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Utility Regulatory Development
And Capacity Building in the Caribbean

Legal and Institutional Development of the
Public Utilities Commission of Guyana

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1. Objectives of Utility Regulation

Before reviewing and evaluating the legal and institutional frameworks of regulatory agencies it would be useful to consider what is meant by “regulation” and define the objectives established for such agencies. This will provide benchmarks by which the various approaches to the frameworks being discussed will facilitate achievement of the functions for which the agencies have been established.

Regulation is direct government control over specific sectors of the national economy. The government may decide to exercise such control for a variety of reasons – for instance, the pharmaceutical industry is regulated in order to protect public health; ownership of firearms is restricted in the interests of public safety; etc. Regulation is often imposed on enterprises which have a monopoly on, or are dominant in, the provision of goods and services, with the objective of protecting consumers from the abuse of dominance by the providers. In a competitive market the consumer can change the provider of goods or services if he/she is dissatisfied with the price or quality being offered. Consumers dependent on monopoly providers have no such choice, and, in the instances of basic goods or services, need to be protected against exploitation.

Until fairly recently utility services were generally considered internationally to be natural monopolies, that is, that competition in the provision of those services was not economically advantageous. Some form of regulation has therefore been exercised in most countries to limit the potential of utilities to place consumers at undue disadvantage, especially in the pricing of the services. In the Caribbean the majority of utility operators continue to enjoy exclusive rights to the provision of the services they offer. These operators often are state-owned and the executive arm of the government exercises the functions of owner, operator and regulator.

However, if regulation of utility services is undertaken by the ministry with responsibility for the relevant sector(s), private entrepreneurs are likely to consider that circumstance to be a disincentive to investment. Private investors need to be able to earn

revenues that will cover the costs of providing the services and provide a return on the capital invested. They will therefore desire a regulatory regime independent of the executive arm of the government, as the perceived disadvantages of direct government regulation are many, including:-

- Inconsistent pricing policies (prices may not reflect costs), often influenced by political objectives.
- Short term focus, normally not extending beyond the next election.
- Unpredictability, especially after regime changes.
- Lack of transparency in decision making.
- Limited accountability to stakeholders.
- Budgetary constraints affecting the quality of decisions.
- Bureaucracy

The increasing incidence of utility services in the Caribbean being provided by private investors has been a significant factor in the establishment of most of the regulatory agencies represented in OOCUR. The objectives sought in establishing these agencies may therefore be summarized as:

- Protecting consumers from abuse by monopoly or dominant service providers. Consumers should be entitled to a quality of service commensurate with the right of the operator to compensation for providing the service.

- Allowing the service providers to earn revenues that will cover the costs of efficiently providing the services and realize a reasonable return on the capital invested.
- Limiting the role of the executive arm of the government in the provision of utility services.

2. The Legislative Framework

If the regulatory agency is to achieve its intended objectives the legislative framework within which it operates must be so established to allow it to operate as a competent and independent institution. In order to accomplish this the organization must be independent and autonomous and accountable and transparent in its operations.

2.1 Regulatory Independence

If the regulator is to limit the role of the executive arm of the government in the provision of utility services, the legislative framework must empower the agency with the appropriate degree of independence. To refer to such a regulatory agency as being “independent of the government” however is not strictly correct, as the regulator is itself an agency of the government. Parliament is always sovereign and any government agency will be independent only to the extent that the government is prepared to allow it to be under the relevant legislation. The regulator’s independence is (or ought to be) from the executive arm of the government, that is, the agency should not be subject to routine instructions from ministers or ministries and approval by the political directorate must not be pre-requisite for the effectiveness of its decisions. Government influence in the relevant sector should be exercised through formal policy statements which are made available to all interested stakeholders and with which the regulator must conform. The greater the political directorate’s direct influence on the operations of the regulatory agency, the greater will be the potential investor’s perception of risk, and consequently the return on investment required.

Independence from government directives is the aspect of independence that normally features most commonly when the topic is considered. However the independence issue is wider in scope. The regulator must also be independent of the self-serving interests of the service providers as well as of undue pressures from consumers. The legislative framework must be so formulated as to require and authorize the regulator to act objectively in the discharge of its duties.

2.2 Regulatory Authority

If the desired degree of regulatory independence is to be achieved, the regulator will need to be vested with the authority and powers of enforcement to ensure that its instructions and decisions are not highly disregarded. Responsible regulatory decisions are dependent on reliable information, but the service providers have no incentive to provide all the information that may be relevant to the operations of the sectors. The regulator must therefore have the authority to require submission of such information as it considers necessary for the effective discharge of its responsibilities. An example relates to the provision of accounting information. Utility accounts are normally kept to comply with statutory requirements on the submission of financial information to government departments. The resultant statements will seldom provide the regulator with the information needed to determine the cost of providing specific services, an important factor in deciding on equitable tariffs. One of the powers of the regulator should therefore be to instruct the utilities as to the format in which it requires accounting information to be submitted. It must also be able to instruct service providers to take such action as may be necessary to improve the efficiency of sector operations, but these instructions should be directed at results, and not consist of specific action to be taken by the management. The regulator must never micro-manage.

The nature and extent of the directions that the regulator may issue to service providers will be dependent on the legislative framework in which the regulator operates. However, there is general consensus that the scope of the regulator's decision-making authority must include whatever areas of utility operations affect the efficiency of service

delivery, provided always that the actions taken conform with the law, formal government policy and the principles of natural justice.

In order to be effective, authority to issue instructions needs to be accompanied by powers of enforcement in order to ensure that directives are complied with. Normally the regulator would influence the actions of service providers by providing incentives, most often financial. However, incentives take effect relatively slowly, and some of the regulator's directives may require immediate response. Provision therefore needs to be made for penalties to be imposed on service providers who defy the regulator's instructions. The means by which this objective is accomplished varies from jurisdiction to jurisdiction. In some countries the regulator may impose fines directly on the service provider, but in others it is considered more unbiased for the courts to be the medium through which the punitive action to be taken is decided on.

But regulators are human and may make mistakes. Provision must therefore be made for some avenue of appeal for those who consider themselves aggrieved by regulatory decisions. It is common to require the complainant to give the reasons for its dissatisfaction, such as errors of judgement, incorrect interpretation of the law, erroneous information presented as fact, etc. The courts are always a possibility for appeal, but in many countries they tend to be slow in response to non-criminal offences. An alternative to the courts can be tribunals, established to consider appeals against regulatory decisions and determine the validity of the complaint. In some instances, if the tribunal determines that the regulator has erred it can over-ride the regulator's decisions; in others it must return the issue to the regulator for reconsideration. The minister, or anyone in the government's executive hierarchy, is an inappropriate avenue of appeal, as the independence of the regulator is hereby compromised.

2.3 Regulatory Autonomy

If a regulator is to be truly independent of the government's executive arm, then it needs also to be autonomous in its operations.

The characteristics of autonomy cover a wide range of issues, among the more important of which are:

- Independent funding. The regulator should be funded by some means independent of the resources of the treasury, generally by regulatory fees paid directly to the regulator by the service providers. If the treasury provides the funding the regulator will probably be subject to periodic shortage of financial resources whenever the government's financial resources are put under strain. Funding from the treasury also provides the political directorate with an opportunity to influence regulatory action by withholding funds.
- Independence from Civil Service Salary Structures and Hiring Procedures. Civil servants typically receive lower financial remuneration than their counterparts, in the utilities, even government-owned utilities. However, the regulator needs to attract and retain staff with the same levels of competence as those of the utilities. The regulator should therefore not be hampered by civil service pay scales or hiring procedures. If that is not the case the regulatory body will probably lack the competence to understand important issues relevant to the utilities' operations, and so be subject to what is known as "regulatory capture" or a dependence on accepting the service provider's interpretation of issues important to the common interest.
- Security of Tenure. Commissioners and other high level managers must know that their appointments can be terminated only on grounds specified in their contracts and not on the whim of the political directorate.
- Freedom to Decide on the Organizational Structure. Typically the government decides on the composition of the Commission or whatever the top layer of decision makers are called. However, the Commission should decide on the organizational structure below the level.

- Freedom to Hire Consultants. The staff of a regulatory agency is unlikely to be able to competently address all the complex issues with which it may be faced. The decision as to whether outside assistance is needed should be the prerogative of the Commission alone.

2.4 Regulatory Accountability

Considerations of independence, authority and accountability should not provide the regulator with an opportunity to act in an irresponsible manner. As a servant of the people the regulator must be able to account to the government and to the people at large in order to assure them that it acts with integrity, openness and fairness, and abides within the legislative framework under which it was established. Some of the ways in which the regulator may be legally required to give an account of its performance are:-

- It financial accounts should be independently audited annually and submitted to the parliament.
- A report on its activities during the previous fiscal year should be prepared annually and presented to the parliament.
- Its annual budget, including the proposed regulatory fees and salaries of members of the Board are to be submitted for approval by the Cabinet (or parliament) before the beginning of each fiscal year.
- The political directorate may order an independent audit of the agency's operations at any time in order to value the efficiency of its operations.
- The regulators internal policies and procedures should be open to public scrutiny.
- Written reports on its decisions, including the considerations and processes by which those decisions were reached, should be published and made available to the public.

- The legislative framework may prescribe the circumstances under which public hearings on regulatory issues must be held. However the regulator should be free to decide to hold a public hearing even if not required by law to do so.
- Information should be kept confidential from the public only if it has the potential to divert the course of justice; contains personal information which the affected parties do not wish to have disclosed; contains commercial information of proprietary nature; or would in some may be prejudicial to the interests of one or more of the affected parties.

In summary, the legislative framework should require and encourage the regulator to be transparent in its operations and thereby enhance its credibility with all stakeholders.

3. The Institutional Framework

Although it would be generally agreed that the institutional framework should be so organized as to allow the organization to discharge its functions with greatest efficiency, no common template has found general acceptance. The widest variations in organizational structure among Caribbean regulators is to be found at the highest level, that of the Commissioners, or Board of Directors. The word “Commission” will be used in subsequent sections of this presentation when discussing this level of management. These are the people who must determine policies and procedures of the organization and accept responsibilities for its success or failure.

Some regulators have a Commission comprised entirely of part-time Commissioners, the Trinidadian Regulated Industries Commission for example. In others, such as the Bahamas and Guyana the Commission may comprise a Chairman and Chief Executive and a number of non-executive and or part-time Commissioners. In Jamaica the “Office” (corresponding to the Commission) consists of a Director General and Chief Executive and a number (currently two) of Deputy Directors General, full time.

This is similar to the organizational structure of most state Public Utility Commissions in the U.S.A.

Obviously there is no overwhelming advantage to any of the various possible configurations of the Commissions. In this age of specialization much can be said for having on the Commission's top decision-making body persons who can give competent and objective advice on particular issues on which the Commission must decide. However caution must be exercised to avoid appointing to the Commission persons who are charged with, or see themselves as, representing the interests of a specific group of stakeholders – consumers for instance. All ultimate decision-makers must be entirely objective in their evaluation of regulatory issues. It is also important that the number of Commissioners be kept relatively small, preferably not more than five. Larger numbers impede the decision-making process without necessarily improving the quality of the decisions.

Full-time Commissioners facilitate rapid decision-making. Their experience can be immediately applied, and where expertise other than that which they possess is required, consultants can be engaged. Even with carefully selected part-time Commissioners it is unlikely that any Commission will be equipped with all the skills likely to be required, and consultants will almost certainly need to be employed from time to time.

The organizational structures of the various agencies below the Commission will probably have more in common than at the Commission level. The functions of all regulatory agencies are similar, they include:-

- Monitoring and Analysis. These functions require professional expertise to monitor the performance, including efficiency, of the service providers; to determine what constitutes reasonable return on capital investment; evaluate tariff review applications etc.

- Consumer Assistance Although it is the responsibility of the regulator to establish a level playing field between all stakeholders, consumers are at a considerable disadvantage in defending their interests when compared with the service providers. The regulator must therefore be especially concerned with the quality of service received by consumers by maintaining avenues of easy communication between itself and consumers and take such action as may be required in the interests of consumers.
- Legal. By its very nature regulation is highly legalistic and the agency will need to have competent attorneys on its staff
- Communications. The responsibility of ensuring the transparency of all its operations to all stakeholders requires an effective communications department
- Administration. This grouping includes human resources and personnel affairs; information technology; advice on formulation of policies and procedures; secretarial and other support services; etc. Depending on the size of the agency this grouping may comprise one or more departments

In Guyana the Regulatory body is the PUBLIC UTILITIES COMMISSION established by Act of Parliament in 1990, which Act was amended from time to time and replaced by Act No. 10 of 1999. It is a body Corporate and consists of a Chairman and four other members appointed by the Minister responsible for the Utility Sector, from among persons appearing to the Minister to be of high character and integrity, and to be qualified as having extensive and relevant professional expertise in trade, finance, economics, law, accounting, engineering or business management or extensive experience in matters relevant to the functions of the commission (**Sect. 5**). The functions of the Commission shall be regulatory, investigatory, enforcement and such other functions conferred on it by the Act (**Sect. 21**). And in the exercise and discharge

of its functions, the Commission is not subject to the direction or control of any person or authority - (**Sect. 21**).

Members of the Commission hold office for three years, but are eligible for re-appointment. For the first constitution of the Commission, the Chairman was appointed for a term of three years, two members were appointed for a term of two years and two members for a term of one year. Subsequent appointments or re-appointments shall be for three years. This staggering of the appointments facilitates the retention of the institutional memory if there are changes in the composition of the membership of the Commission (**Sect. 6**).

But no chairman or any full time member shall be appointed if within five years preceding such appointment has held any senior position in a public utility under the jurisdiction of the Commission -- (**Sect 7**): And the Chairman or any other member during a period of service with the Commission shall be prohibited from accepting employment with any such public utility for a period of two years after ceasing to be a member of the Commission - (**Sect. 8**).

The Chairman or any other member shall not directly or indirectly hire themselves as consultants or hire as consultants for the Commission any company or entity in which they have any interest, directly or indirectly - (**Sect. 10**). At present the Commission's mandate are with respect to the Telecommunication, Electricity and Water and Sewerage Sectors, and it shall perform regulatory, investigatory, enforcement and such other functions conferred on it by the Act. (**Sect. 21**).

It also acts in an advisory capacity to the Minister in such matters concerning public activities as are referred to it by the Minister (**Sect. 23**): And in the exercise and discharge of its functions it has the power to initiate and conduct investigations into the operations and standards of service of any public utility (**Sect. 24**). Members of the Commission are immune from any action, suit, prosecution or other proceedings in

respect of any act done **bona fide** in pursuance or execution or intended execution of their duties or powers under the Act - (**Sect. 14**).

It may make rules in respect of the form and manner of keeping and rendering books, accounts, and other records by public utilities and the matters that the annual report of a public utility shall specify, (**Sect. 87**); and by order may require a public utility to furnish periodically at such intervals as may be specified by the Commission, and at such other times as the it may require, a detailed report of finances and operations in such form and containing such particulars and verified in such manner as the it may specify including accounts, reports or other information.

The Act provides for penalties to be imposed on a utility which without lawful excuse fails or refuses to obey an order of the Commission; or makes any return or furnishes any information which is false in any material particular. In each case the composition of the fine or penalty is contingent upon a summary conviction. This in effect means that a prosecution must be initiated in the Courts of Summary Jurisdiction which shall hear the cause of the complaint and determine the guilt or innocence of the utility: (**Sects 70-76**).

The Commission, however, has not been entirely emasculated in itself imposing sanctions on a utility where it fails to provide a service to the public which is not safe, adequate, efficient, reasonable and non-discriminatory as shall be necessary or proper for the accommodation and convenience to the public. The Commission may direct the utility to pay to any consumer compensation for loss or damage suffered by that consumer - (**Sect. 26**).

Again, when the Commission upon a motion of its own or upon a complaint by an aggrieved party finds that the utility has not carried out a development and expansion programme in the manner approved by the Commission or as provided in a licence or an agreement between the Government and the utility, or that the utility has failed or refused to implement the development and expansion programme in a timely manner in any

material respect, the Commission may direct the public utility to pay to the Accountant General such penalty as it thinks fit, being not less than one hundred thousand dollars nor more than twenty million dollars, and recommend to the Government the suspension or cancellation of the licence granted to the public utility - (**Sect. 29**).

The Commission is, of course, not omniscient nor infallible, and its orders and judgements are subject to appeal. An appeal lies to the Court of Appeal which is at the moment the final Court of Appeal in the country. At the hearing of an appeal the Chancellor may appoint not more than two persons as assessors who in his/her opinion are qualified by reason of their knowledge and experience in respect of matters relevant to the appeal, to assist the Court of Appeal at the hearing of the Appeal, in determining any question of fact arising in the appeal.

The Commission may, however, suspend, review, vary or rescind any decision or order made by it where a hearing is required before the order or decision is made. But such decision or order shall not be suspended, varied or rescinded without giving the parties affected by the decision or order a reasonable opportunity of being heard – (**Sects. 77-78**).

All information and documents provided to the Commission shall be publicly available, provided, however, that the Commission shall take all due and reasonable care to protect and shall not publish or otherwise make publicly available the trade secrets of the public utility, third party confidential information, or any other information that may aid a competitor of the public utility – (**Sect. 83(5)**).

In life nothing comes free and for all the functions and duties coupled with the responsibilities attached to a regulatory body, it must be financed and adequately so in order to maintain its objectivity, integrity and impartiality. In Guyana we do not obtain funding from the Government. We are funded however by an annual assessment upon the public utilities under our jurisdiction – (**Sect. 64**).

What I have heretofore set out appears to be ideal regulations to effectively deal with regulatory matters concerning the utilities. But we have experienced in life that in the midst of calm and smooth sailing there is danger lurking on the horizon. Such dangers may not be fatal but assumes a distraction which upsets the boat ride and calls for measures to circumvent them.

We find, for instance, licences are issued to utility companies by the Government, or there are agreements entered into which regulate the functions of these utilities. To encourage effective development of its business a utility company may be granted conditions not amenable to the jurisdiction of the regulatory body.

The Commission, for instance, as mentioned earlier, is authorised to perform regulatory, investigatory, enforcement and other functions, and has power to do anything which in the reasonable opinion of the Commission is calculated to facilitate the proper discharge of its functions or is incidental thereto. **(Sect. 21(5))**

But Section 21(2) provides that the Commission shall be bound by and shall give effect to several Acts of Parliament, any other law governing a public utility, the terms of any licence and any agreement between the Government and the Utility or any investor, and in the event of a conflict between such agreement or licence and any existing written law, the agreements or licence shall prevail for the purposes of Section 33 of the Act. And Section 33 provides that where any agreement has been entered into between the Government and a public utility in relation to the privatisation or capitalisation of the utility or when the Government has issued a licence or where a law exists specifying the rate of return the public utility is entitled to in respect of the capital invested or dedicated for providing any service, or the principles, procedures, formulae or mechanism on the basis on which such rate of return, and thereby any rate charged by a public utility is to be determined or adjusted, the Commission shall be bound and shall give effect to such agreement, licence or law in determining the rate a public utility is entitled to demand or receive from any consumer, and in the event of a conflict between such agreement or licence and any written law, the agreement or licence shall prevail.

It may not be inappropriate to refer to a few instances where the licence/agreement supersedes the Regulation.

Section 38 of ESRA (3): Except as otherwise provided in the terms of its licence, every public supplier shall, no later than sixty days prior to the end of each of its financial years, submit seven copies of its **annual development and expansion programme** and a current version of its five year development and expansion programme, as approved by the governing body of the public supplier, **to the Commission for approval** in accordance with Part. VII of the PUC Act 1999.

Section 28 of the PUCA provides that a public utility must submit for the approval of the Commission any programme for development and expansion of facilities or services, specifying the period within which it will be implemented, the arrangements for financing and any other information required to be submitted to the Commission, and the Commission, after considering all the relevant aspects of the proposed development and expansion, may approve or reject the programme or may require the public utility to modify the programme suitably.

Paragraph 17 of the Licence provides for the initial development and expansion programme to be as set forth in the Third Schedule of the licence, as amended and expanded upon on an annual basis in accordance with the procedure set forth as follows:-

- The licensee shall not later than 60 days prior to the end of each of its financial years, submit three copies of its annual development and expansion programme, as approved by the Licensee's Board of Directors and containing the information required by the Act, to the **Minister for approval**

The Minister shall submit seven copies of each development and expansion programme approved by the Minister to the Commission within 10 business days after the approval. And during the course of its implementation of approved development and expansion programmes the licensee may make amendments to the programme and prior to making any such amendment shall provide the **Minister** with an explanation of, and relevant information and data on such amendment. **The Minister's approval** of any such amendment shall not be unreasonably withheld, and shall be granted or denied within 24 hours of such ratification, and shall be **deemed to be granted if no response is received within that time. The permission of the Commission shall not be needed for any such amendment.**

Section 48 of PUC Act: Subject to the terms of a licence, the Commission may by rules prescribe the forms of all books, accounts, papers and other records required to be kept by every public utility, and every public utility shall keep and render its books, accounts, papers and other records accurately and faithfully in accordance with internationally accepted accounting principles in Guyana in the form and manner so prescribed by the Commission, and shall comply with all directions of the Commission relating to such books, accounts, papers and other records.

Clause 25 of LICENCE provides that notwithstanding Section 48 of THE PUC Act, the Licensee **shall not be subject to the Commission rules regarding** the form of accounts but shall maintain accounts accurately and faithfully and in a form and manner satisfactory to its outside auditors and to the independent firm of accountants appointed pursuant to paragraph 11 of the First schedule of the Act.

Paragraph 11 of the Act (ESRA) (1st Schedule)

11(a) The Commission shall, after an opportunity for the Company and any other interested party to be heard, appoint an **independent firm of accountants** which may be the Company's independent firm of accountants, or another independent firm of accountants.

11(2) The initial independent firm of accountants to be appointed shall be the firm of independent accountants selected by the Government and the strategic investor. Upon resignation or termination of the appointment of the initial firm of independent accountants the replacement **shall be acceptable to the Company and shall be appointed by the Commission.**

Paragraph 16 of Licence - Operating Standards and Performance Targets

The licensee shall use its best efforts to implement, achieve and maintain the Operating Standards and Performing Targets in accordance with the Second Schedule of the licence, as may be amended from time to time with the prior approval of the Minister and **there shall be no requirement for approval by the Commission** of the Operating Standards and Performance Targets or as amended from time to time with the prior approval of the Minister.

The Operating Standards and Performance Targets are the nuts and bolts, as it were by which the Utility performs and one may think that it may be inappropriate for the regulatory body not to have an input in the setting of the standards and targets.

But then it goes a little further and it is therein provided that the non-achievement of the Standards shall not be grounds for any legal challenge by any customer or class of customers with respect to the service provided by the Company.

It is not without interest to note that Schedule 2 of the licence issued in 1999 sets out the Operating Standards and Performing Targets and emphasised that the utility will use its best efforts to achieve the targets set out therein. The Commission had in 2002 held an inquiry concerning the non-achievement of losses – both technical and commercial – and found that management did not employ due diligence and proper supervision in seeking to reduce the loss. **Order 3/2002.** And in terms of Section 26 of

the PUC Act we made an order for compensation to be paid to consumers for loss suffered as a result of the inefficient service.

Subsequent to that hearing the Operating Standards and Performing Targets were amended and proclaimed that the non-achievement of the standards therein set out shall not be grounds for any legal challenge by any consumer or class of consumers with respect to the service provided by the Company.

As I have pointed out earlier, the Commission's function are set out in the Act. But unlike the other territories in the Caribbean and further afield, it has no jurisdiction to issue licences to any public utility. This function is reserved for the Minister responsible for utilities. And licences for the use of the spectrum or airwaves is the preserve of the National Frequency Management Unit.

With respect to the electricity sector the incumbent utility, operating on a monopoly basis, may by public tender seek the services of an Independent Power Producer (IPP) to generate electricity for sale to it. Before a licence is issued to any such successful bidder (IPP), it will have to enter into an agreement with the incumbent utility with respect to such terms and conditions upon which the electricity will be purchased. But the licence cannot still be issued until such terms and conditions insofar as they relate to rates have been further approved by the Commission. The Commission will have to be satisfied that the terms and conditions are commercially prudent and viable, and will not adversely affect but enhance the system - wide capacity, reliability and efficiency of the incumbent utility, and are compatible with the national energy policy (**See Section 4 of ESRA**).

And except when a licence expires, is revoked, suspended, cancelled or terminated no public supplier of electricity shall cease its licensed operations **without first obtaining the permission of the Minister and the Commission.** (**Sect 11 of ESRA**). It may be an interesting exercise in semantics if the Minister grants his permission but the Commission is reluctant to do so.

In the Telecommunications Sector a company (GT&T) operates the fixed land line services by virtue of a monopoly – licence granted nearly fourteen years ago. It also operates a cellular service. Recently, however, another licence was granted to a Company (Cel*Star Guyana Inc.) for the provision of a cellular service. Both these companies entered into an interconnection agreement with the blessings of the Public Utilities Commission. It was imperative for Cel*Star (Guyana) Inc. to interconnect with GT&T which has the monopoly. Cel*Star (Guyana) Inc. represented by experienced lawyers approached the Commission to fix rates for the several services it has to offer to the public. Interestingly, however, Cel*Star (Guyana) Inc. applied for rates similar to those offered by the incumbent GT&T, and upon enquiry by the Commission whether they do not intend to compete with GT&T, the response was that they will compete on the quality of service and not on rates!! It is early days yet for Cel*Star (Guyana) Inc. and we have not had the necessary feedback as to the quality of service offered.

The Commission had been functioning well during the past years and had it days in Court at the instance of both the Telecommunication and Electricity Utilities. But the issues which attracted legal attention had to do with the procedure which the Commission had adopted in the several matters, and to its credit, if I say so with respect, the Court never attempted to substitute an order in lieu and place of any order made by the PUC. All the orders which it made adverse to the Commission had to do with the manner in which the regulatory body approached its work. When the Commission was faulted the matter was remitted for a hearing **de novo**.

It has been the common experience of all and sundry that the Courts bogged down with criminal and civil matters have little time to deal with regulatory matters. The reasons are with respect, twofold (a) The time factor which is usually advanced due to (b) limited or nil experience and knowledge in regulatory matters of the judges to deal with such matters. I posit that regulators urge their respective legislative bodies to substitute for the Court tribunals staffed with persons experienced in regulatory and utility matters, to adjudicate in appeals from the respective Commission. This should expedite the

determination of issues which affect both the utilities and the consumers, and be more acceptable to all the parties concerned. The findings or order of the tribunal should be binding on all parties. Even in the Courts there is the admonition that there must be an end to litigation. If personnel learned and experienced in regulatory matters are members of an appellate Board their decision should be respected and their order be final without recourse to any other tribunal.

Legal and institutional development in any territory is dependent on the scope the legislators are willing to allow regulators. A regulatory body is a creature of statute and it must operate within the parameters set out in legislation. If the regulator seeks to be too proactive he shall bear in mind that regulation is usually applied in situations where competition cannot exist as in the case of say electricity or the water and sewerage utilities. In the case of a monopoly he cannot protect competition because it does not exist. It is for this reason that legislation/regulation is put in place to protect the consumers.

There may be more scope for the regulator to flex his muscle in situations when there is competition. One view is that in a competitive atmosphere there is no need for the regulator to function. I disagree. The regulator must remove barriers to market entry to new operators. He must oversee interconnection of new entrants with incumbent operators. The regulator has to be more alert in such situations to prevent cut-throat competition, and to ensure there is no predatory pricing.

It may however be generally desirable to minimize intervention in competitive markets, but the general consensus is that regulatory intervention is required to implement a successful transition from monopoly to competitive markets.