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Regulating in the Interest of the Citizen:

Towards a Single Model of Regulatory Transparency?

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Policies of liberalisation and privatisation of utilities have been a prominent part of the public sector reform agenda in the past two decades. This shift has been described as a move from the positive or interventionist towards the regulatory state (Majone 1994, 1997). This shift included the move from public to private ownership, an increasing reliance on the application of formal rules as well as the creation of free-standing, semi-independent regulatory bodies (Loughlin and Scott 1997: 205-7). Regulatory reform in the field of utilities has been particularly prominent. Utilities - defined as industries with network characteristics such as telecommunications, electricity, gas and water (and possibly transport) - are essential to individual economic activity, forming part of the state s obligation of *Daseinsvorsorge*, the state s obligation to provide an infrastructure for the economic activity of its citizens.

At the same time, questions of legitimacy, accountability and transparency in systems of governance have gained an increasingly prominent place in discussions concerning public sector reform. International organisations, such as the World Bank, the International Monetary Fund, the OECD as well as the European Commission have increasingly made their development policies conditional on good governance in recipient countries. These issues have also been a growth business in the literature concerning regulatory decision-making exploring the relationships between regulators and parliament, ministers and firms (see Baldwin and Cave 1999, Graham 1997, Majone 1996). Some observers have linked the increasing use of audits as means of ensuring accountability to a wider trend towards an audit society (Power 1997).

This paper aims to explore whether there are unifying themes in the regulation of utilities with regard to consumer transparency and how such regulatory instruments can be classified. Furthermore, while a substantial literature has developed to explain regulatory change (see Hood 1994), the contemporary study of regulation suffers from a lack of comparative analysis in general, and a focus on the analysis of transparency issues in particular.

This paper investigates these issues in four countries the United Kingdom, New Zealand, Trinidad and Tobago as well as Jamaica. All four of these countries have been categorised as Westminster democracies (New Zealand at least prior to 1996) and as part of the English-speaking family of nations (Castles 1993). The United Kingdom and New Zealand have been at the forefront of public sector reform in the developed world in the last two decades choosing, however, different regulatory systems. The two Caribbean countries offer examples of regulatory change in the developing world, being exposed to the advice of international organisations such as the World Bank, and being in the process of privatisation and, increasingly, also of liberalisation of their utilities. This paper is therefore also interested in issues of policy transfer. Are models of regulation exported and promoted as good practice from the developed world to the developing world, and, if so, how? Are developing countries used as public policy guinea pigs for the development of new policy instruments (similar to Scotland s function in terms of the implementation of the Community Charge in the UK in the early 1990s)? Similarly, a comparison between developed and developing world also allows for a comparison of the prevalence of these mechanisms in various contexts and circumstances. For example, given the well-known problems of collective action, is there a higher reliance on consumer collective and independent action in the developed world while there are more paternalistic elements in the developed world? Such a perspective also addresses the need for research into the unintended consequences of regulation (Baldwin, Scott and Hood 1998: 40-1). A substantial literature has developed on the phenomenon of transplanted legal and political institutions (Watson 1993; Subramaniam 1977; for the Caribbean countries, Mills 1973). More recently, Teubner, drawing on a social autopoiesis perspective, has questioned the appropriateness of the transplant metaphor. He has introduced the concept of legal irritant in order to allow for a

more sophisticated understanding of how transplanted institutions are themselves transformed by their new environments, often in ways that are unexpected.

This paper therefore aims to add value in three ways. First, it seeks to offer a framework for analysing the transparency of regulatory regimes. Second, the paper explores, in a comparative perspective, the diffusion and individual adaptation of regulatory regimes. Third, it aims to analyse differences and commonalities between developed and developing world. This paper first surveys traditional criticisms of regulatory reform with regard to transparency issues and then illustrates four mechanisms of consumer transparency. It examines the regulatory regimes in the four countries and ends with some tentative conclusions.

Consumer Accountability in Utility Regulation

The regulation of utilities has seen periods of private, municipal and public (central government) ownership and control. Nevertheless, since the emergence of the welfare state in the developed world, the traditional way to deliver utility services has been via public bureaucracies, structured as politically-directed hierarchies of permanent, full time and specialised government officials. The function of the official was to seek an equitable treatment for the taxpayer through the provision of uniform services.

The development of network services in the Caribbean countries examined in this paper followed a somewhat different trajectory. Under the Crown Colony system of government, state power was mostly concerned with control functions related to maintaining internal stability (Jones 1992: 3). Only following World War II, as part of a commitment to the preparation doctrine of developing the conditions for Westminster-style democracy prior to independence (Schaffer 1965) did the state take a more active role in the development of economic and social infrastructure. Official concern over the management of utilities was thus connected more with an ideology of state-led development than with welfare policies (Jones 1992: 4-5).

In both the parent and the derivative Westminster-Whitehall model, the underlying assumption was that officials acted as public trustees (indeed the Fabian conception of the public servant was close to that of Plato s guardian class).

Accountability and transparency was to be ensured by and through departmental mechanisms to elected ministers and hence also to parliament. Part of the public sector reform agenda was the intellectual attack on this high trust assumption as well as the need to establish more low trust means of control of public service delivery (most prominently Niskanen 1971). Far from acting in the public interest , officials were seen to budget-maximise , to have become captured by the regulated industry, or to suffer from continuous political intervention by short-termist ministers. As a consequence, regulatory reform has arguably seen a shift from loose (group) to tight (grid) regulation with some observers even pointing to the risk of juridification (Scott 1998). In the analytical literature, debate has focused on the advantages of *ex post* and *ex ante* controls. The aim of *ex ante* control instruments is to lead an agent to a desired outcome/output by procedural controls, *ex post* tools rely on monitoring agents and on target setting. For instance, governments set inflation targets for independent central banks (such as in New Zealand and since 1997 also for the Bank of England).

Despite the widespread perception of regulatory failure with regard to the activities of nationalised undertakings, the privatisation of utility services, the post-privatisation regulatory regimes and the perceived lack of their transparency (and, as a consequence, their legitimacy) have attracted substantial criticism. Paternalistic arguments claim that given the nature of utility services, citizens have difficulties in reaching informed choices. It is argued that the quality of public services is on an inevitable downward trend. This is due to the profit-orientation of private businesses providing public services instead of supposedly public interested officials. More radical arguments suggest that managerialism and privatisation undermine bureaucratic ethics and the notion of democratic citizenship (Haque 1996, 1998). Others fear that the liberalisation and privatisation of services will lead to growing inequality effecting in particular vulnerable customers, namely the old, disabled and the poor, while benefiting shareholders and utility directors (for New Zealand, see Kelsey 1997; Easton 1997).

Further criticism has been directed at the perceived lack of popular participation. Using Hirschman s categories of exit and voice strategies (Hirschman 1970), it is claimed that the introduction of competition and thus the increased reliance on exit

options has not been paralleled by enhanced consumer participation (Falconer and Ross 1999: 341-2). Extending this argument, it could be claimed that the increasing ability to use exit options would decrease the willingness of citizen-consumers to use/demand voice options. At the same time, it is debated whether regulatory agencies provide sufficient procedural and decisional openness, pointing to various possible means of regulating regulators, ranging from procedural to monitoring devices (Graham 1997).

Nevertheless, these criticisms do not offer regulatory benchmarks as to the different mechanisms used in the various countries nor do they discuss the practice of regulatory transparency beyond single-country studies. In particular, a reliance on the exit-voice typology fails to do justice to the different types of mechanisms which are supposed to ensure transparency - nor do they account for whether they are exercised collectively or individually. The next section explores four types of types of transparency mechanisms. It is not claimed that these four mechanisms offer a fully exhaustive or mutually exclusive list of instruments, but it nevertheless aims to establish a framework for the comparative analysis of regulatory regimes.

Transparency mechanisms

This section sets out four mechanisms that are said to enhance the transparency of the regulatory regime, information, choice, representation and voice. All four mechanisms are arguably variations on the exit and voice dichotomy, however, they operate both as *ex post* as well as *ex ante* policy instruments. Similarly, they can be distinguished in terms of individually exercised (voice and choice) and collectively provided tools (information and representation).

Information

One of the key benevolent reasons for regulation is the existence of information asymmetries. Without information, consumers are bound to make lemon choices, leading not only to dissatisfaction but also to a decline in trust. Lack of information as to alternative providers also offers a substantial incumbency advantage. Well-informed consumers force firms to offer decent services and enhance competition between firms. A good example for this type of regulation to advance transparency is

the old Chinese rule that forced physicians to display the number of patients who had died in their care (Hood 1989: 178-9).

In the field of utility regulation, information is provided by the regulated firms themselves, regulatory bodies and consumer groups. Requirements to provide information are included in licence conditions and have been part of an increased interest in ensuring quality standards. These requirements can include disconnection numbers, repair responses, agreed codes of practices as well as financial information. This information offers the regulator not only an insight whether the utility operator maintains commitments to its obligations (such as investment into network modernisation), but also, in financial terms, whether the former monopolist abuses its market position. Comparative benchmarking leagues are provided by private companies, consumer interest groups, operators or by regulatory bodies. Such comparisons are supposed to enable the consumer to undertake more effective and cheaper choices often at the cost of the former monopolist. Equally, shaming and blaming of poor regulatory compliance used by regulatory authorities by extensive media appeal and which might be interpreted as an attempt to challenge existing regulatory regimes, are said to offer effective tools to enhance industry compliance. Such indirect means the provision and dissemination of data without necessarily having substantial sanctioning tools are also prominent at the level of European Union regulatory agencies; for example the European Environmental Protection Agency has not been found lacking in terms of its effectiveness (Dehousse 1997).

Choice

The notion of consumer sovereignty has been developed as a critique of established versions of public administration. It emphasises as an ideal type that a consumer should individually be able to choose the supplier, the nature and the amount of the provided good. At the same time, the sovereign consumer should be able to reject the consumption of the good. The nature of utility services, more or less by definition, makes consumption of utility products a necessity for the consumer (despite some choice in terms of energy-source and the potential to live without telecommunications). Advocates of privatisation and liberalisation argue that competition provides the best incentive for enhancing consumer benefits, pointing to lower prices and the availability of a wider range of services and goods (the earliest

example was the emergence of a multitude of differently-shaped and coloured phone sets). Measuring choice or the availability of exit options is however not restricted to the existence of various service providers. Key issues for the ability to choose are contracts, legal inter-operator provisions and technical installations which allow consumers to switch suppliers easily. One key example for the importance of such an arrangement is the difference between British and German telecommunication liberalisation. In the 1980s, access to the Mercury network required a long pass-number in contrast to the German system which, once liberalised on the 1 January 1998, offered a call-by-call arrangement with easy pre-fix numbers and a unified billing system.

Representation

Ayres and Braithwaite, in their seminal *Responsive Regulation* (1992) advocate a radical form of tripartism. They argue that empowering public interest groups (1992: 54) provides a solution to regulatory problems of capture and corruption. They not only advocate the direct participation of public interest groups (so-called PIGs) in the punishment of non-compliant firms, but also propose regular competitions for the PIG status among various consumer groups. Arguably, their arguments offer a more radical participationist account than can be encountered in the real world of utility regulation. Tripartite arrangements, however, are not unknown to regulation and enforcement. For example, consumer groups have become involved in the enforcement provisions of the 1999 Unfair Terms in Consumer Contracts regulations in the United Kingdom.

More traditional accounts focus on the difference between the direct involvement of consumer groups and the representation of consumer interests within the scope of regulatory objectives as part of the agenda of regulatory agencies. Consumer groups are consulted and involved in the regulatory process, advising regulators (ministers or agencies) on consumer involvement. Such a feature has also been (a rather unsuccessful) part of the regulation of publicly-owned industries, especially in the United Kingdom (see Prosser 1986). Besides the involvement of consumer groups in the regulatory process, the protection of consumer interests has also been part of the statutory objectives of regulatory agencies. For example, the OECD in its regulatory recommendations stressed the benefits of combining the functions of the economic

regulator with those of the consumer interest watchdog due to the often anti-liberalisation rhetoric of consumer groups (OECD 1995).

Voice

The *voice* mechanism is usually exercised individually and *ex post*. Citizen-customers are provided with procedural complaint procedures which allow for grievance handling. Complaint handling has increasingly become a key part of regulatory strategy vis-à-vs utility providers and is collected, especially in the case of the UK, for benchmarking purposes. The UK s Citizen Charter placed special emphasis on the existence of complaint-handling arrangements. However, voice mechanisms need not only be *ex post*. Increasingly, regulatory agencies have been under challenge to open their decision-making processes to individual contributions - for example, via the Internet or via road shows .

The next sections examine and compare the presence of these four mechanisms in New Zealand, the United Kingdom, Jamaica and Trinidad and Tobago. The aim of this exercise is not to offer normative statements or tests of effectiveness, but to compare and explore in a preliminary framework the different national regulatory regimes.

New Zealand: The sovereign consumer

The scale of New Zealand s public sector reform arguably represents one of the most comprehensive reorganisations of the public sector among OECD countries and as a consequence has been praised by advocates of neo-liberal reforms (Canjiano 1996). The fact that a Labour government was responsible for the shift towards a New Right agenda has puzzled many observers. While most studies of public sector reform analyse administrative change (see Pollitt and Bouckaert 2000; Bosten et al. 1991; Schick 1996), less attention has been paid to the 'light-handed' approach towards regulation. This approach has been characterised by two key elements. First, an emphasis on market liberalisation prior to the sale of assets and, more importantly, the reliance on competition law and supervision by a competition authority, the Commerce Commission. This section first sketches the chronology of regulatory reform and then analyses the development of the various transparency mechanisms. Overall, the New Zealand 'model' is oriented at the 'choice' mechanism,

with other mechanisms aiming to support the notion of the 'sovereign consumer' on the market place.

The State-Owned Enterprise Act of 1986 led to the corporatisation of the former trading units of government departments. Outright privatisation was not pursued in order to avoid the alienation of Labour s electoral constituencies (Boston 1987, 1992). Given the traditional practice of lacking bureaucratic and ministerial oversight as well as poor reporting and auditing practives, great stress was placed on establishing financial accountability. Social objectives played only a secondary role (see Boston 1998: 34).

Prior to the 1980s, electricity distribution was provided by a mixture of departments within local government and local electricity power boards which purchased electricity from the country-wide grid of the Ministry of Energy, which was also responsible for the generation of electricity as well as for policy advice. Following the 1986 Act, the Electricity Corporation New Zealand Ltd (ECNZ) was set up to own and operate the generation and transmission assets. Regulatory functions remained with the Ministry. In telecommunications, restrictions on the supply of all services were phased out by 1989. In 1990, the newly established Telecom Corporation of New Zealand Ltd was sold, although the government maintained a so-called Kiwi-share which was supposed to maintain some form of control over consumer pledges (on local free calling options, standard rental charges and universal supply) and veto-power on future developments of the company. At the same time, the Ministry of Customer Affairs requested the quarterly publication of quality of service indicators for residential services. In the gas sector, a policy of privatisation was pursued, leading to the lifting of statutory monopoly franchises in 1992.

In electricity, the first step of regulatory reform was the separation of transmission (Transpower) from generation in 1988. Following the abolition of the Ministry of Energy in 1990, the government decided to corporatise local electricity supply authorities, allowing a poll of local customers and ratepayers to decide on ownership patterns. The 1992 Electricity Act removed the statutory monopoly for distribution and established rules for information disclosure, the temporary provision of price controls for domestic consumers as well as for issues such as safety, land access and

compulsory line service maintenance. In April 1993, competition for sales to small retail consumers was introduced (extended to all consumers as of 30 April 1994). In same year, first steps were taken to develop the framework for an electricity market. In July 1994, Transpower was established as a separate state-owned enterprise of the transmission grid. ECNZ was split into two competing state-owned enterprises, ECNZ and Contact Energy (which obtained 30 per cent of the generation assets). In 1996, following considerable debate over the future structure and ownership of ECNZ, the government (National/New Zealand First) announced that ECNZ should be split into three state-owned and competing enterprises. Furthermore, line and energy businesses were fully separated and more information was to be disclosed and publicised. The industry was required to develop a convenient switching procedure for customers. A profiling system to facilitate consumer switching was initiated and established by a company (Electricity Market Company) owned jointly by Transpower, ECNZ, Contact and the Electricity Supply Association. After the collapse of the coalition, the minority government decided in 1998 on the sale of the generator and retailer Contact Energy.

In terms of regulatory transparency, the main emphasis rested on establishing consumer sovereignty and transparent market relations. The importance of *choice* in terms of facilitating competition in all areas of electricity supply (as of 1999) was one facet of this ambition. The regulation of utilities fell under the scope of the 1986 Commerce Act, which was policed by the national competition authority, the Commerce Commission. Key issues such as interconnection, line charges, metering and other financial and technical details for undertaking direct access and competition in distribution, were not regulated (Berfara and Spiller 1997). Nonetheless, New Zealand's regime also allowed for the imposition of price control where an abuse of market dominance was diagnosed and where such a measure was seen as beneficial to customers (Part IV, Commerce Act 1986). In 1998, an attempt to establish specific price controls on electricity distribution companies in cases of abuse of a dominant position failed due to the lack of parliamentary support for the minority government.

Besides these changes in the organisational structure and the emphasis on the application of competition law, regulation was imposed to enhance *information* - both

for financial-regulatory purposes and for consumers. Disclosure rules increased over time in their robustness and detail, although not in terms of increased areas of information. The importance attached to information disclosure requirements reflected not only a response to past failings, but also aimed to minimise information asymmetries in the absence of a sector-specific regulator. The 1994 information disclosure rules for electricity, drawing on the model established for telecommunications in 1990, required separate audited financial statements for natural monopoly and potentially competitive businesses as well as information on the main terms and conditions of contracts, financial performance measures based on standard asset values, efficiency and reliability performance measures (such as system outages), costs and revenues by tariff category and line charges. In 1999 these regulations were strengthened in order to compensate for perceived shortcomings in the financial accountability of the monopolistic electricity line companies and the public outcry about the prolonged effects of the 1998 Auckland power failure. While information requirements were removed from retailers and generators (now believed to be competitive sectors), new audit requirements and measures for reliability performance, the disclosure of asset management plans and security standards were introduced. A more direct tool for consumer information provision was offered by the so-called Consumer PowerSwitch , which offered, on the Internet and by phone, a direct quote for the cheapest electricity provider.

In terms of *representation*, no consumer councils were established. Nevertheless, consumer groups, in particular large user representatives such as the Major Electricity Users' Group assumed respected positions in consultation exercises. Consumer interests were represented by the self-funded Consumers' Institute (an equivalent of the British 'which?') which operated the 'Consumer PowerSwitch' system with the support of the Ministry of Commerce. More importantly, the Ministry of Consumer Affairs dealt specifically with consumers, despite being subordinate to, but separate from the Ministry of Commerce. Its task was to 'promote a fair and informed market place' by facilitating (so-called self-help) consumer choice and effective consumer rights (i.e. consumer sovereignty) but not by acting as a consumer representative. It targeted in particular low income customers, inhabitants of the Pacific Islands and the Maori. For example, in 1997, the Ministry published a report on good contracts following complaints by customers about the

contractual safeguards provided by the electricity companies (Ministry of Consumer Affairs 1997). The report criticised the insufficient practice of electricity companies to offer 'good contracts', in terms of metering arrangements, rights of consultation, liability questions and disconnection procedures. Rather than following a coercive strategy, the industry was encouraged to establish a self-regulatory code of practice. The Ministry reported on the limited application of this code in 1998, but no coercive action was taken (Ministry of Consumer Affairs 1998). In terms of *voice*, no specific complaint handling procedures or compensation payment arrangements were established (there are no licences) apart from the existing general consumer rights under the 1986 Fair Trading Act.

In conclusion, New Zealand's 'light-handed' regulation model allowed for regulatory transparency in terms of financial disclosure. Unlike the United Kingdom, the representation of consumers both collectively as well as individually with regard to quality of service played only a minimal role. The aim of transparency-inducing regulation was the sovereign customer who exercised informed choices rather than the coercive-hierarchical safeguarding of social objectives and customer rights. It also relied on self-regulation by the industry, both in terms of arranging access to networks as well as in adopting voluntary and non-binding codes of practices.

United Kingdom: Moving Furniture for Comsumer Complaints

In spite of many claims, the privatisation process in the United Kingdom was characterised by an incremental adaptation of regulatory models. The shift towards privatising utilities started, in a rather cautious way, with British Telecommunications (in 1984) and continued with gas (1986), water (1989), electricity (1990/91) and finally railways (1993). Two key uniting themes across these experiences of utility reform have been the usage of price controls as well as the creation of free-standing regulatory authorities. The usage of the RPI-X formula for price control represented an attempt to avoid the juridified processes of US-style rate-of-return regulation. The establishment of sectoral (economic) regulatory bodies followed the rejection of the UK s competition authority, the Office of Fair Trading, to take on responsibilities for regulating the telecommunications market.

The original statutory regulatory objectives prioritised universal services as well as

financability of these services, copying to a large extent from the 1969 Post Office Act as well as the 1973 Fair Trading Act with social objectives only being bolted on at the end of regulatory deliberation (see Hall, Scott and Hood 2000). Concerns with competition and customer protection were only secondary objectives. Over time, both of these objectives have become dominating themes in the regulation of utilities. One key change and learning experience has been the growing emphasis paid to competition as being superior to regulation. Regulatory reform therefore increasingly concentrated on structural change and network access questions, following in particular the experience of government officials with privatised British Gas, where the regulatory bargain (Veljanovski 1991) privatisation as vertically integrated monopoly and under a light price control regime led to continuous battles between regulator and privatised British Gas. As a consequence, structural changes became key themes either via yardstick competition between the regional monopolies in water or by vertical separation of businesses, first in electricity and then in railways.

Parallel to this increased emphasis on competition as regulation , there has also been a growing focus on the creation of quality and service standards. The first instance of such concerns emerged in 1987 when BT faced accusations over quality, backlogs in repairs and installations as well as over the discontinued publication of performance records. Following a report by the Office for Telecommunications (Oftel), quality standards and customer support emerged as key aspect of regulatory strategy, forcing BT to resume the publication of its performance achievements and threatening financial penalties for poor performance. By 1996, Oftel offered performance data on service provision, customer responsiveness, fault repairs, complaint handling and billing accuracy, relying on a mixture of fixed penalties and contractual liability for cases of poor performance (as defined by the regulator).

The 1992 Competition and Services (Utilities) Act (an offspring of the Citizen Charter) extended regulatory powers into areas of consumer protection across all areas of utility regulation. It allowed for the promotion, prescription, publication as well as the enforcement of standards of performance, appropriate complaint procedures and dispute handling mechanisms. This theme was developed further in the Utilities Bill by the Labour government (January 2000). Consumer councils were to be established as statutory independent bodies in all sectors and to play a more

prominent role by being solely responsible for customer complaints, consumer advice and policy representation in the name of consumers. At the same time, the personalised structure of the existing regulatory offices was altered by rebranding these into authorities .

In terms of *choice,* competition has, with the exception of water, been introduced into all utility sectors, especially in telecommunications. The regulatory authorities in all sectors have taken a strong interest in opening networks to new entries in order to enhance competition. Given this increased emphasis on competition, the role of the regulatory authorities changed from pro-active liberalising authorities in enforcing and facilitating network access and price controls to competition watchdogs , in particular with regard to telecommunications. In contrast Ofwat (water) as well as Ofgem (the merged regulatory office for energy) continued to regulate monopolistic areas (especially electricity) and relied on comparative regulation (in particular water) to introduce market-like behaviour into the market.

In terms of *representation*, different arrangements for consumer representation were originally chosen. These built to some extent on the previous (and arguably rather unsuccessful) arrangements in the era of public ownership (Prosser 1986). Thus, in telecommunications six advisory committees and 160 local telecommunications advisory committees were established; in gas, the Gas Consumers Council was established to investigate complaints, provide policy advice and represent a consumer perspective in particular with regard to issues such as disconnection and debt collection. In electricity, building on pre-privatisation structures, regional committees were set up. In water, the Director General was required to establish customer service committees as well as a so-called OFWAT National Consumers Council. Following the passing of the Labour government s utilities act, these different structures were to be harmonised by the establishment of consumer councils in telecommunications, energy and water. Despite the strenghtening of these bodies, the past history of consumer councils did not suggest that these were likely to play a crucial role in processes of regulation both in its formulation as well as implementation. Similarly, the role of the regulatory offices has been ambivalent. While these, in their role as sectoral competition authorities, have become an institutionalised part of the administrative landscape (strengthened by the 1998

Competition Act), they have also increasingly stressed quality of service measures (by, for example, restricting customer take-up by electricity companies in cases of poor selling techniques). Despite these concerns with imposing service standards, in terms of representing customers, the regulatory bodies have a poorer record. For example, Hall, Scott and Hood (2000) report that the customer complaint unit in Oftel played only a minor, outcast role in the hierarchy of the office.

In terms of *information*, little direct information was provided or required to facilitate consumer choice. Whereas Oftel delegated the publication of performance statistics (including a large number of operators) as well as, since November 1999, an interactive web- and telephone-based service for price comparison (including only few operators and quickly outdated pricing information), other regulators have not been so forthcoming. The gas and electricity regulators, while offering information on competition and choosing operators, only offered web-links to non-interactive pricing tables provided by which? . Other data was published in annual reports (for example the number of complaints received by the Gas Consumers Council) or in special studies (Ofgem 1999). While these offered guidance as to customer concerns and degree of information, it was unlikely that these publications had any major impact on customer choice.

Following the 1992 Act, the provision of *voice* arrangements became a licence requirement, demanding complaint-handling arrangements, the publication of disconnection rates, late and deferred payment procedures as well as service standards and targets such as reliability, quality and responsiveness to enquiries and faults. The status of *voice* was further advanced by the Labour government s plans to give consumer councils the explicit task to deal with and monitor customer complaints. At the same time, complaints about the non-transparent and alleged personalised decision-making of the regulatory authorities led to an increased procedural openness, especially in the cases of Oftel and Ofwat (see Scott, Hall and Hood 1997, Prosser 1997).

The array of regulatory instruments aiming to advance consumer transparency in the UK relied therefore on a mixture of all four mechanisms relying on quality standards, institutionalised consumer representatives, complaint handling

arrangements and competition. At the same time, there was a mirror image development in terms of information provision via delegated modes of regulation (for example, the performance standards by Oftel) in the areas of choice which was paralleled by a hierarchisation of consumer representation by independent statutory bodies.

Jamaica: Consumer-Oriented Regulation, Cabin d, Cribb d and Confined.

Although Jamaica underwent a substantial privatisation programme (see Adams, Cavendish and Mistry 1992, chapter 7), of the pipe and cable technologies discussed in this paper, only the telecommunications operator, Telecommunications of Jamaica (TOJ) was privatised by 2000. After the sale in four stages of most of the equity of the Government of Jamaica, Cable & Wireless acquired majority ownership in 1989 (the Jamaican Government retains 20% of the shares in TOJ). This effectively reversed the trend of increasing government ownership that had been established in 1968 leading to full public ownership of the telephone provider in 1975 (see Spiller and Sampson 1996).

At the time of writing, the telecommunications sector was facing a period of liberalisation. Attempts to liberalise the sector in 1998 were limited, due to the privileges enjoyed by Cable and Wireless under the terms of its operating licence. Since then, an agreement has been reached between Cable & Wireless (Jamaica) Ltd and the Minister of Commerce and Technology (Paulwell) under which Cable & Wireless would relinquish a 25 year licence, issued in 1988, under which it was the exclusive provider of land telephone services (Ministry of Commerce and Technology 1999). Thus competition was to be introduced to all aspects of telecommunications services within three years. Among the changes that were to ensue from this agreement were a shift from a cost plus system of price control to a UK-style RPI-X system of regulation. This shift was assisted by technical help provided by the UK Department for International Development (DFID).

Water and Sewerage services were provided by a publicly-owned, vertically integrated monopoly, the National Water Commission. This was a statutory authority similar in form to the UK public corporations. Electricity generation was undertaken by the Jamaican Public Service Company Ltd, a wholly publicly-owned

entity, and by the private sector Jamaica Private Power Company. Electricity distribution was undertaken by the Jamaica Light and Power Company Ltd, which was also wholly publicly-owned.

Regulation of these entities was the responsibility of the Office of Utilities Regulation (OUR), a non-ministerial government department, and the Ministry of Commerce and Technology. The OUR was established by the Office of Utilities Regulation Act 1995 and was headed by a Director-General, a structure similar to the UK regulatory offices, the main difference being the cross-sectoral responsibility of the OUR.

The powers of the OUR were strictly limited both legally and financially. As far as the legal authority of the OUR was concerned, this was partly due to technical deficiencies in the 1985 Act. Also, under Section 13 (1) of the Act, operating licences, which were issued by the Minister, took precedence over the provisions of the Act. Some commentators have sought to explain these restrictions in terms of transaction costs terms, as a solution to the problem of establishing credible commitment sufficient to maintain investment in a regime with a weak bureaucracy (Levy and Spiller 1995). However, the facts were increasingly in revolt against the theory as the new Telecommunications Bill, which, at the time of writing, was passing through its final stages of Parliament, strengthened the powers of the OUR in the realm of telecommunications in several important respects. Changes to the OUR Act in relation to the water and electricity sectors were also promised by Minister Paulwell, but had not materialised by early 2000.

Since its establishment, the OUR self-consciously attempted to balance between the consumer and the utilities interests. Increasingly this involved attempts to compensate for the weaker position of the consumer. As the Director General of the OUR put it: We are coming more and more to see that we have to play a more active role in protecting the consumer s interest than those of the utility, because the utilities are better placed to protect their own interest. The OUR was innovative in trying to overcome legal and financial constraints in order to further the interests of consumers, placing heavy reliance on informal instruments to achieve greater transparency in utilities regulation.

Looking first at the issue of *choice*, the enhancement of competition did not play a significant part in the regulation of Jamaican utilities. As a substitute for this, the OUR attempted to enforce quality of service standards in each of the utilities, to address the problem of low service quality inherent in monopolies (eg. Office of Utilities Regulation 1999a). Until 2000, the provision of choice only played a part in the telecommunications sector. The 1988 Telecommunications Policy provided for the introduction of competition in the provision of value added services, cellular services, and the full liberalisation of the market for Customer Premises Equipment (CPEs) (Government of Jamaica 1998). The OUR adopted a pro-active liberalising role, and committed itself to an any-to-any principle of interconnection, end-to-end interoperability, equal responsibility, interconnection on requests and to standards of prompt, efficient and invisible interconnection (Office of Utilities Regulation 1999). As moves were made towards further liberalisation it was envisaged that the role of the OUR in setting service standards would diminish, and that the importance of the provision of information would increase, to facilitate consumers to exercise their consumer sovereignty in an informed way.

Given the absence of effective exit options for consumers, the *voice* mechanism became a cornerstone of transparent regulation. For the most part this took the form of *ex post* complaint handling. Where customers were dissatisfied with the response that they received from the utility company with respect to a complaint that they had made, the Consumer Affairs Division would take up the complaint and provide an independent review of the complaint. Due to the shortcomings of the Office of Utilities Regulation Act 1985 the OURs power were limited to making recommendations. As a result of this, enforcement of the decision of the review and the implementation of any changes to the policies of the utilities, proceeded on the basis of negotiation with the utility company. Enforcement through negotiation, although not satisfactory from the point of view of the OUR, was conducted in a co-operative style.

The activities of the OUR were at times hampered by the unwillingness or inability of consumers to exercise their voice. This was acute in dealing with social issues, in particular with regard to a lack of consumer input with respect to the re-balancing of telephone tariffs. Other problems concerned,

> water quality and the availability of water in low income areas what we call red zone areas. Either they are very low-income areas or they are very violent areas. We really don t know what is happening so we can t address that need. We know they need water, yes, but we don t know specifics about those social issues Those people don t get out and inform us (interview).

The perception of a need for adequate communication channels influenced the development of structures and conduits for the provision of *information* to consumers. Information provision was not one of the formal duties of the Office of Utilities Regulation although it was to assume such a duty to provide information concerning telecommunications services once the Telecommunications Bill had become law. Informally, however, the provision of information was an important part of the work of the OUR. An open, particpatory approach to decision making had been publicly adopted (Office of Utilities Regulation 1998). The OUR provided substantial information concerning policy developments through consultative documents. However, the success of these efforts was limited and it was felt that this means of providing information had lacked penetration.

Consequently, a number of innovative approaches to providing information were adopted. A community visit approach was adopted where the OUR would visit rural areas and hold community meetings in order to educate consumers as to their rights (and obligations) with respect to the utility companies. By January 2000, only one such community visit had been undertaken but it was judged a success and more were planned as We educated. We educated to a part of the country that never heard of the OUR, who didn t know that there was some kind of redress that they could get. This was judged an achievement given the limited effectiveness of more conventional means of providing information in a traditionally paternalistic developing country with a high illiteracy rate.

Another way in which the OUR enhanced transparency by informal means was through appearances by the Director General and other representatives of the OUR on TV and radio (the genre of the radio talk show being a focal point of Jamaican culture). Thus each quarter the OUR published over the radio information relating to the number of complaints received against each utility. This was seen by the OUR as an effective means of putting pressure on the utilities, which would compete not to be last.

A number of official and unofficial bodies formally took on the function of *representation* of customers of the utilities. In practice, however, none of these were particularly active. Within the OUR (as with Oftel in the UK) representing consumers was regarded as less high prestige work than other functions carried out by the office. At the time of writing, the Consumer Affairs Division was located within a separate office (within the same building) as the rest of the OUR, although this was due to change. Apart from the Consumer Affairs Division of the OUR, which represented the interests of consumers in disputes with utility companies, there were a number of public and non-public organisations performing similar functions. The Consumer Affairs Commission was a public entity while the National Consumers League was an unofficial voluntary organisation. Generally, there was very little co-operation (the relationship was described as being competitive) between these organisations and the OUR, other than that these bodies would pass on to the OUR complaints that they could not deal with themselves.

Given these shortcomings, the OUR established its own internal Consumer Advisory Committee. Although loosely modelled on the British model of utility consumer councils, this body was an *ad hoc* creation. Chaired by Dr Alfred Sangster, a respected journalist and campaigner for the public interest, the Consumer Advisory Committee was to reflect a wide range of views by including representatives from the disabled, the media, the Consumer Affairs Commission and the National Consumers League (partly as an effort to improve relations with these last two bodies). The OUR saw this as an important source of information and advice and a means of gaining the perspective of particular groups of customers such as the elderly and the disabled.

In conclusion, although Jamaica made at least some use of each of the transparency mechanisms to some degree, the emphasis was clearly on voice and information. Efforts were made to improve the effectiveness of the representation mechanism that existed until the end of the 1990s more in form than in practice and at least in telecommunications increasing importance was placed on individual consumer choice. The Jamaican case shows clearly that the need for transparency mechanisms can be as acute for the regulator as it is for consumers. It remained to be seen whether efforts to strengthen these mechanisms would take root.

Trinidad and Tobago: a low-transparency regulator?

The history of pipe and cable utilities in Trinidad and Tobago differs from the other cases discussed in this paper in the increased importance of public ownership in establishing utilities. The Trinidad and Tobago Electricity Company was established in 1945; the Water and Sewerage Authority was established in 1965. Only the Trinidad and Tobago Telephone Company (TELCO) was originally established (in 1968) as a private company and was later transferred to public ownership (see Ryan, 1985). TELCO was (partially) privatised after Cable and Wireless (West Indies) Ltd assumed a 49% holding in the company in 1989-90. (Adams, Cavendish and Mistry 1992: 192-3). Additionally, a contract for the management of its activities was issued by the Water and Sewerage Authority. Originally issued to a foreign company, it was taken over by a Trinidadian company in 1998, once the original contract had expired. Thus, of all the countries examined in this study, Trinidad and Tobago had the lowest level of private sector ownership of utilities at the time of writing.

The regulation of water and sewerage, electricity and *domestic* telephone services was the responsibility of the Public Utilities Commission, established by the Public Utilities Commission Act 1966. The model of the PUC followed the pattern of US-style regulatory commissions although it functioned only as a rate-setting body. Although it had extensive powers with respect to its rate-setting function, including auditing powers, and the right to request information relevant to rate-setting, it had no authority to set quality of service standards or to request information regarding service quality. The PUC was criticised for failing to exercise its powers effectively (Ryan 1985). As a response to such criticisms, a new Regulated Industries Commission replaced the PUC in accordance with the Regulated Industries Commission Act 1998. Consequently, the board of the PUC was not re-appointed in 1999 following the decision to disband it. With respect to telecommunications the Regulated Industries Commission was to share its functions with a new Telecommunications Authority.

As well as having the lowest degree of private sector participation in the provision of utilities, Trinidad and Tobago might also be said to be the least transparent of all the cases discussed here, making little use of any of the four transparency mechanisms.

The regulatory arrangements adopted by Trinidad and Tobago offered no exit options to consumers whatsoever, making *choice* non-existent. Furthermore, the

Shareholder Agreement between Cable and Wireless (West Indies) and the government may preclude competition until the expiry of a 20-year licence in 2010. Although the privilege of monopoly/exclusivity was not explicit in the Shareholders Agreement, the dominant view seemed to be that it was implied by the Agreement (Baksh 1999). Were the government to attempt to liberalise the telecommunications sector before the expiry of the licence, this would almost certainly lead to a challenge in the courts. In practice, this left TELCO the exclusive basic and value-added service provider of both internal and overseas calls.

In the absence of effective exit option, transparent regulation in Trinidad and Tobago was heavily reliant on effective *voice* mechanisms. These could be exercised in two different ways: *ex ante* participation in rate-setting hearings and *ex post* through procedures provided by the PUC for the handling of grievances. There was, however, a serious impediment to participation in rate-setting hearings in that these were highly technical, and highly juridified affairs, which prevented effective participation without the assistance of legal counsel. Thus in the last rate-setting hearing, held in 1998 to decide whether to approve a rate increase for the Trinidad and Tobago Electricity Commission no submissions were made by private individual objectors; only firms and associations of businesses were able to avail themselves of this voice mechanism.

In terms of *ex post* grievance handling mechanisms to provide a voice for consumers, the PUC had an internal Consumer Complaints Unit. It handled complaints from individuals, as with the Consumer Affairs Division of the Jamaican OUR. However, compared with Jamaica, the Trinidad-Tobago Consumer Complaints Unit tended to be more pro-active, taking on issues on its own initiative. As in Jamaica, the Consumer Complaints Unit had no formal powers to enforce any kind of judgement against the utility companies, and so enforcement powers were limited to moral suasion. The decision not to re-appoint the board of the PUC led (in 1999) to noticeable difficulties and ineffective grievance handling.

In terms of the provision of information, the PUC was limited in its power to collecting and disseminating information relating to its function as a rate-making body. This meant that data concerning service quality, for example, was not collected. Budget constraints also limited the capacity of the PUC to collect

information, even where it related directly to the rate-making activities of the PUC.

The Commission disseminated information in a number of ways. It had a small library where members of the public could access information collected by the PUC, including accounting information submitted quarterly by the utilities. It was also involved in a public education initiative, providing information to consumers through leaflets and through public service announcements on radio and TV. Due to the disbanding of the PUC, these activities were minimal during 1999.

In terms of *representation* efforts at consumer advocacy were regarded as highly important by the PUC. Unlike in the UK and Jamaica, no evidence was found to show that complaints handling was regarded as less high-prestige work within the Commission. In fact it was suggested, paradoxically, that because the PUC lacked authority to enforce decisions concerning complaints, the Commission attached great value to the public relations aspect of consumer advocacy, which was essential to the activities of the PUC given the limits to its formal powers in this area. The role of consumer s advocate was shared between the PUC and a number of other bodies, such as the Housewives Association. Although such bodies were numerous, no one had by the end of the 1990s managed to establish a permanent or pre-eminent position in representing consumers interests. Nonetheless, one crucial initiative was the creation of an official committee set up and chaired by the Minister of Trade and Consumer Affairs to monitor complaints lodged against the utilities. The role of the committee was to investigate the most prevalent types of complaints, and to call on utility companies to answer questions and provide information before the committee. The Minister then attempted to mediate between the utilities and the consumer to arrive at a settlement. Once the Regulated Industries Commission Act had come into effect, the powers and functions of the committee were to be put on an official footing.

To summarise, at the time of writing all four transparency mechanisms were only weakly developed in Trinidad. There was little prospect for choice, and given the juridified rate-making process, voice was only effectively available to individual consumers *ex post*. Information was also severely limited, the wide-ranging powers of the Commission with respect to its rate-making function notwithstanding. The PUC was less inventive in this respect than the Jamaican OUR in order to circumvent

these problems. More importance was placed on representation, which was regarded as a high-prestige function of the Commission. These reflections are, however, at best an interim conclusion, given efforts to strengthen regulatory authority. In terms of providing consumer choice, which was of central importance in the developed countries examined and was of at least marginal importance in Jamaica, no progress was likely to be made at least before 2010.

Conclusion

The purpose of this argument was not primarily to highlight the effectiveness or insufficiencies of the different countries regulatory regimes or to assess their responsiveness to consumer concerns. Instead, this paper aims to explore differences in the regulatory landscape. In assessing whether we find convergence or if, in fact, there is divergence across countries of the developing and developed countries, two issues must be addressed. Firstly, to what extent can a process of institutional transfer and learning between the case-study countries be detected? Second, how far have transplanted models, introduced into a new context and environment, continued to operate as they did in their original setting? Table 1 provides an overview of the different transparency mechanisms in utility regulation in the four countries.

Table 1

	Information	Choice	Representation	Voice
New Zealand	Detailed regulations on disclosure of information. Increasingly stringent accounting separation for vertically integrated service providers. Increasing use of standardised measures of performance.	Emphasis on provision of choice through competition. Price controls available in cases of abuse of market dominance. No sector-specific rules to pro-actively promote liberalisation.	Ministry of Consumer Affairs represents consumers collectively. Associations of large user groups and undertake representative activities.	remedies available by Fair Trading Act 1986. of Commerce are dealt with collectively through formulation
United	Limited direct provision of information. and price information available for telecoms; information available in energy sectors provided	Choice in energy and telecommunications, but for water and sewerage. Regulatory offices have actively promoting liberalisation to as choice expands.	Different models for peculiar to each sector, adapted from previous state-owned enterprises Regulatory offices service and also handle complaints.	arrangements specified by licence obligations Voice mechanisms strengthened since given responsibility for monitoring customer
Jamaica	Extensive efforts to public have lacked penetration. unconventional channels for providing information visits, TV and radio appearances. becomes a formal duty of OUR under	Very limited use of choice mechanisms. Policy 1998 provides for liberalisation of VANS, CPEs. Agreement between Cable & Government of Jamaica 1999 will open the	Representation of consumers undertaken Division of OUR. Consumer Affairs National Consumers League have had Consumer Advisory Committee has been offices regulate quality of service and handle	Individual voice function of OUR limited by lack of enforcement consumer complaints. Consumers are often exercise voice remedies.
Trinidad-	Detailed regulations on disclosure of information PUC s restricted function as a rate-setting body. include an archive open and public service announcements on radio	No exit mechanisms currently exist. telecommunications sector may be unlawful Agreement with TELCO Shareholders.	Unit of PUC performs a consumer advocacy role. represent consumer. Minister of Trade and complaints-monitoring committee.	available. Participation in setting inhibited by juridified nature of the PUC receives and attempts to address on an individual basis.

First, are learning and transfer processes producing convergence? One part of the claim concerning the emergence of the regulatory state was that moves towards liberalisation and privatisation have been accompanied by the creation of free-standing regulatory authorities. The UK falls into this category with the establishment of regulatory agencies having become a standard response to all policy areas. New Zealand opted for a different, the so-called light-handed model by relying on the overall competition law. Despite both countries increasing reliance on structural separation as means for regulating business behaviour, the UK and New Zealand have shown little convergence (although some observers point to the price control legislation to highlight underlying similarities). Instead, both systems seemed to strengthen their transparency mechanisms within their regulatory systems on path-dependent lines, building on the already existing structures.[1] New Zealand strengthened its information disclosure rules for financial transparency and pursued structural separation for allowing competition. In the United Kingdom, the role of regulatory agencies as competition authorities was enhanced and consumer councils as independent statutory bodies were empowered in order to protect consumer interests and standards and to handle consumer complaints. In contrast, in New Zealand, regulation relied on the encouragement of self-regulation of industry, in the UK it rests on licence conditions and penalty systems based on performance records.

The comparison between the developing and the developed world shows that the British model inspired the regulatory arrangements with regard to utility reform in Jamaica. This was facilitated partly by the transfer of personnel from the UK civil service. By contrast, the earlier development of a free-standing regulatory commission in Trinidad and Tobago dictated an altogether different developmental path, drawing on the US-style regulatory commissions as a model. Furthermore, although the British model could be said to have influenced the reforms of the Regulated Industries Commission Act 1998, the move away from a narrowly circumscribed rate-maker to an empowered regulatory body has occurred ostensibly without outside assistance. Nonetheless, these changes may have been instrumental

[1] In terms of explaining initial differences in the 'formative constellation', most observers have contrasted the 'pure' implementation in New Zealand with the more pragmatist approach of the UK government in terms of public sector reform. At the same time, it should be acknowledged that the UK regulatory reform experiences has built on already existing structures – so differences in the regulatory

in the recent decision by the IDB to grant assistance to the utility sector of Trinidad-Tobago part of which is expected to benefit the new Regulated Industries

In contrast to the Anglo-American style of free-standing regulatory authorities, the New Zealand model did not have the same following in international fori (we [2] The adoption of UK-type

agenda of international organisations. As already noted, the OECD strongly

also the European Commission regard the establishment of an independent regulator as an essential step towards creating commitment. However, increasing attention

liberalised markets, such as the need for independent judicial processes, the existence of robust administrative capacities and the possibility of effective enforcement action. Not unlike the experiences in the UK and New Zealand, increasing attention has

also on the importance of harnessing public support (Smith and Wellenius 1999). Such measures were to include billing accuracy and practices, terms and conditions

Copying and learning processes do not only occur via interaction with international organisations. Modelling regulatory structures on the developed world

transparency , however, neither the international organisations or the original

attention was given to consumer transparency. Regulation establishing consumer sovereignty still played an inferior role to issues of financial credibility and

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regimes for privatised industries can be explained with differences in the age of public enterprise.

[2] similarity between the role of the Minister of Consumer Affairs in New Zealand and the Minister of Trade and Consumer Affairs in Trinidad-Tobago in reviewing consumer complaints may be the result

resulted from a visit by the New Zealand Minister of Trade to Trinidad-Tobago in 1998 in connection with the franchising of Trinidad-Tobago's postal service, but during which the regulation of utilities

Comparing regulatory regimes in the developed and developing world also sheds some light on the effects of institutional transfer and learning between countries. As already noted, this interest in the unintended consequences of regulation following the implementation of legal irritants (Teubner 1998). In particular, it points to a number of unanticipated consequences that result from the application of administrative doctrines from countries in the heartland of recent administrative reforms such as Britain and New Zealand to the peripheral countries of Jamaica and Trinidad-Tobago. Part of the explanation for the success of administrative reform programmes in the UK and in New Zealand has been the political commitment to the success of the reforms. Often this has been lacking in Jamaica and Trinidad-Tobago. This has manifested itself, for example in the procrastination of the Minister of Commerce and Technology in introducing essential amendments to the Office of Utilities Regulation Act 1995 to Parliament. In Trinidad-Tobago the disbanding of the PUC before the Regulated Industries Commission was operational shows a similar lack of commitment. In both countries, the mechanisms for parliamentary scrutiny of the activities of regulators are also weak. Given such a lack of support and scrutiny, one would have expected consumer transparency to be less effective in the Caribbean countries. In fact, the Jamaican OUR has been inventive in trying to surmount these obstacles, through informal channels of communication, as well as through the reliance of pure persuasion to effect changes in the utilities performance. Similar efforts have been made by the PUC in Trinidad-Tobago, apparently with less success. The importance of such efforts to the argument presented in this paper, is that they point to new *divergences* as Anglo-American institutions are adapted to local circumstances.

Thus, comparing regulatory regimes in the developed and developing world also highlights the importance of understanding the interaction between instruments of governance (such as regulatory regimes) and the relevant context. In particular, the pure existence of *choice* was unlikely to ensure that customers gain from the supposed benefits of liberalisation or, in the case of Caribbean countries, rather of privatised monopolies. In fact, transparency can only create reassurance and sovereign customers if both providers as well as the recipients of information agree

were discussed. Subsequent research was unable to confirm this.

on the content and purpose of the information. Choice, as already noted at the outset of this paper, requires information as well as standards, in order to establish

shown the difficulties facing policy-makers in *detecting*
merely *effecting*
manifested themselves in different ways in both the United Kingdom and in New Zealand. In Maori and Pacific Island communities in New Zealand it was found that

information dissemination were effective tools for detecting concerns and effecting the transfer of information (Ministry of Consumer Affairs 1997b). Equally, concern

retailers.

While this conclusion could only highlight these issues to point to avenues of further

policies of increasing private sector delivery and liberalisation of utility services, this has not led to a convergence of the notion of the citizen as customer. In all four

partly because of institutional inheritance, partly, and more importantly, because of the different ecology of regulation. Thus, despite the internationalisation of a

concepts remain regionally and/or nationally distinct.

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