

# GRIDLOCK: REGULATORY REGIMES IN THE THAI PASSENGER TRANSPORT SECTOR

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# Gridlock: Regulatory Regimes in the Thai Passenger Transport Sector

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## Abstract

The Thai passenger transport sector remains dominated by ailing state-owned enterprises (SOEs). Virtually untouched by post-1997 crisis liberalization and privatization schemes that would have revitalized these “zombies<sup>1</sup>”, the managerial and regulatory architecture of transport SOEs continue to be complicated. Departments under at least two ministries and three sectoral commissions with complex structures regulate the sector with unclear lines of responsibilities. Lacking regulatory expertise, public officials often make decisions on an *ad hoc* basis and abusively protect the *status quo* just as the financial performances of these SOEs, especially “welfare” bus and railway operations, deteriorate. As this paper will demonstrate, privatization, shock therapist’s knee-jerk response to this structural problem, may be inappropriate unless regulatory institutions are strong and independent, restraining conflict of interest and rent-seeking behavior of public officials. Because “regulatory capture” is prevalent, Thailand should first consider institutional remedies, most importantly separating regulatory function from operation and policy-making, whilst increasing public awareness and strengthening competition regime.

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<sup>1</sup> “Zombie” is a nickname for too-big-to-fail enterprises that operate at a great loss yet receive financial support from the government.

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**Abbreviation Index**

AD:	Aviation Department
ADB:	Asian Development Bank
AOT:	Airport of Thailand Public Company Limited
BMA:	Bangkok Metropolitan Authority
BMTA:	Bangkok Mass Transit Authority
BTS:	Bangkok Mass Transit System
CAB:	Civil Aviation Board
CMLT:	Commission for the Management of Land Traffic
DLT:	Department of Land Transport
ETA:	Expressway and Rapid Transit Authority of Thailand
MD:	Marine Department
MoT:	Ministry of Transport
MPC:	Maritime Promotion Commission
MRTA:	Mass Rapid Transit Authority
NESDB:	National Economic and Social Development Board
OTP:	Office of Transport and Traffic Policy and Planning
PAT:	Port Authority of Thailand
SOE:	State-owned enterprise
SRT:	State Railway of Thailand
TCA:	Trade Competition Act
TCC:	Trade Competition Commission
TCL:	Transport Company Limited
TMN:	Thai Maritime Navigation Company Limited

## Setting the Stage

By the early 1990's, Thailand had achieved an unprecedented level of economic success never experienced in any countries except China. Along with relative abundance of labor and natural resources, Thailand's liberal economic policies, encouraging private competition and trade and investment openness while preserving fiscal conservatism, have miraculously pushed growth rates up to double-digit levels. Parallel to such economic advancement is the transition to democracy. After the 1992 "Black May" crisis<sup>2</sup> that led to a clash between the military and anti-government protestors, democracy flourished and civilians were elected as prime ministers, boosting investor's confidence in the Thai economy. The kingdom looked set to become another Asian "tiger".

Yet, there were increasing signs of weaknesses in the policy management of various sectors, especially among SOEs. The government deliberately protected them from private competition, insolvency and takeover only at the burden of taxpayers. When the 1997-1998 financial crisis unexpectedly struck, they became net drawers on government budget, rather than net providers. There was then the popular perception that the crisis highlighted the need for public enterprise reform in Thailand.

Introducing reforms for the SOEs has been an integral part of the Washington Consensus-mandated liberalization process initiated since the crisis. Precisely, in the December 1997 letter of intent to the IMF, the government proposed a fast-track program of privatization, which became the core principle of the 1998 Master Plan for State Enterprise Reform thereafter. Along with energy and telecommunication, transport stood out as areas most likely subject to across-the-board privatization, but so far very little progress has been made. Resistance to privatization from unionized labor within these enterprises as well as political interests involved in the control and management of SOEs have successfully protected public transport from privatization.

Even if the Thai transport sector remains unprepared for such change in ownership, regulatory reforms are much needed.<sup>3</sup> It is increasingly obvious that the existing regulatory structure has not met, and is unlikely to meet, efficiency or equity aims of regulation, hence

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<sup>2</sup> The "Black May" or "Bloody May" is the popular name for the 17-20 May 1992 massive public protest in Bangkok against a military regime and the bloody military crackdown that followed.

<sup>3</sup> In an ideal situation, market should be allowed to function freely without state intervention so that economic efficiency is maximized. However, in the passenger transport market, the government needs to be concerned with both "market failure" such as transport operator's abuse of monopolistic power and "government failure," specifically inadequate public good or service provision. This is particularly true for Thailand where there is strong evidence that the market cannot be left alone without the right government intervention to deal with the sector's inefficiency. Rather than adopting *laissez-faire* policies, creating proper tariff and market access regimes seems more appropriate at least in the short run.

leading to an annual nine-digit loss in dollars for some operators. One explanation for such failure is that the government regards them as “welfare” services and prioritizes in keeping fares at an un-operationally low level. For this reason, most SOEs have no incentive to contain costs, chronically run at a loss and therefore require subsidization. This implies that, given the interventionist role of the State, the important question is not the *extent* but the *quality* of such intervention.

Exploring regulatory regimes in the Thai passenger transport sector, this paper has five sections. Section 1 provides an overview of the SOE-dominated transport operation and highlights signs of organizational inefficiency in the current setting. Such problems can be explained by the top-down approach of policy development in Thailand, which will be briefly discussed in Section II. This is to examine broad issues in Thai policy-making procedures before investigating the existing regulatory framework in Section III. In a detailed fashion, the analysis in this section will explain how the overlapping authority in regulatory decision-making is inconsistent with the characteristics of “good” regulation provided in Dee (2006). Then, Section IV will tackle the most important dilemma transport regulator faces: balancing economic and social ends. The Thai authority is by no means successful in achieving this goal so it is appropriate that policy recommendations be made to increase the independence and productivity of regulators. This institutional reform is in fact the core of Section V’s analysis, which will lead to an open-ended conclusion of this paper: what is or should be the future direction of Thai passenger transport regulation?

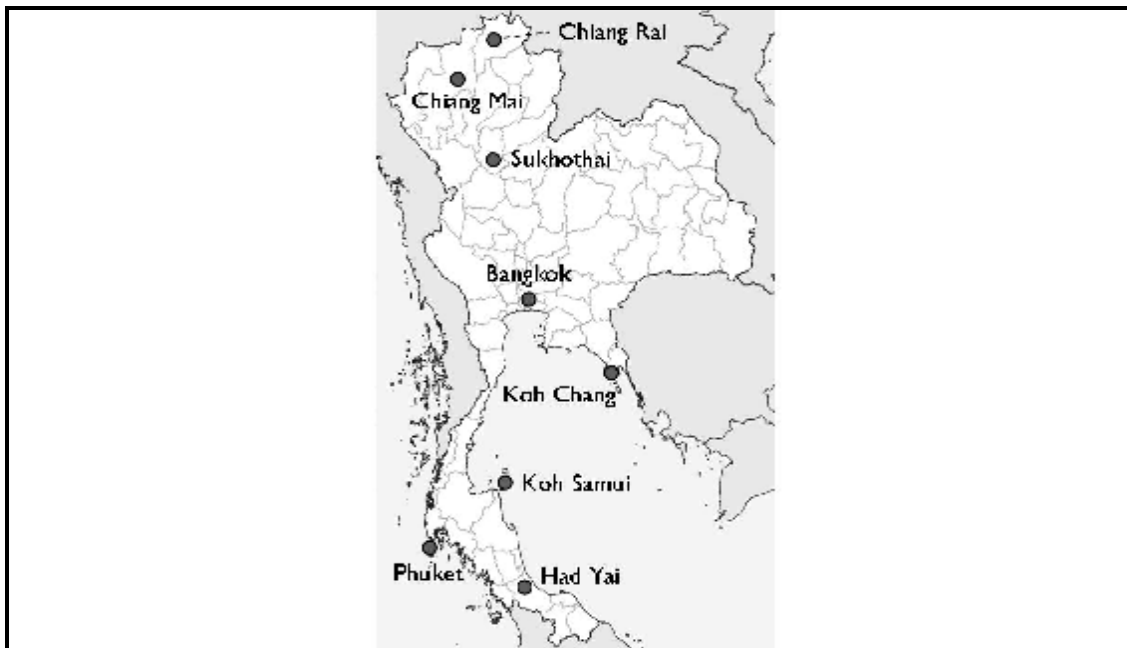
## **I. Operation: Zombie Rules**

In the 1980s, the political wind blew in favor of the right and supply-side economics was adopted while regulatory reforms prioritized on both sides of the Atlantic. As the alarm bell rang, Ronald Reagan and Margaret Thatcher realized the popular dissatisfaction with public transport system and thus the need to commercialize services to enhance quality and efficiency. Mandated by the Washington Consensus, such reforms did not reach much of the developing world, including Thailand, where the state still regards transport sector as a public good and an element of national security. Nationalization is thus justified on two grounds. Firstly, transport network is a classic case of natural monopoly, characterized by fixed cost so high that only one firm can fully exploit the potential economies of scale available. Secondly, because transport services are considered public goods, private provisions may be insufficient and this can generate negative externalities, from social inequality to congestion and air pollution. It is therefore a

social obligation for the government to operate the transport network “for its people,” endowing SOEs with exclusive rights to provide basic services by law. The reality, however, is much more complicated because “social services” are poorly defined as all loss-making transport services without a thorough examination of market structure.

Thai labor unions, by shouting “*khaai chart*” (the sale of the nation), have been very successful in protecting transport services from across-the-board privatization since 1998. So far only two transport SOEs that existed in 1998 have been privatized: Thai Airways International and Airport of Thailand (AOT) which runs Bangkok, Chiang Mai, Chiang Rai, Phuket and Had Yai airports.<sup>4</sup> Of all modes of passenger transport, the air travel sub-sector stands out as the most liberalized to date, probably because of an inevitably high degree of international competition.

Figure 1: Map of Thailand



Fiscal Policy Research Institute (2006)

Quium (2003) ranks transport among areas worst affected by the 1997-1998 recession; in this particular sector, private activity in 1999 dropped by one-third from the pre-crisis level. Since then, private sector participation in infrastructure projects has risen dramatically though involvement is mostly through a concession or licensing arrangement of SOEs, the sector’s

<sup>4</sup> The sector remains unregulated in terms of air traffic control, dominated by Aeronautical Radio of Thailand (Aerothai), an independent arms-length SOE licensed to operate by the AD.



dominant force.<sup>5</sup> Even in relatively contestable markets, such as long-distance road transport, SOEs retain full control of passenger transport operation. Unlike trucks, buses in Thailand are exclusively run under the operation or licensing of Transport Company Limited (TCL), a state monopoly that generated \$2.2 million profit during the first half of 2006.<sup>6</sup> Citing Deunden (2005), “since private [firms] are not allowed to operate the reserved routes, giving the [SOE] exclusivity, they have no choice but to submit to the terms and conditions stipulated in the contracts.”

Along with the Expressway and Rapid Transit Authority of Thailand (ETA), the TCL is indeed a rare breed of “commercial” profit-generating transport SOEs. Other passenger transport SOEs similarly hold monopolistic position and face no competition, yet loss is chronic. Structurally similar to the TCL, Bangkok Mass Transit Authority (BMTA) operates or provides license to all Bangkok bus routes although political pressure has kept fares at an un-operationally low level, making it one of Thailand’s most unprofitable SOEs. Likewise, in rail passenger transport, often dubbed “the most natural of all natural monopolies” because of significant levels of economies of scale and network economies, the SRT maintains a tight grip on passenger service, consequently suffering from an annual nine-digit loss in dollars. Just as they are taxpayer’s biggest burdens, BMTA and SRT rank among the top ten SOEs in terms of employment, hiring more than 37,000 workers: another sign of organizational inefficiency.

In areas untouched by the privatization process, private participation is still permitted either in the form of full or partial concession or joint venture. One success story in ridership and consumer confidence is the Bangkok Mass Transit System (BTS) or “skytrain” concession: a 100 percent privately funded project. The infrastructure of Bangkok subway, on the other hand, is state-financed and partial recovery-based, with rolling stocks, telecommunication tools, power supply and depot equipment in the hands of private investors who share fare revenue with the Mass Rapid Transit Authority (MRTA), an SOE, under a 30-year build-operate-transfer concession contract. An alternative form of public-private partnership is joint venture, such as the Thai Maritime Navigation Company Limited (TMN), an SOE and a leader in cargo shipping that competes with private logistics firms.

As stated above, the most liberalized area of transport is aviation, followed by the maritime transport sector where in general cargo ships, boats and ferries are privately run. Thailand boasts about ten private airlines, most notably the high-frills Bangkok Airways. In tourist destinations where Aviation Department-run provincial airports are lacking, Bangkok

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<sup>5</sup> The size of Thai SOEs is not to be underestimated. In 2004, their total revenues and assets are 28 and 82 percent of GDP respectively.

<sup>6</sup> All figures in this paper are quoted in US dollars.

Airways builds its own, providing it with monopolistic access to three airports: Koh Samui, Koh Chang and Sukhothai. In fact, Thai airlines are a sort of national pride. In 2002, prior to privatization, Thai Airways received more passengers than any other Asian carrier although its revenue ranked third, behind Singapore Airlines and Cathay Pacific. After privatization, it has retained its international market share but contracted non-core, domestic routes to its sister Nok Air. Particularly after the emergence of budget airlines, price competition in the airline industry has been welcome: a situation not found in other passenger transport markets. Nevertheless, as in most countries, foreign carriers, though not foreign investment, are prohibited from domestic routes.

Judging from *Table 1*, the most contestable markets, especially if not qualified as “welfare service,” are most open to competition. These include air and maritime passenger transport as well as freight logistics. On the other hand, certain transport modes, namely buses and trains, have distributive importance, hence a strong, albeit irrational, political will that too-big-to-fail zombie SOEs will continue to walk. Although private firms are allowed to operate under the watchful eyes of the SOE, this operational structure has negative social implication. Quoting Nipon (2002), “exclusive licensing, concession and privileges in these businesses do not only contribute to an uneven playing field, but also result in high economic rents and generate extensive rent-seeking and corrupt behavior.” These problems of course are irrelevant to freight transport where private competition normally governs the market and distributive issues need not be considered. The following sections of this paper will therefore focus on passenger transport which poses three major problems to the economy: huge financial burden, the lack of competition, and unsustainable balance of economic and social aspirations.

*Table 1: Operation of Transport Infrastructure and Services in Thailand*

Mode	Type	Infrastructure	Service
Road	Passenger (Bus)	<ul style="list-style-type: none"> <li>• <i>Departmental (DLT)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>SOE (TCL &amp; BMTA) with licensing</i></li> </ul>
	Freight	<ul style="list-style-type: none"> <li>• <i>Private</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Private (Logistics, firms)</i></li> </ul>
Rail	Passenger	<ul style="list-style-type: none"> <li>• <i>SOE (SRT)</i></li> <li>• <i>SOE (MRTA) with concession</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>SOE (SRT)</i></li> <li>• <i>SOE (MRTA) with concession</i></li> </ul>
	Freight	<ul style="list-style-type: none"> <li>• <i>SOE (SRT)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>SOE (SRT)</i></li> </ul>
Maritime	Passenger	<ul style="list-style-type: none"> <li>• <i>Private (Ferry piers)</i></li> <li>• <i>SOE (PAT)</i></li> <li>• <i>Departmental (Local piers under local authorities)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Private (Ferries)</i></li> </ul>
	Freight		<ul style="list-style-type: none"> <li>• <i>Private (Ships)</i></li> <li>• <i>SOE (TMN)</i></li> </ul>
Air	Passenger	<ul style="list-style-type: none"> <li>• <i>Private (Bangkok Airways airport)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Private (Airlines)</i></li> <li>• <i>Privatized (Thai Airways)</i></li> </ul>

	Freight	<ul style="list-style-type: none"> <li>• <i>Privatized</i> (AOT)</li> <li>• <i>Departmental</i> (Provincial airports under AD)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Private</i> (Cargo planes)</li> </ul>
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*Fiscal Policy Research Institute (2006)*

## II. Policy Development Process: a Top-down Approach

The development of SOEs has always been a major component of Thailand's public policies manifested in national and sectoral plans. In the national context, there are four agencies directly concerned with national economic policy planning, the first two being under the jurisdiction of the Office of the Prime Minister: the National Economic and Social Development Board (NESDB), the Bureau of Budget, the Ministry of Finance, and lastly the Bank of Thailand. In general, these agencies are armed by a corps of highly competent, Western-trained economists known as "the technocrats." Taking an economy-wide approach, the NESDB produces the five-year National Plan which provides a reference for budgetary purposes. Subsequently, each ministry develops its own plans and projects in accordance with the National Plan to be approved by the Bureau of Budget if judged to be consistent with the Plan. Generally speaking, national and sectoral plans do not set priorities according to cost-benefit estimates, nor do they take into account budget constraints. After the plans have been translated into investment programs or projects, the Bureau of Budget will consider them in the context of resource constraints.

However, sectoral (or specifically the line minister's) policies are arguably the playing field of less competent but politically well-connected ministers who wish to distribute rents among their factions and constituents. In fact, ministerial candidates are sometimes pre-selected as a reward for loyal party service rather than because they are the right people for the job. For this reason, ministries tend to include as many ideas as possible in their own platforms even though they are expected to follow the NESDB's somewhat vague strategies.

This is thanks to one important aspect of Thai policy-making: the legislation supporting each line minister is usually brief and vague, bestowing substantial discretionary power to the ministers through ministerial regulation and policy implementation. Therefore, there is an incentive for parliamentarians to hold an executive post in these ministries rather than to regulate through legislative process.

In relation to SOEs, the NESDB has supported the establishment of such enterprises but not in perpetuity. SOEs, like other products or entities, have a life cycle and eventually their responsibilities shall be overtaken by the "invisible hands" of firms. This statement is defended and clarified in Article 50 of the 1997 "People's Constitution": "Every person has freedom ... to fairly engage in free competition. ... The aforementioned freedom shall not be limited except

... for the benefit of ... consumer protection, ... environmental preservation, public safety or anti-monopoly or the eradication of unfairness in competition.” Article 87 likewise guarantees: “The state shall promote free market economy, ensure fair competition, protect consumers and prevent direct and indirect monopoly.” In short, the promulgated constitution does not support government intervention or state monopoly.

This view contrasts with the contents of the 1999 Trade Competition Act (TCA) that replaced the totally ineffective 1979 Price Fixing and Anti-Monopoly Act,<sup>7</sup> Thailand’s first competition law. Administered by the Trade Competition Commission (TCC) which associates with the Department of Internal Trade, Ministry of Commerce, the TCA only deals with anti-competitive practices such as mergers and collusive or “unfair trade” activities *that threaten business competitors*, leaving SOEs exempted along with government agencies and agricultural cooperatives. Ironically, Thai competition law cannot be applied to enterprises that, in the eyes of Visoot (2001), carry out the most visible anti-competitive acts.

Legal non-comprehensiveness also leads to enforcement problems. For example, Section 25 of the TCA prohibits business operators with “market domination” from unreasonable price fixing or service restriction, without clarifying how market domination is measured, leaving much discretion to the administrator.<sup>8</sup> Moreover, as the TCC has inadequate financial and human resources to operate independently, the toothless commission lacks the experience or expertise in enforcement. To no-one’s surprise, the TCC has deliberated only four cases since its inauguration, none related to transport, and nobody has been prosecuted. It should then be emphasized that, in the passenger transport arena, competition law is virtually useless despite the prevalence of monopolists.

### III. Regulatory Institution: Conflict of Interest

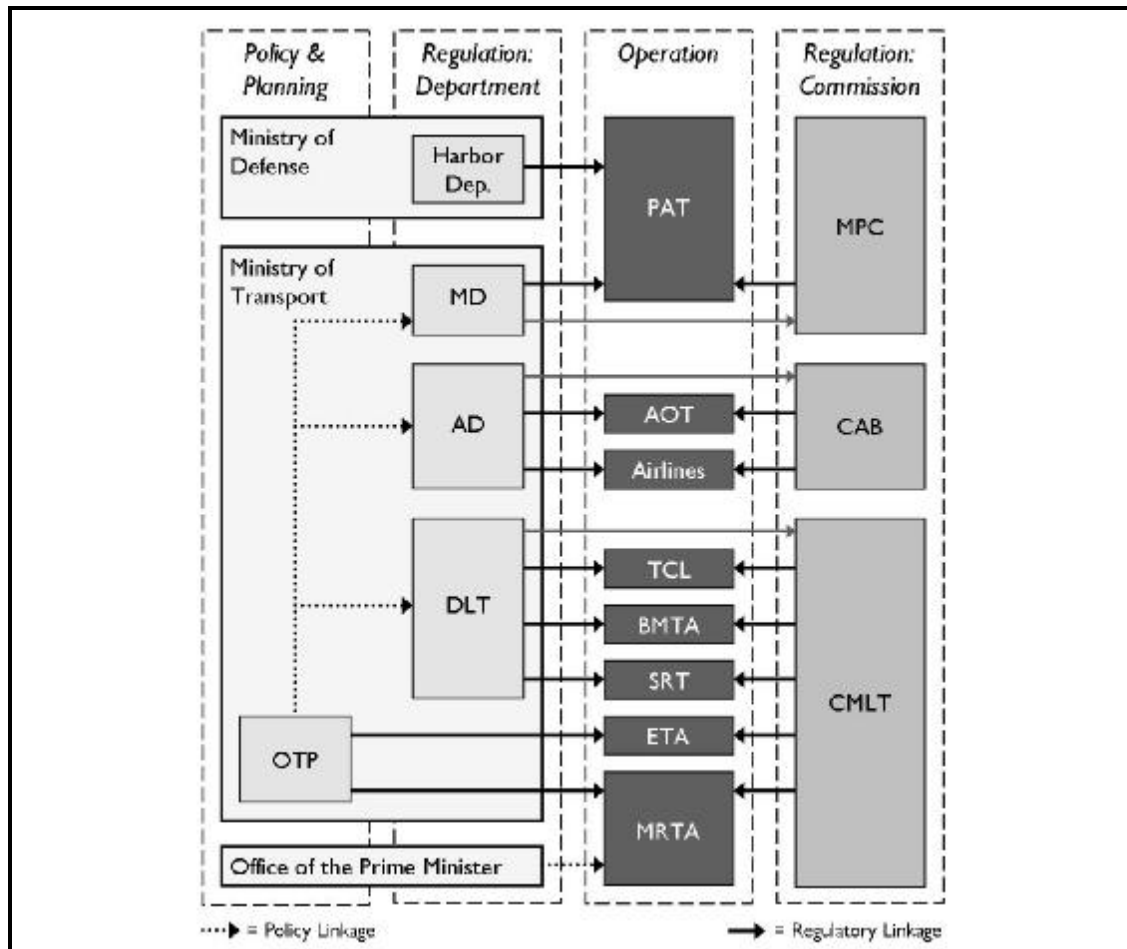
With SOEs exempted from competition law, transport operation is controlled by informal top-down sectoral regulations which, quite like a spider web, prove as confusing as could be. First it must be understood that two types of “regulators” exist: 1) departmental regulators under direct control and acting as agents of their respective ministries and 2) semi-independent, sectoral commissions consisting of the Transport Minister and other high-ranking officials.

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<sup>7</sup> During the 20 years that the law was in effect, only one business, ice trading, was declared a controlled business.

<sup>8</sup> The TCC has attempted to legally establish a market-share threshold as a proxy for market domination, a necessary condition for enforcing Section 25, but the approval was blocked by parliament amid a big-business lobbying allegation.

Figure 2: Policy, Regulation and Operation in the Thai Passenger Transport Sector



Fiscal Policy Research Institute (2006)

If the regulatory matter is internal in nature, such as the scheduling of buses or trains, departments only need to interact with SOEs. However, when the subject of regulation relates to price, coverage or other social requirement, commissioners have to approve the departmental regulator's suggestion for the issuance or modification of regulation. In other words, when the regulatory decision has an impact on the non-transport realm, such as a Bangkok bus fare hike that pushes inflation up and affects the livelihood of urbanites, the sectoral commission, having representatives from both transport and other ministries, must support the decision. In the case where a new piece of legislation is required, it is this commission, not departments under any ministries, that forwards the case for parliamentary approval through the Secretariat of the Cabinet.

### *Regulation by Department*

Departments under at least two ministries, Transport and Defense, hold overlapping responsibilities in planning and regulation.<sup>9</sup> Even though the government assigns the Ministry of Transport (MoT) to develop a transport master plan, with layers of bureaucracy, implementation is never easy and vulnerable to political influence. This is because, despite MoT supervision of many transport operators through Aviation Department (AD), Marine Department (MD) and Department of Land Transport (DLT), the Harbor Department under the jurisdiction of Defense Ministry co-regulates the Port Authority of Thailand (PAT) with the MD. ETA, an SOE operating toll roads, had been supervised by the Interior Ministry until 2002 when the task was transferred to the MoT's Office of Transport and Traffic Policy and Planning (OTP) which enjoys a non-departmental status. To add more confusion to the regulatory architecture, the Office of the Prime Minister acts as the policy director of the MRTA.

Departmental regulation is in fact a component of a top-down process of Thailand's transport policy-making. To put it simply, departmental regulators are no more than channels through which policies generated at the national or ministerial levels can be implemented into SOE operation. Because transportation cost account for 7.8 percent of Thailand's Gross Domestic Product compared with 2.5 percent in Japan and 2.8 percent in the United States<sup>10</sup> (hence demonstrating the sector's inefficiency), the NESDB has put transport and logistics planning as a national agenda. With Ministers' discretionary powers, however, sectoral policy implementation is not always consistent with the NESDB's national blueprint. The MoT, for example, assigns the OTP, its integrated logistics planning and monitoring agent, to play an NESDB-like role in producing a five-year transport master plan that will serve as a policy guideline for all departments under the MoT.

Under the umbrella of respective ministries and the guidance of the OTP are departmental regulators, responsible for mostly technical affairs, from safety and security to congestion control. In a few areas where transport regulation relates to non-transport issues, MoT departments may face difficulties in cooperating with other ministries, such as the Harbor Department that regulates PAT port safety or the Office of the Prime Minister which has a final say in MRTA supervision. This is because departmental agents are institutionally set up to strictly follow the courses of their principals.<sup>11</sup> Department-to-department cooperation thus implies ministry-to-ministry collaboration. Yet, because each ministry has its own agendas,

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<sup>9</sup> The phrase "at least" is used here because under certain scenario, other ministries may indirectly play regulatory functions over transport SOEs. For example, if the ETA wishes to build a suburban motorway, an environmental impact assessment must be submitted to the Ministry of Natural Resources and Environment.

<sup>10</sup> These figures are presented by the President of Thai International Freight Forwarders Association, Suwit Ratnachinda.

<sup>11</sup> In Dee (2006), this feature of regulation is identified as the "thirty different governments" effect: "when there is a lack of consistency and coordination among different government agencies, businesses can feel they are confronted by many separate governments."

policy integration is often dependent on the Prime Minister's decisiveness in choosing what to prioritize.

In other words, what distinctively characterizes the Thai regulatory process is informal decision-making by rationally bounded bureaucrats or politicians whose agendas focus primarily on static rather than dynamic or long-term implications. Unlike in developed economies, formal regulatory impact assessment, whether *ex-ante* or *ex-post*, does not exist. MoT departments may claim that they occasionally perform cost-benefit analysis of regulation but such evaluation is always conducted internally, preventing academics, transport specialists or various stakeholders from openly participating in the policy-making or evaluation process.

### *Regulation by Commission*

The legal authority to issue, change or scrap regulation, however, is vested with a sectoral steering commission that consists of senior officials from the aforementioned two ministries as well as other agencies whose activities are affected by the regulation. At present, there are three commissions: the Maritime Promotion Commission (MPC), the Civil Aviation Board (CAB) and the Commission for the Management of Land Traffic (CMLT) which regulates both rail and road transport. Like the TCC, these regulators have broad, semi-independent power so enforcement can be arbitrary or discriminatory. Because the regulatory authority rests with commissioners who are mostly bureaucrats that already oversee policy and planning and thus sympathize with SOEs, political intervention is a fact of life. MPC structure is among the most complex; the commission must include the Transport Minister and representatives from the Permanent Secretariat of five ministries: Transport, Commerce, Finance, Industry and Foreign Affairs. Similarly, the Transport Permanent Secretary acts as the CMLT chairman but the commission requires membership of the Interior Permanent Secretary, the Secretary of the Council of State, the Commissioner General of the Royal Thai Police, the DLT Director General, and Bangkok governor or their representatives.

The major difference between departmental and commission regulators is ministerial affiliation. Although members of both groups are all civil servants, the latter, comprising of bureaucrats from various government agencies, are supposed to take a broader view in regulatory decision-making. One justification for this regulatory model is to have outsiders debate policy choices of the core principal, specifically the MoT. In certain sense, commission regulators do provide checks and balances to the power of the MoT. However, because neither departments nor commissions are led by regulation specialists, their mindsets are often shaped by the "bounded rationality" of their respective ministries.

One of the purposes of having transport commissions is to open the regulatory process to non-MoT officials and therefore create a regulatory framework that better fits the inter-ministerial or economy-wide perspective, but it appears that regulators, departmental or commission, do not recognize what regulatory best practice is. Some even argue that because all commissioners hold their main public office elsewhere, these non-professional regulators care little about transport regulatory regimes. When problems arise, they hardly take responsibility and simply shift blame to the SOEs or the MoT who has a more direct supervisory role.

Though destined to be independent, commissioners typically make decisions based on their ministerial interests, creating intra-commission conflicts, while poorly responding to local needs. Under the Land Transport Act, the CMLT must regulate bus routes, urban and provincial, but the Bangkok governor worries most about the provision of services in his metropolitan area, leading to disagreements with other commissioners. When the Bangkok parliament convened in 2005 to discuss the governor's BTS skytrain extension proposal, all parliamentary members of one major political party immaturely protested by walking out. Transport policy and regulation have been crushed in a political football field.

As mentioned when discussing about the departmental regulator, the final decision-making power often rests with the executive branch of government. Although regulators enjoy the privilege of introducing whichever regulation they consider appropriate on an *ad hoc* basis, in many cases they cannot resist political influence, especially when it comes to picking winners and losers. For instance, before the 2005 general election, Donmuang Tollway regular fare was reduced from 30 to 20 baht "to benefit locals" despite the understanding that it would put the operation in the red. Commissioners often approve or disapprove government's proposal to change tariff rates without a detailed analysis of demand elasticities.

In short, the Thai regulatory landscape is characterized by conflict of interest, both inside and outside regulatory institutions. Because regulators serve as agents of their ministries with their own set of policy objectives, different agents define "good transport regulation" differently. Outside their meeting room, they face yet another powerful group: rent-seeking or vote-maximizing politicians who misuse transport policy for their personal, financial or partisan, electoral gains.

### ***Self Regulation***

As regulatory functions of both departments and commissions remain weak, SOEs have, in certain aspects, the authority to self-regulate, obscuring the line separating regulation from



operation. All transport SOEs claim their self-regulatory role on their websites but clear-cut examples are the TCL and BMTA which act not only as a bus operator but also as a regulator of their own and subcontracted routes in terms of quality, safety and schedule. Private companies, in return, are required to pay a royalty fee. By capitalizing on their monopoly rights, such SOEs become over-reliant on “easy money” and neglect efficiency or service improvement, thereby upsetting the populace.<sup>12</sup> As Nipon and Deunden (2003) put it, Thai regulatory design fuels “conflict of interest as state authorities hold an equity stake in or enter into revenue-sharing scheme with the business they regulate.” Self-regulation hardly functions as promised, unlike in industrialized democracies where rules, whether established by firms or trade associations, are strictly enforced.

It is therefore inappropriate that loss-making transport operators are given the very power to self-regulate because it adds another dimension to the conflict-of-interest problem. The above two subsections explain how ministerial or political interference impedes the productivity of regulators short of regulatory capability or financial resources to operate independently, blurring the borderline between policy and regulatory roles. To add yet another complexity, some SOEs perform both operational and regulatory tasks. Unlike in the Western model, clear separation between the three functions depicted in *Figure 2* does not exist.

### ***Bad Regulation***

Applying Ross Garnaut’s taxonomy of policy-making problems, there are three major causes of regulatory failure: 1) public officials’ ignorance of regulatory best practice, 2) “capture”<sup>13</sup> or resistance from vested interests, and 3) the opposition to good regulation among those extracting rents from inferior policies. In the Thai transport arena, the second and third issues are inter-related. Because the regulated industry is state-supported, the government’s reluctance to effectively regulate these transport SOEs also implies the misallocation of public resources, creating dead-weight loss as well as rent-seeking opportunities for bureaucrats and politicians. To put it differently, there tends to be a collusion between the regulated and the rationally bounded regulator to keep the *status quo*, resulting in socially undesirable policy outcomes.

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<sup>12</sup> BMTA bus fleet and their service quality have remained remarkably unaltered over the past decades; one guidebook describes the network as “ancient.”

<sup>13</sup> Regulatory capture is defined as a phenomenon in which a regulatory body becomes dominated by the interests of the industry that it oversees.

One excellent example of this capture is how transport policies have been influenced by vested interests inside SOEs, most notably labor unions. Because officials fear political backlash from SOE reforms such as privatization, such plans have been stalled for many years, demonstrating inflexibility or the lack of dynamic consideration on the parts of regulators. Despite unsatisfactory performance of operators, the government prefers to utilize the softest form of regulatory enforcement, namely persuasion. Cited in Dee (2006), one benefit of such technique is “its subtle ability to encourage compliance without actually having to ... ‘get tough.’” Yet, in Thailand, such non-punitive supervisory option fails to alter SOE behavior. Due to weak enforcement, it is rare that transport SOEs are punished by the authority in one way or another, encouraging them to continue draining taxpayer’s money without the investment to upgrade service quality.

In countries with strong democratic fundamentals, the public may express concerns that well counterbalance bad regulation, but not so in the case of Thailand. Although the Thai regulatory structure is labeled as “complaint-based,” indicating that regulators make no move except when operators or consumers voice their worries, the system lacks adequate consumer protection program for informants and complainants, hence low level of public awareness that leads to slow adjustment or weak enforcement of rules.

Because regulation tends to support rather than scrutinize the regulated, Ambrose Bierce’s sarcastic description of a lighthouse as “a tall building ... in which the government maintains a lamp and the friend of a politician” echoes the Thai transport realm very well. What transport regime reveals about the Thai policy-making process: the current setting suffers from all three of Garnaut’s problems and hardly satisfies the prerequisites of “good regulation” listed in Table 2.

Table 2: Comparison of “Good Regulation” and Thai Transport Regime

Good Regulation*	Thai Passenger Transport Regulation**
“It must ... have a clear [net] benefit.”	<b>Not quite</b> , it attempts to balance efficiency and equity ends but results have been mixed; many SOEs operate at a great loss and require subsidization yet service especially for the poor remains substandard.
“It must be better than any [alternatives].”	<b>No</b> , it is inferior to formal regulation that is mutually excluded from policy planning and operation.
“It must be robust to errors.”	<b>Not quite</b> , it is institutionally set up to be inflexible and vulnerable to political pressure so errors are not minimized, nor do they lead to subsequent regulatory re-design.
“It should contain the seeds of its own destruction.”	<b>No</b> , it disallows open <i>ex-post</i> regulatory appraisals so the repeal or amendment of rules only comes at the discretion of bureaucrats or politicians.
“It should state ( <i>ex ante</i> )	<b>No</b> , it fails to communicate regulatory objectives or establish

what it is going to do.”	verifiable performance criteria because policy-making process is generally <i>ad hoc</i> .
“It should be clear and concise.”	<b>No</b> , it suffers from “the thirty different governments” problem.
“It should be consistent with other laws.”	<b>Yes</b> , it must be approved by sectoral commissions with representatives from both transport and non-transport agencies, thus ensuring legal consistency.
“It must be enforceable.”	<b>Not quite</b> , it faces budget constraint and political interference so enforcement is weak, arbitrary or often discriminatory.
“It needs to be administered by accountable bodies.”	<b>No</b> , it is administered internally without due process of regulatory review or consultation with relevant parties.

\*Dee (2006)

\*\* Fiscal Policy Research Institute (2006)

#### IV. Balancing Efficiency and Equality: an Impossible Trinity?

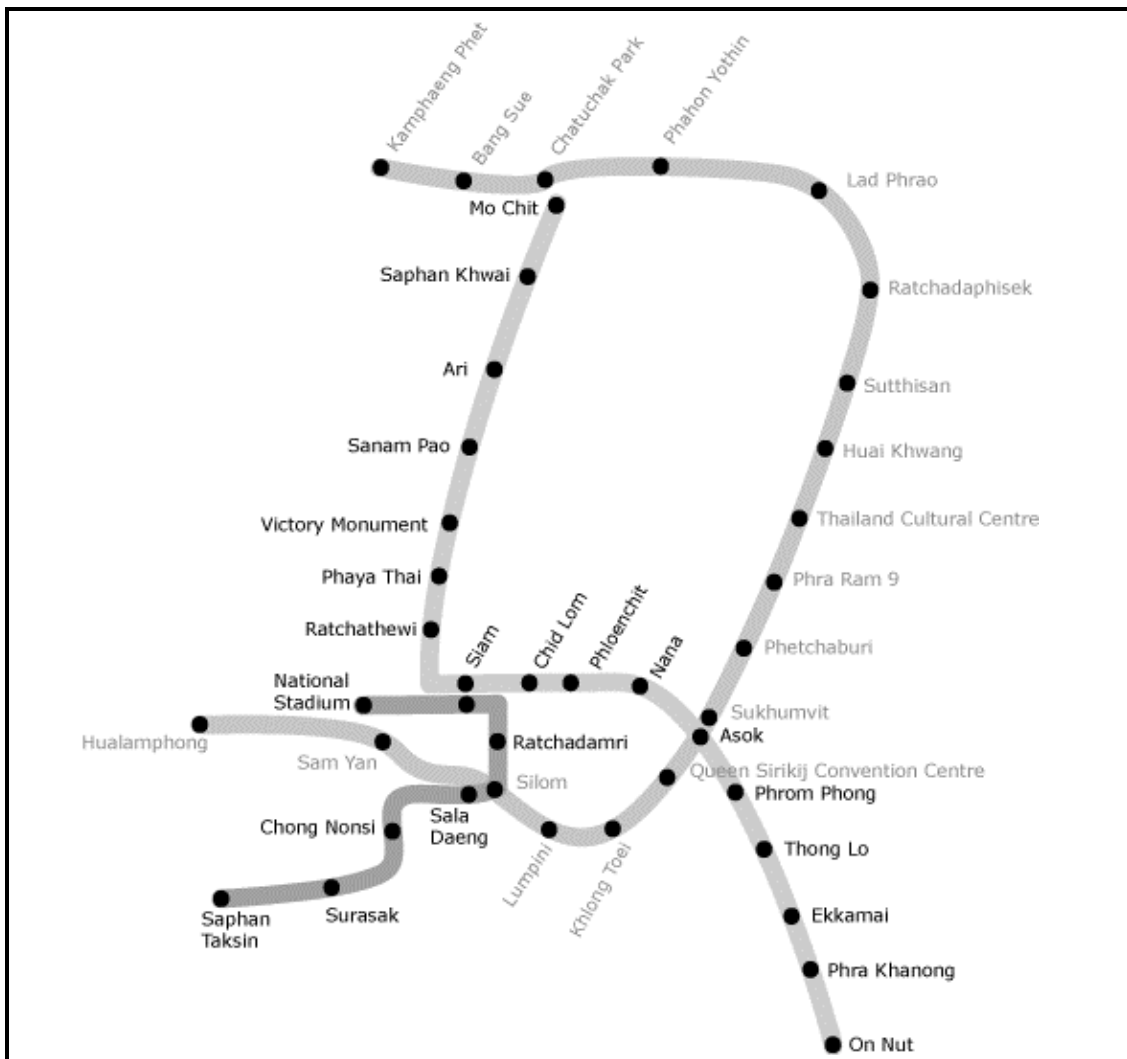
Explaining the existing regulatory architecture, the above section illustrates how poor institutional design leads to suboptimal outcomes. But in what sense are they suboptimal? As described under the first condition in *Table 2*, transport regulation is justified on both economic and social grounds. According to Asian Development Bank (ADB)’s “best practice,” regulators should serve the public interest, such as universal coverage, and maximize net consumer benefits. However, in developing nations facing financial constraints like Thailand, what approach does the authority take in balancing the two ultimate goals?

ADB’s recipe for achievement is to allow private participation in investment, construction and management accordingly to the first objective, while the state should specialize in planning, structuring and regulation. But as the Thai case illustrates, this is more easily said than done. The state, using public interest as an excuse, often interferes with the operation it oversees. For example, the SRT wishes to change its image as a travel means for the poor by investing in infrastructure and technology that would allow it to offer fast, efficient services that satisfy businessmen, yet such reforms await approvals from governmental departments and the CMLT, treating the SRT as a welfare rather than commercial operation. A third-class seat from Bangkok to the northern province of Chiang Mai costs only six dollars, less than half of the bus fare the TCL offers and about one-fifth of Air Asia’s economy class ticket booked well in advance, but the train journey takes as long as fourteen hours, compared to seven by car and only one by plane. For this reason, the SRT is trapped in a vicious cycle: inferior service quality leading to rock-bottom fare and hence no revenue for future investment or technological upgrade.

Other transport for the poor, rural or urban, also shares such fate. In Bangkok, the existing model of operation implies two types of services: “commercial” air-conditioned buses

with a distance-based fare and “welfare” regular buses with a uniform flat fare set at an unreasonably low level irrespective of distance. Commercial services are geographically limited because DLT favors the concession that focuses on markets with the greatest ability to pay. By contrast, welfare means both a minimization of travel cost and a maximization of area coverage so regular buses, often in decrepit condition, can be found across suburbia. For a 20 kilometer ride from Mo Chit to On Nut, the Bangkok regular bus fare, fixed at 0.2 dollar, is only one-fifth of the much faster, cleaner and environmentally friendlier BTS skytrain’s. In the big picture, the SRT, TCL and BMTA are welfare businesses but ETA expressways and MRTA mass transit projects are means to improve urban efficiency, not necessarily benefiting the poor especially in the periphery.

Figure 3: Bangkok’s Limited Mass Transit Network of BTS Skytrain (black) and MRTA Subway (gray)



Travelfish (2006).

With parallel operation of commercial and welfare services, Thailand embraces a traditional technique of balancing financial and social ends, cross-subsidization, of which there are two varieties. One is intra-SOE, as in the case of BMTA, where revenue from commercial operation directly supports the welfare service. Another is indirect inter-organizational cross-subsidization between ailing natural monopolists and profit-making businesses. The BMTA, for instance, is fuel-subsidized by the PTT Public Company Limited. Even in markets where private competition exists, such as freight transport, the government provides grants to inefficient SOEs “to keep them afloat” while endowing them with privileges including access to government loans, land managed by the Bureau of Crown Property that usually carries low rent and, most importantly, a captive state market. All departments are required to use TMN shipping services unless TMN-private firm price differential exceeds an established threshold. Similarly, Thai Airways has the exclusive rights to provide services on international routes negotiated under bilateral agreements even after privatization.

Nonetheless, Allport (2000) discusses the un-sustainability of this regulatory architecture, chiefly inefficiency and the uneven playing field created by subsidization. SOEs are not incentivized to escape the vicious cycle of substandard service and low tariff because they prefer to receive grants and subsidies from the central government. In return, departmental and commission regulators, mostly politicians and bureaucrats, free-ride on the public approval of low transport cost yet, when faced with the popular dissatisfaction of service quality or punctuality, find it convenient to shift blame to the SOEs by pointing fingers to their operational problems. The most adversely affected group of all, however, is the poor commuters who rely on declining transport services. TCL and BMTA buses are in fact notorious for unpunctuality, black smoke and reckless driving. Under this perspective, bargain service, hardly regulated in areas such as safety, not only fails to guarantee equity but also increases social disparity. As transport regulation becomes an obstacle to equilibrating the economic and social goals for which they are intended, Thailand has picked a wrong strategy to harmonize the economic and social well-being of consumers.

## **V. Regulatory Reform: Lost in a Spaghetti Bowl?**

Exposing the shortcomings of the current regulatory setting, analyses in Section III and IV serve as a stepping stone for future reform recommendation, its benefits being dependent on how effectively the government can address Thailand’s institutional weaknesses. There is no off-the-shelf “textbook solution” to the problems of the transport sector. To promote competitiveness and efficiency of operators, there are many ways in which Thai transport

regulation can be improved, from abolishing strict control on market access to more substantial structural changes such as the creation of an independent regulatory agency. But which types of reform should Thailand regard as its priorities?

### *Competition without Privatization*

Economic liberals, including past administrations in Thailand, consider privatization as the ultimate strategy to revitalize the ailing SOEs, but protection-seeking interest groups, both labor unions and regulators, disagree. Privatization, they asserted, led to a domination of profit-maximizing monopolists with a price-setting power, thereby harming the general public. These protestors are not completely irrational. Unless transport regulation as well as competition and consumer protection regimes are strengthened and stringently enforced, there remains a propensity that private operation will either fail or become a dictator in its domain.

One outstanding example of the former case is railway privatization in Britain. After swift reforms, British Rail's revenue gradually increased just as customer satisfaction grew, but the rise of Tony Blair marked a turning point. His administration created layers upon layers of bureaucracy, such as twice re-shaping the structure of the transport department and re-arranging the roles of commission regulator. Since policy and regulatory functions were no longer mutually exclusive, financial management of railway operation was obscured while earnings and consumer confidence plummeted particularly after the 1999 Ladbroke Grove crash that killed dozens. One year later, the infrastructure operator, Railtrack, financially collapsed and privatization immediately became a scapegoat for regulatory failure, including unnecessary state intervention. From the British experience, it should be understood that privatization was not an end in itself. It could not sustain efficiency unless complemented by appropriate regulation and enforcement.

The British case study can be applied to the Thai transport realm. Regulatory agencies never fully function as a result of conflict of interest, impeding regulator's productivity, and political intervention prevails even in spheres where private competition is fierce, such as air travel. In Thailand, privatization usually implies that shares are majority-owned by the government: 70 percent in the case of post-privatization AOT. In other cases, regulators allegedly distribute shares through initial public offering unfairly in favor of close associates and big businesses. Therefore, there is no guarantee that the government will refrain from interfering in privatized transport operation. A change in ownership does not always affect the regulatory control mechanism which, in the case of Thailand, remains arcane and costly,

contrary to the conventional notion of “regulation at the lowest cost”: boosting efficiency, cutting prices and stimulating innovation.

Private operation can be potentially dangerous when the regulated captures the regulator or the former uses legal loopholes to adapt to the new regulatory environment creatively. There are various examples from both developed and developing countries where, after privatization, transport tariffs skyrocketed, perhaps demonstrating the collusion between the regulator and the regulated. As a result, an ownership change from public to private hands may lead to unintended consequences not because of privatization itself but as a result of weak regulatory muscle. A shock therapy may not cure the inefficiency problems within transport SOEs so, along with putting appropriate regulatory regimes in place, what Thailand now needs is to facilitate competition regardless of privatization.

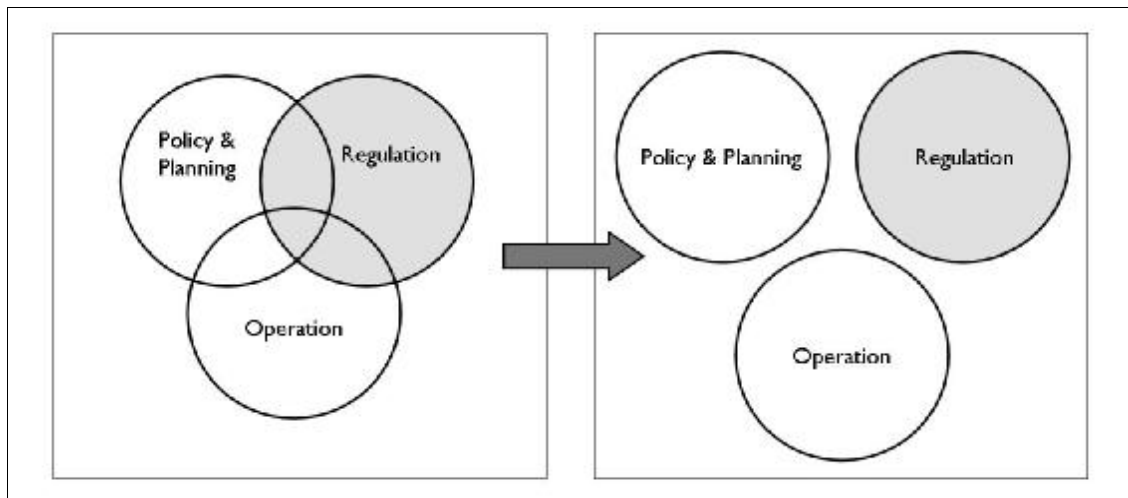
This is in fact the European philosophy of utility regulation; SOE is not the cause of economic deficiency but their operational structure and incompetent managers are. Regulators should thus sharpen competitive pressures and incentivize SOEs to enhance market forces and values within their organization, such as by establishing enforceable quality standard or a target for phasing out subsidy. In chronically unprofitable SOEs, namely the SRT and BMTA, financial restructuring assistance, planned as early as 1998, must be pushed forward.

Therefore, at least in the short run, a viable policy is not to transfer transport operators to the private sector but actually to alter operational structure and make them competitive like a private firm. Yet, because regulatory outcomes are dictated and complicated by public officials who usually hold overlapping responsibilities in policy and regulation but make decisions in accordance with their bounded rationality, this concept of “competition without privatization” is perhaps difficult for them to follow. Politicians and bureaucrats often block reform attempts and protect SOEs from competition. As discussed in Section II, the Thai policy-making process in a top-down approach. Unless the executive power develops a strong leadership to create a coherent institutional framework and an integrity in decision-making, regulators will have no incentive to do so and continue to regulate the sector on an *ad hoc* basis without any senses of direction. The Organization for Economic Cooperation and Development (1997) agrees: “The most important ingredient for successful regulatory reform is the strength and consistency of support at the highest level.” National transport policy should be clear and cohesive but regulatory function separated.

### *Independence and Centralization of Regulatory Power*

What the above analysis implies is that, to make SOEs more competitive and responsive to social needs at the same time, policy-makers and regulators must be free to act on the behalf of the transport sector's interests, not as a vehicle of politicians or interest groups. To avoid the thirty different governments problem, public officials are expected to produce a clear and concise message to operators in a formal rather than *ad-hoc* manner. On the policy planning side, one simple method of doing so is to provide the MoT with a centralized power. Roles of non-MoT departments, such as the Harbor Department or the Office of the Prime Minister, shall be lessened whereas in the regulator's sphere, commissioners, selected on a merit base, must have the full independence to exercise their power free from political or ministerial interference, hence limiting the tendency of regulators to play a blame-shifting game. In other words, an independent commission that possesses the virtuoso power to regulate shall be established as it is no longer appropriate for MoT departments to perform the dual tasks of regulation and policy implementation. Furthermore, in cases where operators self-regulate their subcontracted routes, such as the TCL and BMTA, regulatory control shall be transferred to an independent regulator. To better correspond with notions of good regulation, the regulatory authority must be separated from policy planning and operational functions in *Figure 4*.

*Figure 4: The Ultimate Goal of Institutional Reform in Transport Regulation*



*Fiscal Policy Research Institute (2006)*

Creating an independent regulatory body is easier said than done. On webpages, it appears that the three existing commissioners have a regulatory power superior to and independent from ministerial intervention. Yet, the conflict-of-interest problem persists because of the rules governing the selection of commissioners. Like other sectoral commissions in Thailand, officials from various ministries are assigned to transport commissions without the



direct experience in regulation. Sectoral expertise is thus dispersed which, in economic sense, indicates the inefficient division of labor or specialization of skills.

To set regulators free from political meddling, it should be legislated that they cannot hold any other public offices, whether in the bureaucracy and in the legislative, executive or judicial branches of government, or have ever been employed in any transport SOEs, thereby encouraging only non-politicized experts to take charge of the regulatory agency. It will be most democratic if these regulators are popularly elected but the opportunity cost associated with an election may be too high. As in many Western democracies, these commissioners shall be elected and their qualities reviewed by the parliament, with the information regarding each candidate available to the public to prevent politicians from capturing the selection process. This is to ensure that the chosen candidates represent the *crème de la crème* of the transport field who, unlike regulators in the present model, can fully allocate their time and resources to their regulatory tasks.

Nevertheless, the inclusion of non-state actors, including academics, in the commission does not necessarily guarantee institutional independence. Enabling factors such as a healthy budget and regulatory experience must be inserted into the productivity equation. For this reason, capacity-building in terms of skills, intensity and expense of regulatory effort is a prerequisite for successful regulatory reform. Unfortunately, textbooks can offer little help as regulators are practitioners, not just planners or academics. Participation in regional and international regulatory forums, for instance, should be encouraged in order to expose regulators to the experience of counterparts and their information-sharing network.

However, regulatory expertise by itself cannot solve many of the existing problems in the Thai transport realm, such as the lack of integrity in decision-making or enforcement. To curtail such institutional problems, it is believed that the "sole regulator" model can "de-spaghetize" the existing regulatory network as well as lower the propensity to regulatory capture. In other words, there should be only one transport regulator, possibly named "the Transport Commission," with only few, say five, expert commissioners who have a final word in regulatory decision-making. If accompanied by accountability devices, such reform can minimize the influences of rent-seeking politicians and protection-seeking interest groups, most notably labor union, on regulatory outcomes, thereby creating a more competitive environment in the transport industry.

In addition, the sole regulator model will increase the effectiveness of benchmarking and ranking programs for comparison purposes among transport SOEs. For example, once considering safety record, the commission may revoke a license of private bus operators but it will unjustifiable if the standards applied to rural, TCL-licensed and urban, BTMA-licensed buses

differ. Using this regulatory strategy, it will be easier to judge if an operation or its service provider is underperforming in terms of safety and punctuality, among others. The poorly rated ones must be monitored and perhaps penalised in an enforceable way so the classical technique of mere persuasion may not always work. Regulators need to get tough with substandard services while handing rewards or endorsement to the outperforming ones to incentivize operators to sustain their superior service standards.

### ***Regulatory Impact Assessment***

As crucial as the assessment of operation is commissioner's reflections on their policies, assessing whether their regulatory techniques have an overall positive social impact in the short and long terms. Regulation should be "robust to errors" and "contain the seeds of its own destruction," such statements arguing for a dynamic form of regulation where *ex-ante* and *ex-post* impact assessment plays a central stage. To follow the conventional notion of regulation at the lowest cost, regulation must be critically evaluated and compared to its alternatives before any is imposed. This is to be done in a transparent manner, unlike the present model where such appraisal is performed secretly within MoT departments. Likewise, after regulation has been put in place, the commission must re-weight the pros and cons of such regulation. If the latter outweighs the former, regulation must be re-designed to improve its quality and lower its cost. Otherwise, it may have to face its eventual mortality.

It is already clarified that regulatory review should be conducted both *ex-ante* and *ex-post*, but one may ask how such review should be exercised. Fundamentally, such assessment is often linked to Kaldor-Hicks test of allocative efficiency, which is satisfied if an activity confers sufficient benefits on those who gain such that potentially they can compensate all losers while still remaining better off, but in the transport sector, equity and social considerations are as important as efficiency. To put it differently, although cost-benefit analysis prevents regulation from imposing an unacceptable burden on the economy, hence serving public interests, it can be attacked for its irrationality of the "rational actor paradigm": diffuse public interests are poorly represented once all citizens are treated as wealth-maximizing buyer and sellers.<sup>14</sup>

If a price ceiling imposed on all SRT trains fails to pass a cost-benefit test, such over-simplified assessment that takes no consideration of non-efficiency goals may not truly reflect the social gains that regulation is about to bring, namely the redistribution of the rich's income

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<sup>14</sup> Some political scientists argue that cost-benefit analysis favors the rich. A dollar gain is in fact not of equal weight to all individuals accruing it because the way one values the effects of a policy in monetary terms partly depends on his wealth so the acceptance of the *ex ante* wealth distribution biases cost-benefit analysis in favor in those who already possess economic power. Likewise, Self (1975) declares: "the main use of cost-benefit analysis appears to be as a supporting argument for particular organizational or policy view-points."

to subsidize poor commuters. Therefore, it is the responsibility of independent commissioners to weigh static against dynamic and economic against social ends. With such evaluation, *ad-hoc* policy judgment can no longer be justified, forcing regulators to implement what they *should* rather than what they or politicians *want*. Following this logic, the establishment of a single independent regulatory agency that provides non-politicized experts with a full authority to appraise regulation can tackle all of the three problems of Garnaut's, especially if the assessment process is open to the public.

### *Transparency and Accountability*

Regulatory structure, however well designed, cannot completely eliminate the evils of capture and corruption unless decision-making process is made transparent and accountable. Like in other areas of the Thai government, these are chronic diseases that impede the productivity of public officials and create unnecessary social burdens. Referring to Nipon (2002), "many ... officials and agencies themselves have become powerful interest groups aiming to preserve or increase their share of economic rents, privilege and power. These problems point to the importance of having in place proper policy design, institutional structure and administrative capacity." The MoT blueprint for logistics development (2005-2008) enlists anti-corruption as a ministerial agenda although Thais do not doubt this is simply marketing: more talk than action.

Whether the proposal for creating one independent regulatory body becomes fruitful or not, it is therefore necessary that commissioners stringently impose accountability regimes on both operators and regulators themselves. Regarding the former, disclosure is the keyword. To lessen information asymmetry between the regulator and the regulated, each service provider should be obliged by law to file a report at least annually. At present, many Thai SOEs publish such reports but they are rarely updated and hardly accessible to the general public which has the right to know how their taxed income is being spent. For instance, the most recent report available on the TMN's website is of year 2002. Like regulators, taxpayers wish to assess if subsidization leads to service improvement rather than a mere salary increase of the ever expanding SOE labor force but, with limited or outdated information, such judgment is virtually impossible. Enforcing disclosure regime, a relatively non-interventionist form of regulation, is vital for creating competitive and performance pressures on transport operators.

Disclosure is what makes operation transparent and accountable but these merits also constitute the basis of "the regulation of regulation." Indeed, Baldwin and Cave (1999) lists "transparency" and "due process" as two of the five characteristics of good regulation. When

impact assessment is performed, for example, stakeholders must be invited to participate and their inputs from various perspectives considered by regulators. At the same time, commissioners must be able to defend their policy choice to outsiders who play a check-and-balance role and act as “informal” regulators of the real regulators.

Nevertheless, in Thailand, public awareness on regulatory issues remains low because consumers cannot observe clear benefits from such participation yet they are easily misguided by anti-globalization protectionists. In other words, there exists widespread misperception that regulatory reform is equivalent to privatization when in fact the two are totally separate matters because competition-promoting reforms can be implemented without changes in transport operator’s ownership. Especially after the Thai Administrative Court declared the capital-raising scheme for the electricity generation SOE unconstitutional, the public mood, it can be said, has turned against reform and the future of SOEs suddenly become uncertain.<sup>15</sup>

In the long run, privatization may be deemed necessary once competition law and regulatory preconditions are satisfied. Ministers must not fear labor unions taking to the streets and politicizing the agenda, and assure that political leadership will overcome these vested interests which benefit from the *status quo* and resist socially desirable changes. One diplomatic solution to this “mob rule” is to invite opponents to open dialogues and inform them about compensation policy, thus lowering the tendency for “*status quo* bias.”<sup>16</sup> At least in Thailand, the public mistakenly associates profit-motivated firms with high prices and unregulated service quality, although academic research mostly illustrates the opposite. In the real transport world, such as the airline industry, there are innumerable cases of reform creating social benefits in the long run despite initial job losses.

Public awareness is thus the key to smoothing the process of regulatory reform, whether or not it is complemented by privatization. To reduce information asymmetry, the government needs to reveal its commitment in setting transitional paths to deal with social needs such as unemployment consequences of reform in a comprehensible manner, avoiding the overly technical language alien to most Thais. Such education does not always indicate the propagandizing of pro-reform platforms. Rather, a fair, well-balanced argument should be offered so that optimally everyone knows if they are a winner or loser. If they fall in the latter category, the government must ensure that society will not abandon those for whom hardship is

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<sup>15</sup> Many Thais did not understand that the ruling only had to do with privatization process, not the legality of privatization itself.

<sup>16</sup> Status quo bias refers to a situation when, facing uncertainties, players in a game oppose changes after calculating the expected value of reform. For example, workers earn \$100 per month but after privatization, a quarter will be laid off to improve efficiency. Those unemployed will eventually find a job with an average pay of \$80 but for others remaining with the organization, salary will be increased to \$105. With full information about winners and losers, three quarters of the workers will opt for reform. Without information, however, all workers will base their decision on expected value of reform, which is  $(.25*80)+(.75*105) = 98.75$ , and vote against privatization.

created by the reform process and that their input to regulatory code drafting and implementation are always welcome. This is indeed a win-win situation. While the public have channels to voice their concerns, regulators gain credibility: an indispensable part of the regulatory reform process.

### **The Future of Transport Regulation: the Road to Where?**

As anti-reform sentiments gained ground in Thailand, no public official dared opposing the union-sympathizing public and replacing *the status quo* with a more suitable form of transport regulation despite potential improvement in both economic and government performance. With ambitious plans for restructuring and privatization stalled, it is by no means a vacation period for transport regulators. Under a top-down approach, it is crucial that they introduce competition to this exceedingly inefficient sector such as by setting a timetable for phasing out subsidies and coordinating with lawmakers in strengthening the existing competition regime, even if SOE ownership should remain unaltered in the short run. Patronage ties between the regulator and the regulated must be broken, permitting only transparent formal interactions between the two, while the role of the civil society promoted. With increasing public awareness and participation, the road to regulatory reform, whether complemented by privatization or not, would be smoother.

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