

# ANNOTATED READING LIST FOR A BODY OF KNOWLEDGE ON INFRASTRUCTURE REGULATION

Developed for The World Bank by:

Mark A. Jamison  
Sanford V. Berg  
Public Utility Research Center  
University of Florida

Revised August 15, 2008

Funding for this project was provided by:



The authors thank Farid Gasmi and José I. Távora, who co-authored the original document with us in 2004, for their important research and contributions. Special thanks are owed to Rossana Passaniti and Cynthia Stehouwer for their organizational and editorial work, and to Janice Hauge, Lynne Holt, Mark Hoekstra, Hamilton Silva, Troy Quast, Juan-Daniel Oviedo, Rich Gentry, and Abhay Dhingra for their research efforts, and Michael Rodriguez for his web design expertise. In addition, the authors thank the members of the 2008 review committee – Martin Rodriguez Pardina, Rohan Samarajiva, Jorry Mwenechanya, and Pippo Ranci – for their advice and recommendations, as well as the World Bank staff and attendees at the original review meetings at Eynsham Hall and Arlie House for their helpful suggestions and comments. The authors take responsibility for all errors and omissions.



## **Chapter VII. Regulatory Process**

### **Introduction**

Recall that a basic problem of regulation is to overcome to the extent possible the asymmetries between the government and the operator.<sup>1</sup> Even if regulatory instruments overcome this asymmetry, it is still important to ensure that the actions of the government and the regulator match the long-term interests of the country's citizens. It may be tempting, for example, for politicians to pressure the regulator to pursue short-term political interests that hurt the longer-term interests of customers of the utility services.<sup>2</sup> To overcome such problems to the extent possible, countries adopt rules for regulation and government institutions that encourage regulation under the law,<sup>3</sup> as well as independence, transparency, predictability, legitimacy, and credibility of the regulatory system, to help ensure that regulation serves the long-term interests of the country.

This chapter addresses these issues. First, it examines institutional design issues, such as the role of the regulator, followed by a review of regulatory decisions, ethics and stakeholder relations are described. Following this chapter's narrative is a list of references, organized by topic.

### **Institutional Design<sup>4</sup>**

Proper institutional design is important for providing confidence to investors and customers that the regulatory process is credible, legitimate, and predictable. Regulation is credible if stakeholders can trust that commitments will be kept. Legitimacy means that the regulator is not captured by the operator or other special interests. Regulation is predictable if regulatory decisions are consistent over time so that stakeholders are able to anticipate how the regulator will resolve issues. Three main elements of institutional design are (1) the regulatory mechanism, (2) the existence of an independent, economically autonomous, well-funded and technically qualified regulatory agency, and (3) accountability mechanisms<sup>5</sup> to prevent favoritisms.

In general the regulatory institution is considered independent if it operates under the law and has arms-length relationships with private interests, arms-length relationships with political branches of government, and organizational autonomy, including economic autonomy. Regulatory agencies are held accountable by having transparency in agency processes and through appeal processes. Commissioners or directors serve in effectively non-political positions.

---

<sup>1</sup> See Chapter I.

<sup>2</sup> This highlights what are in essence two principal-agent problems, one between the government (acting as the principal) and the regulator (acting as the agent) and another between the public (acting as the principal) and the government (acting as the agent).

<sup>3</sup> See Chapter I Section I for information about the economic foundations of law.

<sup>4</sup> See Section A.

<sup>5</sup> See Chapter III for information about regulators sharing information with the public, which helps with accountability.

The two main issues in defining a transparent regulatory process are the institutions to which the regulator is accountable and the set of mechanisms through which accountability takes place. Relevant institutions are the executive and legislative branches of government, a supra regulatory agency, the judges, and qualified consumers associations. Mechanisms for ensuring accountability include allowing stakeholders to appeal agency decisions to the courts, a detailed specification of the tasks to be performed by the regulator, clear rules and deadlines, transparency of the regulatory decisions (publication and reasonable explanation of decisions, existence of consultative bodies), an open regulatory process, existence of feedback procedures, the supervision of regulator actions by auditors and watchdogs, mechanisms of removal when moral incapacity or misconduct is proved, scrutiny of budget, and commissioners or directors serving fixed terms, being subject to restrictions on corruption and conflicts of interest, and being appointed by the government. Transparency promotes intellectual rigor, well-reasoned decision making, and coherent policy, and satisfies parties' right to know the reasoning process.

The three main issues in defining a utility regulator's role are the sector(s) covered, the regulator's role in relation to policymakers,<sup>6</sup> and the regulator's role in relation to other regulatory entities such as the competition agency.<sup>7</sup> Regulatory agencies can be industry-specific, sector wide or multi-sector depending on the size of the industries, scarcity of human resources, political risks, imperfection of decision making process, coordination capacities and the relevance of industry boundary problems. Regional regulatory agencies exist in some countries where legal traditions or a desire to be close to local conditions makes regional bodies desirable. Regulatory agencies are administrative regulatory bodies that act on behalf of the government to remedy market failure. Typical regulatory duties include monitoring network and service availability, standard setting, regulating prices and service quality, supervising and enforcing operator commitments, handling complaints, providing policy advice, monitoring competition, and settling disputes. Regulators may also monitor the financial performance of the sector, conduct auctions and grant concessions, and have some normative functions directly related to issues like safety standards and regulatory procedures. A clear determination of responsibilities and procedures is relevant to successfully perform these tasks. Monitoring of access and competition is a key responsibility of regulatory agencies. This work is often performed in coordination with the country's competition authority.<sup>8</sup> Sometimes regulators are called upon to work with environmental protection agencies.

Some agencies are structured with a board of directors appointed by the executive branch of government, while others are managed by an executive director. Sometimes the legislative branch participates by confirming the proposed directors or even appointing them. For an optimal institutional design directors should be highly qualified and independent of regulated firms, consumers, other stakeholders, and the political powers. Specific expertise is required to deal with diverse and highly specialized issues, so staffing should be based on a strict recruitment process and include an optimal mix of skills, appropriate training programs aimed at strengthening regulatory capabilities. Wide access to quality outsourcing, a sustainable salary

---

<sup>6</sup> This includes the regulator's authority to enforce her decisions.

<sup>7</sup> Section C of the first chapter also covers the role of the regulator.

<sup>8</sup> Chapter II Section B notes the utility regulator's relationship with the competition regulator.

structure, and independent financial sources are also important. To balance economic autonomy a close scrutiny by auditors and legislators is required.

### Reviews and Appeals of Regulatory Decisions<sup>9</sup>

The specific mechanisms and procedures for developing, reviewing and appealing regulatory rules and decisions vary from system to system because they depend on historical and institutional peculiarities, which are often specific for each country. However, general principles apply, including inclusiveness, transparency, and simple methods for citizen participation. In this context, distinctions can be made between the executive, legislative and judicial interventions in the regulatory process as they represent different approaches to pursuing the country's interests. Checks and balances among these branches of government are in order to provide legitimacy and stability to the regulatory system.

An important step in the regulatory process is the choice of instruments, including administrative procedures, specific legislation, contracts and presidential decrees.<sup>10</sup> The choice of instrument affects processes for stakeholder input and appeal. For example, legislation may be used to define the powers of the regulator, agency procedures, and operator obligations and rights, including rights of appeal. Contracts might have different appeal procedures, including to international dispute resolution bodies, and different operators can be treated differently.

Countries often adopt two levels of appeals. The first level is to the regulatory agency itself, where stakeholders can ask the regulator to reconsider a decision. The second level is to an administrative tribunal or the court system, which are sometimes restricted to considering whether the regulator followed the law in making her decision. In some countries courts can also consider whether the regulator was substantively correct in her decision. This involves second-guessing the regulator, so courts sometimes defer to the regulatory agency because the regulator has more specialized knowledge than do the courts. Countries that regulate by license sometimes have another layer of appeal, namely the licensing authority. An appeal to the licensing authority may be triggered if the regulatory decision requires a change to the operating license. Another level of appeal may be to the legislative body or president. These appeals change the laws under which the regulator operates and so are often reserved for problems in the structure of regulation itself.

Some regulatory controversies may be best resolved through alternative dispute resolution processes when traditional means of resolution are costly, time consuming, and unpredictable. Alternative dispute resolution includes:

- Negotiation, which is a voluntary process of discussion without a third party to facilitate;
- Mediation, where a third party or mediator facilitates the process and may suggest a resolution, but may not impose one;
- Arbitration, where the parties voluntarily place in the hands of a third party or arbiter the solution to their dispute, committing themselves to abide by its decision. The

---

<sup>9</sup> See Section B.

<sup>10</sup> See Section H of the first chapter for other information on regulatory instruments.

arbiter is often a collegiate body of persons, with expertise in the matter being disputed.

### Ethics<sup>11</sup>

The regulator often emphasizes ethics to ensure that decisions are impersonal and impartial, and guided by values and reasoning without conflict of interest. Ethical challenges for regulators include the “revolving door,” which is said to occur when the regulator’s decisions are influenced by future employment concerns or past employment relationships. The financial interests of the regulator herself or of her family raise another ethical challenge, if these interests are related to the financial performance of the operator.

To address ethical issues, some countries adopt codes of conduct for regulators, which may restrict the regulator’s future employment, prohibit the receiving of gifts, limit the regulator’s personal investments, and restrict the regulator from being involved in decisions where the regulator cannot maintain fairness or the appearance of fairness.

### Stakeholder Relations<sup>12</sup>

To ensure that the independent agency regulates under the law to serve the collective interests of the stakeholders rather than the interest of one or a small group of stakeholders, independent agencies should have arm's-length relationships with regulated firms, consumers, other stakeholders, and politicians. Examples of mechanisms for ensuring arms-length relationships include appeal processes, transparency, restrictions on corruption and conflicts of interest, and publication of an explanation for every decision. Some countries provide oversight committees or advisory bodies for their regulatory agencies, but these should be approached with caution as they can become instruments of influence for politicians and special interests

Two main aspects of regulatory processes are the existence of mechanisms to receive stakeholders’ inputs and to solve stakeholders’ complaints in an intermediate, administrative body. Regulatory processes should allow stakeholders to present their opinions through open processes like public hearings. Stakeholder confidence can often be enhanced by having well-established, ordered, and open interactions between the regulator and stakeholders.<sup>13</sup> However, formal hearings can be legalistic, costly, and slow, so regulators with a tradition of formal processes have begun using alternative procedures, such as negotiated settlements and arbitration. Some countries have experimented with informal processes, but issues of transparency lead many to add elements of formality.<sup>14</sup>

---

<sup>11</sup> See Section C.

<sup>12</sup> See Section D.

<sup>13</sup> See Chapter III Section L for additional details about sharing information with stakeholders.

<sup>14</sup> One situation where difficult negotiations can occur is in the renegotiation of concessions or licenses. See Chapter II Section C for information on this topic.

## Concluding Observations

The regulatory process is the means by which the public regulates the government and the regulator, and by which the government regulates the regulator. By participating in and observing the regulatory process, insisting on the development of and enforcement of codes of conduct, and constraining regulatory discretion through laws, contracts, and appeals the public seeks to ensure that when the government addresses asymmetries between itself and the operator, that asymmetries between the public's knowledge and objectives and the government's knowledge and objectives do not frustrate the development of effective and efficient utility services.

By participating in and observing the regulatory process, constraining regulatory discretion through laws and appeals, and insisting on the development of and enforcement of codes of conduct, the public seeks to ensure that the government addresses asymmetries between itself and the operator. Transparency and public communication reduce the likelihood that asymmetries between the public's knowledge and objectives and the government's knowledge and objectives will frustrate the development of effective and efficient utility services. World class regulatory commissions utilize in-house training and other techniques for capacity building. A number of resources that can be utilized for capacity building are available from regional regulatory associations and universities.

## Case Studies

Florida Public Service Commission, Inside the Florida PSC 2003, 2003.

Indiana State Ethics Commission, Code of Ethics for the Indiana Utility Regulatory Commission, Executive Order #93-12. See Indiana State Ethics Commission at <http://www.state.in.us/ethics/laws/IURC-EO.html> (downloaded August 26, 2003).

National Consumer Council, "Consumer Representation in Public Utility – A Review by the National Consumer Council." PD 02/E/96. London: NCC, 1996.

New Jersey Board of Public Utilities, "Code of Ethics."

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Office of Utility Regulation, Jamaica, Annual Report & Financial Statements 2002/03, 2003.

Ofgem, "Financial Penalties – The Process," 2003.

OFWAT, Having Your Say: Ofwat's code of practice on consultations, January 2002.

OFWAT, Ofwat Complaints Procedure, March 2003.

OFWAT, Ofwat Annual Report 2003-2004, 2004.

Samarajiva, Rohan, “Alternative Regulatory Practices and Alternative Dispute Resolution,” in Legal Aspects of Regulation in South Asia, S. K. Sarkar and Vivek Sharma, eds., New Delhi, India: Tara Energy Research Institute, 2002, pp. 36-44.

Sundar, S. and S. K. Sarkar, Framework for Infrastructure Regulation, Tata Energy Research Institute, New Delhi, India, 2000.

Uganda Communications Commission, Business Plan 2000-2002, 2001.

Table 7. Chapter VII Cases by Topic Area

	Cases												
	Florida Public Service Commission, 2003.	Indiana Ethics Commission	National Consumer Council, 1996.	New Jersey Board of Public Utilities	Nigerian Communications Commission, 2003.	Office of Utility Regulation, Jamaica, 2003.	Ofgem, 2003.	OFWAT, 2002.	OFWAT, 2003	OFWAT, 2004.	Samarajiva, 2002.	Sundar and Sarkar, 2000.	Uganda Communications Commission, 2001.
<u>Chapter VII. Regulatory Process</u>													
A. Institutional Design Issues	X				X	X						X	X
B. Development, Review and Appeal of Regulatory Rules and Decisions					X		X					X	
C. Ethics		X		X									
D. Stakeholder Relations	X		X		X	X		X	X	X	X	X	X

## References

### A. Institutional design issues

#### Core References

Brown, Ashley C., Jon Stern, and Bernard Tenenbaum with Defne Vencer, Handbook for Evaluating Infrastructure Regulatory Systems, Washington, D.C.: The World Bank Group, 2006.

Establishes metrics and models for evaluating regulatory systems. Provides short, mid-level, and in-depth evaluations. Explains independence models, transitional regulatory systems, and the difference between governance and substance, independence.

Eberhard, Anton, "Infrastructure regulation in developing countries: an exploration of hybrid and transitional models," Paper prepared for the African Forum of Utilities Regulators 3rd Annual Conference, 15-16 March 2006, Windhoek, Namibia.,

Gives examples of models for regulatory institutions. Analyzes how these designs have impacted performance.

Guasch, J. Luis, and Pablo Spiller, Managing the Regulatory Process: Design, Concepts, Issues, and the Latin America and Caribbean Story, Washington, D.C.: The World Bank Group, 1999, Chapter 3.

Describes the basic regulatory instruments and provides examples of where they have been used. Considers legislation, presidential decrees, and contracts.

Levy, Brian, and Pablo T. Spiller. "A Framework for Resolving the Regulatory Problem," in Regulations, Institutions, and Commitment: Comparative Studies in Telecommunications, edited by Brian Levy and Pablo T. Spiller. Cambridge, U.K.: Cambridge University Press, 1996, pp. 1-35.

Describes characteristics of infrastructure monopolies and how they affect optimal institutional design, that is to say, the optimal organizational answer to the nature of transaction costs arising from government opportunism or dynamic inconsistency of investment policies. Examines how developing countries' institutional endowments affect how they should design their regulatory governance. Defines institutional endowment, considering the legislative and executive institutions (mechanisms for appointment and for making and implementing laws and regulations), judicial institutions (mechanisms for appointment and for resolving disputes), customs and accepted norms, contending social interests, and administrative capabilities.

## **Sectoral References**

### ELECTRICITY

Bergara, M., W. Henisz, and P. Spiller, "Political Institutions and Electric Utility Investment: A Cross-Nation Analysis," September 1997. Revised version published in *California Management Review* 40(2): 1998, pp. 18-35.

Finds relevant evidence on the relationship between country institutional characteristics and investment in electricity sector. The study is based on a sample of 87 countries.

## **Other References**

Guasch, J., J. Laffont, and Straub. "Renegotiation of Concession Contracts in Latin America." Mimeo, 2002.

Finds evidence on the relationship between institutional characteristics, like bureaucracy quality, and contract renegotiation. The study is based on a data set of 1,000 concessions awarded in Latin-America countries.

Ogus, Anthony, "Comparing Regulatory Systems: Institutions, Processes, and Legal Forms in Industrial Countries." Working Paper No. 35, Centre on Regulation and Competition, University of Manchester, U.K., 2002.

Provides a general comparison of regulatory institutions across countries.

### **1. Definitions of regulatory independence and institutional mechanisms to promote this (appointments, funding etc.)**

## **Core References**

Berg, Sanford, Ali Nawaz Memon, and Rama Skelton, "Designing an Independent Regulatory Commission." Working Paper 00-17, Public Utility Research Center, University of Florida, 2000.

Provides general guidelines and recommendations for introducing for refining an independent regulatory commission.

Estache, Antonio, "Designing Regulatory Institutions for Infrastructure – Lessons from Argentina." Note no. 114 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, May 1997.

Provides an analysis of the mutually related concepts of independence and economic autonomy. Argues that: (1) Regulators should operate independently from political pressures—from ministries and from the regulated enterprises, private or public; (2) Regulators should be appointed on the basis of professional rather than political criteria and should have formal protection from arbitrary removal during their term; (3) The appointment process should involve both the executive and the legislature, to ensure proper checks and balances; and (4) Regulatory agencies must first have their own resources.

Smith, Warrick, “Utility Regulators: The Independence Debate.” Note no. 127 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Analyzes the extent of discretion and the relationship between independence and accountability. Argues that regulatory independence is favored when there is a distinct legal mandate independent of ministerial control, professional criteria prescribed for board appointment, executive and legislative branches involved in appointment process, fixed term appointments and protection from arbitrary removal, staggered terms, autonomous budget and reliable sources of funding.

Tenenbaum, Bernard, “The Real World of Power Sector Regulation.” Note no. 50 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, June 1995.

States that the notion of an independent regulatory commission does not mean that the regulatory entity needs to be truly independent, since independence does not mean the absence of accountability. Furthermore, independence does not imply, either, that the regulatory entity should have complete authority over all possible decisions affecting the utility sector. Divisions of responsibilities are typical. Argues that what ultimately matters is not whether the regulatory entity is independent, but whether the government can give a credible commitment to investors and consumers. An alternative to independence is a completely specified regulatory regime that leaves little or no discretion to the regulatory entity, like the approach taken in Chile and Peru.

## **Sectoral References**

### ELECTRICITY

Brown, Ashley C., and De Paula, Ericson, “Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector.” World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4. Washington, D.C., December 2002.

Explains that the funding of regulatory agencies is central to the balance between independence and accountability. Describes balancing accountability, independence, predictability, and dependability. Argues that there must be a legal prohibition against diversion of regulatory fees to other use by the Government.

Dubash, Navroz K., “The New Regulatory Politics of Electricity in India: Independent, Embedded, or Transcendent?” National Institute of Public Finance and Policy, New Delhi, India, 2005.

Examines cases of independence, capture, and interactions for regulatory agencies in India. Finds risks in regulatory developments in India, but also opportunities for regulation to transcend politics.

Johannsen, Katja Sander, “Regulatory Independence in Theory and Practice – A Survey of Independent Energy Regulators in Eight European Countries,” February 2003.

Provides a comparative assessment of regulatory independence of eight European electricity regulators (Austria, Denmark, Greece, Ireland, Italy, Luxembourg, Northern Ireland and Spain). Finds a significant variation in both the institutional design and the role played by independent regulatory authorities.

## TELECOMMUNICATIONS

Min, Wonki, “Telecommunications Regulations: Institutional Structures and Responsibilities.” Working Paper no. 237, Organization for Economic Co-operation and Development (OECD), Washington, D.C., 26 May 2000.

Describes how independence can be strengthened if: (1) The regulator is structurally separate from the Ministry; (2) “The head of the regulatory body is appointed by the head of the Government (i.e. President or Prime Minister) with the approval of the legislative body;” (3) The regulator is not a single person (e.g. a director general), but is a collegiate body (e.g. a commission); (4) The commissioners have fixed, staggered terms; (5) Only the courts can overturn the decisions of the regulatory body; and (6) The regulator has autonomy in making personnel changes. Also discusses the relationship of the regulator to the policy-making body.

## TRANSPORTATION

Babikci, Dzmitry and Stephan von Crammon-Traubadel *Regulating Public Automobile Transport: The Major Issues* Institute for Privatization and Management Research Center, Minsk, Belarus, 2005.

Focuses on the need for independent regulatory bodies to provide sound regulation for local transportation markets and analyzes public automobile transport in Belarus in terms of social and economic importance. As the structure of the sector changes with the development of private providers, the system of state regulation of public transportation needs to be reformed as well. The two major types of regulations needed are regulations on technical and safety standards, and market regulations.

Estache, Antonio Privatization and Regulation of Transport Infrastructure: Guidelines for Policymakers and Regulators World Bank Institute Development Study, World Bank, Washington, D.C., 2000.

Focuses on enhancing the abilities of regulators to oversee the liberalization of transport policies and on strengthening of the role played by private operators and investors in transport infrastructure. The book has two parts. The first part provides an overview of why economic regulation is important. The second part covers four subsectors: airports, ports, railways, and roads. The following are discussed for each subsector: relevance from the viewpoint of a regulator; main privatization and regulation trends; price and quality regulation issues that characterize the sector, and performance indicators that the sector's regulators should be able to rely on to be effective in their jobs.

### **Other References**

Baudrier, Audrey, "Independent Regulation and Telecommunications Performance in Developing Countries." Working Paper, University of Paris Panthéon-Sorbonne and Autorité de Régulation des Télécommunications, September 2001.

Defines independence and finds that it has a positive impact on the growth rate of telecommunications penetration.

Besley, Timothy, and S. Coated, "Elected versus Appointed Regulators – Theory and Evidence," NBER Working Paper W7579. Cambridge, MA: National Bureau of Economic Research, 2000.

Contrasts direct election with political appointment of regulators, arguing that when regulators are appointed, regulatory policy becomes

bundled with other policy issues the appointing politicians are responsible for. Discusses how lack of voter interest affects regulatory policy outcomes.

Stern, Jon, " Effective Utility Regulation and Independent Regulation: What Makes an Independent Regulator Independent?" *Business Strategy Review* 8(2), 1997, pp. 67-74.

Argues that formal regulatory independence and accountability is not always a necessary condition for effective regulation (though where feasible and effective it carries potential economic benefits). Explains how an informal or advisory regulatory system may work better in some situations.

### **Key Words**

Accountability, Independence, Transparency, Dependability, Budgets, Funding

## **2. Agency responsibilities (sectoral coverage, tier of government, functions, etc.)**

### **Core References**

Estache, Antonio, "Designing Regulatory Institutions for Infrastructure – Lessons from Argentina." Note no. 114 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, May 1997.

Provides a description of the design of regulatory institutions for gas and power, water and telecommunication industries in Argentina. Discusses institutional design issues and summarizes the main functions and structural characteristics of the Energy Regulatory Agency.

Florida Public Service Commission, Inside the Florida PSC 2003, 2003.

Describes the Florida Public Service Commission's responsibilities, authority, and practices, including relationship with other governmental bodies and sector coverage.

Kahn, Alfred, The Economics of Regulation: Principles and Institutions, Cambridge, MA: MIT Press, 1988, vol. I, Chapter 2.

The three fundamental roles of regulators are to regulate the quality of service, the rate level, and the rate structure. Explains regulatory techniques and issues in each of these three roles.

Smith, Warrick, "Utility Regulators: Roles and Responsibilities." Note no. 128 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Examines the utility regulator's sector scope, its role in relation to ministers, and its role in relation to other regulatory entities. Makes a case for multi-sector agencies by arguing that they allow the pooling of scarce expertise, reduce the risk of industry and political capture and of inconsistency in regulatory approaches across sectors, and they help to deal with the blurring of industry boundaries.

## **Sectoral References**

### ELECTRICITY

Brown, Ashley C., and Ericson De Paula, "Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector." World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, Washington, D.C., December 2002.

Examines regulatory roles in granting concessions, conducting auctions, and sector planning. Roles in auctions include setting the terms and conditions and ensuring that auctions are conducted fairly and transparently. Describes potential conflicts of interest in having regulators involved in concessions and auctions. Also describes key considerations in deciding whether regulators should have roles in sector planning.

### TELECOMMUNICATIONS

ICT Regulation Toolkit. Washington, D.C.: infoDev and the International Telecommunications Union, 2007, Modules 1 and 6.

Describes telecommunications regulators' roles as implementers of policies set by the government.

### TRANSPORTATION

Huff, Lee and Louis Thompson Techniques for Railway Restructuring Policy, Research Working Paper number 380, World Bank, Washington, D.C., 1990.

Defines what is involved in restructuring railways so that they behave more like market driven enterprises. The question addressed is not whether the railway should be restructured, but how. Policies should focus on ensuring that the roles and responsibilities defined will actually be realized in law or enforceable agreement.

### **Other References**

Delfino, Jose, and Ariel Casarin, “The Reform of the Utilities Sector in Argentina.” Discussion Paper No. 2001/74, World Institute for Development Economics Research, (WIDER), United Nations University, Helsinki, 2001.

Provides an assessment of the welfare changes and the distributional impact associated with the privatization of telecommunications, electricity, natural gas, and water and sewerage services of the Gran Buenos Aires area.

Laffont, J., “Multiregulation and Development,” World Bank Development Report, Mimeo, 2000.

Develops an agency framework for the analysis of sector specific and multi-sector regulatory agencies in developing countries.

### **3. Mechanisms for ensuring accountability of regulatory decisions (due process, record keeping, content of written decisions, etc.)**

### **Core References**

Brown, Ashley C., and Ericson De Paula, “Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector.” World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, Washington, D.C., December 2002.

Explains the importance of transparency. States that the critical element on the reasoning and integrity implicit in the regulatory process is that no substantive opinion is rendered without full explanation, that directors clearly reveal the thought process by which they arrived at their decision(s) and opinion(s). Disagreements should be over matters of substance and not a matter of how fair or honest the process itself was. Explains that transparency also demands that all of the evidence, be in fact, opinion, or argument, that was presented to the decision makers in an effort to persuade them be publicly exposed. Absent compelling circumstances, no information should be withheld from public view.

Estache, Antonio, “Designing Regulatory Institutions for Infrastructure – Lessons from Argentina.” Note no. 114 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, May 1997.

Holds that accountability requires transparency in the regulatory agency’s decision-making process, and clear, simple procedural rules. Most important are: a) Rules setting deadlines for decisions; b) Rules

requiring detailed justifications and nonpolitical reviews of decisions; c) Processes to ensure that all concerned parties have the opportunity to express their views in public hearings and to appeal decisions; and d) Rules to permit the removal of regulators in cases of proven misconduct. States that another key factor in accountability is the number of regulators.

Office of Best Practice Regulation, Best Practice Regulation Handbook, Australian Government, 2006.

Describes practices for regulatory impact analysis and for involving stakeholders.

### **Sectoral References**

TRANSPORTATION

Heggie, Ian and Piers Vickers Commercial Management and Financing of Roads World Bank Technical Paper number 409, World Bank, Washington, d.C., 1998.

Commercialization of roads requires four basic building blocks: a) establishing responsibility for managing roads; b) creating ownership of roads by involving users in their management; c) stabilizing road finance by securing an adequate, continual flow of funds; and d) strengthening management of roads by introducing sound business practices

### **Other References**

Paul, Samuel, “New Mechanisms for Public Accountability: The Indian Experience.” See <http://www.undp.org/governance/docsaccount/new-mechanisms-accountability.pdf>.

Provides an assessment of some initiatives to enhance public accountability in India, including the creation of citizen charters in important public services, legislation to facilitate the public’s right to information, and experiments in e-governance in sectors and departments serving business and citizens in general.

### **Key Words**

Information, Transparency, Independence, Accountability, Regulation, Process

#### **4. Structuring, staffing, funding requirements**

## **Core References**

Academy for Educational Development, “Fiscal Autonomy Review: Comparative Study of Regulatory Fiscal Autonomy Around the World,” October 20, 2003.

Compares fiscal autonomy of regulatory institutions around the world. Findings consider funding sources, how agency actions affect funding, funds stability, and funding mechanisms.

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Describes the organization of the Nigerian Communications Commission and its strategic plans.

## **Key Words**

Agency structure, Training, Accountability, Independence, Ethics

## **B. Development, review and appeal of regulatory rules and decisions**

### **1. Mechanisms for ensuring effective decision-making**

#### **Core References**

Baldwin, R., and M. Cave, Understanding Regulation: Theory, Strategy, and Practice, New York: Oxford University Press, 1999, Chapters 7, 9, and 10.

Examines the benefits and costs of regulation, including how countries evaluate regulatory agency costs and benefits. Considers when self-regulation may be effective.

Black, Julia, “Using Rules Effectively” in Regulation and Deregulation, edited by C. McCrudden. Oxford: Oxford University Press, 1990.

States that command and control regulation implies a proper use of rules. Discusses the relevance of using rules effectively and setting standards, in order to achieve legitimacy and avoid counterproductive regulation.

Holburn, G., and P. Spiller, “Interest Group Representation in Administrative Institutions: The Impact of Consumer Advocates and Elected Commissioners on

Regulatory Policy in the United States.” UCEI Energy Policy and Economics Working Paper No 002, University of California-Berkeley, 2002.

Estimates the effect of consumer advocates on commissions and regulatory policy.

Hossain, Kamal, “Review and Appeal of Regulators’ Decisions in the South Asian Context,” in Proceedings of the SAFIR Workshop on Regulatory Strategy, S. K. Sarkar, editor, New Dehli, India: Tara Energy Research Institute, 2001, pp. 17-24.

Contrasts the perspectives, expertise, and roles of regulators and judges. Further considers regulatory process and the scope for review.

Smith, W., “Utility Regulators – Decision making, Structures, Resources, and Start-Up Strategy.” Public Sector Note no 129, World Bank, Washington, D.C., 1997.

Examines the decision making structure, the strategy for creating regulatory agencies and the role of financial and human capital.

### **Sectoral References**

#### GAS

Darr, Frank P., “A State Regulatory Strategy for the Transitional Phase of Gas Regulation,” *Yale Journal on Regulation* 12 (1): 1995.

States regulators should adopt a system of advanced planning and incentive rate setting. With planning utilities and regulatory commissions can reduce the level of regulatory risk inherent in the changing environment.

#### TRANSPORTATION

World Bank *Promoting Intermediate Means of Transport: Approach Paper* Sub-Saharan Africa Transport Program Working Paper, number 20, World Bank, Washington, D.C., 1996.

Puts forward a five-stage decision-making model for the designer/planner of projects or programs to improve mobility in rural areas.

### **Key words**

Cost-benefit analysis, Standards setting

## 2. Choice of regulatory instrument

[NOTE: Readers should cross reference this subsection with Chapter I Section G.]

### Core References

Guasch J., and P. Spiller, “Regulation and Private Sector Development in Latin America.” Washington, D.C.: World Bank, 1995.

Establishes a direct relationship between instruments and regulatory credibility. Regulators legitimacy and regulation itself are achieved through different regulatory instruments, for instance, administrative procedures, contracts and so on.

Guasch, J. Luis, and Pablo Spiller, Managing the Regulatory Process: Design, Concepts, Issues, and the Latin America and Caribbean Story, Washington, D.C.: The World Bank Group, 1999, Chapter 3.

Describes the basic regulatory instruments and provides examples of where they have been used. Considers legislation, presidential decrees, and contracts.

McCubbins, M. D., R. G. Noll, and B. R. Weingast, “Administrative Procedures as Instruments of Political Control,” *Journal of Law, Economics and Organisation* 3: 1987, pp. 243-277.

Developing a critique of judicial review literature, recommends the use of administrative procedures as a regulatory instrument that enhances the effectiveness of regulation.

### Sectoral References

ELECTRICITY, GAS, AND WATER

Prosser, T., Law and the Regulators, Oxford, U.K.: Clarendon Press, 1997, Chapters 4-6.

Draws lessons from the liberalization process and examines regulation both without and through competition. Includes chapters dedicated to electricity, water and gas.

TELECOMMUNICATIONS

ICT Regulation Toolkit. Washington, D.C.: infoDev and the International Telecommunications Union, 2007, Modules 1 and 6.

Describes structures and practices of telecommunications regulatory agencies.

Thatcher, Mark, "Regulatory Reform and Internationalization in Telecommunications, in Industrial Enterprise and European Integration edited by J. Hayward. Oxford, U.K.: Oxford University Press, 1995, pp. 239-269.

Builds upon the idea of convergence in telecommunications reform around the world. Examines the new framework that emerged after privatisation in Europe, focusing on the interaction between the changing strategies of governments and public telecommunication operators at the national level, and regulatory reform in the European Union context.

#### TRANSPORTATION

Paulina, Beato Blanco *Road Concessions: Lessons Learned from the Experience of Four Countries Best Practice Study*, Inter-American Development Bank, Washington, D.C., 1997.

Analyzes issues and challenges related to private toll road developments in Latin American countries. Explores new schemes to mitigate some problems that often appear in road concessions. Illustrated with the regulations of four countries and four concession contracts.

Kopicki, Ron and Louis Thompson Best Methods of Railway Restructuring and Privatization CFS Discussion Paper Series, number 11, World Bank, Washington, D.C., 1995.

Provides context and guidance on restructuring railways. Addresses structural issues associated with rail enterprise reform, the design of specialized intermediary institutions that carry out much of the work of railway restructuring, and the management techniques that are appropriately adapted to railway reform and restructuring. Focuses on "best" methods and includes seven case studies: Japan National Railway, New Zealand Railways, Argentina Railways, Swedish Railways, British Railways, and railroads in the United States, and Canadian Railways.

#### Other References

Landes, W., and R. Posner, "The Private Enforcement of Law," *Journal of Legal Studies* 4: 1975, pp. 1-46.

Examines the main arguments in the debate on public and private enforcement, and law effectiveness.

Stewart, R., "Regulation and the Crisis of Legalism in the US," in Law as an Instrument of Economic Policy, edited by Terence Daintith. European University Institute, Series A, Law, No. 7, Firenze: Badia Fiesolana, 1988.

Examines the U.S. debate over the use of administrative regulation and alternative instruments to achieve economic objectives, as well as the relationship between regulation and legalization.

Williamson, Oliver, "Franchise Bidding for Natural Monopoly," in The Economic Institutions of Capitalism. London: Collier Macmillan, 1987.

Using the cable television industry as an example, argues that franchise bidding for natural monopolies suffers from severe contractual disabilities in the presence of technological and market uncertainties.

### **Key words**

Contracts, Franchises, Nationalisation, Privatisation, Proceduralisation, Regulatory rules, Public-Private Partnerships

### **3. Role of government policy arm, investors, consumers, and other stakeholders in regulatory decision-making**

#### **Core References**

Goetz, A. M., J. Gaventa et al., "Bringing Citizen Voice and Client Focus into Service Delivery." Institute of Development Studies Working Paper no, 138, University of Sussex, U.K., 2001.

States that there are three different forms of consumer participation in the regulatory process: consultation (dialogue and information sharing), representation (forms of participation in the decision making process), and influence (accountability mechanisms to incorporate people's preferences).

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Describes the NCC's values, mission, and responsibilities. For each area of responsibility, describes purpose, targets, and programs.

Describes how the NCC engages stakeholders and relates with other governmental bodies.

Prosser, T. *Law and the Regulators*. Oxford: Clarendon Press, 1997.

Provides an assessment of juridification of regulatory processes in UK and the US. In this context the author discusses the role of the regulator and its relationship with other actors.

Smith, W., “Utility Regulators–Roles and Responsibilities,” Public Sector Note no. 128. Washington, D.C.: World Bank, 1997.

Examines four factors that determine the optimal responsibility allocation between ministers and regulatory agencies: the relevance of technical and political criteria, the existence of conflicts of interest, the strength in specific expertise, and the capabilities of the regulatory agency.

Ugaz C., “Consumer Participation and Pro-Poor Regulation in Latin America,” WIDER Discussion Paper No 2002/121, United Nations University, Helsinki, 2002.

Examines the regulatory experience of Latin American countries with different institutional endowments, focusing on the different mechanisms and outcomes of consumer participation in regulatory processes.

### **Key words**

Liberalization, Privatization, Regulatory agency, Sector Policy, Standard setting

## **4. Appeals of Regulatory Decisions: Legal mechanisms and internal procedures**

### **Core References**

Baldwin, R., and M. Cave, Understanding Regulation: Theory, Strategy, and Practice, Oxford: Oxford University Press, 1999, Chapter 22.

Presents several mechanisms to improve openness, transparency, and accessibility. Discusses the relevance of having a single or a collegiate regulator.

Brown, Ashley C., and Ericson De Paula, “Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector.” World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, December 2002.

Explains that having the Government itself hear appeals of regulatory decisions removes any benefit from having an “independent” regulatory agency and in many jurisdictions parties can appeal Government decisions to the courts. Special or pre-existing tribunals hear regulatory appeals in England, India, and Bolivia. Argues that unless the special tribunal is judicial, its decisions could be subject to judicial review. Direct appeals to the courts have the benefit of fulfilling constitutional or other legal rights available to citizens, however, where independent regulation is a new concept the judiciary is often unprepared to deal with such matters.

Green, R., “Checks and Balances in Utility Regulation – The U.K. Experience.” Note no. 185 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, May 1999.

Describes U.K. appeal process.

Rodriguez-Ibeas, Roberto, “Regulatory Enforcement with Discretionary Fining and Litigation,” *Bulletin of Economic Research* 54(2): 2002.

States that enforcement can be performed in different styles and can use a variety of mechanisms. Some of them concern the application of fines in an administrative or, in other cases, in a judicial process. Discusses how litigation and fines involve basic rules and principles that help protecting consumers.

Sundar, S., S. K. Sarkar, and Purna Kohli, “Regulatory Interface with the Judiciary: The Indian Experience,” in Legal Aspects of Regulation in South Asia, S. K. Sarkar and Vivek Sharma, eds., New Delhi, India: Tara Energy Research Institute, 2002, pp. 95-112.

Examines how regulatory agencies differ from government and the judiciary. Further discusses relationships among regulatory agencies, government, and the judiciary, considering judicial intervention and jurisdiction.

### **Key Words**

Administrative bodies, Appeal bodies, Litigation, Accountability

- 5. Judicial review of regulatory agencies, differences between appeal and review processes, and developing and implementing processes to reduce likelihood of review and appeal**

## **Core References**

Baldwin, R., and M. Cave, Understanding Regulation: Theory, Strategy, and Practice, Oxford: Oxford University Press, 1999, Chapter 5.

Examines the issue of who regulates. Discusses roles of legislative bodies, courts, central government departments, and local authorities.

Buscaglia, Edgardo and William Ratliff. Law and economics in developing countries. Stanford, Calif.: Hoover Institution Press, 2000, Chapters 3-4.

Examines the link between legal systems and reform of economic institutions and practices in developing countries. Makes recommendations on judicial review and dispute resolution.

Storms, Scott R., "Indiana Utility Regulatory Commission Rulemaking to Enhance Regulation," October 2003.

Outlines IURC's authority and opportunities for appeal.

## **Other References**

Fordham, Michael, Judicial Review Handbook, 3rd ed. London: Hart Publishing, 2001.

Provides a general overview of judicial review of administrative decisions and discusses the convenience of reviewing legality and opportunity of regulatory procedures.

Hawkins, Keith, The Uses of Discretion. Oxford: Clarendon Press, 1992.

Explores some of the central issues involved of discretion by government organizations. Presents a variety of analyses of by lawyers and social scientists.

Newman, P. (ed.), "Regulatory Agencies and the Courts" in Palgrave Dictionary of Law & Economics, vol 3. London: Macmillan, 1998.

Explains concepts, procedures and problems confronted in the judicial review of administrative decision-making process.

Richardson and Genn, Reviewing Judicial Review: Administrative Law and Government Action. Oxford: Oxford University Press, 1994.

Says that judicial review is examined through the lens of administrative law principles and examines several issues, including discretion, interdiction or arbitrariness and opportunity control.

## 6. Alternative dispute resolution procedures

### Core References

Bourdeaux, C., R. O'Leary, and R. Thornburgh R., "Control, Communication, and Power: A Study of the Use of Alternative Dispute Resolution of Enforcement Actions at the U.S. Environmental Protection Agency," *Negotiation Journal* 17(2): 2001, pp. 175-191.

Focuses on a specific agency, and provides analysis of alternative dispute resolution mechanisms.

Buscaglia, Edgardo. Law and economics in developing countries. Stanford, Calif.: Hoover Institution Press, 2000.

Examines the link between legal systems and reform of economic institutions and practices in developing countries. State that poverty largely results from flaws in legal institutions. Recommend substantive and procedural legal factors for developing countries, including recommendations on judicial review and dispute resolution.

Shapiro, Sidney A, and Randy S. Rabinowitz, "Punishment versus Cooperation in Regulatory Enforcement: A Case Study of OSHA," *Administrative Law Review* 49 (4): 1997.

Focuses on the debate between the compliance and deterrence approaches for enforcing regulation, in terms of punishment and cooperation. Alternative procedures to resolve disputes are discussed, regarding an administrative procedure case.

### Key Words

Arbitration, Alternative Dispute Resolution, Conciliation, Mediation

## C. Ethics

### 1. Main principles

### Core References

Brown, Ashley C., and Ericson De Paula, “Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector,” World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, December 2002.

Explains that since regulatory expertise is in high demand by regulated companies, disparities in compensation between the regulators and the regulated provide incentives for a “revolving door” that can create, at a minimum, the appearance of impropriety, if not constituting an impropriety itself, and can damage the credibility and effectiveness of regulation. There are two elements of the equation, the first being competitive compensation packages and the second being reasonable ethical standards.

Indiana State Ethics Commission, Code of Ethics for the Indiana Utility Regulatory Commission, Executive Order #93-12. See Indiana State Ethics Commission at <http://www.state.in.us/ethics/laws/IURC-EO.html> (downloaded August 26, 2003).

Establishes a code of conduct for the Indiana Utility Regulatory Commission. Commissioners will maintain the independence of the commission, avoid impropriety and the appearance of impropriety, and be faithful to the law. A commissioner is disqualified from a decision if the commissioner is biased or has a conflict of interest.

OECD, Building Public Trust: Ethics Measures in OECD Countries, PUMA Policy Brief No. 7, September 2000.

Describes common ethics criteria in OECD countries. Discusses reasons for ethical conduct. Scores criteria according to frequency of application. Describes approaches for developing and implementing ethical practices.

Shell, G. Richard, Bargaining for Advantage. New York: Penguin Books, 1999.

States that while deception is part of negotiation, ethical slips can cause you to lose credibility. The three frameworks for thinking about these contradictory factors and ethical issues in general are the Poker School, the Idealist School, and the Pragmatist School. Techniques for coping with unethical tactics are also discussed.

## **Sectoral References**

TELECOMMUNICATIONS

Wu, Irene, and Cathleen Xue, "Decision-Making Procedures and Ethics Rules: The Practical Enablers of Integrity and Impartiality in Telecommunications Regulation," U.S. Federal Communications Commission, Washington, D.C., August 15, 2002.

Summarizes decision-making and codes of ethics by the Canadian Radio-television and Telecommunications, Hong Kong's Office of the Telecommunications Authority, the U.K.'s Office of Telecommunications, and the U.S. Federal Communications Commission.

### **Other References**

Hirschman, Albert O., "Against Parsimony: Three Easy Ways of Complicating some Categories of Economic Discourse," *American Economic Review* 74: 1984, pp. 89-96.

Provide explanations and definitions of ethical conduct.

Wilson, J., Bureaucracy: What Government Agencies Do and Why They Do It. New York: Basic Books, 1989.

Explains the difference between ethical conduct and bureaucratic conduct.

### **Key Words**

Compensation, Regulatory agencies, Ethics

## **2. Conflicts of interest**

### **Core References**

Brown, Ashley C., and Ericson De Paula, "Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector," World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, December 2002.

Explains rules that an agency can adopt to limit conflicts of interest, including public disclosure of financial interests, prohibition on the ownership of any regulated operator, recusal from decisions where the regulator is personally affected by the issue or someone close to the regulator is personally affected, and procedures for the agency to deal with commissioners or staff who have a conflict of interest.

Indiana State Ethics Commission, Code of Ethics for the Indiana Utility Regulatory Commission, Executive Order #93-12.

Establishes a code of conduct for the Indiana Utility Regulatory Commission. Commissioners and their family members shall refrain from having economic interests with the regulated operators.

### **3. Developing and implementing a code of ethics**

#### **Core References**

Indiana State Ethics Commission, Code of Ethics for the Indiana Utility Regulatory Commission, Executive Order #93-12.

A state ethics commission established this code of conduct for the Indiana Utility Regulatory Commission. Commissioners will maintain the independence of the commission, avoid impropriety and the appearance of impropriety, and be faithful to the law. A commissioner is disqualified from a decision if the commissioner is biased or has a conflict of interest.

Independent Commission against Corruption, “Practical Guide to Corruption Prevention.”

Describes what a code of conduct should contain and provides guidelines for developing a code of conduct.

New Jersey Board of Public Utilities, “Code of Ethics.”

The Board established this code of ethics, which addresses outside employment and interests, financial interests in regulated companies, acceptance of gifts, use of official position or information, outside activities, post-employment, conferences and conventions, and representation before and contracts with the state government. An ethics commission is responsible for enforcement.

OECD, Principles for Managing Ethics in the Public Service: OECD Recommendation, PUMA Policy Brief No. 4, May 1998.

Summarizes standards that a code of ethics should meet.

OECD, Building Public Trust: Ethics Measures in OECD Countries, PUMA Policy Brief No. 7, September 2000.

Describes common ethics criteria in OECD countries. Discusses reasons for ethical conduct. Scores criteria according to frequency of application. Describes approaches for developing and implementing ethical practices.

Winston, Kenneth, “Moral Competence in the Practice of Democratic Governance,” in For the People: Can We Fix Public Service, edited by John D. Donahue and Joseph S. Nye, Jr. Washington, D.C.: Brookings (forthcoming).

Explains moral competence, which it defines as “the set of individual attributes and dispositions (latent moral resources) that make for good governance.” Identifies virtues for a public servant, namely “fidelity to the public good, the duty of civility, respect for citizens as responsible agents, proficiency in social architecture, and prudence.”

### **Key Words**

Ethics, Conflicts of Interest, Transparency

## **D. Stakeholder relations**

### **1. Managing relations between the Government, investors, consumers, and other interest groups**

#### **Core References**

Estache, Antonio, “Designing Regulatory Institutions for Infrastructure – Lessons from Argentina.” Note no. 114 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Explains that accountability requires transparency in the regulatory agency’s decision-making process, and clear, simple procedural rules. Processes to ensure that all concerned parties have the opportunity to express their views in public hearings and to appeal decisions are important.

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Describes NCC’s relationships with government and stakeholders.

Smith, Warrick, “Utility Regulators: The Independence Debate.” .Note no. 127 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Explains the mechanisms of independence, such as having a legal mandate distinct from the ministry, appointment criteria, checks and balances in appointments, fixed terms, protections from arbitrary removal, staggered terms, and earmarked funding.

Smith, Warrick, “Utility Regulators—Decisionmaking, Structures, Resources, and Start-up Strategy.” Note no. 129 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Examines practices for making decisions that are “well informed and accepted as fair and legitimate” by consumers, regulated firms and other stakeholders. Key regulatory processes and advisory bodies are explored.

Uganda Communications Commission, Business Plan 2000-2002, 2001.

Describes UCC’s relationships with stakeholders.

### **Sectoral References**

#### ELECTRICITY

Brown, Ashley C., and Ericson De Paula, “Strengthening of the Institutional and Regulatory Structure of the Brazilian Power Sector,” World Bank Report on the PPIAF Project for Brazil Power Sector, Task 4, December 2002.

Describes potential conflicts of interest in having regulators involved in concessions and auctions. Also describes key considerations in deciding whether regulators should have roles in sector planning. Explains the importance and mechanisms of transparency.

#### TELECOMMUNICATIONS

ICT Regulation Toolkit. Washington, D.C.: infoDev and the International Telecommunications Union, 2007, Modules 1 and 6.

Describes telecommunications regulators’ roles as implementers of policies set by the government.

#### TRANSPORTATION

Farlam, Peter *Working together: assessing Public–Private Partnerships in Africa Potential of Public Private Partnerships (PPPs) in Africa* South African Institute of International Affairs (SAIIA), University of the Witwatersrand (Wits), South Africa, 2005.

Using eight case studies, examines the potential of Public Private Partnerships in Africa. Finds that those partnerships that have been most

successful in Africa have been characterised by thorough planning, good communication, strong commitment from both parties and effective monitoring, regulation and enforcement by government. Recommendations for African governments and the private sector drawn from the case studies.

### **Key Words**

Stakeholders, Transparency, Public, Government, Consumers

## **2. Role of advisory bodies**

### **Core References**

African Forum for Utility Regulation, “Background Note: Consumer Involvement in Utility Regulation,” 2001 (second meeting at Accra, Ghana).

Addresses issues in establishing advisory bodies, including identifying existing groups and determining whether the group should be formal or informal, the types of members, the appointment process for members, meeting schedules, remuneration, geographic scope, and sector.

Green, R., “Checks and Balances in Utility Regulation—The U.K. Experience.” Note no. 185 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1999.

Explains that in the U.K., parliamentary select committees oversee the regulatory agencies. The committees usually aim for unanimous reports. There is a committee for each ministry. The committees invite written and oral evidence. Some committee members build up great expertise, but the committees also appoint expert advisers, often academics, to assist them.

OFWAT, Ofwat Annual Report 2003-2004, 2004.

Describes use of advisors for technical issues, Ofwat’s service in advisory groups, the setting up of new advisory groups, and working with existing advisory groups.

Smith, Warrick, “Utility Regulators—Decisionmaking, Structures, Resources, and Start-up Strategy.” Note no. 129 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Describes best practices for advisory bodies.

### **Sectoral References**

#### TRANSPORTATION

Estache, Antonio, Manuel Romero, and John Strong The Long and Winding path to Private Financing and Regulation of Toll Roads Policy, Research Working Paper, number 2387, World Bank, Washington, D.C., 2000.

Provides a broad overview of issues at stake from the viewpoint of both privatization teams and regulators responsible for supervising contractual commitments of private operators and the government, to each other and to users. Because most road projects require investments with long amortization periods and because many projects do not generate enough demand to become self-financing through some type of user fee or toll, the road sector remains in the hands of the public sector to a much greater extent than other transport activities. Nevertheless, there are many ways of getting the private sector involved in toll roads, thus reducing public sector financing requirements for the sector.

### **Key Words**

Advisory bodies, Transparency, Stakeholders

### **3. Handling of consumer grievances and relations with consumer representative bodies**

### **Core References**

African Forum for Utility Regulation, “Background Note: Consumer Involvement in Utility Regulation,” 2001 (second meeting at Accra, Ghana).

Provides an overview of alternative approaches for: (a) fostering consumer awareness of the regulatory system; (b) dealing with consumer complaints; (c) involving consumers in regulatory decisions, and (d) designing regulatory institutions. Holds that credibility with consumers will depend in part on how regulators deal with consumer complaints. Even complaints that may not be valid are opportunities for regulators. States that consumers should understand their rights and obligations, and

the role of the regulatory agency. No single communication medium will be ideal for all consumers on all issues. Procedures for handling complaints can be structured in different ways.

Gillis, William. "State Commissions in Transition: The NARUC Consumer Issues Challenges," *National Regulatory Research Institute Quarterly Bulletin* 20(2): 1999, pp. 171-176.

Describes the importance of consumer education and how state commissions in the U.S. can cooperate in this area. Items for collaboration include establishing electronic listserves, compiling consumer education materials, publishing surveys, cataloguing consumer education resources, and establishing shared goals.

OFWAT, Ofwat Complaints Procedure, March 2003.

Informs customers how to contact Ofwat and make a complaint. Further describes Ofwat's complaint handling procedures and standards.

### **Key Words**

Complaints, Consumers

## **4. Institutional strategies to solicit stakeholders' input**

### **Core References**

Goetz, A. M., J. Gaventa et al., "Bringing Citizen Voice and Client Focus into Service Delivery." Institute of Development Studies Working Paper no. 138, University of Sussex, U.K., 2001.

Examines case studies of public sector services and their performance, especially in their service to the poor. Examines both voice and responsiveness mechanisms.

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Describes NCC's processes of public hearings and other means of obtaining stakeholder input.

Smith, Warrick, "Utility Regulators – Roles and Responsibilities." Note no. 128 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Describes approaches for obtaining stakeholder input.

### **Sectoral References**

WATER

OFWAT, Having Your Say: Ofwat's code of practice on consultations, January 2002.

Describes Ofwat's consultation processes, including notice, timetables, and documents.

OFWAT, Paying for Water Customer Research. Accent Research for WaterVoice and Ofwat September 2003.

Summarizes research on customers' attitudes towards paying their bills, what encourages customers to pay bills, operator techniques for managing debt, and customer awareness of the water and sewage bill.

### **Other References**

Palast, Greg, Jerrold Oppenheim, and Theo MacGregor. Democracy and Regulation - How the Public Can Govern Privatised Essential Services. London: Pluto Press, 2003.

Examines U.S. regulation in international context, considering how decisions are made by public debate in a public forum.

## **5. Public communication strategies**

### **Core References**

Intermedia, "Goal-Oriented Communications Strategies," Intermedia Communications Training (undated).

Identifies keys for communications strategies, including building trust, knowing the media's goals, meeting the public's and government's goals, and meeting the operator's and other stakeholders' goals.

Intermedia, “Holding a Press Conference,” Intermedia Communications Training (undated).

Identifies key steps and strategies for holding a press conference. Considers defining the message, timing, audience, and conference format.

Intermedia, “Making Allies with the Media,” Intermedia Communications Training (undated).

Identifies techniques for working with the media, including using word pictures, identifying what is new, understanding the angle, developing a lead, accuracy, deadlines, balance, trust, and supporting material. Also provides ground rules.

Nigerian Communications Commission, Five-Year Strategic Management Plan: 2003 – 2007, 2003.

Describes NCC’s processes of public hearings and other means of obtaining stakeholder input.

Smith, Warrick, “Utility Regulators—Decisionmaking, Structures, Resources, and Start-up Strategy.” Note no. 129 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Explains importance of open regulatory processes. Discusses approaches in the U.S., U.K., Argentina, and Bolivia.

### **Key Words**

Press, Journalists, Communication, Stakeholders, Transparency, Public

## **6. Public hearings**

### **Core References**

“Consultation and Participation: Overview” in Best Practices in Dealing with Social Impact of Hydrocarbon Operations, Washington, D.C.: World Bank Group.

States that consultation is the process of receiving input from all stakeholders in a decision. Best practices are reviewed. Practical recommendations include placing consultations in the appropriate legal, cultural, and linguistic contexts; using facilitators; providing background; recognizing that there may be local factions; providing resources for

public participation; ensuring that interpreters are present; and dealing with gender issues. Managing a consultation involves planning, testing proposals, involving subject matter experts, training personnel, maintaining overall responsibility, coordinating related activities, building trust, reaching out to normally underrepresented groups, managing expectations, involving appropriate levels of government and NGOs, and preparing an action plan.

Smith, Warrick, “Utility Regulators—Decisionmaking, Structures, Resources, and Start-up Strategy.” Note no. 129 in Public Policy for the Private Sector. Washington, D.C.: World Bank Group, 1997.

Describes processes in U.S., U.K., Argentina, and Bolivia.

### **Key Words**

Transparency, Hearings, Stakeholders

## **7. Negotiation techniques and strategies**

### **Core References**

Fisher, Roger, and William Ury, Getting to Yes: Negotiating Agreement Without Giving In. Middlesex, England: Penguin, 1981.

Says to focus on and talk about the interests of the negotiators, not their positions. Identify interests by examining the parties’ situations and the effects of their choice options. Identify common interests and areas of mutual gain. Identify your BATNA (Best Available Alternative to a Negotiated Agreement) and the BATNA of the other parties. Work to improve our BATNA and to decrease the other parties’ BATNAs.

Shell, G. Richard, Bargaining for Advantage. New York: Penguin Books, 1999.

Says an information-based bargaining approach should be used, focusing on planning and preparation, careful listening, and attending to the “signals” the other party sends through conduct. Six foundations of effective negotiation include your personal bargaining style, your goals and expectations, authoritative standards and norms, relationships, the other party’s interests, and the diverse ingredients that go into the most important of all bargaining assets: leverage. The four stages of the negotiating process itself are preparation, information exchange, proposing and concession making, and commitment.

Thompson, Leigh, The Mind and Heart of the Negotiator. New Jersey: Prentice-Hall, 2001.

Says the use of power and persuasion comes primarily from the negotiator's BATNA, which must continually be improved. Other sources of power include information, social networks, physical appearance, and persuasion tactics. Creativity and problem solving can overcome fixed-pie perceptions. The key challenges in multiparty negotiations are the development and management of coalitions, the complexity of information management, voting rules, and communication breakdowns. Also explains importance of and techniques in assessing BATNAs and describes negotiation skills.

**Key Words**

Negotiation, Coalition, Stakeholders