Are regulator and regulatees reacting responsively towards each other?

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Abstract

It is a trend in regulatory policy and regulatory studies to advocate a responsive, tit-for-tat, regulatory strategy. The argument is that responsive regulation is the most cost-effective enforcement style leading to more compliance in the long run.

However, little work has been done sorting out the theoretical concept of responsiveness and its empirical equivalents. Therefore, it is still unclear what scholars actually mean by "responsiveness". At which phase(s) of the regulatory process can and should the regulator be responsive and to what kind of "conduct" should they react? Furthermore, we know little about to which degree the regulators and the regulatees actually manage to interact responsively with each other.

This paper 1) measures the reactions and counter reactions of the Australian Competition and Consumer Commission (ACCC) with Australian companies that the ACCC investigated for breaching the Trade Practices Act. Through this analysis the paper discuss 2) whether or not we are able to identify the reactions and counter-reactions as being responsive in the way that the theory of responsive regulation would imply the should be.

The overall conclusion of the paper is that there are elements of responsive behaviour in the regulatory interaction between the ACCC and the regulated company. However, it does not form an unbroken chain of corresponding reactions and counter reactions.

In discussing the concept of responsiveness and ways to empirically analyse it this paper proposes an analytic frame that future studies might be able to use.

1. Research question

For at least two decades the trend in regulation and regulatory studies has been that regulatory enforcement should take neither a solely deterrent nor a solely cooperative approach. Rather a responsive, tit for tat, strategy is seen as the most effective approach to regulatory enforcement. Today, both Scholz's (1984a & 1984b) game-theoretical argument and Ayres & Braithwaite's (1992) combined game-theoretical and sociological arguments stand for many as a widely accepted truth about how best to obtain compliance.[1]

However, few studies have actually tested whether or not the actors involved (the regulator and the regulatee) behave responsively towards the behaviour and attitude of each other. Some studies have tested whether or not regulatees react in the way predicted by responsive regulation theory, that is

[1] For critiques of Ayres and Braithwaite (1992), however see Gunningham & Grabosky (1998), Black, (2001) and Haines (1999) and Pearce & Tombs (1997).

whether regulates become hostile and non-cooperative if they perceive the regulator to be hostile and non-cooperative, and whether on the contrary regulates become open minded and cooperative if the regulator does the same (Winter & May, 2001; May & Winter, 1999, Scholz, 1991). Furthermore, several case studies categorize the regulatory style of different regulatory authorities as flexible and responsive - tough on bad guys and soft on good guys (Carson, 1970; Hawkins, 1984; Kelman, 1982; Bardach & Kagan, 1982; Scholz & Pinny, 1995; May & Winter, 1999). However, these studies often operate with a mixed or slightly different concept of responsiveness than the theories of Scholz and Ayres and Braithwaite imply. Yet another study tests whether or not, and if so in what way, four different regulatory agencies act responsively (Nielsen, forthcoming). The empirical analyses show that responsiveness is far from the main factor explaining the behaviour of regulatory authorities and that in practice responsiveness does not necessarily occur in the way recommended by the theories of responsive regulation and its advocates.

But as far as we know no study has tried to uncover whether or not both regulator and regulatee manage to react responsively throughout an entire regulatory interaction. The theory of responsive regulation implies that actions breed reactions that correspond with the attitude and style of the first action. Therefore, a responsive regulatory style should produce either a chain of accommodative and friendly actions and reactions, or a chain of non-accommodative and hostile actions and reactions. But does this actually happen? Are we able to find this theoretically described and argued pattern of behaviour in empirical data?

As such the purpose of the present paper is not to question the argument that responsive behaviour leads to cost-effective enforcement and desirable compliance. The purpose is to test whether or not regulatory authorities and regulated companies manage to behave responsively when interacting with one another. In the next section we further explain and discuss the theory of responsive regulation, trying to define what kind of responsiveness we should be looking at, and where and how we should be able to identify it throughout the regulatory interaction. In section three, we outline the data and field of study used in the empirical part of the paper. In section four, we explain and discuss how we have: 1) measured the regulator's and the regualtees' behaviour and attitude in different phases of regulatory enforcement interactions, and 2) measured the level of correspondence between these throughout entire interactions. Finally, sections five and six outline and discuss the empirical findings and make concluding remarks.

2. Responsiveness, yes! – But do actors manage to act responsively?

Society's rules and standards tell individuals and companies how to behave, while regulatory agencies and their employees are supposed to ensure compliance and react when people do not comply. The purpose is to make sure that people and companies behave in a way that has been politically defined

as preferable. The ultimate goal is compliance without spending too many resources enforcing it – in other words, efficiency.

The main message in both Scholz's and Ayres & Braithwaite's argument is that to pursue this goal, regulatory agencies should use a responsive regulatory strategy. Partly, this is because such a strategy would allow the regulatory agency to concentrate most of its resources and deterrence techniques on the bad firms (Scholz, 1984b; 388). Partly, it is because it shows the bad guys that it pays to be a good guy - it encourages them to be more cooperative and comply with the law (Scholz, 1984b, 388). Finally, and perhaps most fundamentally - in at least the argument of Braithwaite and Ayres – accommodation and kindness breed accommodation and kindness (Braithwaite, 2002: 41). To treat people in and open minded and with respectful manner makes them more willing to listen and cooperate.

However, to make sure that the regulatory interaction does not get locked into "negative spirals", the regulator should, according to Ayres & Braithwaite, be able to forgive a history of wrong-doing. "Forgiveness, giving the wrongdoer a second chance, can bring out the best in the worst of us…(..); and we should extend forgiveness to those who show signs of abandoning cheating in favour of cooperation" (Ayres & Braithwaite,1992; 33). To both Scholz and Ayres & Braithwaite responding narrowly to a particular breach or past events is ineffective in the long run (Scholz, 1984a & 1984b, Ayres & Braithwaite, 1984, Braithwaite, 2002). It reflects "regulatory formalism", does not motivate or help the regulatee to change, and is therefore of little value to society as a whole either (Braithwaite, 2002; 29).

Therefore, Scholz and Ayres and Braithwaite advocate responsiveness to the broader cooperative or non-cooperative behaviour and/or attitude of the regulatee. Regulatees showing the will and ability to self-regulate should be rewarded with less harsh regulation (Ayres & Braithwaite, 1992; 19). "Reforms must be rewarded" (Braithwaite, 2002; 31). Furthermore, to make sure that we start as many "positive spirals" of reactions and counter-reactions as possible, the theory of responsive regulation proposes, that the regulator should generally start from a presumption of being cooperative. Ayres and Braithwaite use the illustration of a pyramid and put it this way: "The idea of the pyramid is that our presumption should always be to start at the base of the pyramid, then escalate to a somewhat punitive approach only reluctantly and only when the more modest forms of punishment fail" (Braithwaite 2002; 30).

These prescriptions raise the question of whether or not the regulator and the regulatee can actually manage to react and counter react to each others' behaviour and attitudes as the theory implies they should. Are human-beings so well-tuned into other actors and their social psychology that we will be

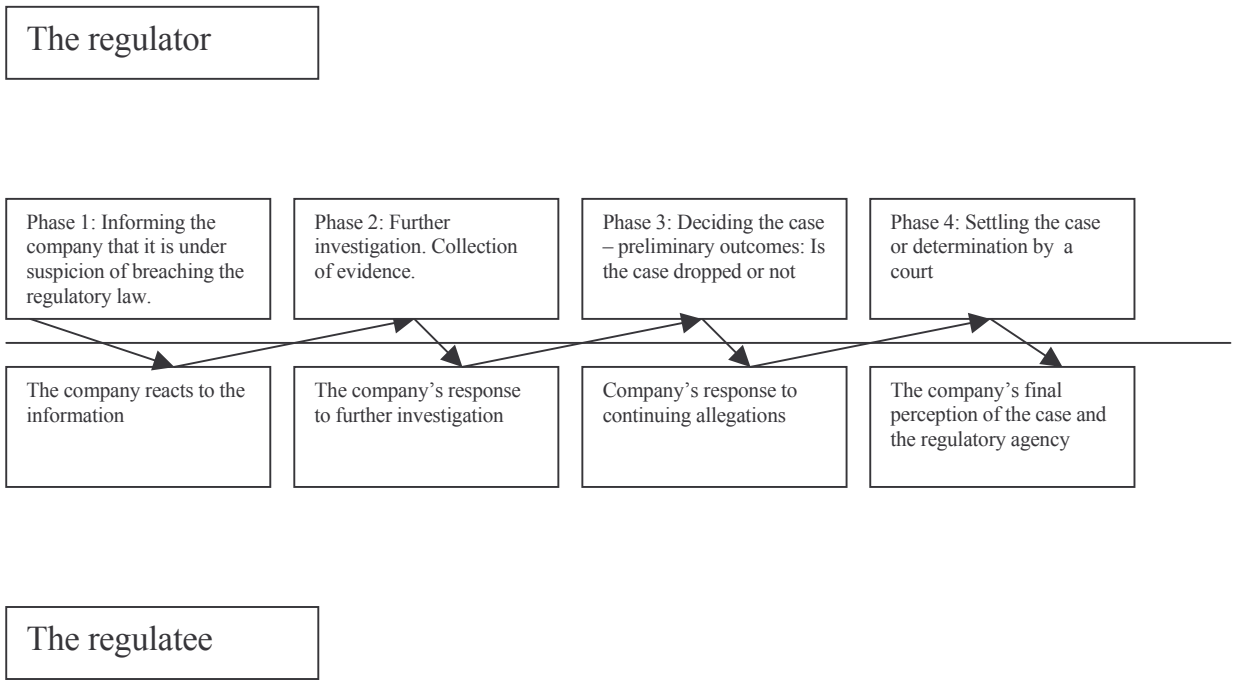
able to observe such spirals – or chains – of either positive or negative reactions and counter reaction? Are regulators and regulatees so socially intelligent that they can decode each others behaviour and attitude correctly and act in a strategically optimal way?

In other words, is there any correlation between the behaviour and attitude of the regulator to the counter-behaviour and -attitude of the regulated company and vice versa throughout an entire case. Do accommodation and kindness breed accommodation and kindness while non-accommodation and hostility breed non-accommodation and hostility?

In order to find the answer to this question we need to systematize the regulatory interaction. When does it start and when does it end? Are we able to divide it into phases within and between which we expect the regulator and the regulatee to have the opportunity to act and react to each other? Below we have tried to sketch out the different phases of a typical regulatory interaction. However, the look and phases of the regulatory interaction will vary, especially between two different types of regulatory authorities. On the one hand are those agencies for whom regulation is based on proactive face-to-face inspections that go on regularly from the day where the business starts until the day when it eventually goes out of business. On the other hand are those authorities for whom regulation is more reactive, what we might label single-case based. The regulator gets a tip from a whistleblowers or complainant and then starts investigating the case. In this paper we report data from this second category of regulatory authority.

In Figure 1 we outline the different phases in a regulatory interaction in the situation of an interaction (or investigation) centred on a specific suspicion of breach of the law by the regulated company. The behaviour and attitude of each of the two actors can be more or less accommodative and friendly. What we expect, however, is that their behaviour will correlate and therefore create a kind of chain of corresponding reactions and counteractions. If the way the regulator informs the company about it being under suspicion is not very accommodative and friendly, we expect the regulated company to react in an equally non-accommodative and hostile way. Then we also expect the regulator to be non-accommodative and more hostile while collecting further evidence.

Figure 1: Phases of the regulatory interaction



3. Settings and data

The data used in this paper is part of a larger empirical project, the ACCC Enforcement and Compliance Project[2] which uses qualitative and quantitative research methods to empirically evaluate the impact of both competition and consumer protection enforcement action by the Australian Competition and Consumer Commission and to examine the relative explanatory power and interaction of the different theoretical frameworks that seek to describe and explain regulatory enforcement style and business compliance.[3]

[2] The project is lead by Christine Parker with Vibeke Lehmann Nielsen leading the quantitative part of the project. The data collection has occurred under the auspices of the Centre for Competition and Consumer Policy, Regulatory Institutions Network, Australian National University and the mentorship of John Braithwaite. The ACCC has partially funded this research by jointly providing funding for the work of the Centre for Competition and Consumer Policy. The ACCC has also supported and cooperated with this research project. However, this research is being conducted independently of the ACCC. Natalie Stepanenko and Amanda Scardamaglia have provided able assistance for the data collection and analysis at different times. More information about the larger project can be obtained at http://www.cccp.anu.edu.au/projects/project1.html

[3] At a descriptive level, the project seeks to examine regulatory style (May & Winter 2000), business motivational postures towards compliance and cooperation with regulatory authorities (V. Braithwaite 2003) and business compliance behaviour (McBarnet 2003, Gunningham & Grabosky 1998:241). At an explanatory level it tests theories such as deterrence (Scholz 1997), procedural justice (Tyler & Huo 2002) and reintegrative shaming (Ahmed et al 2001).

The ACCC is Australia's federal competition and consumer law regulator, responsible for enforcing provisions of the Trade Practices Act 1974 (Cth) (TPA). This research is concerned solely with the ACCC's activities in enforcing the provisions of Part IV TPA (anti-competitive practices); Part IVA (unconscionable conduct); Parts V & VC (unfair practices, product safety and information, and country of origin claims); and Part VB (price exploitation in relation to the introduction of the goods and services tax in 2000[4]).[5]

Under the TPA, the ACCC has powers to investigate potential contraventions of the provisions above and to enforce those provisions by taking alleged offenders to court for the imposition of monetary penalties, injunctions and other orders. Generally, offences under the TPA attract civil penalties, not criminal penalties. Under Part VC unfair practices contraventions, with the exception of misleading or deceptive conduct (s52), and product safety and information contraventions may be prosecuted as criminal offences as an alternative to attracting civil penalties. However, the ACCC very rarely uses criminal prosecutions in these matters and no penalties of imprisonment are available in any case (see Parker & Stepanenko 2003). The ACCC also has power under s87B TPA to accept enforceable undertakings in connection with any matter in relation to which the Commission has a power or function under the Act. Enforceable undertakings are used extensively to settle potential enforcement matters with or without court action. Under Part VB (price exploitation in relation to the New Tax System) the ACCC had (for a limited period) additional powers to monitor prices and to issue notices of contraventions that could be taken as prima facie evidence of certain elements of a contravention in later court proceedings.

The competition and consumer protection regulation enforced by the ACCC covers all Australian businesses in all their trading activities. Similar competition and consumer protection regimes exist for businesses in most other jurisdictions (add references). Therefore the findings are expected to be useful for generating hypotheses about business regulation more generally.

Qualitative and quantitative data have been collected in three phases, with the qualitative data[6]

[4] This regime existed only for a limited time from 1 July 1999 to 30 June 2002 and was intended to prohibit traders unfairly taking advantage of the changes to Australia's tax system with the introduction of the GST via 'price exploitation' or misrepresentation of the effects of the changes.

[5] The ACCC also has other regulatory powers and responsibilities in relation to certain industries that have been wholly or partially privatised or deregulated over the last twenty years (e.g. telecommunications and international liner cargo shipping). This research is not concerned with these specific regimes. Nor does this research cover the ACCC's use of its powers to authorise or examine potentially anti-competitive mergers before they occur. The general provisions of the TPA can also be 'enforced' by actions between private parties for damages and other remedies. Indeed the TPA is litigated much more by private parties than by ACCC enforcement action. The impact of the possibility of private action is likely to confound attempts to evaluate the impact of ACCC activity on compliance.

[6] Interviews were conducted around Australia with (a) thirty-seven ACCC staff (including some former senior officers and Commissioners), and (b) twenty-one trade practices lawyers and other advisers to gather examples of key cases of ACCC compliance and enforcement activity and general information on the nature of ACCC enforcement activity and its impact on compliance. An analysis of the frequency and outcomes of different types of ACCC enforcement activity was also made using ACCC Annual Reports and the data from interviews. (See Parker & Stepanenko (2003) for a report on the preliminary results of this data. See also Parker (2004) and Parker, Braithwaite & Stepanenko (2004) for other results form

analysis used to inform the design of the quantitative survey and wording of the questionnaire. However, this paper is only based on the quantitative part of the data. Therefore, in the following, focus is on this part of the data collection.

The largest 2700 Australian businesses including those that had been the target of ACCC enforcement activity in the previous five years were surveyed with a mailed self-completion questionnaire with repeated telephone follow-up. Responses from 816 (32%) businesses are reported here[7]. Questions were based on preliminary hypotheses based on the qualitative data analysis from the first stage of the project (as reported in Parker & Stepanenko 2003), as well as hypotheses and concepts used and developed by RegNet colleagues in other highly-regarded, large scale surveys of regulatory compliance[8] and the literature on regulatory enforcement style and business compliance (Mitnick, 1980; Scholz & Pinney, 1995; Bardach, 1989; Kagan, 1994; Williams & Hawkins, 1986; Bardach & Kagan, 1982; Kagan & Scholz, 1984; May & Winter, 2000; May & Winter, 1999; Winter & May, 2001).[9]

Details of the 3000 largest Australian businesses (by number of employees on the payroll) were obtained from a list publicly available from a commercial collection company (the 'Dun & Bradstreet list'). The business was defined as the consolidated organization in Australia only (subsidiaries were not counted separately with head office expected to complete the questionnaire). Unions and government authorities were excluded, but government entities engaged in business were included. A list was also made of all those businesses against which the ACCC had initiated a breach investigation or enforcement action of any kind between mid-1997 and mid-2004. This list was also supplemented by a list of some 180 businesses that the ACCC had communicated with about potential breaches in relation to the lead up to the introduction of a goods and services tax in Australia in 2002.[10] Very small businesses (those estimated to be 20 or less employees) were deleted from the list (the 'ACCC list'). Special efforts were made to ensure that all those 566 businesses on the adjusted ACCC

this part of the project). Furthermore, fifteen ACCC enforcement matters were examined in more detail. Each of these cases was identified as particularly significant and/or successful enforcement cases in preliminary interviews with ACCC staff and trade practices lawyers. This involved a further twenty-five focused interviews with people in the businesses or industries affected by ACCC enforcement action. Newspaper and other reports of each case and relevant court documents, where available, were also collected and analyzed.

[7] More data are still coming in.

[8] For example, John and Valerie Braithwaite's data collections on nursing home regulation (eg Braithwaite, J. & Makkai, 1991, Makkai & V. Braithwaite, 1993) and their work with Tina Murphy and others on tax compliance (eg Braithwaite, V., 2003, Murphy, 2004).

[9] See footnote 3 above. The questionnaire is available at http://www.cccp.anu.edu.au/projects/project1.html

[10] Approximately 1200 businesses. The ACCC was given special extra enforcement powers in the time leading up to and immediately after the introduction of the goods and services tax to Australia in order to prevent or stop misleading pricing and labeling or unjustified price increases by business. During this period the ACCC used a new enforcement strategy in which they sent warning letters to all businesses against whom they received GST-related complaints in that period.

investigation list were included in the survey, even if they were not on the Dun and Bradstreet list.[11]

The total number of businesses surveyed was 2700 (including a total of 566 on the ACCC list). The businesses surveyed included 450 from the ACCC list that were not on the Dun and Bradstreet list. The remainder of 2250 was taken from the Dun and Bradstreet list starting with the larger businesses.

Questionnaires were mailed out in a series of waves from October 2003 to May 2005. Three protocols for mailing of the questionnaire and telephone follow-up were trialed with small numbers of businesses in October-December 2003, January to March 2004 and March to July 2004. The fourth and final protocol was used for the bulk of businesses in the survey from September 2004 to May 2005 with contact made and questionnaires posted in waves of 500. The final response rate was 822 (32%) (but as of 12 May, now up to 979 – 36% - not incorporated here). The changing of protocols was simply because it turned out to be very difficult to collect the data, so we had to try different strategies.

The final protocol involved:

(1) Phonecall to each business to check the correctness of the contact details obtained from the Dun and Bradstreet list and to gather the names of the Chief Executive Officer or equivalent (eg Managing Director), the Chief Financial Officer, Trade Practices Compliance Officer, Legal Counsel and Company Secretary;

(2) Mail questionnaire to CEO together with letter requesting participation in the survey, one page question and answer document about 'Why you should complete this survey' and one page summary of confidentiality and anonymity arrangements for survey;

(3) Repeated telephone follow-up until target respondent is available seeking cooperation of most senior person responsible for trade practices compliance to fill in the survey;

(4) Telephone follow-up until questionnaire completed and returned or alternative person in the business is nominated to return questionnaire or refusal received;

(5) Where CEO refuses to complete questionnaire on own behalf, then CFO phoned; where CFO refuses, Trade Practices Compliance Officer phoned, then Legal Counsel then Company Secretary.

The protocol was carried out by a data collection company that specialises in academic research with trained phone operators actively seeking to find the correct person in the organization to fill out the questionnaire and to persuade business people of the value of participating in the survey and

[11] Just over 100 from the ACCC list were on the Dun and Bradstreet list.

of the ethical arrangements for the survey designed to protect their confidentiality and anonymity. On average each completed questionnaire was the result of a total of approximately 28 phonecalls.

The survey sample is not intended as a representative sample of Australian businesses. Rather it is the 2700 largest Australian business as determined by the Dun and Bradstreet list including all those larger businesses that had faced ACCC enforcement action in mid-1997 and mid-2004 (the 7 years previous to when the survey was conducted). Although the response rate was only 32% (latest data update not incorporated here brings response rate up to 36% (979)), the profile of our respondents compares well with the profile of the whole Dun and Bradstreet list in terms of size and, especially, industry (see table A1 and A2 in appendix 1).

While previous quantitative empirical tests of the impact of regulatory enforcement on business compliance with the law focus on general attitudes towards regulators, enforcement and compliance, this survey also measures the impact of specific episodes of business-regulator enforcement action on business attitudes towards the regulator and compliance. For the purposes of some analyses, those businesses which have experienced an enforcement interaction with the ACCC form a sub-sample, with those who have not experienced an enforcement interaction being the control group.

Our survey respondents were slightly smaller on average than the average company on the D&B list. Companies of 300 or less are therefore underrepresented among our respondents compared with the Dun and Bradstreet list. But there are also less very large companies. 25% (203) of respondents reported that they had had an interaction of any sort with the ACCC. 11% (84) of all respondents reported they had been the subject of an ACCC investigation of an alleged breach by their business. 566 (21%) of the 2700 businesses surveyed had experienced an ACCC investigation according to our 'ACCC list'. Therefore businesses that experienced an ACCC investigation are underrepresented among our sample.

There are three likely reasons for the lower response rate among those who had experienced an ACCC investigation or enforcement action. Firstly, some of the businesses who experienced ACCC enforcement action may have subsequently gone out of business or changed their business name as a result of the enforcement action and were therefore untraceable.[12] Secondly, some businesses that responded to our survey and had experienced an ACCC investigation according to the ACCC list may not have reported that they have done so. This might be because they did not wish to report it in our anonymous survey (see next point). Or it may be because the person filling out the questionnaire did not know or did not remember about the investigation. This may be particularly true of businesses where the 'investigation' or enforcement action they experienced was only a single letter from the ACCC or similar. This is likely to be true of many of the 180 businesses

[12] About 100 from the ACCC list could not be traced.

approached who had experienced an enforcement response in relation to the introduction of the GST, since most enforcement actions in response to GST complaints were only by correspondence, often a single letter. Thirdly, businesses that had faced investigation or enforcement action, and particularly those who were still in the process of an ACCC investigation, may have been more reluctant to fill in the survey because they were worried about the anonymity and confidentiality of their responses.[13]

Therefore, even though this project has collected a lot of data from many companies, this paper focuses only on a small part of the data (84 companies), namely data from those respondents that had experienced and an investigation and therefore engaged in a regulatory interaction with the ACCC. As our ambition with this paper is not to explain variation in interaction, but simply to identity whether it can be characterised as responsive or not, the characteristics of this group of companies are not particularly relevant. One might however object that if our data only contains for example big companies or companies from one industry, then the analysis will not give a representative picture of the regulatory interaction. As one sees in table A3 and A4 in Appendix 1, all categories of size and industries are covered by the data.

4. Operationalization – measuring responsiveness

To test whether or not regulator and regulatees react responsively toward one anothers' behaviour we have to be able to measure the chain of reactions and counter-reaction that runs throughout the different phases of their interaction.

The ACCC does not, unlike for example environmental and occupational safety and health regulators, engage in proactive, ongoing and frequent inspections. Instead the ACCC's enforcement is primarily reactive and single-case based. They receive tips from whistleblowers or complainants (such as employees, consumers, suppliers or competitors), through ACCC staff reading stories in the media, or noticing suspicious pricing patterns or advertisements. On this basis, they will start to investigate a case. This makes it relatively easy to identify when an interaction between the ACCC and the company under suspicion starts and ends, and the different phases in between.

The next thing is to measure the character of the behaviour and attitude that the ACCC and the regulated company show at each phase. As mentioned in section 2, the theory of responsive regulation implies that accommodation and understanding breed accommodation and understanding. Therefore

[13] Despite extensive anonymity, confidentiality and privacy protocols that were explained to businesses, the data collection company reported a number of cases where businesses that had faced enforcement action declined to fill in the survey on legal advice that the questionnaire could be subpoenaed or because they were otherwise sensitive about confidentiality and anonymity.

we want to be able to measure the level of accommodation and understanding of each actor's behaviour in each phase, and afterwards test the correlation between these.

As shown in Figure 1, we are able to divide the regulatory interaction into four phases. Within each phase we would like to measure the behaviour and attitude of both the ACCC and the regulated company, so that we can test then these correlate. Below and in Tables 1–4 we outline by which variables we measure behaviour and/or attitude in each of the phases.

In the first phase is concerned with how the ACCC informs the company under suspicion about its investigation and how the company reacts to this information. The logic of the measures here is that the more personal, informal and non-disturbing the way of informing the company, the more accommodative and friendly is the behaviour of the ACCC. However, sometimes a company might find out about an investigation before the ACCC formally approaches the company. Therefore, we have asked for information on both how the company "found out" about and was "formally informed" of the ACCC's investigation. The level of accommodation and friendliness in the way the ACCC informed the company is measured as the mean of the score on both questions. The ranking of each possible answer is shown in table 1.

Table 1: Variables measuring level of accommodation and friendliness in the first phase of the regulatory interaction

Phase of interaction	Behaviour/attitude of the ACCC	Behaviour/attitude of the regulated company
Information about investigation	Index that includes variables measuring 1) the way the organisation found out that the ACCC was investigating it and 2) how the ACCC formally informed the organisation that it was under investigation. Coding of possible answers: 1) Scale measuring level of accommodation from 1-5 ranked in the following way: 1 = ACCC staff showed up at our premises one day pursuant to a statutory notice to start their investigation and copy documents 2 = Suppliers/customers/competitors told us that they had been interviewed by the ACCC 3 = We received a notice from the ACCC requiring us to provide documentary evidence or attend interviews with employees 4 = We received a letter from a staff member of the ACCC 5 = An ACCC staff phoned us 2) Scale measuring level of accommodation running from 1-5, ranked in the following way: 1 = The ACCC staff members just showed up at our premises one day pursuant to a statutory notice to start their investigation and copy documents. 2 = The ACCC sent us a formal notice requiring us to provide documentary evidence or requesting interviews with managers or employees. 3 = The ACCC sent us a formal letter requesting us to provide documentary evidence or requesting interviews with managers or employees	How did most mangers in your organisation react when they found out that the ACCC was investigating your organisation? To what degree did your organisation had the following reactions? Ashamed Embarrassed Confused Calm Worried Irritated Angry Coding of each answer: Scale going from 1-5

	4 = The ACCC sent us a letter telling us about the investigation 5 = The ACCC telephoned us and told us about the investigation	

How the ACCC informed the company about the investigation is however only one link in this part of the chain. The next link is how the company reacted. This is, as shown in table 1, measured according to seven different emotional reactions (ashamed, embarrassed, worried, confused, calm, irritated and angry). We expect that the more accommodative and friendly the behaviour of the ACCC is, the less worried, angry and irritated becomes the regulatee. On the other hand, the company is expected to be more ashamed and embarrassed, while our expectation is more unclear when it comes to feeling confused or calm.

The second phase is concerned with how the ACCC went on to handle the situation where they still needed to collect evidence as to whether or not the company had breached the law, while the company is fully aware that the investigation is going on. Does the ACCC try to involve and inform the company, or do they shut them out? Do they already – implicitly – judge the company as guilty, for example, by trough threats about going to court or by issuing a press release about the investigation? To measure this we use the variables outlined in table 2. The behaviour of the ACCC is measured as a mean of different measures of accommodative ways of behaviour on one hand and non-accommodative ways of behaviour on the other hand. At this phase, we also want to measure the behaviour of the company being investigated. Again we distinguish between accommodative and non-accommodative ways of behaviour among a list of different possible ways of reaction. Accommodative ways of reaction include, for example, cooperating with the ACCC, conducting a self-investigation, and taking the initiative to remedy the harm caused by the potential breach. Likewise, non-accommodative behaviour is being non-cooperative and perhaps even deciding to fight the ACCC. Once again, the level of accommodation is measured as the mean of such accommodative and non-accommodative ways of behaviour. See Table 2 for the exact wording of each measure.

As in the first phase, we test whether or not the ACCC and the regulated company act responsively toward one another by looking at whether or not their different ways of acting and reacting correlate. However, in order to figure out whether or not the reactions and counter reactions of the ACCC and the company form a chain of either accommodative or non-accommodative behaviour throughout the entire interaction, we also need to test whether or not the behaviour of the company in the first phase correlates with the behaviour of the ACCC in the second phase.

Table 2: Variables measuring level of accommodation and friendliness in the second phase of the regulatory interaction

Further investigation/collection of evidence	Index measuring the mean of the answers to the following question: Which of the following things did the ACCC do, once your organisation knew it was under investigation by the ACCC?	Index measuring the mean of the answers to the following question: What did your organisation do after you knew it was under investigation by

	Coding of possible answers: *Accommodative ways of behaviour:* "They offered us information on how to prevent the problem in the future", "They informed us about our responsibility under the law and our legal rights", "They wrote a letter detailing the ACCC's concerns and asked for our comments and a response to those concerns", "They offered us a meeting where we could talk about the allegations". (Yes = 2 and No = 1) *Non-accommodative ways of behaviour:* "They threatened they would take us to court", "They threatened they would go to the media", "They told us to do nothing while they were conducting their investigation", "Business assets were frozen until the case was decided", "They said they would continue their investigations and let us know when they were done", "They issued a press release about the investigation". (Yes = 2 and No = 1)	the ACCC? Coding of possible answers: *Accommodative ways of behaviour:* "We conducted an internal enquiry to consider the issues raised by the ACCC", "We felt bad about breaking the law and thought about how we could remedy the damage", "We took remedial action on our own", "We did everything we could to cooperate with the ACCC". (Yes = 2 and No = 1) *Non-accommodative ways of behaviour:* "We decided to fight the ACCC's allegations", "We decided to be like a stonewall to the ACCC". (Yes = 1 and No = 1)

The logic in the third and fourth phase is the same as outlined in relation to the first and second phase, and the variables used to measure the behaviour of the ACCC and the regulated company is expounded in Tables 3 and 4. However, as shown in the tables, we use three different variables to measure the behaviour of the ACCC in each of the third and the fourth phases. The reason for this is that both these phases contain both 1) interactions in relation to decision making and 2) the actual decision, and each of these might be more or less accommodative. Furthermore, the possible behaviour of the ACCC in relation to the actual decision varies according to whether or not the case was dropped or not. Deciding to drop a case can be implemented different ways as can the decision to continue.

Table 3: Variables measuring level of accommodation and friendliness in the third phase of the regulatory interaction

Deciding the case and its preliminary outcome	Measured by three different variables: **1)** If managers or lawyers from your organisation did have a meeting with the ACCC while they were still investigating the case: To what degree does your organisation think each of the following statements fits the atmosphere of the meeting? Measured as a mean of the ranking (scale 1-5) of the beneath accommodative ways of behaviour minus the mean of the ranking (scale 1-5) of the beneath non-accommodative ways of behaviour. *Accommodative ways of behaviour:* "The ACCC was listening to our point of view", "The ACC was quite willing to take into account our concerns about how to handle the case", "The ACCC was good at explaining to us the substance of the allegations". "The ACCC was interested in minimizing the costs that the case would have to our organisation e.g. damage to our reputation, loss of customers etc., "The ACCC was good at explaining the social and economic consequences of the alleged breaches we committed". "The ACCC treated us with dignity and respect". *Non-accommodative ways of behaviour:* "The ACCC just wanted us to provide them with more evidence", "The ACCC was only thinking about taking us to court", "It was clear that the ACCC was thinking about whether or not the case would make a good story for the media"	Index measuring the mean of the answers to the following question: What did your organisation do after you knew it was under investigation by the ACCC? - Measured as a mean of the ranking (scale 1-5) of the beneath accommodative ways of behaviour minus the mean of the ranking (scale 1-5) of the beneath non-accommodative ways of behaviour *Accommodative ways of behaviour:* "We were keen on establishing a dialogue with the ACCC", "Our strategy was to get a quick settlement with the ACCC", "We thought it was best to cooperate with the ACCC", "We had other more important things to handle, so we asked our lawyer to get the best possible settlement" *Non-accommodative ways of behaviour:* "Our strategy was to fight back at the ACCC", "Our strategy was not to directly fight back but to be like a stonewall – not helping the ACCC at all",

	2) The accommodation of the ACCC's behaviour if the case was dropped after preliminary investigations. – Measured by ranking the accommodativeness of the ACCC' behaviour in the following way: 1 = The case was dropped and the ACCC told us so, but nothing else happened 2 = The case was dropped and the ACCC provided us with information on the Trade Practices Act and how to prevent such problems in the future 3 = The case was dropped and the ACCC issued a press release saying that there was nothing in the case. **3)** The accommodation of the outcome of preliminary investigation (if case was not dropped) Measured as a mean of the ranking (scale 1-5) of the beneath accommodative ways of behaviour minus the mean of the ranking (scale 1-5) of the beneath non-accommodative ways of behaviour. *Accommodative ways of behaviour:* "They sent us a letter where they outlined their view of the case", They phoned us and told us their view of the case", "They asked for a meeting with us and our lawyers", "They asked for a meeting without our lawyers". *Non-accommodative ways of behaviour:* "They threatened to take us to court", They threatened to publicise our case in the media", "They sent out a press release without showing it to us first".	"We didn't care that much about the case".

Table 4 also shows that we measure the regulated companies' final perception of the ACCC and the incident through four different variables. Each of the four variables is the result of a factor analysis examining all the responses to a long list of statements about the overall outcome of the incident with the ACCC. Therefore each variable (factor) represents a different aspect of the company's final reaction to the incident. The factors are not intercorrelated and a test of reliability (Cronbach Alpha) shows that it is not possible to add all the variables together. By adding them together we would lose important information and therefore misinterpret the results. Therefore we treat them as four independent variables.

Table 4: Variables measuring level of accommodation and friendliness in the fourth phase of the regulatory interaction

Settling the case	Measured by three different variables: **1)** How direct and face-to-face was the rest of the case? Measured by the following ranking (scale 1-8): 1 = Written correspondence between the ACCC and our lawyers 2 = Written correspondence between the ACCC and our management 3 = Phone calls between the ACCC and our lawyers 4 = Phone calls between the ACCC and our management 5 = Meetings between the ACCC and our lawyers 6 = Meetings between the ACCC, our lawyers, and our management 7 = Meetings between the only ACCC and our management 8 = Meetings where a Commissioner/s of the ACCC attended **2)** How was the atmosphere of the rest of the case? Measured as a mean of the ranking (scale 1-5) of the beneath accommodative ways of behaviour minus the mean of the ranking (scale 1-5) of the beneath non-accommodative ways of	Measured by four factors (each an index composed of several variables. Each index runs on a scale from 1-5). Each factor measures different aspects of the overall outcome of the case – perceived by the company. **1)** Overall view of the ACCC (its fairness and accommodativeness). Measured by ranking the level of agreement to the following statements: "We were treated unfairly", "The ACCC were balanced in their criticism of us. They focused on both good and bad things", "In the end the ACCC gave us credit for being cooperative". **2)** Positive learning. Measured by ranking the level of agreement to the following statements:

	behaviour. *Accommodative ways of behaviour:* "The ACCC was focusing on getting the best outcome for our company while still applying the law", "The ACCC were very willing to listen to our suggestions regarding how to resolve the case", "The ACCC was keen on giving us information about the law and helping us understand its purpose". *Non-accommodative ways of behaviour:* "The ACCC were only waiting for the right moment to force us to accept the solution they always wanted", "The ACCC was very keen to tell us about the harm that the conduct had caused", "We had the feeling, that the ACCC would make the case even worse if we didn't accept their solution", "The ACCC was keener on making an example of our case than looking at the facts and individual circumstances of the case", "The ACCC treated the case in a standard way instead of looking at its individual characteristics". **3)** The accommodation of the enforcement activity (if case was not dropped at this stage). Measured by the following ranking (scale 1-6): 1 = Through a criminal prosecution 2 = Through contested civil proceedings in court 3 = Through court orders that we consented to (e.g. financial penalties, orders not to engage in the conduct again) 4 = Through a formal settlement with that we signed and that was enforceable in court and was made public 5 = Through a settlement agreement with the ACCC that was made public 6 = Through a settlement agreement with the ACCC that was not made public in any way	"We learned a lot about the Trade Practices Act and how to comply with the law", "We were pleased to have the opportunity to remedy the harm caused by the conduct", "We learned a lot about weak spots in our own organisation", "We ended up with a better compliance program", "We learned that the best strategy is to be cooperative with the ACCC". **3)** Feeling of being stigmatized. Measured by ranking the level of agreement to the following statements: "The case gave a lot of bad publicity", "We are/were ashamed of having violated the law", "We felt stigmatized as criminals", "The ACCC has held this incident against us ever since". **4)** Negative learning. Measured by ranking the level of agreement to the following statements: "We learned to be more careful about creating things that might be used as evidence against us", "We learned that you need to fight hard against the ACCC", "We learned more about how to get away with breaches of the Trade Practices Act"

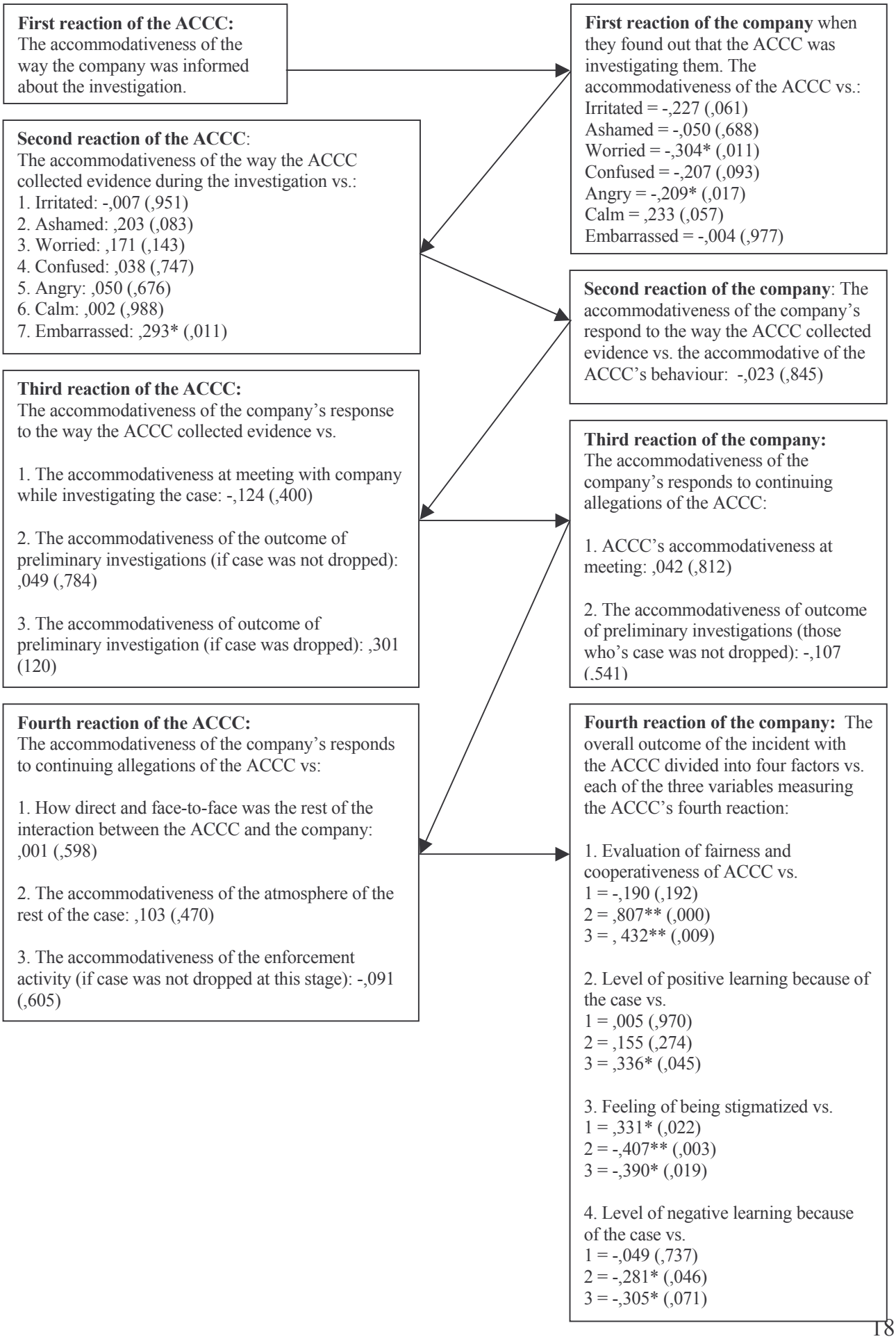
Thus, having outlined how we measure the behaviour of both the ACCC and the regulated company throughout the entire regulatory interaction, we are now ready to turn our attention to testing whether or not we are able to identify their behaviour as responsive.

Findings

Figure 2 presents the results of Pearson's correlations testing the correlations between each link in the chain of reactions and counter reactions throughout the entire case, starting with the way in which the company was informed about the investigation, ending at the companies overall perception of the ACCC and the very incident.

Figure 2 shows a mix of significant and insignificant correlations between the reactions and counter reactions of the ACCC and the regulated companies. In other words, the behaviour of the two actors does not form an unbroken chain of responsiveness. Especially in the mid part of the interaction responsiveness is weak. Furthermore, the ACCC is less responsive towards the company than the other way around. To say that accommodation and kindness breeds accommodation and kindness is according to the data a truth with modifications.

Figure 2: Correlations between action and reaction between the ACCC and companies being investigated


First reaction of the ACCC:
The accommodativeness of the way the company was informed about the investigation.
First reaction of the company when they found out that the ACCC was investigating them. The accommodativeness of the ACCC vs.:
Irritated = -,227 (,061)
Ashamed = -,050 (,688)
Worried = -,304* (,011)
Confused = -,207 (,093)
Angry = -,209* (,017)
Calm = ,233 (,057)
Embarrassed = -,004 (,977)
Second reaction of the ACCC:
The accommodativeness of the way the ACCC collected evidence during the investigation vs.:
1. Irritated: -,007 (,951)
2. Ashamed: ,203 (,083)
3. Worried: ,171 (,143)
4. Confused: ,038 (,747)
5. Angry: ,050 (,676)
6. Calm: ,002 (,988)
7. Embarrassed: ,293* (,011)
Second reaction of the company: The accommodativeness of the company's respond to the way the ACCC collected evidence vs. the accommodative of the ACCC's behaviour: -,023 (,845)
Third reaction of the ACCC:
The accommodativeness of the company's response to the way the ACCC collected evidence vs.
1. The accommodativeness at meeting with company while investigating the case: -,124 (,400)
2. The accommodativeness of the outcome of preliminary investigations (if case was not dropped): ,049 (,784)
3. The accommodativeness of outcome of preliminary investigation (if case was dropped): ,301 (120)
Third reaction of the company:
The accommodativeness of the company's responds to continuing allegations of the ACCC:
1. ACCC's accommodativeness at meeting: ,042 (,812)
2. The accommodativeness of outcome of preliminary investigations (those who's case was not dropped): -,107 (,541)
Fourth reaction of the ACCC:
The accommodativeness of the company's responds to continuing allegations of the ACCC vs:
1. How direct and face-to-face was the rest of the interaction between the ACCC and the company: ,001 (,598)
2. The accommodativeness of the atmosphere of the rest of the case: ,103 (,470)
3. The accommodativeness of the enforcement activity (if case was not dropped at this stage): -,091 (,605)
Fourth reaction of the company: The overall outcome of the incident with the ACCC divided into four factors vs. each of the three variables measuring the ACCC's fourth reaction:
1. Evaluation of fairness and cooperativeness of ACCC vs.
1 = -,190 (,192)
2 = ,807** (,000)
3 = , 432** (,009)
2. Level of positive learning because of the case vs.
1 = ,005 (,970)
2 = ,155 (,274)
3 = ,336* (,045)
3. Feeling of being stigmatized vs.
1 = ,331* (,022)
2 = -,407** (,003)
3 = -,390* (,019)
4. Level of negative learning because of the case vs.
1 = -,049 (,737)
2 = -,281* (,046)
3 = -,305* (,071)

However, looking closely at the results in Figure 2 we also see that some elements of responsiveness actually do exist. First of all, we see that the more accommodative the way the ACCC to informed the company about the investigation, the less worried and angry is the regulated company's reaction. Furthermore, we see that being embarrassed leads the ACCC to react more accommodatingly towards the company when collecting evidence. However, in the next link of the chain, we have to notice that the level of accommodation in collecting evidence does not correlate – either negatively or positively – with the behaviour of the company. And the behaviour of the company at this link does not correlate with the subsequent behaviour of the ACCC. However, in the fourth and final phase we again see some elements of responsiveness, since several of the companies' final overall reactions correspond with the previous behaviour of the ACCC. The company especially reacts responsively to the level of accommodation of the enforcement activity of the ACCC. The more accommodative this is, the lower the level of negative learning and the feeling of being stigmatized. While the regulatee's perception of the ACCC being fair and cooperative, and the level of positive learning, is higher when the behaviour of the ACCC is accommodative. Likewise, if the atmosphere of the last phase of the case is thought to be accommodative, the feeling of being stigmatized, and the amount of negative learning is low, while the perception of the ACCC as being fair and cooperative is high.

One result that might surprise is that the more direct and face-to-face the last phase of the regulatory interaction is the more stigmatized does the company feels. What we expected was the opposite as a direct, face-to-face, interaction indicates a fairly high level of involvement and willingness to listen. It indicates that your case is not just another case that one have handle as quick and easy as possible. That the correlation is actually the other way around might be because of the way we have measured the variable. The wordings of the possible answers to how direct and face-to-face the rest of the case went do not only measure variation in level of personal interaction, but also variation in how high in the hierarchy at both sides (both at the ACCC and the company) the case went. So, the higher in the hierarchy the case go the more stigmatising does the company thinks it is.

The overall conclusion of the analyses in figure 2 is that there are elements of responsive behaviour in the regulatory interaction between the ACCC and the regulated company. However, it does not form an unbroken chain of corresponding reactions and counter reactions. There might be two reasons for this result. First of all, the theories of responsive regulation might overestimate actors' capability to decode the behaviour of one another and act responsively thereupon. Secondly, the reason might be that our data – the way we have measured behaviour in each phase – does not capture what it is the ACCC and the regulated company act upon. One thing to notice in relation to that is that some of our measures measure attitude or perception while others measure actual behaviour, and the level of responsiveness is higher when we look at attitudes and perception instead of behaviour.

It is by no doubt more difficult to classify and rank the accommodativeness of different way of behaviour than of attitudes and perceptions. To classify behaviour requires an element of interpretation and the danger of misinterpretation is obvious. But on the other hand this only underlines how difficult it in general is for individual actors to interpret and understand the behaviour of others. However, there might still be room for improving how we measure regulatory responsiveness.

Concluding remarks

The research question of this paper was: Does regulator and regulatee manage to act responsively towards one another? The empirical analyses show that they only manage to do so to a limited degree. To say that accommodation and kindness breeds accommodation and kindness is according to the data a truth with modifications. Throughout a regulatory enforcement interaction the reactions and counter reactions of the regulator and the regulatee does not form an unbroken chain. However, on the other hand, we do see some elements of responsiveness, but it is mainly in the beginning of the interaction and when we measure the reaction of the actors as attitudes and perceptions instead of behaviour.

Does this lack of responsiveness mean that we have to drop the theories of responsive regulation by referring to, that they are based upon a false picture of the behaviour of the actors involved? The results of the analysis might indicate, that human being are not so socially intelligent that they can decode each others behaviour and attitude correctly and act strategically optimal upon it. If so the theories of responsive regulation is based on an optimistic but unrealistic picture of human beings.

However, before we throw out the baby with the bath water, we would speak for focusing future studies on 1) discussions and development of valid and reliable ways to empirically analyse the concept of responsive regulation and 2) uncovering how we optimises the possibility of actors to act responsively. Under which institutional and human conditions do we, as individual actors, manage to decode each other behaviour correctly and act in a responsive way towards it? What are the preconditions – of institutional, economic and intellectual character?

Appendix 1: Comparison of respondents and survey sample

Table A1: Industry of Respondents Compared with Whole Dun and Bradstreet List

Industry a)	Dun & Bradstreet List % (largest 3000 businesses) b)	Survey Respondents % (n=816)
Agriculture, Forestry and Fishing	2	6
Mining	4	3
Manufacturing	32	32
Electricity, Gas and Water Supply	7	8
Construction	7	8
Wholesale Trade	22	22
Retail Trade	11	10
Accommodation, Cafes and Restaurants	23	23
Transport and Storage	6	5
Communication Services	0	0
Finance and Insurance	6	6
Property and Business Services	13	12
Government Administration and Defence	2	3
Education	2	2
Health and Community Services	6	8
Cultural and Recreational Services	0	0
Personal and Other Services	14	15

a) Classified according to Australian and New Zealand Standard Industrial Classifications. See http://www.abs.gov.au/ausstats/abs@.nsf/0/7cd8aebba7225c4eca25697e0018faf3

b) Percentages total more than 100% because businesses could be coded as belonging to more than one industry

Table A2: Size of Respondents Compared with Whole Dun and Bradstreet List

	Dun & Bradstreet List (largest 3000 businesses)	Survey Respondents
Avg Number of Employees	1200	977
Median Number of Employees	300	362
Avg Turnover (Aus $)	$517mill[14]	$469mill
Median Turnover (Aus $)	$79mill[15]	$89mill

Table A3: Size of those companies who have had an investigation

[14] This information was only available for 1308 companies on the D&B list. 1693 were missing.
[15] This information was only available for 1308 companies on the D&B list. 1693 were missing.

Number of employees	Pct. (N = 84)
0 – 199	11 %
200-399	15 %
400-999	33 %
1000 +	41 %

Table A4: Which industry those companies who have had an investigation represent

Industry	Pct. (N = 84)
1: Primary Industries (Agriculture, Forestry and Fishing and Mining)	2 %
2: Manufacturing and construction (Manufacturing and Construction)	10 %
3: Whole sale trade (Wholesale Trade)	21 %
4: Retail and Hospitality (Retail Trade and Accommodation, Cafes and Restaurants)	22 %
5: Financial and Insurance, Property and Business services, transport and storage (Finance and Insurance, Property and Business Services, Transport and Storage)	23 %
6: Government and Essential services (Electricity, Gas and Water Supply, Government Administration and Defence)	14 %
7: Education and Services (Communication Services, Education, Health and Community Services, Cultural and Recreational Services, Personal and Other Services)	8 %

References

Ahmed, Eliza, Nathan Harris, John Braithwaite & Valerie Braithwaite (2001). *Shame Management Through Reintegration*. Melbourne: Cambridge University Press.

Ayres, Ian & John Braithwaite (1992). Responsive Regulation. Transcending the Deregulation Debate. New York: Oxford University Press.

Bardach, Eugene & Robert A. Kagan (1982). *Going by the Book: The problem of Regulatory Unreasonableness*. Philadelphia: Temple University Press.

Bardach, Eugene (1989). "Social Regulation as a Generic Policy Instrument" in Salamon (eds.) *Beyond Privatization: The Tools of Government Action.* Washington D.C.: "The Urban Institute Press.

Black, Julia (2001). "Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-regulating World", Current legal Problems, 54: 104-147.

Braithwaite, John & Tonni Makkai (1991). "Testing an expected utility model of corporate deterrence", *Law & Society Review,* 25, 7–40.

Braithwaite, John (2002). *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.

Braithwaite, Valerie (2003). 'Dancing with Tax Authorities: Motivational Postures and Non-compliant Actions' in Valerie Braithwaite (ed) *Taxing Demcrocacy: Understanding Tax Avoidance and Evasion*. Aldershot, UK: Ashgate, 15-39.

Carson, W.G. (1970). "White Collar Crime and Enforcement of the Factory Legislation". *British Journal of Criminology,* 10:383

Gunningham, Neil & Peter Grabosky (1998), *Smart Regulation: Designing Environmental Policy*. Oxford: Clarendon Press

Haines, Fiona (1999). "Innocent Deaths and Regulatory Failure: A Case Study of Change in the Absence of Punishment", *International Journal of the Sociology of Law,* 1999 (27), 23-50.

Hawkins, Keith (1984). *Environment and Enforcement: Regulation and the Social Definition of Enforcement.* Oxford: Clarendon Press.

Kagan, Robert (1994). "Regulatory Enforcement", pp. 383-422 in D.H. Rosenblom & R.D Schwarts, *Handbook of Regulation and Administrative Law*. New York: Marcel Dekker, Inc.

Kagan, Robert A. & John T. Scholz (1984). "The "Criminology of the Coporation" and

Regulatory Enforcement Strategies", pp. 67-95 in K. Hawkins & J. Thomas (eds.), *Enforcing Regulation*. Boston: Kluwer-Nijhoff.

Kelman, Steven (1982). *Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy*. Mass.: The Massachusetts Institute of Technology.

Makkai, T. & Braithwaite, V. (1993), "Professionalism, organizations and compliance", *Law & Social Inquiry*, 33-59.

May, Peter & Søren Winter (1999). "Regulatory Enforcement and Compliance: Examining Danish Agro-Environmental Policy", *Journal of Policy Analysis and Management*, Vol. 18, No. 4, pp. 625-651.

May, Peter & Søren Winter (2000). "Reconsidering Styles of Regulatory Enforcement: Patterns in Danish Agro-Environmental Inspection", *Law and Policy*, vol. 22, no. 2, pp. 143-173.

McBarnet, D. (2003), 'When compliance is not the solution but the problem: From changes in law to changes in attitude' in V. Braithwaite (ed) *Taxing Democracy*. Hampshire: Ashgate

Mitnick, Barry (1980). *The Political Economy of Regulation*. New York: Columbia University Press

Murphy, K. (2004) "The role of trust in nurturing compliance: A study of accused tax avoiders", *Law & Human Behaviour*, 28(2), 187-209.

Nielsen, Vibeke Lehmann (forthcoming). "Are regulators responsive*"* Working paper. Aarhus: Institut for Statskundskab

Parker, Christine & Natalie Stepanenko (2003) *Compliance and Enforcement Project: Preliminary Research Report*, Canberra: Centre for Competition and Consumer Policy, Australian National University

Parker, Christine (2004) "Restorative justice in business regulation? The Australian Competition and Consumer Commission's use of enforceable undertakings", *Modern Law Review*, 67(2), 209-246.

Parker, Christine, John Braithwaite & Natalie Stepanenko (2004) *ACCC Enforcement and Compliance Project: Report on ACCC Compliance Education and Liaison Strategies*. Canberra: Centre for Competition and Consumer Policy, Australian National University

Pearce, Frank & Steve Tombs (1997). "Hazards, Law and Class: Contextualizing The Regulation of Corporate Crime, *Social and Legal Studies*, vol 6 (1), 79-107.

Scholz, John & Neil Pinney (1995). "Duty, Fear and Tax Compliance: The Heuristisk Basis of Citizenship Behavior", *American Journal of Political Science*, vol. 39, no. 2, pp.490-512.

Scholz, John (1984a). "Cooperation, Deterrence, and the Ecology of Regulatory Enforcement", *Law and Society Review*, vol. 18, no. 2, pp. 179-224.

Scholz, John (1984b). "Voluntary Compliance and Regulatory Enforcement", *Law and Policy*, Oct. 1984, no. 6 , pp. 385- 404.

Scholz, John (1991). "Cooperative Regulatory Enforcement and the Politics of Administrative Effectiveness", *American Political Science Review*, Vol. 85, No. 1, pp. 115-136.

Scholz, John (1997). 'Enforcement policy and corporate misconduct: The changing perspective of deterrence theory' 60(3) *Law & Contemporary Problems*, 253-268.

Scholz, John T. & Neil Pinney (1995). "Duty, Fear and Tax Compliance: The Heuristisk Basis of Citizenship Behavior", *American Journal of Political Science*, vol. 39, no. 2, pp.490-512.

Tyler, Tom & Yuen Huo (2002). *Trust in the Law*. New York: Russell Sage Foundation

Williams, Kirk R. & Richard Hawkins (1986). "Perceptual Research on General Deterrence: A critical Review", Law and Society Review, vol. 20, no. 4, p. 545-572.

Winter, Soeren & Peter J. May (2001). "Motivation for Compliance with Environmental Regulations", *Journal of Policy Analysis and Management*, vol. 20, no. 4, pp. 675-698.