

**CONFERENCE ORGANISED JOINTLY BY INSTITUTE OF PUBLIC  
ADMINISTRATION AND MANAGEMENT AND  
THE STAFF DEVELOPMENT ORGANISATION**

**‘MANAGING THE TRANSITION FROM A DEPARTMENT OF GOVERNMENT  
TO A REGULATOR’**

**ADDRESS BY  
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Our Federation has for quite a few years been insisting with Government about certain requirements which need to be put in place in our country if market forces are to be given a chance to operate and our industry a chance to compete in an increasingly aggressive global environment. We are aware by way of contrast of the difficulties of our small local market that can easily be cornered by the few operators that command a strong position. This is certainly a real problem we face. But our special circumstances demand even more that we face the challenge that comes with liberalisation of the market. Our participation will not be limited to the vast Single Market of an enlarged European Union that we could be joining in two years time, but it already extends to the four corners of the globe where other opportunities for business beckon even for our small enterprises. We therefore need to be a competitive destination for doing business if our enterprises are to be able to compete globally.

Our Federation believes that as a general rule government should run on a much leaner but well-oiled machine that is able to respond to demands of the changing requirements of the dynamic business environment in the world outside our shores. The Federation believes that a modern state should assume an increasingly receding role in the economic life of our small community. But statutory regulation must definitely be an entrenched institution to ensure a fair deal to consumers – industry included. The objective followed by the Malta Federation of Industry in this regard is for our country to optimise the use of its human and financial resources.

When Government embarked on a liberalisation of trade our Federation insisted that it had to happen in parallel with measures that included a Fair Competition law that safeguarding the interests of both business and consumers alike. We also lobbied strongly for a proper Standards Authority. Both of these are now up and running to some extent. We would also like to see the Monitoring and Surveillance Unit working satisfactorily to ensure uniform applicability of the legal provisions about Trade descriptions, Food Labelling, Health requirements and the minimum standards by importers, manufacturers and retailers of goods alike. Competition can be maintained only if a level playing field is continually upheld.

In the same manner, and in consonance with, the idea of opening up competition, and giving a good deal to consumers and optimising our resources, our Federation also campaigned for the setting up of independent regulatory authorities. We primarily targetted the big service corporations that are state-owned, that are state-protected, and that enjoy a monopolistic position on the market. Traditionally these entities operated freely and regulated themselves as well. These practices had extremely adverse effects not only on industry's costs as a consumer for water, energy, telecomms, port services and others, but for decades our state corporations ignored the level of service being provided to the detriment of industrial consumers.

Our Federation has developed a strong belief in privatisation not only as part of a larger exercise to roll back the state, but also as a means of mitigating unnecessary expenditure commitments that the State is bearing – naturally through additional taxation. Industry considers the infrastructure a vital link in the future of enterprise. We consider that progress achieved in privatisation triggers progress towards optimising the use of our human and financial resources. Public corporations are perceived by the private sector to be instruments for political intrusion, that blunt the corporate drive necessary in any service or product provider to increase efficiency. The situation is considered to present a hindrance for these public set-ups to adopt modern management concepts of continuous improvement. It does not seem to encourage innovation, any undue attention for the bottom-line and consumer needs, and hindering future development to support its customers including bulk industrial users. Examples of these are found in crisis situations in fields of telecomms, energy and water in the past two decades.

Our policy should not be misunderstood to mean that we lobby for privatising government monopolies, and thereby creating private monopolies. On the contrary we have suggested that there should as a matter of principle be an overall capping of a 5% shareholding by any one individual or corporate shareholder when Government sells its interests to the private sector. This was intended to serve as a means to prevent private monopolies. However, we also said that when circumstances do not make it economically feasible for more than one operator to offer a service than Government could consider a higher private corporate shareholding to attract the right strategic partners who could join hands with a public corporation. We have also advocated the idea of at least sub-contracting to the private sector certain functions of these public monopolies that cannot be opened up to competition. All along, as you can see we have tried to induce market forces to operate. Alternatively, we favour the next best scenario that optimises resources, financial and human, even in the public sector, provided operators are made accountable and pressured to increase efficiency and to care for the customer by an outside force that is independent and that acts business-like.

This brings me to the other important aspect of sorting out state monopolies - the regulatory function that in most instances was vested in the operator himself. The policy of the FOI has been to convince Government to separate these two roles. It is considered to be of utmost importance and very consistent with our drive to achieve optimum performance in the economy. Industry does not operate in a vacuum. It can be efficient

to the extreme, highly competitive if benchmarked in its internal operations, but then it can be driven down the competitiveness ladder by inefficiencies in the operating environment in the country which is outside the control of the enterprise. Government Corporations enjoying monopoly status and privileged in being their own regulators are perceived by the private sector to be major contributors to inefficiencies in the operating environment.

I shall explain this in a simple way. A Government Corporation with a known surplus in its labour force normally qualifies for a Government subsidy to cover its operating losses and probably even its capital spending, through letters of comfort or bank guarantees. It fixes the charges for its services to the consumer probably through a political decision that could be aimed at balancing the books and therefore probably pitched at a high level in such a way that contributes to industry's declining competitiveness. It was also not uncommon for Government to subsidise the charges for certain services on social grounds and therefore pitching them at a notional level. In both instances the customer foots the bill either through a higher charge as a user of the service of a particular corporation or through tax hikes that make good for the subsidies granted by Government. Private enterprise will normally also suffer as a result of the unfair competition that a monopolist can exercise in the market for both finances and human resources. When a public Corporation enjoys the regulatory role besides the operating monopoly, more often than not it does its utmost to avoid having any competition by pushing for legislation that safeguards its position unhindered. All of us here probably remember how TeleMalta exercised their regulatory role for many years by being the sole importer of telephone sets and in more recent years by preventing competition from parallel service providers that were offering overseas calls at lower rates by using call centres abroad. The same happens with EneMalta who does not allow electricity generation of a certain capacity, or use of alternative sources of energy when it senses that this could compete with its own services.

The Federation is very much aware that the situation about the separation of the regulatory aspect from the operational one is still evolving. Malta has its own particular circumstances that affect the chances of finding the necessary expertise needed by a regulatory authority to function properly and fairly. The country also has a structural problem of economies of scale and it remains to be seen how our regulatory authorities will be able to function effectively and professionally whilst avoiding exaggerated costs to the taxpayer.

Government had indicated in the White Paper on privatisation that it favoured the contract-based approach, which was considered to convey more certainty to private investors. The other two avenues indicated – the quasi-judicial approach and the Directive based approach were deemed to be less attractive. The Federation has not come out in favour of one solution for all instances. However, we were pretty clear in stressing the independence of statutory regulators. Our idea is that operators can, with some effort, achieve a good level of service at reasonable charges to users if the regulatory authority insisted on the removal of inefficiencies, and the adoption of a market based approach. We are not really sure whether it will be regulator or the Office

of Fair Competition who will be responsible to watch out for abuses of a dominant position on the market. Our micro-market can easily be cornered and this could be extremely dangerous if allowed. We favoured clear terms of reference possibly even with an indication of targets which regulators should strive to achieve especially in the sectors where state monopolies still exist. Industry insists that state operators should give good value for money to customers because the same is demanded by industry's customers in the global market. The regulator's role should evolve into a system that balances the economic interests of consumers (industrial consumers included) whilst placing the onus on the service provider to achieve profitability by achieving an acceptable level of efficiency. The operator needs to be able to respond to market needs promptly and to actively consider the development of his sector. The regulator's vigilance must ensure that industry and the economy at large are well-served. We know that in the UK the directive approach utilised contractual terms as well (BT and the Water Authority privatisation are examples of this approach). So long as the regulator sets achievable objectives to the operator, then he has to insist that the latter meets his obligations in full.

The regulatory Authority has to be well-equipped to analyse on an ongoing basis the performance of the operator or operators, the level of service, the charges, the customers' perceptions and any deviations by the operator from contractual obligations and good practice, such as price-fixing, cartels and other restrictive practices that go against the spirit of fair competition or that in some way perpetuate the monopolistic stances that were and are still quite common. We have insisted on the independence of regulators from Government otherwise they will not have enough bite; and the measures that need to be taken by operators will be subjected to political pressures, and all efforts to achieve better performance will fizzle out.

There is of course the big question of divorcing the policy making from the regulatory function. Regulatory authorities need to follow the overall Government strategy and policies but that has to take into account not just political objectives but be underpinned by economic rationale. My personal view is that statutory regulators should make recommendations on matters of policy but Government must ultimately remain responsible for the general lines adopted. To ensure more transparency the regulators should perhaps be made to report directly to the House of Representatives. Regulatory authorities should not on the other hand be allowed to assume the function of a state within a state as that could be dangerous. The checks and balances on the authority, if assumed by the House of Representatives, should be subject to an independent auditor whose report goes direct to the House. In principle one must not ever forget that the regulatory authority has a duty to defend the general economic interests of the country as well as those of consumers both in their role as users and as taxpayers. The brief to the authority should be to ensure that operators give a good level of service, a competitive charge for their service, and that the particular sector is instigated to develop along the lines indicated in Government's policies and possibly pinned down by quantified targets. We certainly encourage the use of benchmarks to gauge performance in all respects.

Generally I must say that we consider that statutory regulation is still in its infancy in Malta except in a couple of instances. The public relations function, the transparency of

procedures, the pro-active approach, the gathering or formation of expertise, and a variety of other aspects, are in a capacity-building stage. But industry is very anxious to see quick results. The global market doesn't wait for us to become competitive. So industry has higher expectations from this modern approach by state regulation: reduction in its costs, higher level of service assured by mandatory service charters that also allow for the possibility of suing for damages the operators. This especially so in those several instances where the operators will probably continue to enjoy a de facto monopoly. I believe here lies the biggest challenge for regulators. We cannot compare what is happening in Telecomms where competition is already operating and where the sector will be fully market- led by the beginning of next year. We would like to see what will happen on the lines I indicated as regards Water, Energy and the Transport sectors. We believe for example that port operations both at Valletta and the Freeport should operate under a strong independent regulator. It is a challenge to the country. It needs attention and a careful approach to get results in raising the efficient use of our two vital resources –finances and people – within the constraints of a small country. We cannot and should not exonerate ourselves from the rules of our competitors. Any attempt to do this will not make economic sense and its effects will certainly obstruct our economic development and future prosperity.

I am optimistic that we can get good results as we have managed to do in other areas in the recent past. The private sector has a string of evidence that there are advantages in this country that we should cultivate further. The performance of our industry has given ample evidence of this by a satisfactory performance in past years in spite of certain constraints in the operating environment that decreased profitability and therefore the enthusiasm to re-invest. We are trying to improve industry's competitiveness and its profitability. I compare Malta to peculiar spots in big countries that have so-called micro-climates that help immensely the yields and quality in agriculture production. We do have similarly a sort of micro-climate that has given positive results to business when chances of success looked remote. I am sure that we could do the same with our development of statutory regulation. As always we are starting late. But this could be to our advantage, this time around, because we have the opportunity of using the experience of other countries to avoid pitfalls and therefore to move ahead faster. With more determination we could get the right results that our small country needs if it has to compete with the rest of the world in a hectic tussle for market share. It is a continuous challenge – and has always been. It has been our history and it is our destiny to be tossed around in a bigger world where nimbleness and smallness does sometimes give certain advantages not enjoyed by larger countries. Let's use what apparently is a disadvantage to our advantage. Thank you for your attention.