

REGULATORY STEWARDSHIP

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Keynote presentation delivered at the 'Regulatory Reform: supporting business investment and growth' conference in Canberra on Wednesday 16 February 2022.

Good afternoon.

Good regulatory stewardship recognises that regulation does not operate in isolation. Rather, regulation is often just one aspect of Government's overall footprint on a market and society.

Government's entire footprint, including policies and any regulatory interventions, must therefore be fit-for-purpose in the context of the market.

Regulatory stewardship promotes a consideration of how regulatory interventions, if required at all, can be designed to combine with other interventions and market context to ensure our markets are sustainable, accessible, competitive, efficient, safe and secure.

A regulatory stewardship approach means market stewardship by each regulator is considered in the context of all regulatory interventions in that market and directed towards clear objectives. And that regulatory objectives and approaches are also considered in the broader system in which markets sit.

Stewardship promotes a whole-of-system consideration and an understanding of how the combination of different policy, regulatory and other levers applied by Government best interact and balance to achieve policy and regulatory objectives.

My Department plays a key stewardship role in the operation of many markets, including: telecommunications, aviation, land transport, shipping, creative and cultural industries, media and of course the evolving online universe, working with a range of other actors in these markets. We also have, or agencies in our portfolio have, regulatory responsibilities and service roles in many of these markets. As such, I encounter market stewardship questions almost daily.

Effective market stewardship requires us to be clear about the objective of our interventions in markets, some of which have been in place for generations and some of which are new, responding to the changing world.

So what does good look like?

What is our ultimate objective as stewards of the market?

From my perspective there are six elements that need to be in balance. We need markets that are sustainable, accessible, competitive, efficient, safe and secure – abbreviated to ‘SACESS’.

Now these elements are interrelated and sometimes put pressure on each other as we as stewards try to create balance.

In short,

sustainable means that the market is appropriately commercial and resilient to continue without subsidy interventions in foreseeable circumstances.

accessible means that it is appropriately accessible and resilient at an affordable price point.

competitive means that appropriate levels of competition are able to operate.

efficient means that the resources of the market are allocated efficiently and the operation of the market achieves efficiency

safe means that the activities of the market are safe for people to interact with, and

secure means that the market is appropriately secure from credible security threats.

I encourage all policy makers and regulators to understand these elements and how they operate in your markets, which elements you influence and who influences the others, and how you work effectively together, or not, to ensure an optimal balance in your market.

That is my central message here today. Master systems leadership, apply the lenses of the SACESS model and collaborate to improve our markets.

Let me now give you a brief example of how the elements work in the aviation market.

A “sustainable” market means the market requires light touch intervention. The sector enjoys the social licence to continue to operate and companies are able to make an adequate return to continue to operate efficiently and safely.

It means supply matches demand – if supply exceeds demand, prices may be pushed below sustainable commercial operating levels. In our context, it also means effective mechanisms for emissions and noise management – externalities are appropriately managed. Australia has a resilient aviation sector overall but with some thin markets, and it has required support through some challenges, such as COVID, to continue to operate.

“Accessible” means the market provides a level of connectivity across Australia and people can access flights for essential purposes. Flights are available to ensure the vital flow of goods and passengers. It means that flights are available at a reasonable price point for those needing to use the market, including those living and working in remote Australia, and including in thin markets. It means Australia has access to its key global markets, for freight and passengers.

“Competitive” means that market structures allow competition to operate properly: this means capacity to compete, accessibility to new entrants and technology and no anti-competitive behaviour. Different forms of advanced mobility can coexist. For airports it means access to airport services is regulated, as an airport will usually be a monopoly provider of services. It may mean there is more than one operator of aircraft on a route or it may mean only a sole operator is able to make a sufficient return to operate commercially in the market. Australia already has one of the most open domestic aviation markets in the world, as well as one of the most resilient, but reducing barriers to enter the market can make the market more competitive.

“Efficient” means maximising the use of scarce resources, such as landing slots or aircraft, or the capital available for investment in that sector. It means the market provides the services that customers need. Competition is at a level that allows market participants to make sufficient returns to allow them to continue to operate and to invest to meet future consumer needs. New aviation infrastructure – runways, terminals – and airplanes can be funded to meet consumer demand.

“Secure” refers to the prevention of interference from malign influence, such as terrorists. Aircraft are not able to be used for criminal purposes, for example, drones being used to deliver drugs to prisoners in jails or to stalk people or invade their privacy. Security requirements are robust but data informed and at a minimum impost to the traveller and the industry.

“Safe”. Safety is incredibly important in aviation and we have strong regulatory and governance arrangements in place. In government, CASA is the regulator, the Department is responsible for policy and Airservices provides services, and all participants in the market must comply.

We refer to this as the SACESS model and we need to, as market stewards, deliver all of these objectives. The challenge in this market is that no one part of Government holds the levers to create balance. Key players in a government market map of aviation include my department, CASA, Airservices, ATSB, Home Affairs, Border Force, AFP, ACCC and others.

Effective regulatory stewardship will therefore involve making a judgement about the balance between all of these objectives which is a key challenge for us as regulators and policy makers.

As the Commonwealth, we need to ensure that the multiple touch points, regulations and policies which combine to form our Commonwealth ‘footprint’ on a market combine to deliver SACESS markets.

To give another example, I will use the telecommunications market. Who are the actors in the telecommunications market?

In the private sector its carriers such as Telstra and Optus, and carriage service providers. There are industry associations such as the Communications Alliance. Equipment manufacturers and infrastructure providers are also actors in the market. Actors in these markets have billions of dollars at stake and regulation can impose costs in the millions or billions.

On the government side, my Department is the lead policy agency. The Australian Communications and Media Authority (ACMA) allocates spectrum and regulates technology. The Australian Competition and Consumer Commission (ACCC) regulates competition. Treasury reviews foreign investment, Home Affairs works to ensure security and resilience. There is also a law enforcement interface. In essence these markets are complex systems.

Mapping all market elements can provide a mechanism to analyse the currency of existing settings and ensure they evolve with changing circumstances – disruptions, innovations, technology.

We also need to consider policy under development, to support alignment of effort by ministers and officials and ensure that policy changes can be shaped to have the optimal impact on the market. We can avoid unintended consequences of myopic or blinkered interventions in markets by viewing policy or regulatory change through all lenses of the SACCESS model.

So how do we ensure that all of these actors and objectives are calibrated to deliver SACCESS markets?

This is the most challenging question for regulators and policy makers.

We need to be pragmatic and consider whether industry can self-regulate, what information we as governments have available to us on which to base regulatory intervention compared with what industry has access to, and how compliance can best be assured. We need to be well placed to act quickly – scanning the horizon for future developments and moving our regulatory footprint to accommodate, not form a barrier to, innovation – like drones.

We need to keep in mind that systems are living – they are a collaborative piece with a constantly changing community and industry. The maturity of the regulated community will determine the extent to which we can co-design with them.

Each of these elements will impact on each other. For example, new increased safety measures can drive up costs and create barriers to new entrants, resulting in decreased accessibility (through price), efficiency, competitiveness and sustainability.

Deregulatory action to decrease costs on markets and consumers may need to risk manage safety or security issues in a balanced way.

All measures that change the Government's impact on a market should be considered in the context of their impact on the other elements of SACESS as well as the current state of the market.

For example, the telecommunications market is mature and operating well but constantly evolving with technology. The aviation market, however, is hard hit and is focused on sustainability and existence of a viable market – the capacity to pass on any increased costs due to increased safety or security arrangements without adversely impacting accessibility needs careful monitoring.

Markets are also at different levels of policy and regulatory maturity, which impacts on the types of policy priorities. Established markets like telecommunications have well established legal and regulatory frameworks, while we are currently considering core policy and regulatory challenges for the online universe.

Formal techniques like mapping markets provide tools for policy makers to ensure that the system effects of policies from all perspectives are fully understood by decision-makers in making decisions that impact key Australian markets. They can also provide a template for necessary collaboration in policy making processes for agencies and ministers.

But no process is a substitute for true system collaboration. For people coming together, hearing each others perspectives, understanding the wisdom behind others perspectives and codesigning policy and regulatory change to achieve the right balance to steward great markets together.