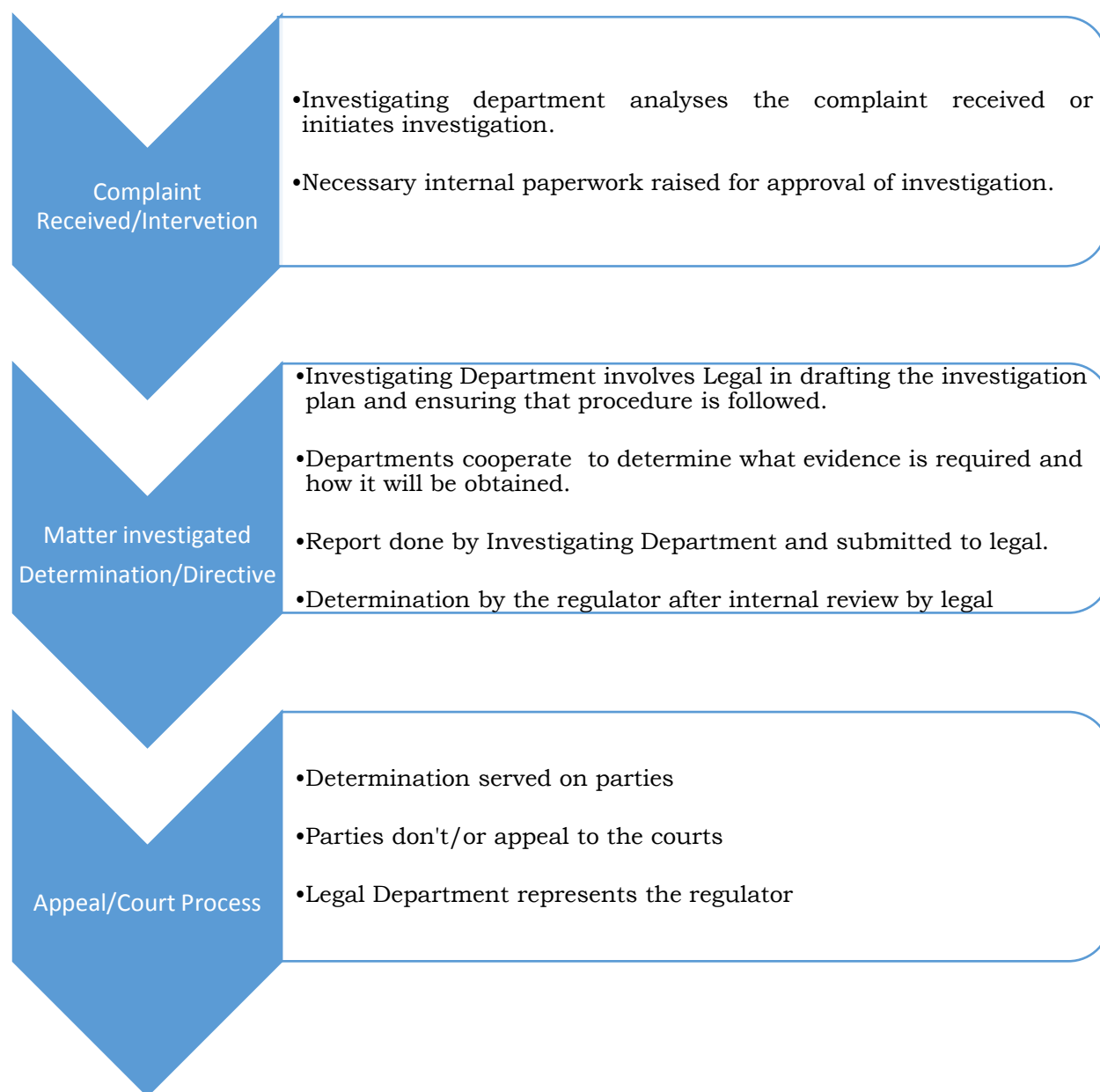
are the mergers and monopolies; and the consumer protection departments. Complaints and other regulatory interventions are usually received or initiated and investigated and concluded by the investigative departments composed of non-legal professionals.

The legal department would only be involved at a later stage and only when there was an appeal by a party or parties not happy with CCPC's findings either through the courts or before the matter is taken to court. The parties may challenge the findings based on several factors such as insufficient evidence, wrong conclusions, or on procedural matters such as the manner in which the evidence was obtained or not having been served the notice of investigation properly.

These challenges were at times successful resulting in cases being lost or closed on simple technicalities rather than on the actual substance of the findings. In order to ameliorate this, CCPC redesigned its workflow and started involving the legal department in the investigations by having them examine the evidence obtained and the conclusions drawn from the said evidence. This has enabled investigative departments to raise the level of investigations and ensure that all the procedures in the law are followed.

Therefore it is proposed that all regulators engage the legal department from the start especially for cases that have the potential of changing the conduct or trading practices in a given sector of the economy or some parties being sanctioned. This is important because parties won't just accept sanctions without challenging them in the courts of law. The diagram below shows the generic stages or workflow of complaint resolution or regulatory intervention until a matter is disposed of. The diagram also shows what is supposed to be done at each stage.

Figure 1: Investigation Workflow



The above model entails that the legal department can steer the investigation to ensure that the investigators do not act outside the law. Mostly the investigative departments are manned by non-legal professionals such as economists and engineers. Whilst these professionals have the technical knowhow of regulation such as economic and investigation tools, they may lack the expert legal knowledge required to ensure that investigations or regulatory interventions are sound at law from the start and can stand up to the scrutiny of the courts of law.

Furthermore the model affords the legal department to be familiar with the investigations and thus be better prepared to argue the cases before the courts of law thus increasing the chances of success. This would in turn translate into the efficient use of resources and effectiveness of the regulators.

3. GOVERNMENT SUPPORT

There is always the threat of regulatory work being rendered impotent due to political pressure. Parties that maybe disadvantaged by the regulators intervention may influence the government to stop the investigations. In that case the regulators should ensure that they demonstrate to governments the welfare gains resulting from the regulators interventions.³ For example the benefits maybe in form of lower prices for goods and services, efficiency gains etc. Regulators should also ensure that they counter the effects of lobbying by firms by engaging in various advocacy programmes aimed at government officials and the general public.

Regulators should have training workshops for officials from the judiciary, legislative and executive to generate the required political support needed to effectively carry out their mandate. The aim should be to inculcate a culture of awareness on the role of regulators in society and the effects of their actions on the welfare of the economy as a whole. This is quite critical as the level of political support seem to determine the allocation of resources to regulators by the government.⁴

Advocacy activities amongst the public are also critical as they would raise the public support regulators need to ensure that their mandate is fulfilled and also help keep the government and the regulators active.⁵ Furthermore,

³ <http://www.oecd-ilibrary.org/docserver/download/4307081ec009.pdf?expires=1456328108&id=id&accname=guest&checksum=EC179EC478FA3E6AB0318BBD219F8202>

⁴ CCPC Strategic Plan:2011-2016

⁵ CCPC, CUTS 2010, Why Should Zambian Consumers be Interested in Competition Policy & Law

once the public are aware and vested in the activities of the regulators, it may lessen the likelihood of interference from the government.

4. Conclusion

Enhanced cooperation between the investigative departments and the legal department would result in positive changes with the regulators increasing their chances of success even before the courts of law. Increased advocacy targeted at the state officials and the general public would ensure that the regulators investigations and interventions are supported and not curtailed.