

Regional co-operation among regulators

Conference report

Conference of the Club of Regulators

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Regional co-operation among regulators

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Physical, economic and institutional integration and connection are driving the need for greater cooperation between regulators. Key factors include the development of trans-national infrastructure, integrated markets and global players, as well as the need to implement common rules, principles and policies, and mutualise resources at regional level. Cooperation takes a variety of forms and presents a number of challenges, notably in terms of governance, legal frameworks and resource use.

1st roundtable: coordinating regulations and public policies

Cooperation in competition law and policy

Antonio Capobianco

Senior Competition Expert, International cooperation in competition law and policy, OECD

There has been a huge increase in cooperation between competition authorities over the last thirty years. Significant cooperation has developed in this area due to a large increase in the number of competition authorities and jurisdictions with a competition law, the rise of cross-border competition cases and, more generally, globalisation. A disconnect has arisen between the business world, which operates on a cross-border international basis, and legal frameworks, which continue to operate primarily at national level. Cooperation can take the form of harmonisation but is also increasingly seen as cooperation on a case-by-case basis.

Global networks such as the OECD Competition Committee and the International Competition Network support enhanced cooperation. The memberships and approaches of these networks vary in line with their priorities. Regional networks also offer a forum for competition authorities but tend to focus on enforcement.

In practice, most cooperation occurs bilaterally, underpinned by inter-governmental memoranda of understanding and formal mechanisms, notably the increasingly prevalent second-generation cooperation agreements that enable the exchange of confidential information without the need to see prior consent by the owner of the information, through information gateways. Nevertheless, informal cooperation and information-sharing between jurisdictions remains common and continues to be grounded on basic principles of trust and confidence.

Formal cooperation brings benefits but it can be time-consuming, slow and onerous in an environment where timeliness is key, particularly with respect to effective enforcement. Cooperation faces practical challenges, such as human resources and languages, and is often subject to legal constraints. The inability to exchange confidential information on cases, for example, often presents a significant obstacle to effective cooperation. Agencies often require cross-border investigative assistance to manage cases often involving multiple countries; this form of cooperation too can be difficult to put in place because of legal constraints. The European Competition Network (ECN) is a prime example of how effective cooperation frameworks can successfully support cross-border competition regulation.

There is scope to develop increasingly multilateral cooperation frameworks and activities in order to rationalise enforcement, resource use and the recognition of decisions across borders.

CIS competition authorities' cooperation & Eurasian Economic Union

Anatoly Golomolzin

Deputy Head, Russian Federal Antimonopoly Service & CIS competition authorities' cooperation & Eurasian Economic Union

The Russian Competition Authority is a multi-sectoral and multi-functional regulator with control over competition law. It has extensive first-generation bilateral agreements with authorities from other countries, as well as second-generation agreements that are particularly useful when working with BRICS.

A number of agencies and working groups were established in 2006 to support special investigations into competition law in the CIS. Key targets included passenger air travel, telecommunications, oil and oil products, food retail and pharmaceuticals. An assessment framework ensured that all regulatory bodies shared information and took decisions in a consistent way. This approach, which was validated by all CIS countries, has significantly improved competition and regulation in target areas. Joint investigation between competition authorities, introduced in 2010, has markedly improved efficiency in enforcement.

Some of the most interesting results were achieved in the field of oil and oil products through a 2011 multinational working group chaired by the competition authorities of Austria and Russia. Discussions covered pricing on relative markets, the monitoring and analysis of wholesale and retail markets, and the experience and methods of application of competition, competition law and commercial infrastructure. Detailed reviews have been conducted for other target areas, again in cooperation with international competition and regulatory experts, and new areas are being explored, notably housing construction, raw materials and state aid in the agricultural sector.

This activity is undertaken in cooperation with international agencies and companies. It is supported by agreements such as the recently signed Treaty of the Eurasian Economic Union, which enables members to achieve more significant results through second-generation information sharing.

OECD Regulatory Policy Committee

Nikolai Malyshev

Head of the Regulatory Policy Division, OECD

The work of the OECD Regulatory Policy Committee is defined by a recommendation or 'soft law' that sets out the steps governments could take to improve their law-making. Before 2012, it focused on tools of regulatory management and governance. International regulatory cooperation emerged as a key challenge during this period and, in 2013, a framework of thirteen approaches to this issue was developed. Complete integration in the form of super-national regulators emerged as the strongest form of cooperation with cross-border information exchange emerging as the softest. Further research was undertaken to help the OECD understand the nature of these forms of cooperation and identify ways in which associated instruments, norms and standards could be improved.

Over the last three years, a diverse group of around fifty international organisations has been meeting as part of this process. Strong commonalities emerged between these organisations despite their different mandates. In particular, they tend to work upstream on analysis, data collection, best practice and the creation of normative instruments but are relatively passive regarding the implementation and evaluation of those norms. Furthermore, most of their agreements and recommendations are non-binding. Enforcement is also generally soft, which limits the potential to demonstrate the value of this work.

Relative to domestic jurisdictions, international organisations tend to be relatively weak in terms of stakeholder participation beyond their direct membership. International organisations often underperform relative to domestic jurisdictions in terms of impact, ex post evaluation, and critical assessment of regulatory and administrative burdens. There is clear potential for improvement here.

Trans-governmental networks (TGNs) of regulators are a relatively new construct, the vast majority having developed in the last 10 to 15 years. Many of them have very small secretariats and lack capacity to evaluate the instruments they develop. The OECD is launching new research into TGNs to illustrate how their extra-governmental status limits their ability to make and enforce laws. As they do not generally work under the direct mandate of national governments, they tend to be surrounded by loose, non-binding legal structures. Alongside 'pure' TGNs that have no connection to national governments, 'hybrid' TGNs with a degree of state involvement are starting to emerge, notably in finance and health.

It is interesting to note that jurisdictions use all of the tools at their disposal to achieve international regulatory cooperation. Nevertheless, attempts to develop harmonised legal norms and frameworks are often subject to inter-border friction between regulatory agencies due to a failure to harmonise enforcement procedures as well as regulations. A better understanding of enforcement activity could, therefore, support greater international cooperation and advanced agreements.

Cooperation in the financial sector

François-Louis Michaud

Deputy Director General of Micro-Prudential Supervision IV, European Central Bank

Central banks are required to cooperate on a broad range of global financial activities. This process originated from a need to stabilise macro-economic positions around gold and foreign exchange but it has evolved to cover broader regulation and supervision of financial intermediaries. International staff secondments and discussions have been taking place since the 1920s. The development of global financial markets accelerated in the 1990s and, in Europe, culminated with the introduction of the banking union in 2014.

Cooperation is driven by the need to underpin cross-border trade and create a consistent regulatory framework for financial activities. It has three broad objectives: to create a level playing field for large institutions; to enable regulators to better understand the activities of global organisations across multiple jurisdictions; and to respond to global financial crises with a view to maintaining or restoring stability.

In practice, cooperation occurs in three phases. First, the financial regulators gather to agree on standards. Second, these standards are integrated into national or regional legislation covering the sector. As such, standards must be realistic and aligned with legislators' priorities, otherwise they will not be transposed into the respective national legislations. Third, the degree and quality of implementation and compliance is evaluated by peers from elsewhere in the financial sector. Peer pressure plays an important role in ex post implementation.

Speed and timeliness are key challenges as it can be difficult for all parties to reach a common understanding of risks and issues. This was seen with diverging analyses of sub-primes and securitisation at the start of the 2000s. It can also be difficult to obtain a holistic understanding of highly complex macro-economic environments. Participants must agree on the broad aims of the standards that they are trying to introduce, and must also consider how changes driven by micro-economic aims will affect the wider system. This is key to ensuring success and an actual implementation of the standards: while immediately after a crisis there is in general broad agreement for developing new or better standards, regulatory fatigue and pushback tend to increase overtime. Third parties often question the legitimacy of "unelected bureaucrats" to influence national policy and financial environments in this way. An answer to this is that standard setters operate within strict limits, starting with the mandate they have received from the political sphere to develop standards in a given area and ending with the transposition of the standards in positive law (which does not happen if policymakers disagree!). Additional complexity is created by the fragmented financial environment where different supervisory and regulatory activities are dealt with by different stakeholders.

1st roundtable: Discussion

Alberto Biancardi

As well as studying the coordination of competition authorities, it would be interesting to explore possible interactions between regulation and planning, particularly in sectors such as water and energy where an independent authority is active.

Jean-Yves Ollier

That is a key element of cooperation but it may be specific to infrastructure regulation.

François-Louis Michaud

In the banking sector, 'phasing in' is used to give institutions time to plan and adapt their business models so that regulatory rules can achieve the intended effect within the intended timeframe.

Chiara Caccinelli

To what extent is cooperation between competition authorities based on a prior assessment that the markets in those countries are sufficiently similar to merit a common response?

Antonio Capobianco

The objective is consistency in the outcome, rather than identical outcomes. When there are differences in market structures, jurisdictions and competitive dynamics it is possible to have different enforcement outcomes across jurisdictions. However, competition authorities should seek to implement remedies that do not conflict with those imposed elsewhere. As such, it is important that agencies discuss solutions to shared concerns in order to provide businesses with legal certainty and clarity around their cross-border activities.

Does your research take account of how regional influences affect implementation?

Nikolai Malyshev

Discussions around the future of our research are ongoing. We are interested in regional proximity as a political and economic factor that affects international cooperation. When mutual recognition agreements are successful in providing access to markets that are regulated in different ways, this tends to be due to regional proximity and common cultural factors.

How are regulators working to share human resources and exchange knowledge between sectors?

Jean-Yves Ollier

Central banks have shared knowledge and human resources for almost a century. Regulators in some areas see exchanges of human resources as an important element of cooperation.

Nikolai Malyshev

Inter-agency cooperation is useful but it tends to occur on an ad-hoc basis. More systematic cooperation would be useful and there is potential to go much further in certain areas.

François-Louis Michaud

Most of the staff in central banks and regulators are seconded from their financial body on a temporary, rotating basis. In Europe, there is a major programme to encourage national authorities to send staff to the European Central Bank and other bodies for a few years. As well as exchanging personnel, it is important to encourage staff to rotate function and gain insight into other parts of the market.

2nd roundtable: coordinating regulators in network industries

Regulators can be active in a single sector or multiple sectors. They can have responsibilities for competition, benefit from different levels of experience and history, and face problems ranging from investment to pricing. Levels of cooperation and coordination with other regulations and institutions vary significantly, driven by availability and also by appetite.

The European Water Regulators (WAREG)

Alberto Biancardi

President, European Water Regulators (WAREG) & Commissioner, Italian Regulatory Authority for Electricity Gas and Water (AEEGSI)

Water regulators across Europe are facing similar problems, primarily the need for huge investments and better environmental safeguards. These challenges and the unusual status of water as a shared resource and a necessary and common good, can strain dialogue between stakeholders, regulators and politicians. In addition, European norms for water are vague, providing only general principles for economic regulation, and detailed information on enforcement is lacking. To develop a shared response to these challenges, the network of European Water Regulators (WAREG) was created in 2014. WAREG is an open network with 24 members and three observers. It collaborates with partners outside Europe.

WAREG has four key objectives: to exchange best practices and information; to provide specialised training and promote knowledge exchange; to encourage cooperation with a view to maintaining infrastructure investment, good quality services and consumer protection; and to promote open dialogue with relevant organisations and institutions, both regionally and internationally. Most of WAREG's activities are undertaken by subject-specific task forces, with the support of two permanent working groups focused on institutional and regulatory matters.

This approach has strengthened institutional relationships and collaboration across the European water sector and with international bodies. A considerable amount of information has been collected and published on topics including industry structures, governance frameworks, customer engagement and tariff methodology. An analysis of affordability has been conducted and another on water efficiency is underway. The 2017 work plan is focusing on the role of regulators in defining investment priorities, the advantages of independent regulation of water and wastewater services, and stakeholder engagement.

The Energy Regulators Regional Association (ERRA)

Märt Ots

Chairman, Energy Regulators Regional Association (ERRA) & General Director, Estonian Competition Authority

The Estonian Competition Authority is a rare example of a multi-sectoral regulator that is also a competition authority. Its responsibilities include competition, energy, water and railways for Estonia's 1.4 million citizens. It is a member of numerous international and regional regulatory networks.

The Energy Regulators Regional Association (ERRA) is an inter-institutional organisation established in 2000 and registered in Hungary. It aims to improve national energy regulation in member countries; foster the development of stable regulators with autonomy and authority; improve cooperation; and facilitate the exchange of information, research, training and experience. It has a democratic structure based on a general assembly of members and a strong, permanent secretariat. ERRA is open to energy regulators from around the globe and currently has 30 full members.

Four standing committees are tasked with delivering detailed work plans in: licensing and competition; economic regulation, particularly tariffs and pricing; customers and retail markets; and subjects specific to the bi-annual meetings of directors. ERRA also organises conferences and workshops.

ERRA operates a tariff database, which gathers official data on electricity and natural gas in member countries. It also conducts member-to-member projects including twinning, internships and ad-hoc consultancy, hosts a regulatory research award, and runs a range of popular training courses. As a result of this active programme, membership is growing and the international network is increasingly successful.

The Mediterranean Energy Regulators (MEDREG)

Veronica Lenzi

Research and Scientific Manager, Mediterranean Energy Regulators (MEDREG)

MEDREG is a diverse association that brings together 25 electricity and gas regulators and ministries from 21 countries in the Mediterranean region. MEDREG was founded in 2007 as an informal working group and has grown into a fully-fledged association under Italian law. MEDREG aims to: promote progressive market integration and regulatory harmonisation; encourage development that is environmentally and financially sustainable; support shared initiatives in areas such as infrastructure investment and development; promote capacity development; and foster cooperation, collaboration and information exchange among members. MEDREG's role is particularly important given the political issues that often affect countries in the south of the region. Its recommendations to members are non-binding.

MEDREG has a representative general assembly operating under a 'one country, one vote' rule which works with the support of a permanent secretariat with five employees. Five working groups cover institutions, consumers, electricity, gas and renewables. There is also a task force to coordinate the work MEDREG performs in the context of the Union for the Mediterranean (UfM) Energy Platforms, which involve regulators, business actors and think tank active in the Mediterranean electricity, gas and renewables sectors. MEDREG is funded primarily by the European Commission with additional funds from membership fees and in-kind contributions from members.

MEDREG produces a range of tools including reports, studies and benchmarking. It also supports case studies, peer-review activities, training and capacity building, institutional partnerships, public consultations, and the coordination and facilitation of bilateral projects. Outputs include the drafting of regional best practice guidelines and regulatory frameworks; analysis of regulatory implementation; the development of a common regulatory culture in the region; and the provision of ad-hoc technical assistance to regulators in the south of the region. This approach has been successful. For example, it has enabled MEDREG to support the development of feed-in tariffs and certificates of origin in Algeria; a twinning programme with regulators in Spain and Austria is now supporting the development of renewables. In Egypt, MEDREG helped to set up and train a new, independent gas regulator and advised on issues relating to licence fees, unbundling and certification.

The three main challenges faced by MEDREG are: to provide efficient technical support that favours energy exchange and infrastructure projects; to increase consumer-related activities, particularly those affecting vulnerable customers; and to raise the profile of its deliverables and recommendations.

The experience of the Mexican ASEA

Carlos de Regulès

Executive Director, Mexican National Agency for Industrial Safety and Environmental Protection of the Hydrocarbons Sector (ASEA)

Mexico has been going through a profound energy reform process over the last two years. This has led to the creation of a number of new institutions, including ASEA, the safety and environmental protection regulator for the oil and gas sector, in 2014. Practical collaboration with other regulators has been of fundamental importance to its success.

Regulation is the art of striking the right balance between the risks and benefits of an activity in order to compensate for market failures. Knowledge, expertise and insight are obtained through discussions and exchanges between peers. As such, pertinent collaboration with other regulators is vital if concrete challenges are to receive successful responses.

ASEA has a very broad scope with responsibility for issuing regulations, evaluating projects, conducting inspections, and applying enforcement along the full length of the hydrocarbon chain from exploration to delivery at the pump. Thanks to effective collaboration with different partners, the organisation is now fully operational. It has 459 employees, has issued almost 20 new regulations and conducted over 1,200 inspections. Collaboration between domestic economic and technical regulators has had a positive impact on regulatory recommendations, resource management, conflict resolution and institutional design within the sector.

North America is a fully integrated region in terms of energy production and distribution. Prudential regulation, especially in the environmental field, lies at the heart of this successful integration and of the North American Free Trade Agreement (NAFTA). Recent Mexican energy reforms highlighted the need to fill in a number of regulatory gaps in order to provide the market with consistently high standards and efficient, risk-based regulation across the board. US and Canadian experience in regulating safety in offshore activities and environmental practice in unconventional resource exploitation has successfully informed the Mexican approach to these areas. Intense collaboration across North American means that Mexican regulation in these areas is consistent with, and more complete than, the rest of the region.

When NAFTA was being negotiated, the US and Canada insisted that Mexico overhaul its environmental institutions and regulations to create a level playing field across the region. The challenge now lies over the border with the new US administration and its support for environmental deregulation. As a result, ASEA has shifted its approach and is focusing on advocacy, with a view to persuading the US that industry does not seek deregulation per se, but requires a steady regulatory position.

Regulatory collaboration has different dimensions, notably intra- and inter-sector, covers different scopes, such as bilateral and multilateral, and involves different actors, ranging from national agencies to think-tanks. As such, a regulatory environment can be compared to an ecosystem. Ecosystems provide three lessons for regulators. First, that individual species collaborate successfully only if they have a stake in the outcome. Second, that individual species are stronger when the system is strong. Third, that systems are strong and resilient only if they are diverse. Cooperation works best when it is pragmatic, simple, useful and aimed at tackling a specific problem.

The Network of Telecommunications Regulators in Francophone Countries (FRATEL)

René Dönni Kuoni

Network of Telecommunications Regulators in Francophone Countries (FRATEL) & Director of the Telecom Services Division, Swiss Federal Office of Communications

The Federal Office for Communications in Switzerland is responsible for telecoms, postal services, and radio spectrum and media regulation. It currently holds the presidency of FRATEL, a global network which brings together telecoms regulators from 48 member countries, primarily from Africa and Europe. One of the main ideas behind FRATEL is to create a 'north-south' dialogue.

The charter of FRATEL lays out a number of objectives: to establish and strengthen cooperation and exchanges amongst members; to promote the exchange of information and experience; to contribute to training and technical cooperation; and to support the study of questions relating to telecommunications. Membership is free to regulators and institutions in francophone countries; observers and external experts are also welcome. There is an annual meeting and an annual technical seminar, but there are no permanent working groups. FRATEL does not charge membership fees and has no independent financial resources but a permanent executive secretary is provided by ARCEP.

FRATEL provides a channel for members to meet other specialists and interested third parties and to exchange best practices. The network also conducts studies into topics of common interest and has instigated a two-year Masters in the regulation of the digital economy and telecoms. Members of the network are united by their common linguistic background rather than by regional ties. Given members' varying degrees of maturity and the different contexts within which they operate, the network is obliged to be flexible: members are free to choose their degree of involvement and the extent to which they implement recommendations. FRATEL enables and supports regular exchanges with institutions such as the World Bank and the European Commission and with private sector organisations. It enjoys close links with the ITU's Global Symposium for Regulators (GSR).

The Telecommunications Regulators of the Mediterranean area (EMERG)

Antoine Samba

Head of international affairs, French Telecommunications Regulatory Authority (ARCEP) & Co-operation between Telecommunications Regulators of the Mediterranean area (EMERG)

EMERG is a platform of telecommunications regulators from EU member states and countries in the Mediterranean region. It aims to provide a joint analysis of progress and development of the markets and the regulatory frameworks in the region; to promote coordinated approach on regulatory methodology and on an harmonisation with the principles of the EU framework; support knowledge transfer and information exchange between countries; and to foster cooperation between EU member states and countries from the European area. There is a decision-making plenary assembly and a rotating presidency. The Chairman relies on resources provided by its NRA with the support of a Permanent Secretariat and an external consultant for the production of reports and deliverables.

EMERG produces an annual report and conducts a benchmarking exercise every year to highlight commonalities and differences between member countries. Workshops, on topics such as licensing and auctioning or Net-neutrality, help to foster cooperation. Memoranda of understanding and joint meetings with other regulatory bodies further strengthen collaborative relationships. EMERG does not have its own budget but is funded through contributions from national regulators and European Commission grants. Its EU funding is forecast to end in the next two years. As a result, members are considering whether the network should seek to develop a more formal structure or become entirely informal.

2nd roundtable: Discussion

Stéphane Saussier

There has been a lot of discussion about the benefits of formal and informal cooperation, but little mention of the risks and drawbacks, such as lobbying and stronger regulators imposing their views on others. Do the positives always outweigh the negatives?

Eric Brousseau

This morning's discussion provided many examples of cooperation among regulators but it would also be interesting to discuss the interplay between networks and sector actors.

Märt Ots

The presence of a competition regulator and/or a sector regulator influences the way that lobbying groups behave. It is generally easier to be a competition regulator because lobbying activity is weaker. Sector regulators can experience heavy political pressure, especially in high-profile areas like energy and telecoms.

Alberto Biancardi

The regulatory environment in Europe is relatively heterogeneous. Benchmarking, rather than ranking, is an effective way to obtain insight into the activities of regulators and lobbyists. A common set of tools at European level would help to centralise the dialogue, interactions and activities in this area.

Jean-Yves Ollier

It is a delicate balance to achieve the right level of inclusiveness and representation during regional cooperation. It is important to develop two-way exchanges, especially in regions with diverse membership.

Carlos de Regulès

Inclusiveness is one of the best things that can happen to interactions between regulators and regulated entities: all levels of the food chain must be included if conversations are to be relevant. Mexico is seeking to develop a regulatory observatory to assess the effectiveness of regulatory outcomes.

René Dönni Kuoni

Although there is a risk of stronger players imposing their will during collaboration, the alternative – being alone – is even less desirable. It is also always useful to hear the opinions of interest groups, whether they represent industry, consumers or third parties.

Antoine Samba

An external interest group will participate in the next FRATEL seminar. The network has been progressively opened to third parties without affecting the quality of our exchanges, debates and conclusions.

François-Louis Michaud

It is important to define ex ante what we hope to achieve through cooperation, beyond simply ensuring a more level playing field, learning from each other, and driving efficiency. Defining measures for success from the outset increases accountability and makes it easier to respond to critics.

Veronica Lenzi

MEDREG is independent but EU-funded, which means it must balance pressures from its funder and from a membership that does not necessarily share the same objectives. Clearly defining aims from the outset and regularly reviewing the approach taken helps to achieve this balance. Cooperation among regional players is vital. It increases accountability and helps to channel resources in the most productive direction.

Anatoly Golomolzin

How does MEDREG approach issues around competition and pricing? What can FRATEL teach us about broader cooperation outside regional networks?

Veronica Lenzi

MEDREG is already taking action on energy competition and prices, even though not all markets in the network are currently open. A biannual observatory report benchmarks prices and highlights market developments in different national electricity markets. In the future, it could be possible to create an association of Mediterranean competition authorities but MEDREG's current focus is limited to energy.

René Dönni Kuoni

The FRATEL network has a single focus – telecommunications – and a unique cultural perspective which it would not be easy to replicate, even for languages such as Spanish and English that also have significant global reach.

Jean-Yves Ollier

ARCEP supported the creation of a francophone network of energy regulators in 2016. The shared cultural background of members is generating benefits and making it easier for some countries to access the regulatory environment and address and understand specific questions.

