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**APOYO CONSULTORIA REPORT TO THE
INTERNATIONAL TELECOMMUNICATION UNION (ITU)
GLOBAL SYMPOSIUM FOR REGULATORS,
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FEEDBACK TO REGULATORS FROM CONSUMERS



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1. Purpose of this Report

Worldwide, consumer protection issues in telecommunications services are generally not given full consideration. They rarely are included in the agendas of international telecommunication meetings. Few seminars have been held to enable operators and consumer organizations to share views and experiences. Far more common are meetings between operators and regulators. A review of Internet web sites and policy papers show that little attention is given toward consumer protection policies. Textbooks on regulation primarily focus on market structure, incentive regulation, tariff regimes, deregulation and competition. Issues such as regulating and addressing consumer policies, consumer protection and the public interest receive scant attention. To give consumer issues greater priority and launch a global dialogue between consumers and regulators, participants in the 2001 International Telecommunication Union (ITU) Global Symposium for Regulators (GSR) requested the ITU Telecommunication Development Bureau (BDT) to commission a case study to provide feedback to regulators from consumers.

This report provides consumers' views on how consumers are affected by and react to rules adopted by regulators to enable regulators to implement their mandate more effectively. More specifically, it identifies what regulators can do to raise consumer awareness and increase consumer involvement in the regulatory process. The views expressed in this study are those of the author and may not necessarily reflect the opinions of the ITU and its members¹.

Many policy makers assume that tariff regulation is the key to addressing consumer issues related to services provided by monopoly operators that control essential facilities, and that competition will address other consumer concerns related to services provided in an efficient competitive framework. Although competition is a powerful means to protect consumers against abuse of market power by dominant service providers, it may also be necessary—at least during a transitional period until full competition is achieved—for policy makers to craft specific policies to ensure adequate consumer protection.

Major market reforms have been implemented in most countries, such as introducing competition in the provision of telecommunication services, the injection of foreign private capital through the privatization of state-owned incumbent operators and the creation of national regulatory authorities separate from the incumbent operator, if not separate from government ministries. Nevertheless, consumers' perceptions and opinions about the new marketplace scenario are less than encouraging. Consumers feel that they have been excluded from the initial decision-making process that led to sweeping changes in the provision of telecommunication services, including market structure, ownership and tariff regulation. They believe that their late arrival in the regulatory process provides them with limited opportunity to influence or even overturn critical decisions made at the onset of the sector reform process.

The paradox is that there has been considerable attention devoted to several major indicators closely related to consumer well-being, such as network expansion, service coverage, quality of service and significant tariff reductions. However, as this report confirms, there is a broad consumer-related agenda yet to be pursued. If consumer views are neglected or treated in the absence of due process, regulators' efforts to foster competition and to instill a sound regulatory framework may prove to be unsustainable.

¹ The author wishes to thank Mrs. Claudia Collado from the Latin American and Caribbean Office of Consumers International for her invaluable insights and help in conducting the fieldwork, and addresses special thanks to Susan Schorr and Nancy Sundberg from the International Telecommunication Union.

Consumers views and opinions were gathered through in-depth interviews and a survey that was sent to consumer organizations². Although the study mainly focuses on residential consumers in Latin America, organizations from other regions were also consulted and the research includes reports prepared by numerous consumer associations around the globe. National regulatory authorities were also surveyed to compare their opinions with those of consumers³.

2. Why the need for regulators to address ICT consumer issues?

This section examines the main reasons why consumer protection policies have failed to take priority on the agenda of national regulatory authorities and policy makers. It also stresses why it is necessary for regulators and policy makers to address these issues.

- The level of consumer involvement in the telecommunication sector is closely linked to the degree of citizen involvement in the overall national policy and decision-making process. The general institutional environment, including the extent to which civil society participates in rulemaking and the strength of other institutions such as the judiciary and legislature, has a direct bearing on consumer involvement in telecommunication policy and regulation. Nevertheless, in some countries the telecommunication sector reform process has served as the forerunner to citizen involvement in domestic rulemaking. This is mainly due to the fact that the privatization process requires transparency and due process in rule-making to attract foreign investment. Despite this encouraging trend, domestic institutional administrative and legislative practices continue to define the extent to which consumers may participate in drafting rules.
- Creation of consumer protection policies are justified by market failures such as high transaction costs faced by consumers in dealing with large companies, the lack of information made available to consumers regarding service conditions and market dominance by some service providers. That is, in the absence of meaningful competition, consumers have no choice in service provider. If they are dissatisfied there may be nowhere else to bring their business. It is for these reasons that individual consumers have formed coalitions to work together to address their common problems.
- However, there is no guarantee that such organizations are representative of all consumer concerns. Moreover, consumer organizations are seldom well funded. Their budgets often include only subscription revenues - which can be very limited especially in less-developed countries - and they rarely receive funding from the state or other donors.
- International consumer organizations are almost non-existent. Those that do exist are responsible for consumer issues in all sectors—not solely telecommunications or information and communication technologies (ICTs). The weakness of these consumer organizations has contributed to the lack of attention to consumer protection for telecommunications and ICT services.
- Although comprehensive guidelines and procedures have been developed covering issues such as technical standards, interconnection, tariffs, licensing and market structure, the same does not apply to consumer protection issues. Such consumer protection policies, practices and principles that have emerged are based more on a normative or prescriptive nature such as United Nations guidelines for consumer protection⁴. Their practical applications or know-

² Consumers organizations and regulators that participated in the Protection of telecommunication consumers rights survey are listed on Appendix 1.

³ It is important to note that survey results only reflect responses received. A greater emphasis was put on Latin American consumer associations. Participation from partially state-funded consumer organizations was greater than from other consumer organizations.

⁴ Guidelines for Consumer Protection, United Nations, New York and Geneva, 2001, UNCTAD/DITC/CLP/Misc. 21. See also “Guidelines for Consumer Protection in the Context of Electronic Commerce”, Organization for Economic Cooperation and Development, 2000.

how have a strong management component, which imply that regulators should structure their organizations to provide consumer protection services to demanding customers. This represents a significant challenge for public sector agencies not used to providing quality customer service to the public at large.

Box 1: United Nations guidelines for consumer protection (As expanded in 1999)

The UN has defined the general principles for consumer protection and legitimate consumer needs to include the following:

- (a) “The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- (e) Availability of effective consumer redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (g) The promotion of sustainable consumption patterns.”

Source: Guidelines for Consumer Protection, United Nations, New York and Geneva, 2001, UNCTAD/DITC/CLP/Misc. 21

- Thus, the consumer agenda could include a wide range of activities. This would require careful analysis to identify key priorities and significant effort on the part of regulators or the private sector to implement. Furthermore, certain issues can only be addressed following research on consumer behavior. Establishing customer services such as call centers, creating mass awareness of consumer rights, enforcing those rights, creating nationwide offices to address consumer issues and offering a dispute resolution system are examples of activities that regulators should consider in setting up the consumer agenda.
- This implies that the regulator should shift its focus from being solely engaged in the “rule-making line of business” toward providing more sophisticated services to its market: the demand for consumer rights protection. The organization, human resources and management profile required mirrors those of a private business engaged in similar activities. However, if the regulator becomes engaged in these areas in the absence of careful planning, these activities could easily overtake the regulator’s mandate and drain its human and financial resources.

Because there are so many consumer issues to be addressed, policy makers and regulators must carefully define roles and allocate responsibilities between the public and private sector to avoid shifting responsibilities from operators to the regulator and to identify which activities, such as consumer complaint call centers, may better be outsourced to the private sector. After all, consumers are the operators’ customers and the private sector should bear the burden of addressing consumer concerns.

Consumers may be most vulnerable where they lack alternative service suppliers. Therefore, consumers are more likely to require intervention where dominant operators are protected by the government, where regulators lack enforcement power, where there are no quality of service performance requirements or where dominant operators are authorized to set tariffs below cost and therefore drive out competitors. There will be less need for intervention where operators are subject to well-designed incentives to meet consumer needs.

In addition, state-owned operators may fail to meet consumer needs because of inflexible management policies, political interference, and regulation which favors the state-owned enterprise. Consumers will press for reforms and privatization where public services run by the government are in shambles.

Box 2: Consumer associations may drive sector reforms: Cameroon's experience

There was a boom in mobile phone subscribers once mobile services were introduced in Cameroon, followed by an upsurge in consumer complaints about local fixed telephone service. In November 2001, the Mouvement National des Consommateurs du Cameroun (MNC), a consumer association, organized a seminar for consumers to provide training and information for end users in an effort to resolve their complaints related to poor quality of service, high tariffs, insufficient network coverage and difficulties with mobile-fixed interconnection. The regulatory authority, private and public operators, and representatives of the telecommunication administration participated in the seminar.

Although the regulatory authority displayed initial enthusiasm for the seminar, MNC reported that it did not follow up with concrete actions.

According to MNC, the event's biggest achievement was that the government launched the privatization of the public operator Camtel to promote the necessary investment to improve its network. Following privatization, fixed line quality of service has improved, interconnection disputes were resolved, network coverage improved and retail tariffs witnessed a 12% reduction.

Source: Protection of Telecommunication consumers Rights Survey, APOYO Consultoría

Implementation of improved end-user services, such as moving from a per-minute billing system to a per-second scheme, often require active involvement of the regulator. Regulators in a number of countries have launched lengthy regulatory consultation processes to reduce the unit of measurement for metering calls since the regulatory framework had not foreseen this innovation. But even active involvement by the regulator cannot guarantee success. In El Salvador, for example, local calls are metered by the minute, which resulted in customers frequently being double billed for the same minute when they placed a series of short calls within any given minute. The consumer association Centro para la Defensa del Consumidor (CDC) requested the regulator to reduce the unit of local call metering, and the regulator proposed to reduce the minute unit to a twenty-second unit. In El Salvador, the regulator proposes regulations, but they must be approved by the government. Although the proposal was approved by the government it was later overturned by the Supreme Court.

A proactive approach to consumer protection has seen greater success in other countries, such as Australia where the regulatory authority has authorized mobile number portability.

Box 3: Australian Mobile Number Portability and Consumer Choice

Australians have adopted mobile phones at a rapid rate since competition was first introduced in 1993. Between 1993 and 1997, Australia had three licensed mobile phone providers, which utilized both digital and analogue technologies. Australia's analogue mobile phone network has now been phased out and most Australian consumers can now choose between the Global System for Mobile Communications (GSM) and the Code Division Multiple Access (CDMA) digital mobile phone technologies. Those living in more remote regions have the option of satellite phones.

Australia has a high rate of mobile phone penetration by world standards, with more than 50 per cent of the population connected to a mobile service. Increasingly, Australians are showing a preference for mobile phone services which offer flexibility and independence over fixed line services.

Mobile number portability (MNP) was introduced in Australia in September 2001. The introduction of MNP represented a major advance in mobile phone service provider competition in Australia. It offered significant benefits for consumers by allowing them to change their mobile phone provider without having to change their mobile number, thereby improving the efficiency and ease with which consumers can select among competitive service providers. Some 400,000 subscribers (four per cent of the base) have since taken their mobile phone number with them to a new mobile provider.

Australia's method of introducing MNP has emerged as a model for other countries both in terms of speed for end users and industry consultation. In most cases, moving a single number to a new mobile provider can be completed within one hour. Changes requested outside standard business hours are completed at the beginning of the next business day, while requests to move multiple numbers may take longer.

In line with Australia's self-regulatory model, MNP was introduced after significant work by industry to agree to the basis on which MNP would be implemented. This work involved establishing the procedures for implementing MNP where there is a change in mobile carrier network, rather than merely a change in mobile service provider, and developing consumer guidelines that specify the information suppliers must provide to customers.

MNP has facilitated increased consumer choice and the exercise of power and control by the consumer. Consumers may change their mobile service provider without the expensive barrier of acquiring new letterhead, business cards or contact notification.

To assist Australian consumers to navigate the variety of mobile options and choices available—including the description of MNP—the Australian Communications Authority (ACA) has produced the Mobile Phone Tool Kit. The kit is based on the principle of empowering consumers through information and is available in a range of formats: print, online (<http://toolkit.aca.gov.au>), and CD-ROM.

ACA has widely distributed the Mobile Phone Tool Kit to consumers, industry and government since its launch in June 2002. To date, responses to the Tool Kit have been positive. A survey of those consumers who have used the Tool Kit found that 95 per cent thought that the Tool Kit provided useful information, was easy to understand, and easy to use.

The Mobile Phone Tool Kit is the first of three stages in an ACA information package for consumers. The other kits, covering Internet and fixed line services, are in production.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

Sector reforms have fostered a greater need for incorporating consumer issues into the regulatory agenda. The drivers behind this trend are:

- Regulators' aims to be independent from operators and to be accountable to society at large, which implies that the consumer's role in the regulatory process will be enhanced.
- Regulators are realizing that having well prepared and active consumer representatives may be an effective counter-balance to a private operator that enjoys a dominant position in the market.
- Some sector reforms have not brought immediate benefit to end users. Tariff rebalancing programs, for example, have increased some local tariffs while expected benefits such as improved quality of service, have been delayed. Delays in improved consumer welfare leads consumers to question the attractiveness of sector reforms.
- Regulators face increased political pressure (e.g., from the legislature or consumer ombudsmen) to take pro-active measures to address previously neglected consumer concerns.
- Many new low-income consumers in less developed countries have discovered that they may not be able to afford the services now available to them. Prior to sector reform, it was usually the wealthiest households that had access to fixed line service. Only wealthy families could afford expensive installation charges. These households also benefited from low monthly telephone bills. As networks expanded into underserved and low-income areas, some consumers viewed access to telecommunication services as a means of gaining social status. Later, these consumers discovered that they could not afford the services to which they had subscribed since local monthly charges increased, and their ability to place calls was therefore reduced.
- A significant number of citizens in some countries distrust private managers with respect to setting tariffs, usage metering and billing.
- The development of consumer protection is closely linked to the development of competition. The liberalization process encourages industry to take increased responsibility for how it treats consumers.
- Consumer interests were ignored by policy makers responsible for the privatization and liberalization processes, especially in those countries that failed to create a regulatory body prior to privatizing and liberalizing the sector. Consumers that have been disappointed by the initial sector reform experience are now suspicious and more demanding in requiring both action on the part of regulators and a system of due process that includes end users.
- Information services and e-commerce have raised more sensitive consumer issues such as privacy protection.

Competition and consumer protection policies complement each other. Competition policies have been designed to lead to consumer benefits such as greater choice, better quality of service and cost-based prices. Once robust competition has been achieved, the need for specific consumer protection policies, at least in theory, should decrease. Specific consumer protection policies, ensure that consumers are able effectively to exercise their right to choose among alternative services and service providers.

The state should not favor any particular stakeholder, including consumers, but should aim only to correct market failures. Careful analysis is needed, however, to avoid consumer protection policies that impose undue costs on the market, which may ultimately harm consumers. While low-cost, low-market interference options should be favoured, there might be a short-run tradeoff between competition policies and consumer welfare. For instance, the regulator may decide to prevent cross-subsidies between monopoly services and competitive services bringing to an end the benefit to consumers of the formerly subsidized service.

3. Telecommunication complaints are generally at the top of overall consumer complaints

Consumer complaint statistics in a number of countries demonstrate that telecommunication complaints generally rank at the top of all complaints registered - even after sector reforms and government - sponsored consumer programs have been implemented.

An effective action plan to increase consumer satisfaction requires an understanding of the reasons why telecommunication consumers complain. What follows is a list of some of the major factors leading to consumer complaints:

- **Lack of choice among alternative service providers due to a single or dominant operator.** New services or new ways of providing existing service that are not properly explained to consumers causing end users to make uninformed spending choices.

Box 4: Pre-paid cards help consumers to manage their spending but regulatory loopholes may arise

The Czech Republic Consumers Defense Association (CDA) is involved in trying to resolve an on-going problem. Czech Telecom, the dominant operator, launched a new system of prepaid cards. However, any unused credit expires after a seven-month period with no refund provided to consumers. The CDA interviewed almost 200 consumers to find out whether they were informed about the pre-paid card conditions. Only 37 % of prepaid cardholders knew that they must use up their credit by the end of 2002. CDA demanded that Czech Telecom offer a refund on any un-used credit. Although the case received media coverage, it had not been resolved at the time this report was prepared. CDA, however, is hopeful that this case will be quickly resolved in favor of consumer's interests.

Source: Protection of Telecommunication Consumer Rights Survey, APOYO Consultoría

- **Lack of sufficient pricing information regarding value added services.** Telecommunication service providers frequently offer value-added voice and information services (such as counseling, Small Office & Home (SOHO) services and entertainment) using complex pricing schemes. These services have given rise to various consumer complaints, usually related to the lack of information provided to consumers by service providers. Typical claims relate to the failure properly to advertise prices, disputed calls, metering, and lack of customer services. In some countries, consumers associations have played an important role in bringing these cases to the regulator. El Salvador's Centro para la Defensa del Consumidor (CDC) obtained an 80% refund for users that had been sent excessive bills for such entertainment services after a tripartite special commission was created that included consumers, operator, and government representatives. This was an *ad-hoc* solution devised in lieu of procedures and institutions to deal with these types of problems.
- **Costs to consumers in assessing competitive offers.** Even when the operators and service providers offer fair practices, consumers face the additional cost of acquiring and assessing competitive offers. On-going consumer research is necessary to understand risks that consumers might face with new service offerings.

Box 5: British and Irish Joint Study on Mobile Roaming

On April 2002 the Irish Office of the Director of Telecommunications Regulation, (ODTR) conducted a joint study with the British regulator, the Office of Telecommunication, (OfTel) on mobile roaming and the cost of using a mobile phone abroad .

The ODTR had received numerous consumer queries and several complaints about mobile roaming prices. In addition, research from other European countries demonstrated that consumer awareness of mobile roaming charges was generally low. While the ODTR has no direct control over mobile roaming prices, the regulatory body took the opportunity to address gaps in consumer awareness by issuing general advice to consumers on how to control costs. Because of extensive travel by mobile users between Ireland and the United Kingdom, the ODTR and OfTel agreed to release a joint mobile roaming study. ODTR first conducted a consumer survey to assess the level of consumer awareness (43% of Irish consumers did not know how much it cost to use a mobile phone while abroad.) In light of the consumer survey results, a further report was published advising Irish consumers on how best to manage mobile usage costs when traveling in the UK. OfTel released a similar report for UK consumers in Ireland. The consumer advice was based on an examination of different usage profiles for a range of users (business traveler, commuter etc.) While the exact impact on levels of consumer awareness is difficult to quantify without further research, the report did receive considerable attention from consumers, the industry and the media in Ireland. Coverage of the report in national print and broadcast media ensured that a large consumer base was made aware of the report.

In July 2002, the ODTR followed up on its first report by releasing further advice on mobile roaming costs in other European destinations. As with the previous report, the ODTR examined a number of different user profiles using tariff data submitted by operators. This report was designed to further reinforce consumer awareness and was timed for the peak period of Irish recreational travel. The goal of these reports is to ensure that information on reducing the cost of mobile roaming when traveling overseas is readily available to the Irish consumer.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

- **High telecommunication services expenditures relative to household income and variable monthly bills.** Household expenditures figures show that telecommunication services represent between two and six percent of total expenditures. The introduction of new services, such as the Internet, mobile telephony and voice information services has raised the proportion of household expenditures spent on communication services. The fact that telecommunications accounts for an increasing share of gross domestic product confirms this trend. Highly variable household bills—especially where consumption is metered or where different rates apply throughout the day—affects consumers on a fixed income who are left with less money for other purchases. Consumers tend to compare their phone bills with water and electric bills which may be more predictable. Some bills may even produce a devastating effect if members of the household have generated a large number of long distance calls or used expensive entertainment telecommunication services.
- **The lack of control by the head of household over telecommunication usage.** This applies particularly to per-minute metered access for fixed telephony and the Internet by other family members, friends and even neighbors as opposed to more personal services such as mobile which are easier to control.

Box 6: Lack of control by the head of household tends to increase telecommunications claims

In February 2002, an Internet user and member of the Spanish consumer association, Confederación de Consumidores y Usuarios (CECU) who subscribed to a flat-rate Internet service complained that he had been billed inaccurately for calls placed to value added services. The service provider, Retevisión, received similar claims from other users and examined the issue. The operator was able to demonstrate that the user had authorized a change from flat-rate access to metered access resulting in more expensive charges. The user reluctantly acknowledged responsibility for the incurred charges but asked the operator to block access to the more costly services after learning that a relative had effectuated a change in the conditions of service without his agreement.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

- **Difficulty in demonstrating the user's level of consumption, especially for users but also for operators.** Homes rarely have metering devices that can be compared with operator billing systems. This leads to opportunistic behavior both by users and operators and the risk that the parties may either reject a truthful claim or accept a false claim. Some policy makers have now reversed the burden of proof, holding the operator responsible for maintaining evidence regarding consumer claims.
- **Slamming and cramming.** Even when competition is introduced, the transition to full competition may be plagued by consumer abuses such as “slamming”, the illegal practice of changing a consumer's telephone service without permission, “cramming”, the practice of placing unauthorized, misleading, or deceptive charges on the telephone bill; fraud and deception; privacy infringement; lack of customer security, and false and misleading advertisement.

Box 7: Sweden's National Post & Telecom Agency Slamming Case

Many end users have complained to the Swedish National Post and Telecom Agency (PTS) that service providers had signed them up as their customer without seeking their consent. Swedish pre-selection regulations give customers the right to select their own service provider. Swedish consumer organizations asked PTS to intervene and resolve the slamming problem. PTS investigated by surveying new customers. The regulator decided it would fine any company in which 0,5% of the operator's new customers complained that they had not freely selected the service provider. PTS conducted two more investigations and found no operator which had surpassed the 0.5% limit. Indeed slamming complaints nearly evaporated, indicating that operators had ended their misleading marketing strategies.

Source: Protection of Telecommunication Consumer Rights Survey, APOYO Consultoría

Box 8: Colombia's Superintendencia de Industria y Comercio (SIC) misleading advertisement case

In December 2000, a mobile telecommunications operator launched an advertisement campaign which offered a 99% discount on terminal equipment. The Colombian regulator SIC launched an investigation to enforce consumer protection rules. SIC discovered that the operator had not offered the promised discounts to all users. In addition, SIC learned that the operator imposed additional obligations on those consumers that wished to receive the announced discounts. SIC imposed a fine on the operator for infringing consumer protection rules.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

- **Greater ease in making complaints.** Innovations such as toll free call centers, personalized marketing channels and government-to-consumer Internet services facilitate low-cost interaction between regulators and consumers. These innovations help regulators identify previously underreported claims. It is important for regulators to adequately interpret statistical trends. Regulators should not assume high consumer satisfaction where they receive few “official” claims. Such trends may also be a result of the high costs for consumers in communicating with regulators.
- **Consumers have become more well-informed** Consumer associations are aware that they need to be more prepared in technical matters to be able to negotiate, comment, and promote their interests.
- **Consumer associations have learned that a common set of consumer problems exist across countries.** International consumers associations such as Consumers International are networking through in-person seminars and over the Internet to foster an exchange of experiences and to reduce the information asymmetries they face when dealing with global or regional operators. Some representatives of consumer organizations, aware of the strength of global telecommunication operators, are even pursuing strategic alliances with regulators.

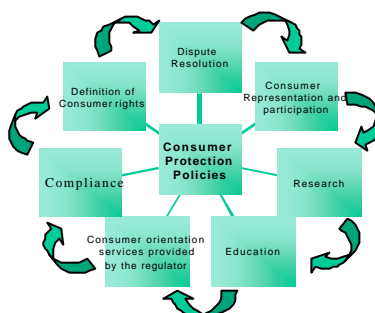
4. The Consumer Protection Value Chain and the Regulator's Role

It is necessary for policy makers to understand the difference between consumer protection and consumer defense in order to clearly define the roles to be played between different government agencies and between the private and public sector. Consumer protection refers to the creation of necessary conditions that guarantee transparency and fairness in consumer relationships. Defense implies the representation of the consumer's interests.

The public sector may play several roles, including both protection and defense. Each role adds value to the services provided to consumers. The roles outlined below may be assigned to several government agencies: the general consumer agency, the telecommunications regulator, Ministries and Ombudsmen among others. The regulator typically does not represent consumers, although some countries do have consumer representatives appointed in their decision-making bodies. In some countries, the regulator may have a mandate to perform all roles except representation. Of course, not all countries ensure that all of these roles are assigned either to the government or private sector.

Figure 1: Value- Added Chain Of Consumer Protection Policies

Value-Added Chain of Consumer Protection Policies



The state's role in consumer protection can include:

- Definition and update of a Code of Practice or set of rules that defines the rights and obligations of operators and consumers.
- Creation and implementation of dispute resolution procedures. The state should guarantee the existence of procedures and institutions that allow consumers to exercise their rights. To ensure due process, these procedures should guarantee administrative resolution systems that include the right to appeal.
- Enforcement of consumer rights through government supervision of consumer relationships and imposition of fines.
- Dissemination of relevant information for consumers. The state often acts as an information facilitator when market players lack incentives to provide accurate, timely, and complete information.
- Education of consumers to ensure that they are fully aware of their duties and rights, and able correctly to interpret available information to make informed choices.

Conduct research on consumer concerns, perceptions and expectations. The public sector cannot rely solely on reported complaints to identify consumer problems and design effective policy responses and must also:

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- Strengthen consumer's organizations to compensate for the high transaction costs individuals face in their relations with operators and to recognize the important role these organizations play in promoting the public good.
- Defend and represent individual consumers. The state may create institutions that represent consumer and citizen interests and which supervise the role played by other agencies such as the telecommunication regulator.

Figure 1: The Consumer Protection Value-Added Chain in Peru

ROLE	OSIPTEL	Firms	Consumer Associations	Competition Agency	Ombudsman
Rule Setting	●	○	○	●	○
Dispute Resolution	●	○	○	●	○
Customer Service	●	●	●	○	○
Research	●	●	●	●	●
Auditing	●	○	○	●	●
Information	●	●	●	●	●
Education	●	○	●	●	●
Representation	○	○	●	○	●
Users' Ass. Promotion	●	○	●	●	●

Several institutional and management approaches may be adopted for each role. There is no unique or inherently better approach to apply. The political framework, degree of competition, institutional environment, and available financial resources are among the factors that affect the selected approach. Certain roles may be assigned to several players. Dispute resolution systems, for example, may include administrative courts, conciliation and arbitration.

5. Definition of Consumer Rights

Once the difference between consumer defense and consumer protection are clearly spelled out and roles assigned to the major stakeholders, it is necessary to define consumer rights to ensure adequate consumer protection.

The definition of consumer rights usually occurs when new services are introduced or to compensate for the lack of regulation of incumbent operators, or opportunistic behavior exhibited by new entrants.

Box 9: Lack of consumer protection

The Armenian consumer association, Union for the Protection of Consumer Rights (UPCR), received many consumer complaints, mainly regarding the right of redress from operator's decisions. UPCR investigated and discovered that the standard contract between consumers and the operator did not include consumer protection clauses, meaning consumers had no legal cause of action based upon the contract. UPCR demanded that the government and the regulator develop a new standard contract form that would include clauses recognizing consumer needs and rights. Two laws must be amended in order to develop a sufficient contract. Although a commission was created to modify the legislation, UPCR expects that the process will be long and complicated.

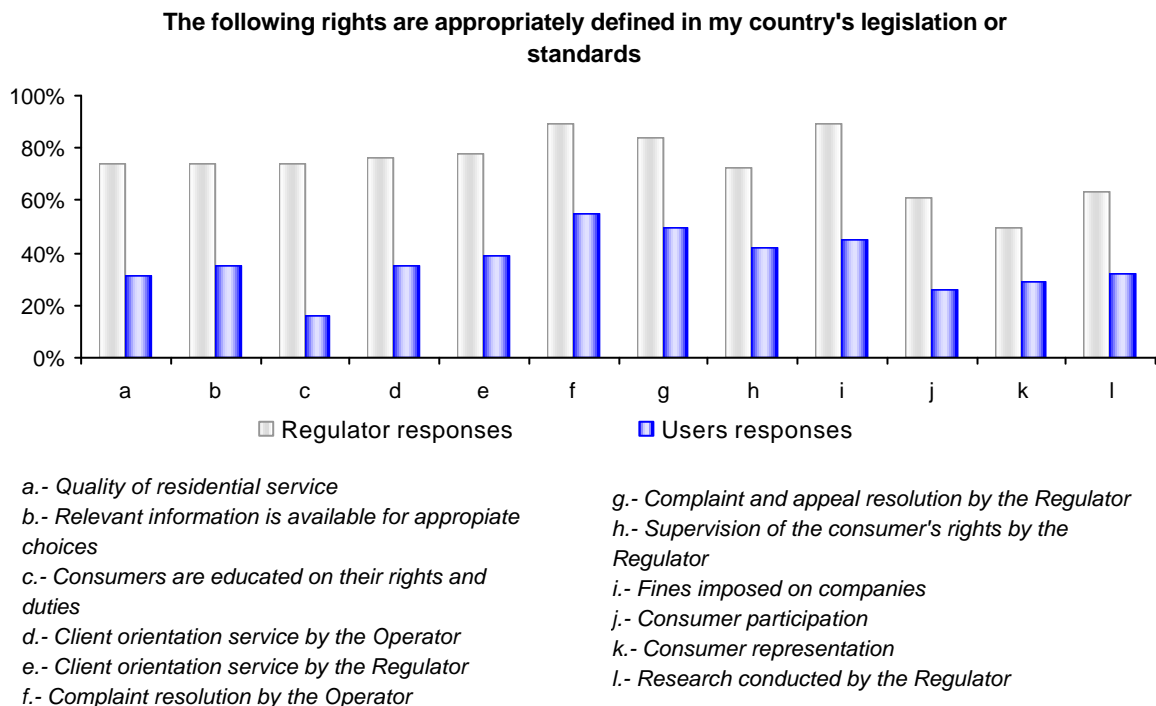
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

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What specific consumer rights regarding telecommunication services should be considered? Most are applications derived from general domestic consumer protection laws or from the United Nations Guidelines for Consumer Protection. There is no universally agreed set of principles and it may be unwise to create a single set of telecommunication consumer protection principles since these are often developed to address specific local issues which evolve rapidly and may quickly become out-of-date. That said, a number of countries have adopted similar measures to provide consumer protection in the telecommunication sector. The most common policies are those regarding complaint resolution processes and the power to fine operators. It is a good practice for regulators to encourage both operators and consumers to participate in the creation of Codes of Practice that include dispute resolution procedures that rely on the parties to resolve such disputes at the onset. Where this does not succeed, consumers can address their grievances through an administrative procedure.

As Figure 2 demonstrates, consumer protection policies are usually quite diverse. Moreover, a number of administrations are not empowered to enforce consumer rights, placing in jeopardy the credibility of their national consumer protection policies. Likewise, few countries have assigned responsibility for research, consumer participation and information services. There is also a major gap between the perceptions of regulators and consumers organizations with regard to consumer issues. For example, only 16% of consumers believe that they are appropriately informed of their rights while 74% of regulators believe consumers are properly informed. This gap may reflect a lack of information about consumer policies, the inadequate institutional capacity of some consumer associations, practices that do not correspond to a legal mandate, and different perceptions and expectations about defined policies.

Figure 2:



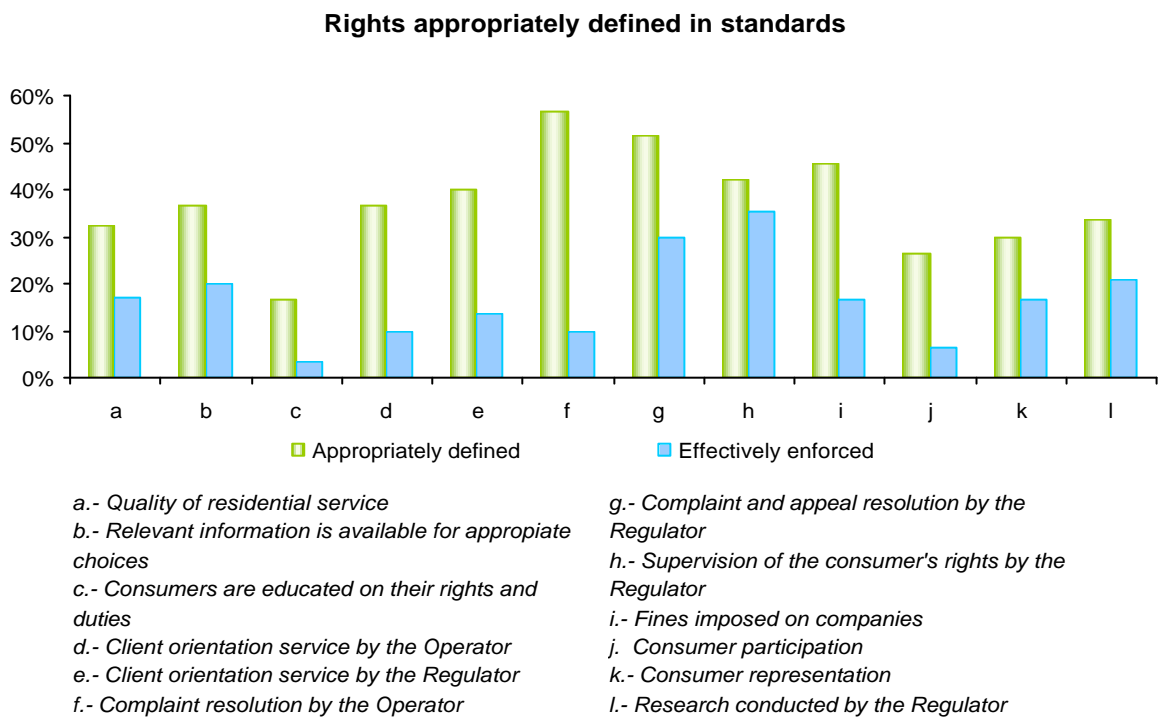
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

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Appropriately defining consumers' rights, of course, does not ensure effective enforcement of these rights. Consumer organizations note that of all different consumer protection measures, fewer than 20% on average are enforced. Consumer organizations report that consumers complain that they are poorly informed (97%), subject to low levels of customer service (90%), have little opportunity to be involved in regulatory decision-making processes (93%), and that their concerns are not subject to research and supervision (see Figure 3).

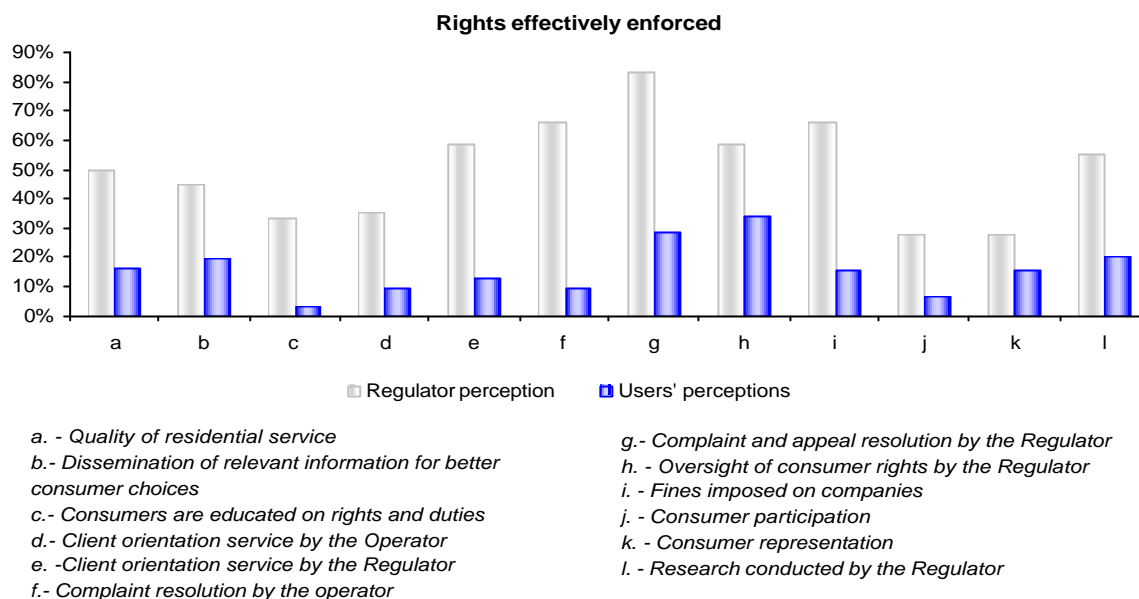
Regulators have a far more positive view of how consumer protection policies are enforced. But even regulators' views are discouraging. With the exception of complaint resolution processes, the majority of regulators surveyed noted that consumer protection policies were not properly enforced. Regarding specific telecommunications consumer rights, there is greater agreement between consumers organizations and regulators on how policies are defined and how they are enforced, with relatively higher ratings on issues such as blocking access to unwanted services, timely bill delivery, and the right to suspend phone service. However, large disparities exist on consumer compensation for damages, and on the privacy of communications

Figure 3:



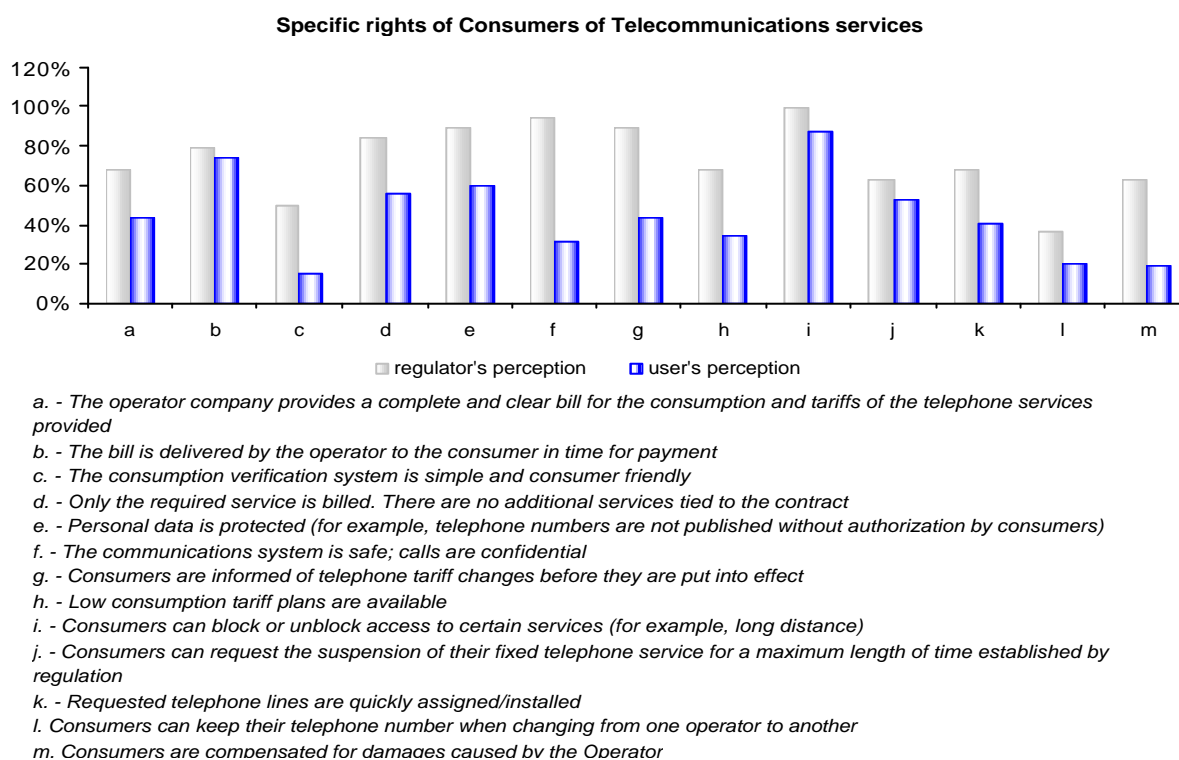
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Figure 4:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Figure 5:

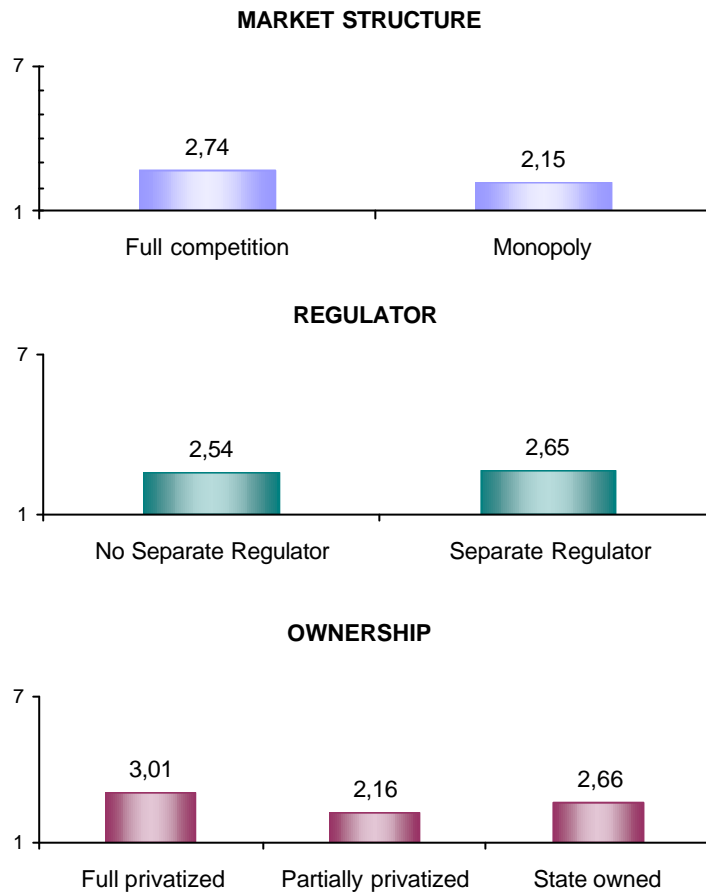


Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Consumers' ratings regarding consumer protection policies are higher in those countries that have created a national regulatory authority, introduced competition, and undertaken privatization programs. However, these rating are still far from being impressive.

Figure 6:

AVERAGE RATING FOR PROTECTION OF TELECOMMUNICATION CONSUMERS RIGHTS
(1: No progress / 7: Total satisfaction)



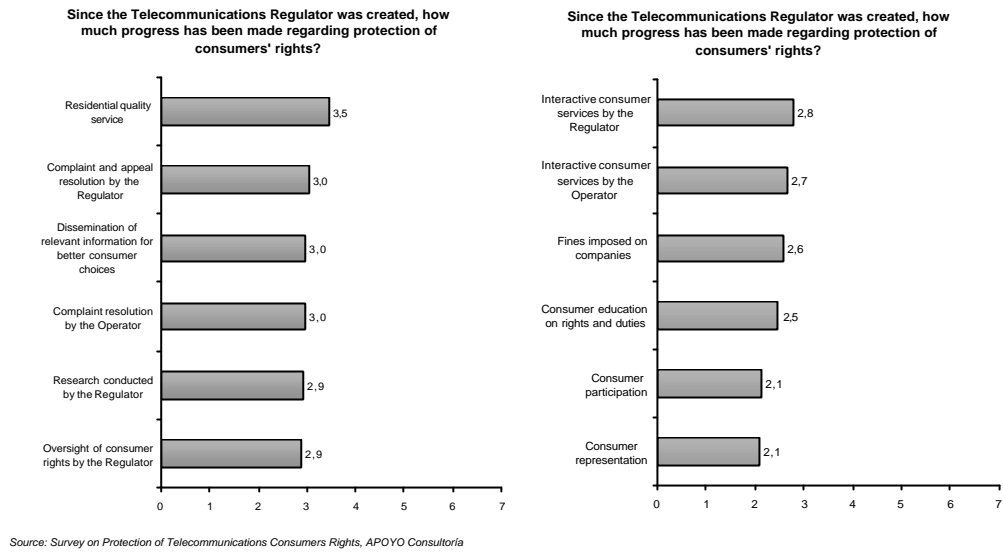
Source: International Telecommunication Union, *Effective Regulation Trends in Telecommunication Reform, 2002 Survey on Protection of Telecommunication Consumers Rights*

Overall Average: 2.62

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

The increase in the number of countries that have created national telecommunication regulatory authorities is a relatively recent worldwide trend according to International Telecommunication Union (ITU) statistics. Regulators’ agendas have been devoted to a complex set of policies, which may explain why specific consumer protection policies have lagged behind other issues such as privatization, tariff regimes, or competition policies. While consumers acknowledge progress in areas such as quality of service, complaint resolution processes and access to information, they seek improvement in issues such as consumer participation, the representation of consumers interests both in regulatory processes and dispute resolution; education, and imposition of fines.

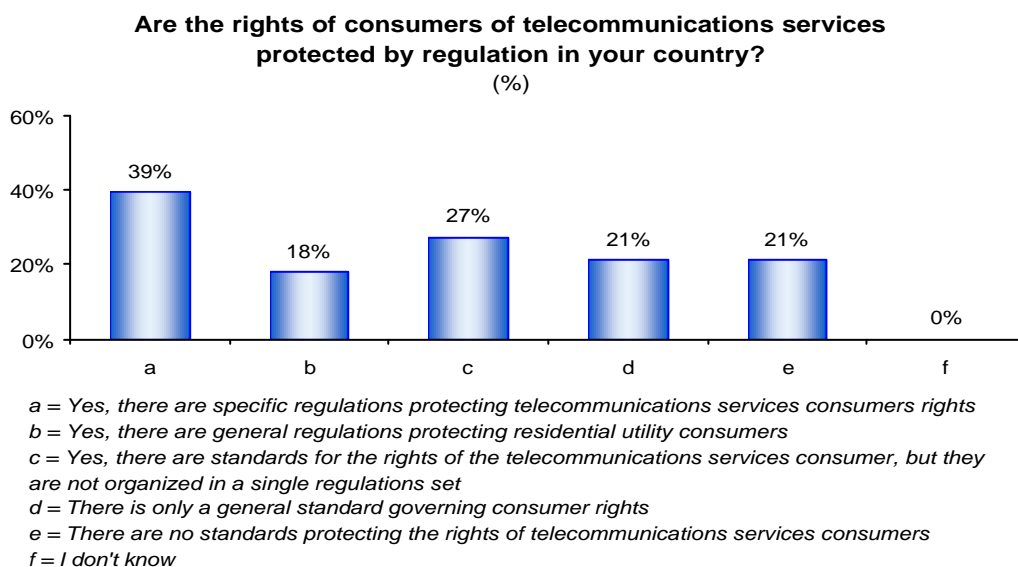
Figure 7:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

The extent to which consumer protection policies need to be codified is an on-going discussion as shown by the different approaches taken by Australia and Colombia in boxes 10 and 11. Some countries advocate the formal codification of consumer rights in law. Others argue that a better approach is to define general principles in a guideline and leave specific claims to be solved by jurisdictional dispute resolution bodies or Alternative Dispute Resolution mechanisms. As illustrated in the figure below, about 21% of the countries surveyed have enacted and are applying general consumer laws, 18% have general regulations that cover utilities, whereas 21% do not have any regulation in place to protect telecommunication consumers’ rights. While 39% of countries have specific regulations providing for the protection of telecommunication consumer rights, these regulations are usually contained in various legal instruments, increasing transaction costs for consumers.

Figure 8:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Box 10: How much detail in a Code or is it enough to have just a Guideline?

The consumer protection policy governing the Australian telecommunications industry consists of a set of minimum standards prescribed by the government. The Consumer Protection and Service Standard⁵ is the central consumer protection measure, which provides that industry is responsible for consumer welfare and protection. During a transitional stage, government agencies and industry may share responsibility for consumer protection with the ultimate goal of responsibility shifting almost completely to industry. This is consistent with Australia's general regulatory approach which increasingly relies on industry self-regulation.

Under Australia's telecommunications regulatory framework, industry associations can also develop codes of practice. While compliance with these codes is voluntary, industry may also agree to be bound by the codes it designs.

An industry association which develops a code can request the Australia Communications Authority (ACA)⁶, to register the code. ACA will register the code if it meets certain requirements, e.g. the code development process included adequate consultation. Once a code is registered, ACA has the power to direct a particular provider to obey the code.

The Australian Communications Industry Forum (ACIF) is a non-governmental body comprised of industry representatives which develop Codes of Practice for telecommunications providers. The Telecommunications Industry Ombudsman (TIO), which receives complaints from consumers, assists ACIF in developing its codes by providing information and feedback from complaints it receives (see Box 19 for more details on the TIO).

Examples of consumer protection provisions included in Codes of Practice are that:

- An operator must ensure that a customer has provided informed consent before transferring a customer to it from another company;
- Service providers must bill consumers for calls within six months;
- Advertisements about telecommunications deals and offers must be clear with all exceptions to offers easily understood;
- Providers must inform dissatisfied customers that they can complain to the Telecommunications Industry Ombudsman (TIO).

ACA has indicated that it would like industry codes to be less complicated and less detailed, and wishes to see industry taking more responsibility for compliance. The Australian Consumers Association, likewise, has criticized the slowness of the telecommunications self-regulatory system. It does not share the regulator's view that self regulatory processes are efficient. The Consumers Association also believes that the self-regulatory model provides insufficient consumer protection from contractual and selling practice abuse. The need for better control of unacceptable commercial practices and poor contractual terms in the Australian telecommunications marketplace has been reported by TIO since 1996. These problems have also been studied by the Australian Communications Law Center, and reflected in the caseload of consumer agencies. In 1999, the TIO and the Australian Competition and Consumer Commission (ACCC), asked the ACIF to formulate a Selling Practices Code.

Consumers argue that the problem has not yet been resolved and that the national regulator failed to address the issue. One reason may be that the Australian Communications Authority did not consider agents and dealers as industry players and did not include them in the consultation process. Further development of ACIF codes has been bogged down by disputes over narrow definitions and guideline development. In the meanwhile, consumer organizations have published a Telecommunications Contracts Check List of Fair & Unfair Contract Terms (available from the CHOICE web site <http://www.choice.com.au/articles/a103326p1.htm>).

This Check List outlines best practice terms and clauses to be included in contracts between an operator and a consumer. It also identifies examples of unacceptable and unsound contractual terms. The cooperative work published by the consumer movement is an alternative approach to industry self-regulation that sets out a statement of legitimate consumer expectations, undiluted by industry lobbying. The consumer association now seeks adoption of these best practices by industry and the regulator in a new industry code that would replace the Guidelines developed by ACIF. In the view of the consumer Association these best practices are a valuable resource for industry players, consumer casework agencies, consumer advocates and individual consumers.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

⁵ http://www.dcita.gov.au/Article/0,0_1-2_1-3_170-4_14963,00.html

⁶ See R. Horton. Consumer Protection in the Australian Communications Industry. Consumer Protection: Where Do We Draw the Line. Asia – Pacific Forum on Telecommunications Policy and Regulation, May 16-18 2002, Kuala Lumpur.

Rules on consumer rights and the need to include consumer protection issues in specific regulations generally grow out of consumer complaints. It is fairly common for the regulator to draft specific rules in response to particular consumer complaints. The proliferation of such specific rules, together with various telecommunication service-specific regulations, can be daunting for even the most active consumers. Regulators in some countries are therefore under pressure to develop a single code that incorporates all rights for consumers of telecommunication services. In response to this pressure Peru has included in one law a consumer protection “bill of rights” for all regulated utilities. The law also defines a single procedure for resolving all related disputes.

Box 11: New Colombian Rule on Consumer Rights

The Colombian regulator, Comisión de Regulación de Telecomunicaciones CRT, cites the process of drafting a single rule on telecommunications services consumer protection as the most effective measure it has taken to ensure consumer protection.

CRT’s mandate was expanded in 1999 to include the power to ensure consumer protection. In the same year CRT launched a consumer protection project for mobile services. The regulatory body soon realized, however, the need to extend the project both to cover all telecommunications services and to protect business as well as residential consumers. CRT recognized that the convergence of networks and services impacts the same set of users.

The project culminated with a new rule, named Resolution 489, which was enacted in 2002 that integrated all existing consumer protection rules, extended consumer protection to cover other issues, such as minimum contract terms, and set new obligations for services provided through prepaid cards.

The CRT 2002 rule includes:

1. The requirement for service providers to inform new customers about tying agreements and also that no obligatory contract period can exceed one year. Service providers may offer equivalent plans in terms of untied services with the option to cancel the service at the consumer’s discretion if this clause is not included. The obligation for operators to inform users that they will be reported to credit agencies in case of default of payment. Operators are also required promptly to inform credit agencies as soon as the consumer's debt has been paid.
2. A prohibition on operators to activate services that have not been accepted by the user, even services offered temporarily and for free.
3. A prohibition on charging for calls routed to automated voice mailboxes without offering the consumer advance warning to enable the consumer to make an informed decision on whether or not to continue the call. Warning messages must last at least 5 seconds.
4. The obligation for the operator to provide, upon request, a password that allows the consumer to block long distance, mobile, and value added calls free of charge.
5. The obligation on vendors of wireless mobile terminals to provide consumers a booklet with preventive warnings against using handsets while driving, and recommending limited use by pregnant women, children, the elderly and those with immune deficiencies.
6. The obligation on operators to provide call identification services to users that request it.
7. Clear rules governing prepaid cards, including cards that contain visible information on deadlines by which cards must be activated as well as the metering unit and applicable rates; a four-month minimum expiration date; the provision of free-phone consumer information numbers; a prohibition against charging for uncompleted calls; the obligation to inform users regarding limits on the length of calls and the right of consumers to retain an assigned number for a minimum period.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría

Some operators require their customers to pay for any calls billed and then file a claim for incorrect charges. Several administrations have recognized the negative impact of such “pay first, then claim” practices, addressing abuses in their general consumer protection laws. An example of this practice that was not rectified is illustrated in the box below.

Box 12: Croatian case on “pay first, then claim” practice

From 1999-2001, the Croatian Association for Consumer Protection (CACP) received a number of complaints that the local operator, had charged users for unmade calls and value-added services that were not used. Certain fixed-line subscribers were obliged to pay enormous bills. If the subscriber did not pay, the operator would cut the service and sue the customer in court. The courts reacted promptly, ruling against the subscribers. Subscribers were then forced to pay not only the disputed bill but high court expenses as well. CACP had little success in resolving any of these complaints due to the complexity of dealing not only with the operator, but resellers and other agents of the operators.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

“Ghost” or “pirate” calls are increasingly developing as a common problem for consumers of telecommunications services. There is often no way for consumers to prove that they did not place a disputed call.

Box 13: Ghost calls in Armenia

In 2001, the Armenian Union for the Protection of Consumer Rights UPCR received a complaint from a consumer who was billed by the incumbent operator for approximately USD 70 for telephone calls he did not place. The consumer had unsuccessfully complained to monopoly operator Armentel but received no reply. UPCR complained to the operator and also used the press to fight the case. Two articles were published in a national newspaper in which UPCR indicated it planned to take the case to court if the operator failed to resolve the dispute. In the end, the operator voided the bill.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

The Armenian and Croatian cases illustrate the difficulties in resolving complaints about “ghost” calls in the absence of a formal institutional process. Such complaints are particularly difficult in a monopoly environment coupled with limited consumer protection measures. The consumer is often limited to a choice between no service or bad service. Paying for calls not placed may be a better alternative than no service. Faced with such a Hobson’s choice, it is not surprising that consumer associations will use other means—such as the press or other means of obtaining publicity—to obtain results. A better option may be to resolve such complaints through formal institutional procedures such as those described in the box on Spain below.

Box 14: Errors in billingsystems in Spain

In October 2001, a member of the Spanish Confederación de Consumidores y Usuarios (CECU) complained that local phone bills sent by the operator during the previous six months were inaccurate and significantly more expensive than before. The consumer produced bills both for the disputed period and to demonstrate his previous consumption history. CECU lawyers brought the case to the operator, which denied any responsibility. CECU then brought the case before the Consumption Arbitration Board (see Box 21 below), which requested the operator to report on the status of the distribution point, (where copper pairs are allocated to homes within a small area), and to perform technical tests to check for errors in the billing systems. The reports showed that the distribution point was open, and easily accessible from the street by third parties. The arbitrators termed the distribution point “irregular”, and the operator was held responsible. The arbitrators ruled in favor of the consumer ordering the operator to refund the consumer for the overcharges

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

“For-pay” voice messaging services have been the subject of complaints in several countries, including calls unwittingly placed to a voicemail service by consumers unaware of the costs for such service, or the service being provided on an unsolicited basis and in the absence of consumer consent. These complaints highlight the need for operators to inform both regulators and consumers about the impact of the introduction of new services.

Box 15: Unfair charging in Bolivia

On March 2002, a Bolivian consumer complained to the operator that she was charged for a series of very short calls from her fixed line to a mobile number that she had not placed. The operator rejected the claim, showing that the calls were indeed placed from the fixed line. The consumer turned to the regulator, Superintendencia de Telecomunicaciones (SITEL) which also concluded that the calls were placed and correctly billed. However, SITEL showed that the calls were placed to a mobile number assigned to a voice mailbox and that the consumer had neither reached the called party nor left a voice message.

SITEL discovered during the course of its investigation that consumers were offered no choice whether or not to use the voice messaging service. SITEL concluded that although the billing was unfair, it was legal and the customer was required to pay the bill. SITEL, however, continued to investigate the issue in an effort to develop a general consumer protection rule. In June 2002, SITEL approved a rule which orders operators to provide a free message informing consumers that they will be charged for the call if they use the voicemail service. To avoid a charge, consumers must terminate the call.

Source: Protection of Telecommunications Consumers Rights Survey, APOYO Consultoría.

Privacy is a widely held citizens right. It is often defined in a high-level political agreement. The right to privacy has been expanded to cover communications and data protection in telecommunication and other laws. However, as demonstrated in the boxes below, complaints about infringements of the right to privacy may rise.

Box 16: Unprotected consumer data in Estonia

The Estonian regulator Estonian National Communication Board (ECB) received a complaint from a consumer about the practice of a service provider distributing bills without sealing them in a closed envelope. The service provider sent bills on A4 paper that were simply folded in three, allowing third parties easily to read other customer's personal data. The bills included the name and the address of the consumer, the list of services provided and the amount due. ECB found that the service provider's bill distribution practice violated the Telecommunications Act's provision requiring service providers to protect consumer data since it did not exclude third parties' illegal access to personal consumer data. ECB ordered the service provider to cease its billing practice and required the service provider and its courier service to sign an agreement to maintain the confidentiality of bills distributed to customers.

Source: Protection of Telecommunication Consumer Rights Survey, APOYO Consultoría.

As many of the examples above demonstrate, it is often extremely difficult for consumers to receive refunds for billing errors. Compensation for damages is even a more formidable task.

Box 17: Massive refund promoted by consumer association in Peru

In 1996, the Board of Directors of the Peruvian telecommunications regulator, OSIPTEL, included a member of the Peruvian Asociación de Consumidores y Usuarios (ACYU). It also included representatives of the private sector. During this year, and without informing end users, mobile service providers changed their practice of billing customers by the second and began rounding to the minute. OSIPTEL enacted a rule that forced the cellular operators to restore per-second metering and fined the operators. Initially, OSIPTEL did not order the mobile operators to refund customers for any overcharges because OSIPTEL concluded that the lack of historical billing data made individual customer refunds virtually impossible. In addition, OSIPTEL lacked the legal power to order such refunds. However, pressure from the ACYU representative on the OSIPTEL Board of Directors resulted in the regulatory body reassessing the refund issue. Mobile operators refunded a total of USD 6.8 million to Peruvian consumers.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

6. Dispute Resolution of Consumers Claims

The best process to resolve consumer claims is for service providers to handle them through their own high-quality customer service measures. These may include private resolution services such as professional mediation. Several operators also offer the services of an internal ombudsman who seeks to convey consumer concerns to management. Such services are rare however, especially where consumers have no alternative supplier to which they can bring their business.

Many governments, therefore, have created a consumer dispute resolution system aimed at delivering fair results in a timely fashion. Such government-created systems foster responsible consumers that are aware of their rights and know how to exert them. Consumers that are unable to resolve their disputes in an easy and effective manner often become frustrated and dissatisfied with the sector reform process.

Box 18: Lack of dispute resolution systems generates consumer disappointment

The Consumer Association of one sub-Saharan African country reports that it is disappointed by the perceived indifference of the regulator to the rights of end users. The consumer association brought a complaint to the regulator, alleging that the state-owned monopoly operator had sent fictional invoices to users. While the consumer association acknowledged that the regulator had referred the case to the court, the consumer association criticized the regulator for failing diligently to pursue the case. The consumer association noted that the monopoly operator was undergoing privatization and that the chief executive officer of the company enjoyed a high political position.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Traditionally, individual consumers have attempted to resolve disputes with unresponsive operators by suing them in court. There are, however, many drawbacks to litigation, including high costs relative to the value of the claim, judges' lack of technical expertise, the inability of consumers to gather sufficient evidence to prove the claim (often in face of an operator that may have the needed proof). In addition, in some countries the judiciary may lack sufficient resources or be subject to political interference.

It is for these reasons that a growing number of countries have created so-called alternative dispute mechanisms (ADM) imbued with the legal authority to resolve consumer claims. The mechanisms include mediation (where a third party acts as a mediator but without any binding power), and arbitration (where parties voluntarily agree to solve their dispute through a third party who is entitled to take a binding decision). The legislatures in several countries have passed laws allowing parties to resolve their claims through arbitration, in which the decision may not be appealed to the judiciary. Other countries have passed laws empowering government agencies to resolve disputes. Mediation, if successful, may end an on-going arbitration or administrative process.

It is important to bear in mind that the judiciary may become a more relevant option for resolving consumer complaints once judges become more knowledgeable about the technical issues raised by telecommunication consumer claims, effective competition becomes the norm, and national judiciaries become stronger institutionally and independent from political or business influence. The judiciary is undergoing serious reform programs in some countries with the help of multilateral institutions such as the World Bank⁷.

Several countries have empowered their national telecommunication regulatory authorities to resolve consumer claims or have created separate institutions to resolve consumer complaints such as an agency that takes all consumer complaints. Regulatory authorities have embraced

⁷ See the World Bank's "Law and Justice" WEB page at <http://www4.worldbank.org/legal/>

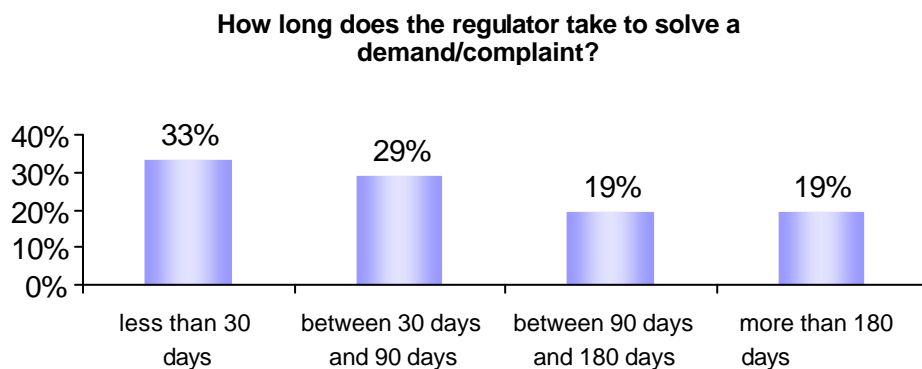
FEEDBACK TO REGULATORS FROM CONSUMERS

several options for resolving cases, from simply authorizing one staff member to decide upon consumer cases to creating institutions within the regulatory authority autonomous from the administration. Government agencies have also applied ADR (alternative dispute resolution) systems such as mediation and arbitration.

Administrative arbitration is very similar to private arbitration since both apply arbitration rules and rely on external professionals as arbitrators. Administrative arbitration decisions, however, may be appealed to the judiciary. Alternative dispute resolution systems are less practicable where government officials own or control operators, since critics may deem their decisions arbitrary or unfair.

The experiences reviewed below show that there is ample opportunity for regulators to enhance their current performance regarding consumer claim resolution.

Figure 9:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Box 19: Australia Telecommunications Industry Ombudsman (TIO)

The TIO is an industry-funded, independent non-government scheme. It is independent of telecommunications companies, consumer groups and the government. Its income is derived solely from members who are charged fees for complaint resolution services provided by the TIO. Members consist of telecommunications carriers, telephone carriage providers and Internet Service Providers (ISPs). The ombudsman is not a consumer advocate, rather a service to help consumers and telecommunications companies resolve disputes. TIO also provides information and assistance to organizations where its assistance is required by law, or where its assistance helps the industry and consumers to resolve complaints without investigation by the TIO.

The federal government established the TIO in 1993 to resolve disputes between telecommunications companies and residential and small business customers. In 1997 the TIO's jurisdiction was extended to include complaints about Internet service providers (ISPs). The TIO is independent from telecommunications companies, ISPs, consumer groups and government, and provides its service free of charge to consumers.

The TIO has the authority to make legally binding decisions (up to the value of \$10,000) and recommendations (up to the value of \$50,000)

The TIO also has the power to exercise its discretion not to investigate a case further if it concludes that all relevant facts in the matter have been considered.

All carriers and eligible service providers (including Internet service providers) are required under the Telecommunications Act to be members of the "TIO Scheme". The "TIO Scheme" is operated by the Telecommunications Industry Ombudsman Ltd.

Box 19: Australia Telecommunications Industry Ombudsman (TIO) (Cont'd)

The structure of the TIO is designed to ensure its independence. The TIO is governed by a council and a board of directors, and is managed by an independent Ombudsman appointed by the board on the recommendation of the council.

The council is comprised of five TIO member representatives and five consumer representatives, with an independent chairman. While the Ombudsman has responsibility for the day-to-day operations of the scheme, the council provides advice to the Ombudsman on policy and procedural matters.

The Board has corporate governance responsibilities including financial management of the scheme and ensuring compliance with the articles of association and its constitution. With the exception of the independent director, who is appointed by the board itself, directors are appointed by the TIO membership.

A member is only charged complaint handling fees if the TIO receives a complaint from one of its customers. Therefore, the funding system acts as an incentive for members to keep TIO investigations to a minimum by developing and maintaining effective complaint handling and customer service procedures.

The TIO may refer systemic problems, identified through complaint statistics, to the Australian Communications Authority, the Australian Competition and Consumer Commission, the Privacy Commissioner or other appropriate bodies.

The TIO investigates and helps resolve complaints about the provision or supply of telephone and Internet services as well as the failure to provide or supply these services.

Source: www.tio.com.au

The Peruvian Regulator OSIPTEL took another approach to dispute resolution, establishing an administrative-type court to resolve consumer claims.

Box 20: Peruvian Court for Consumer dispute resolution

The Peruvian administrative Court for consumer dispute resolution (TRASU) was created in 1995 by the regulator, OSIPTEL. TRASU decisions are made on behalf of OSIPTEL but it remains independent from the regulator since it is not accountable on jurisdictional matters to the regulator's administration. That is, TRASU's decisions are taken independently from OSIPTEL's Board of Directors and administration. TRASU intervenes only after the operators have addressed the claim, and the consumer appeals the operator's response. Conciliation between the operator and the consumer may be possible during the process.

TRASU is a six-member collegiate body, supported by a technical secretariat. OSIPTEL's board of directors appoints members to TRASU for an undefined term. Members are prestigious professionals who serve on a part-time basis to ensure their independence. The technical secretariat is staffed with competent professionals that support the administrative court decisions.

TRASU is empowered to enact guidelines on how it analyzes complaints. These guidelines are based on previous cases and signal to both users and operators the likely outcome of future decisions. TRASU also rules on the proof needed to resolve claims, and which party bears the burden of proof. OSIPTEL's board of directors does not review TRASU rules and guidelines.

In case of complaints regarding fixed line local calls, TRASU guidelines authorize the administrative court to ask for the following evidence:

Report on faulty service: this document allows the administrative court to assess if, during the period when the claim was filed, faults or suspension of service were reported, which could indicate the possibility that any disputed calls were not placed from the user's phone.

Records of technical inspection: this operator-generated report describes the local loop for the user's phone service area, indicating the location of the network details and any security measures that would limit access by third parties. This report allows TRASU to rule out illegal line access to the service provider's external plant.

Average and variable measured local service usage. This data can help to identify the consumer's pattern of consumption.

Itemized call report Even if the consumer has not requested itemized call billing, the operator should maintain itemized call records for all users, which may assist in dispute resolution.

Call investigation information. This information allows TRASU to establish whether any calls had been placed previously between the user's number and the number associated with any disputed calls.

TRASU has the power to interpret and solve claims related to all telecommunications services, which are related to infringements of consumer rights including billing, installation, and quality of service. It can also impose fines if the operator fails to abide by its decisions.

TRASU can also rule on procedural grounds, e.g., imposing a default judgment in favor of the consumer if the operator fails to meet a court-imposed deadline to resolve the consumer's case.

Although TRASU's decisions may be appealed to the courts, few cases are. Parties are not charged for TRASU's services, unless there is a clear case of misuse of the claim procedure.

About 48% of the 35,000 claims handled by TRASU during 1995-2001 were resolved in favor of consumers. An on-line consultation service available on the OSIPTEL Web site enables users to track the status of their claim.

Source: <http://www.osiptel.gob.pe>

The Spanish arbitration system has been hailed by consumer associations around the world as one of the best dispute resolution mechanisms in existence.

Box 21: Spanish Law for Consumer Protection

Spain's 1984 General Law on Consumer Protection recommended creating a voluntary arbitration system for consumer claims. After creating awareness in the private sector through a pilot project the Arbitration Law was enacted in 1988, which gave rise to the development of the Consumer Arbitration System in 1993. Consumption Arbitration Boards (CABs) were created as administrative bodies responsible for resolving consumer claims related to all products and services, not solely in the telecommunications sector. CABs were created at the local, regional, and national levels. Regional CABs and the national CAB act only if the controversy involves several jurisdictions or occurred across several regions. The CAB establishes a three-member collegiate body for each case whose decision is binding on the parties. The CAB appoints the president, and the consumer and the operator each appoint one member. At the time this report was published, there were 40 local CABs active in Spain.

Claims may be initiated either by an individual consumer or by consumer associations. The arbitration may be based on law or "equity arbitration." Equity arbitration relies on the judgment of the arbitrators, which may base their decisions on rules, customs, and their common sense. Conciliation between the operator and the consumer may be possible during the process.

It is noteworthy that a firm may publish a public announcement that it will rely on the Consumer Arbitration System to resolve any future consumer disputes, although the firm may also announce limits on the issues and amounts of such controversies. Telefonica, for example has published such announcements. Firms that publish such public announcements are granted an official logo which can be used as a label for quality of service. They are also identified in the National Listing of Firms as a company that is a member of the Consumer Arbitration System.

The official logo tells consumers that they can expect quick and effective service should they make a claim against the registered firm.



Official Distinguishing Logo of the Spanish Consumer Arbitration System

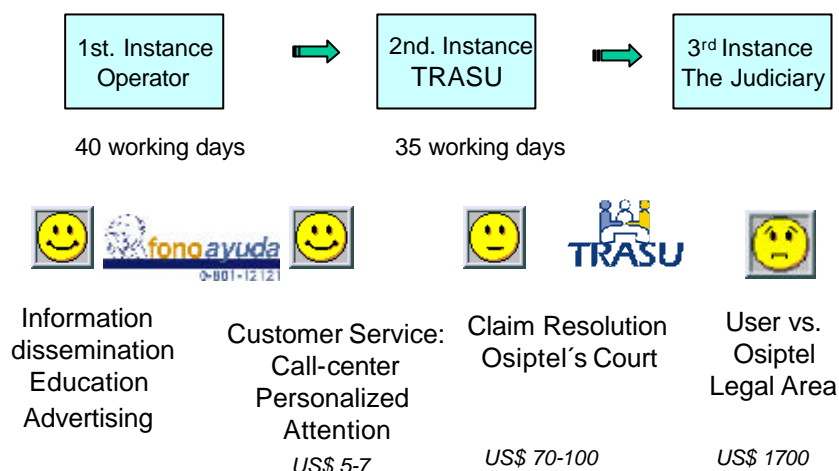
According to the Spanish national consumer organization Confederación Española de Consumidores y Usuarios (CECU), about 90% of all claims handled by the Consumer Arbitration System are brought by consumer associations. About 80% of these claims are resolved through mediation, leaving 20% of all claims to the system's collegiate bodies. Almost half of all claims are resolved in favor of firms

Source: Confederación Española de Consumidores y Usuarios.

Figure 10:

CONTROLLING CLAIM RESOLUTION SERVICE COSTS – THE PERUVIAN EXPERIENCE

(US\$ per claim)



It is important to bear in mind that dispute resolution processes can become costly. Strict adherence to due processes and careful legal analysis is not only expensive but can drain the regulator’s resources. The figure above compares OSIPTEL’s costs for implementing the TRASU administrative court with other measures. The TRASU dispute resolution process costs approximately USD 70-100 per claim. This can amount to more than ten times the cost of preventive actions such as establishing a customer service call center. The cost of massive information dissemination per user is also lower than TRASU claim resolution cost.. Appeals of TRASU decisions are even more expensive, climbing to an average of USD 1,700 per appeal. Appeals of TRASU decisions moreover, carry severe public relations costs. All appeals are waged as disputes between the consumer and the regulator rather than as disputes between the consumer and the operator. And, as noted before, all litigation involves high costs for consumers and generates high levels of consumer dissatisfaction.

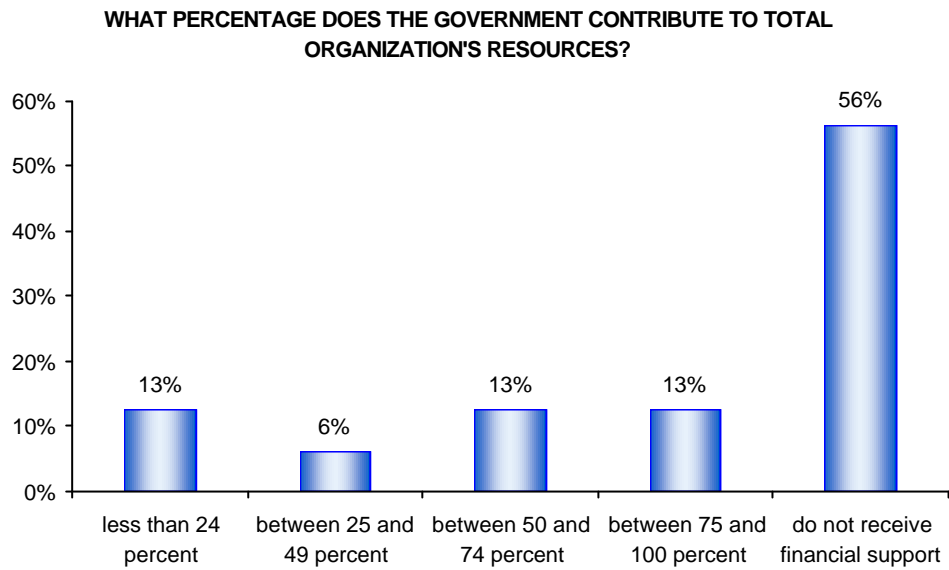
Clearly, it is in regulator’s best interest to create incentives for dispute resolution mechanisms that place a greater burden in terms of effort and costs on the private sector while ensuring adequate consumer protection.

7. Consumer Participation and Representation

Effective participation by consumers in regulatory processes can help regulators to implement consumer-oriented regulation. Consumer participation also provides a needed counterbalance to the influence exerted by the private sector, can provide political support for regulators’ actions and has the potential to foster creative solutions to specific problems.

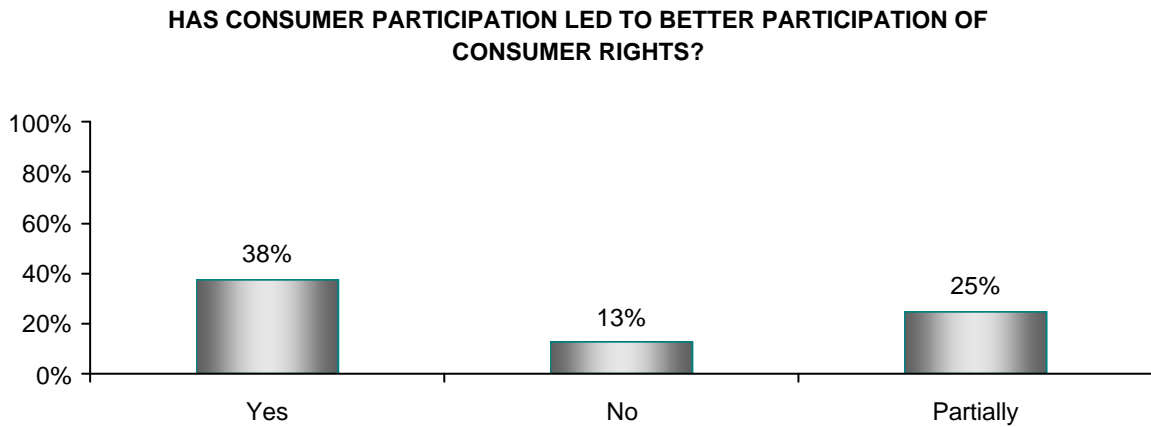
Consumer organizations recognize that they have not participated in regulatory processes as effectively as possible. More than half of consumer organizations are aware that they need to improve their technical skills to interact with both the regulator and operators. A large majority (89%) of these associations would welcome state support provided they remain independent. In fact, about 40% of all consumer organizations which responded to the survey conducted for this report, indicated that they receive financial support from the government.

Figure 11:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

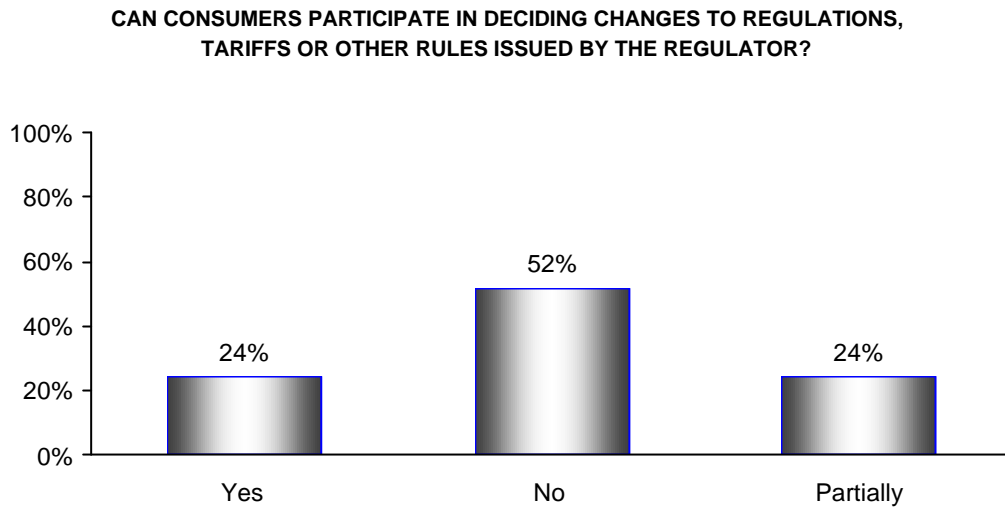
Figure 12:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

However, the predominant view is that consumers are not permitted to participate in regulatory processes.

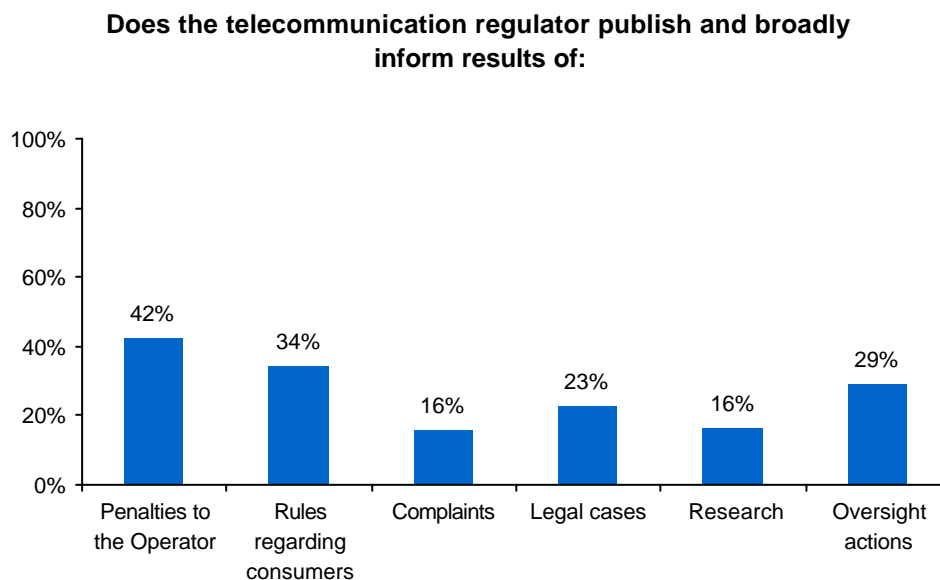
Figure 13:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Only 22% of consumer organizations view regulators' decisions as transparent. Consumer organizations (42%) believe that regulators are far better about publicizing fines imposed on operators and publishing rules that concern consumers. Consumer organizations, however, have little awareness of regulators' research activities and complaint resolution measures.

Figure 14:

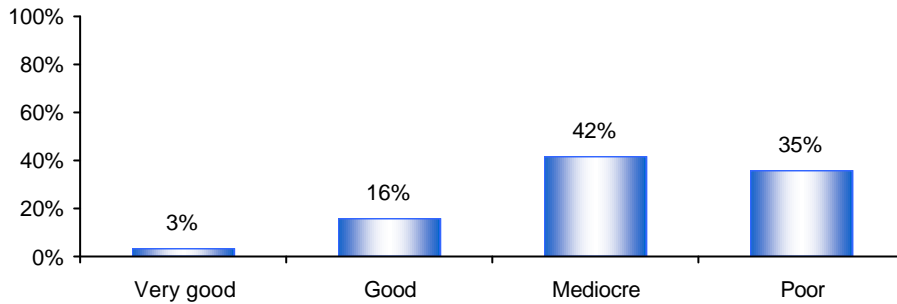


Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Thus, there is no surprise that in the opinion of consumer organizations regulators overall performance is rated either mediocre or poor (77% combined).

Figure 15:

What is your opinion on how the telecommunication regulator is performing?



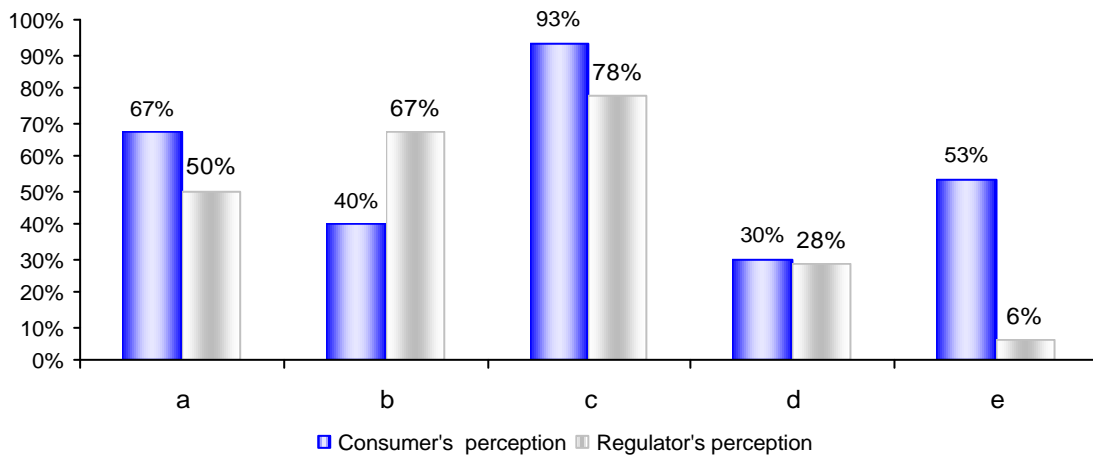
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Consumers can participate in the regulatory process in a variety of ways, including formal procedures (public hearings, filing comments, working group participation); informal means (seminars, meetings, written communications); public protest; and networking, lobbying, and forging alliances with other organizations.

Almost all consumer organizations rely on the media to put forward their concerns. Some even run their own media programs. Formal procedures and joint ventures with other organizations are also quite common. Note that although organizing and participating in demonstrations rank as the least used practice, it is not entirely uncommon considering that it is a rather extreme means of communicating interests.

Figure 16:

WHICH MEANS DOES YOUR CONSUMER ORGANIZATION USE TO PARTICIPATE IN THE REGULATORY PROCESS?



- a = Participates through the established formal mechanisms
- b = Participates through informal mechanisms with the Regulator
- c = Uses the media to promote its position
- d = Organizes demonstrations and protests
- e = Establishes alliances with other entities

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Box 22: The “Phone Strike”

The Peruvian consumers association Asociación de Consumidores y Usuarios (ACYU) reported that in April 1998, many political, labor union and religious institutions were restricted from using the media to express their opinions. ACYU organized a "phone strike" to protest thirteen grievances against the incumbent monopoly, including that the incumbent had closed several branch offices that had provided direct service to customers, the high set-up charge for local calls, the incumbent's political efforts to extend its legal monopoly, the absence of any mechanisms for verifying phone metering, and the lack of tariffs plans for low-income groups. ACYU succeeded in convincing 73% of households to participate in the "phone strike" by abstaining from placing calls for one day. ACYU believes that the phone strike forced the government to consider bringing forward the end of the incumbent's legal monopoly and introduce tariffs plans for low-use consumers. ACYU also believes, however, that the phone strike also brought about the end of user representation on OSIPTEL's Board of Directors.

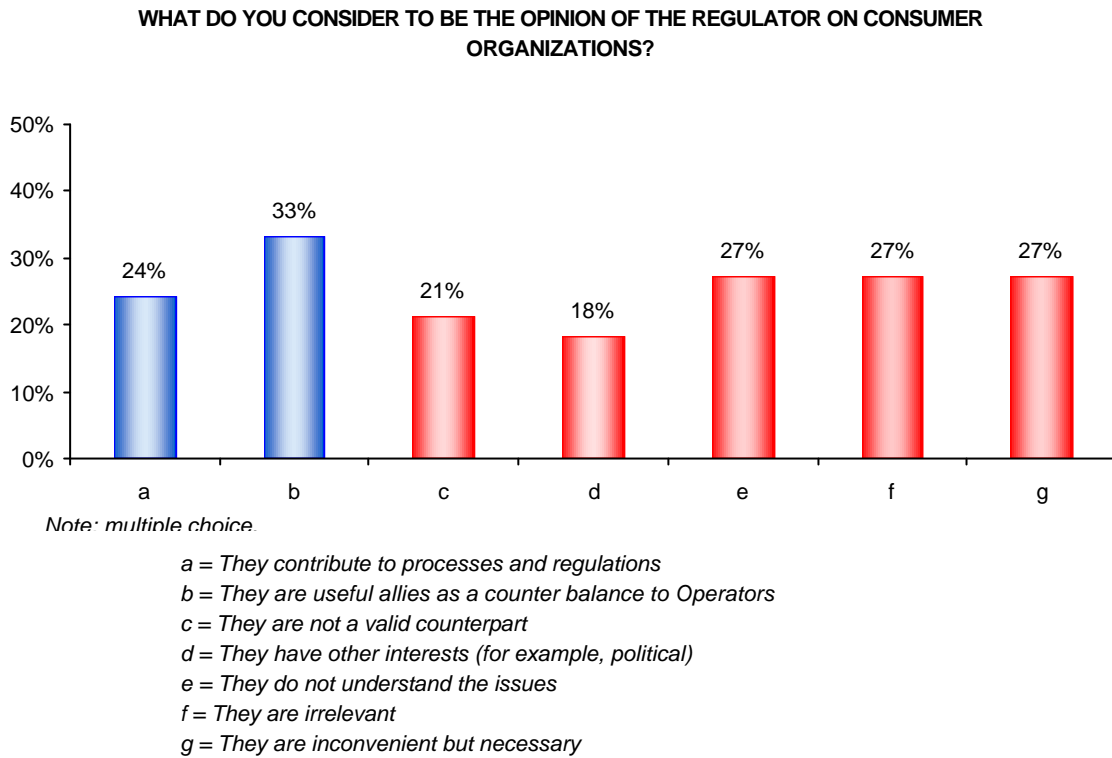
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Regulators have reacted to lobbying by consumer groups by redesigning their services and organizations to deal with consumer concerns. Almost half of national regulatory bodies surveyed in this report have created a top-level management unit that addresses consumer issues. Such units have provided consumers a distinct regulatory counter-part that focuses on consumer issues.

Brazil has gone farther by creating an internal ombudsman, appointed by the Brazilian President, that works within the country's national regulatory authority to represent consumer interests.

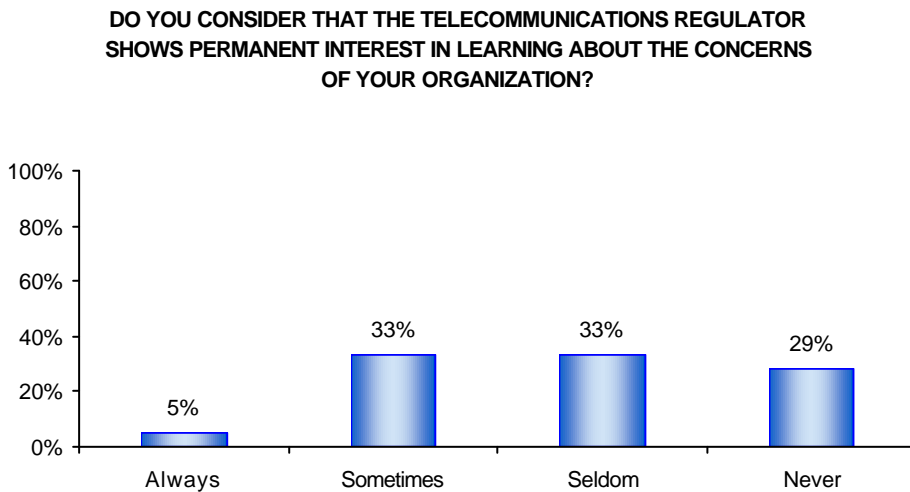
However, consumer associations still believe that most national regulatory authorities remain unresponsive and do not understand their concerns. Only 24% agree with the statement that the regulator believes that consumer associations do contribute to regulatory processes and regulations. Even regulators acknowledge that they allocate little time to consumers: Fifty six percent of all regulators surveyed spent less than five percent of their time on meetings with consumers. Moreover, regulators are usually not aware of how much of their budget is allocated to consumer protection policies. Consumer organizations also believe that the staff of national regulatory bodies spend no more than twenty percent of the time they devote to the private sector with consumer representatives.

Figure 17:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Figure 18:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

The formal institutions and procedures typically used by regulators to consult with stakeholders include public hearings (39%), the regulator’s website (36%), and newspapers and other mass media (18%). However, only 17% of consumer organizations consider that these consultation methods are appropriate.

Box 23: Why consumer organizations regard consultation means used by regulators as inappropriate

Why do these organizations consider these means inappropriate? The following list of qualitative responses from consumer associations offers a good indication.

Argentina

- “Nobody considers consumers’ opinions”.
- “Sometimes procedures are complicated”.

Australia

- “Poor representation of consumer interests”.
- “Hearing doesn’t mean listening”.

Colombia

- “Little diffusion. The regulator uses its Web page and the majority of users don’t access the Internet yet”.

Chile

- “It only serves to legitimize resolutions already taken”.
- “Technical weakness of users organizations”.

Czech Republic

- “Consultation mechanisms of the regulator are aimed only to some professionals”.

Fiji

- “Monopoly status of the industry enables them to make their own decision. At the end of the day profit is more important to them than consumer’s concerns.”

Guyana

- “Briefs by our consultant are ignored”.
- “It is difficult for consumers to access additional information”-

Kazakhstan

- “Lack of consumers’ knowledge”.

Peru

- “ Our suggestions are not taken into account at the very beginning of the process, but later on when it is more difficult to put forward our interests.”
- “Public consultations do not bind the regulator to take into account consumers participation, so we don’t know if consultations through the regulator’s Web site will really be reviewed.”
- “Our participation in public hearings is quite diminished by time limits.”

Zambia

“Failure to appoint consumer representatives on the board of regulators”.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Although consumer associations cite clear improvement on the part of regulators in terms of transparency, disclosure of information, and establishing formal consultative institutions, they remain disappointed with current formal procedures. There are, however, some promising recent experiences or projects regarding consumer participation that could help regulators to improve the way they consult with consumers.

Joint ventures on specific projects that include consumers associations, regulators and other government agencies may be an effective way of fostering closer working relations between consumers and the regulator. Consumer organizations have succeeded in forging alliances with competition agencies, human rights organizations, labor organizations, universities and umbrella consumer organizations (i.e. Consumers International) Consumer associations seek to forge the same kinds of alliances with national regulatory authorities so they may more effectively participate in regulatory processes.

Box 24: Colombia: Consumer Participation on Rule-making

Before 2000, civil society participation in government decision-making procedures was practically non-existent. Consumer's organizations lacked the technical capacity to argue their positions, and the regulatory authority did not offer platforms for citizenship participation. Initially, the regulatory authority simply posted a proposed rule on its website and required that all comments be posted through the same website. The consumer's organization Consumidores Colombia (COCO) forged partnerships with several Colombian universities to create a consumer's expert group. This enhanced the credibility of COCO's participation, especially in the debate of highly complex technical issues. The regulator carried out several public hearings to learn the positions of operators and consumers. Today the regulatory body invites COCO to discuss controversial topics on a regular basis.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Box 25: United Kingdom: Communications Consumers Involvement Project⁸

The National Consumer Council (NCC) is a non-profit consumer policy and research organization. Although it is independent of government it maintains a close working relationship with government officials. The majority of its funding comes from the Department of Trade and Industry. One NCC project has been designed to examine the benefits of consumer involvement in the regulatory process as well as barriers to and solutions needed to enhance consumer participation. The NCC defines the term "involvement" as a continuum of measures ranging from consultation, participation and representation. NCC recognizes that consumer involvement can take many forms and that an effective strategy will rely on a range of measures. The NCC has welcomed the creation of a new consumer representative body, the Communications Consumer Panel (CCP).

Its recommendations include that:

- The new regulatory authority Ofcom should ensure efficient consumer involvement from the beginning of the regulatory process and not wait until the process has ended. The regulator should provide regular evaluation and feedback, including publishing consumer impact assessments and annual reports on how consumer involvement has been taken into account.
- The CCP should be required to draw up criteria for prioritizing its work, to consult on its work programs and to report annually on how it has fulfilled its duties.
- The regulator and the CCP should be required to draw up a memorandum of understanding to ensure cooperation, guard against unnecessary duplication and enshrine the independence of each.
- Consumer research work should be shared, and joint research carried out, where appropriate.
- The regulator should be required to publish a periodic comprehensive report describing how it takes consumer research into account in its policy-making.
- Operators should also review their structures for including consumers, and report regularly on the impact of consumer involvement on its policies.

Broader consultation may be achieved through several means, such as the Viewers Panel and Stakeholders Groups. The Viewers Panel is composed of various consumer representatives selected to represent a wide range of consumers' interests. The Viewers Panel has a clear remit and defined parameters for its work. Stakeholders Groups are independent bodies designed to provide high-level advice to the government from a broad group of stakeholders. Task groups or special consumer panels—usually a small group of consumers and industry managers—may also be created to tackle specific issues. OFTEL has six advisory committees; one each for England, Wales, Scotland and Northern Ireland, plus a committee for the elderly and disabled and one for small businesses. The members are selected through open recruitment.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Peru's 1999 Transparency Rule also provides for the creation of permanent or ad-hoc stakeholder consultative groups that may provide input to OSIPTEL's Board of Directors.

⁸ Based on National Consumer Council. Involving Consumers in Communications. Case study for the Involving Consumers project. 2002. http://www.ncc.org.uk/policy/involving_consumers/index.htm

Box 26: The Australian Consumer Consultative Forum⁹

The Australian Regulator ACA has a legislative obligation to provide information to consumers on both radio communications and telecommunications issues. A related goal is the creation of a community that is informed about the rights and options available to them in Australia's market.

The Consumer Consultative Forum (CCF) was established in 1997 in accordance with the Australian Communications Authority Act 1997. The forum meets twice a year and provides the ACA with a formal mechanism for consulting consumer representatives on a wide range of communications issues. Membership of the CCF is at the invitation of the ACA.

Members of the CCF include organizations that represent consumer interests from a variety of perspectives, relevant government agencies and industry bodies.

The terms of reference for the Consumer Consultative Forum are to:

- Assist the ACA with consumer consultation on matters relating to its telecommunications functions;
- Ensure that consumer interests are adequately considered in ACA's decision-making; and
- Assist in informing the community about telecommunications service issues and matters relating to the industry.

Issues put forward for consultation are access to services, quality of service, development of codes and standards, emergency services, privacy, impact of new technologies on consumers, including those with special interests and needs, and comprehensive consumer impact statements.

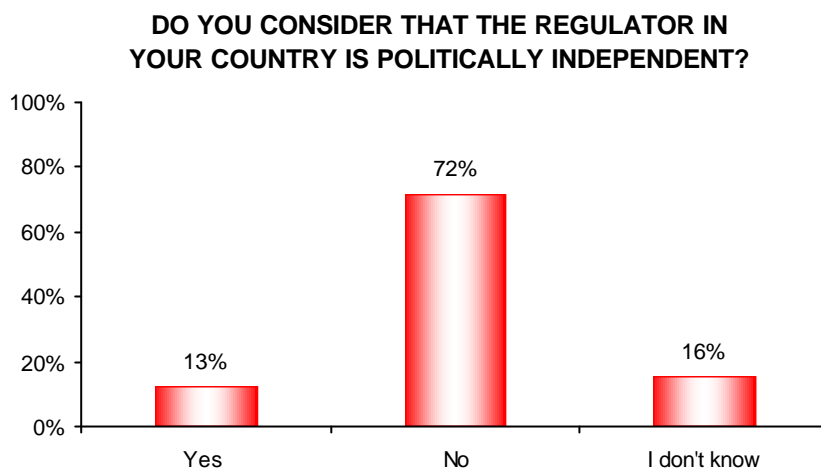
Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

A hotly debated issue even within the consumer movement is whether consumers should be represented directly in the top-level decision-making bodies of national regulatory authorities. A few countries have consumer representatives as well as operators' representatives in the decision-making bodies of regulatory authorities. In the Dominican Republic, for example, these consumer representatives are appointed by consumer organizations. The Peruvian regulator OSIPTEL had consumer representatives during 1993–1998 appointed by consumer organizations.

Those that advocate including consumer representatives on the decision-making bodies of national telecommunication regulatory authorities argue that such consumer involvement is nothing more than the application of the concept of direct democracy. They question whether regulatory authorities can properly represent the public interest where citizens do not directly choose the regulatory body's decision-makers. Generally, top regulatory officials are appointed by elected officials rather than being directly elected themselves. Because some telecommunication operators—generally incumbents—wield political as well as market power, some consumer advocates believe that giving consumers a vote on the regulatory authority's decision-making body is the only way to counterbalance the asymmetry between operators and consumers. These consumer advocates have argued that because the mandate of national regulatory authorities is to promote consumers' needs, the most effective means of obtaining this goal is to provide consumers direct participation. Relying on appointed officials to serve as agents of consumer interests is less effective, the consumer advocates say.

⁹ Based on <http://www.aca.gov.au/committee/national/ccf/ccf.htm>

Figure 19:



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

There are, however, many questions arising from such direct consumer representation. How representative are the appointed consumer representatives? Who appoints these consumer representatives? How should they manage conflicts of interest between the general public good and specific interests, such as when decisions that improve overall welfare harm specific groups? How can these consumer representatives avoid political interference especially in countries with poor governance structures? How can regulatory bodies ensure the proper accountability of the representatives and insure against regulatory capture? Finally, will the decision-making process become more political and less technical where representatives of specific interest groups sit on the decision-making body?

8. Interactive consumer services provided by the regulator

Interactive consumer services refer to all methods regulators employ to communicate with individual consumers, including call-centers, TV and radio broadcasts, newspapers, information provided on websites or in pamphlets, interactive Internet-based tools and direct contact with staff either in person or by telephone. Using the media to communicate with individual consumers is particularly challenging for regulators who must compete for the attention of the average individual consumer with news and entertainment services offered by a host of information providers. Moreover, it is often difficult to assess the costs and effectiveness of the different means used to convey the regulator’s messages. Pamphlets that contain needed content may fail if they are not widely distributed or arrive after issues have been resolved. Likewise, regulators’ comparisons of different service providers’ offers may be ignored or misunderstood by consumers.

Due to cultural reasons, traditional means of interacting with individual consumers—face to face meetings— are still quite important in some countries. Many consumers believe that if they meet a staff member in person, they will surely have their problem solved. Face-to-face meetings may also be necessary where users lack the connectivity or education needed to use more modern call centers or Internet tools, or where regulators fail to provide any consumer service by telephone. Launching call-centers and Internet services does not necessarily mean that office visits will decline. Rather these new services may serve to complement traditional means, especially where a knowledgeable staff member is needed to resolve complex cases.

At a minimum, regulators should aim to be reached easily by interested consumers. This includes creating a user-friendly Internet-site updated on a regular basis. Regulators’ websites should avoid content that requires a high-bandwidth connection where most household users access the Internet through a dial-up service.

FEEDBACK TO REGULATORS FROM CONSUMERS

It is important for regulators to incorporate a consumer's perspective when deciding the location of the headquarters and any branch offices. Regulators' offices are often located in government buildings that cannot be accessed by low-income groups at a reasonable cost.

Regulatory staff serving individual consumers must be trained to deal with the most disgruntled client. Prompt reception of consumers in a comfortable environment by well-trained staff can help to diffuse potentially inflammatory meetings.

Implementing consumer call centers is the next logical step. A simple, low-budget project may rely on current personnel to handle a relatively low number of calls, so that the incremental costs of providing the service remain modest. Later, the regulator may consider migrating to a system capable of handling more calls at lower unit costs, and which can analyze the data generated from the calls.

Regulators may even consider implementing a call-service center with trained personnel using ISDN services provided by the local operator. Call centers accessible throughout the country can be established, especially if regulators and consumers share the costs of calls. Operators should be able to provide a call-sharing scheme by which the regulator pays for long distance calls but consumers pay for local calls. Call centers enable regulatory bodies to increase the number of consumer complaints they resolve and provide a valuable service for consumers residing in towns where the regulator maintains no office.

A call center handles consumers concerns and questions through a software application that allows a prompt reply with standardized answers and generates statistical reports which summarize consumers' concerns. This information enables regulators to identify regulatory loopholes or new consumer protection initiatives. A call center also enables the regulator better to manage staffing of the call center by analyzing incoming calls (queues, daily call patterns, duration, origin) and monitoring quality of service indicators. This information can be used to redesign the call center and make informed choices on equipment outlays, number and profile of personnel, and changes in the regulators' internal organization or a decision to outsource the call-center. The regulator usually trains the personnel and oversees the service provided by the outsourced firm.

The regulator may further cut costs if it shares a call center with other similar government agencies. In Peru, for example, all public utility regulators share a single call-center toll-free number. Not only does this cut costs for the government agencies, which also benefit from any advertising paid by the others, but the consumer benefits from having just one phone number to remember. The number of personnel that serve each utility depends on the respective regulator. Generally, the level of use by consumers is driven by media campaigns. Thus the level of advertising helps to define the number of required positions and controls the budget. An automatic answering service serves as an overflow device to handle calls at peak times, allowing personnel to return a consumer's call later. Without such a device, the call center will experience congestion.

The call center may also be used for consultation purposes by placing random calls to households and asking the called party their opinion about a specific topic. Tele-voting, although not statistically representative, is also an option that can be carried out with the call center.

The regulator's web site has become a popular way to reach and interact with certain types of consumers. Websites offer a continuum of options: from just posting general information about the regulator—which in itself is important if regularly updated and used to announce planned rule-makings—mailing lists (i.e. the regulator mails proposed rules to a predefined set of citizens), to allowing consumers to interact with the regulator's information system and staff. Interactive applications enable consumers to obtain information about the current status of their complaint and to participate in virtual forums and discussion panels. Some regulators also allow consumers to post comments that can be read by other stakeholders.

The publication of rules in the official governmental newspaper or registrar provides an excellent opportunity to include non-technical and user-friendly presentations of consumer-oriented rules. Regulators are also embarking on consumer outreach projects..

Box 27: Reaching Out to Consumers

In Peru, network expansion, coupled with new services and new market entrants, has generated a greater demand on the part of consumers for information about rates, consumer rights and procedures for filing complaints.

The Peruvian regulator OSIPTEL has implemented a variety of way to provide needed information, including its website, a network of branch offices across the country, a call-center service (FonoAyuda) and bulletins and other publications geared to consumer interests. In 2002, OSIPTEL began experimenting with a more proactive approach, a mobile vehicular unit called MoviAyuda which travels throughout Lima, the capital city, especially to high-complaint locations and areas with high pedestrian traffic. OSIPTEL has also set up temporary kiosks in high population locations such as business centers, public squares and universities staffed by personnel that can provide information or take complaints on rates, quality of service and billing. Pamphlets are also distributed with basic consumer advice

MoviAyuda is a simple idea that brings the regulator to the consumer, facilitates access to information, and reduces consumer costs and efforts in obtaining relevant information. MoviAyuda also provides valuable feedback to the regulator on the main problems between operators and their customers, enabling the regulator to identify issues requiring policy action.

MoviAyuda doubled OSIPTEL's contacts with consumers in the initial two months of its launch– including calls to its call center and visits to the regulator's offices. Users feel they have been served better because they have a closer point of contact.

Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

Although a few regulators have launched their own broadcast programs, mainly on the radio, broadcasts by consumer organizations or independent journalists are often seen as more credible. Regulators may best use broadcast media by participating in regularly-scheduled programs to explain rules that affect consumers.

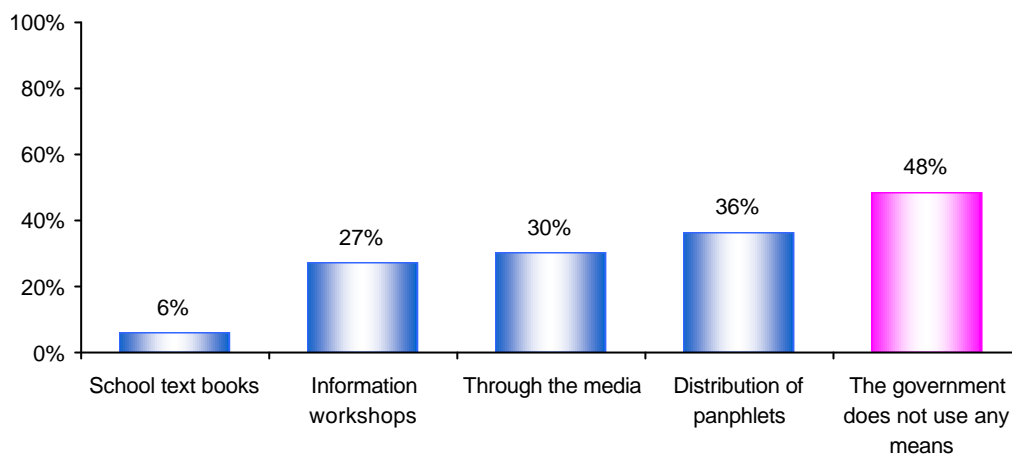
Many regulatory agencies have found that hiring a well-connected and professional press officer is key to effectively relating to the media and managing crisis events.

Massive media advertisement campaigns are generally too expensive for regulatory agencies. However, specific educational mass-media campaigns may be needed to educate consumers about major changes in the market, such as introducing “calling party pays” tariffs, new numbering plans, or opening the long-distance market to competition.

School textbooks are another useful but often neglected channel to educate consumers about their rights. Education is a powerful albeit long-term action to shape people's attitudes about enforcing their rights as consumers. Nevertheless, very few government agencies use the educational system to inform consumers about their rights and duties.

Figure 20:

BY WHAT MEANS DOES THE GOVERNMENT EDUCATE THE POPULATION ON THEIR RIGHTS AND DUTIES CONCERNING TELECOM SERVICES?



Source: Protection of Telecommunication Consumers Rights Survey, APOYO Consultoría.

International networking by consumer associations is emerging as an important means of self-education. Regulators have been invited to participate in some of their activities.

Box 28: Consumers International Regional Conferences on Public Services.

Consumers International (CI)¹⁰ supports, links and represents consumer groups and agencies all over the world. It has a membership of more than 260 organizations in almost 120 countries and four regional offices. It strives to promote a fairer society through defending the rights of all consumers, including poor, marginalized and disadvantaged people, by:

- supporting and strengthening member organizations and the consumer movement in general
- campaigning at the international level for policies which respect consumer concerns.

Consumers International is an independent, non-profit organization. It is not aligned with or supported by any political party or industry. It is funded by fees from member organizations and by grants from foundations, governments and multilateral agencies.

The CI Latin American and Caribbean Office recently organized the second regional conference on public utilities. About 140 people attended the conference which included the participation of consumer organization representatives and experts from the United States and Europe, CI staff responsible for public utilities in Africa and Asia, and regulators from Latin America and the Caribbean.

Delegates participated in workshops on topics such as the representation of consumers on the boards of public utilities, access to and the quality of services provided by the public utilities, and public utility regulation and tariffs regimes.

The conference also shared the results of research carried out in four Central American countries: Nicaragua, Honduras, El Salvador and Guatemala by the Consumers and Public Services in Latin America project (CONSUPAL) which previously researched public services in Mexico, Colombia, Peru, Brazil and Chile. The research concluded that:

- Services in the Central American countries studied are deficient.
- Consumer participation should either be financed directly by the State or the government should allocate to consumer associations a percentage of the fines imposed on operators.
- A regional benchmarking study on tariffs is needed.
- Independent regulators are a key factor for effective participation by consumers in the regulatory process. Co-regulation by operators and regulators should be avoided, and joint work between consumers and the regulator should be fostered.
- Consumer's organizations should aim to reach a high technical capacity.
- Several policy instruments should be used to expand access to public utilities.
- Market transparency and equitable relationships with the operator are needed.

Source: www.consumersinternational.org

9. Research

Analysis of consumer claims and complaints to call centers are not by themselves sufficient to develop consumer protection policies. Research is needed to identify actual and predicted consumer problems, to assess the impacts of regulatory policies and operators' market strategies, and to devise best practices.

Continuous research is of paramount importance, especially to repeal, update, or phase-out policies that are no longer needed.

¹⁰ For more information, see www.consumersinternational.org

Research conducted by the regulator may be useful not only for consumers but for market analysts and firms. An analysis comparing services offered by all operators, for example, not only enables competitive service providers to compare their offers, it reduces the costs for consumers in obtaining this information.

Agreements between the regulator and universities or research institutions may enable the regulator to obtain independent, high-quality and affordable research. Both qualitative and quantitative research methods are needed to capture information needed for decision-making, such as focus groups and statistical analysis.

Box 29: OFTEL's Consumer Research Program and Guidelines¹¹

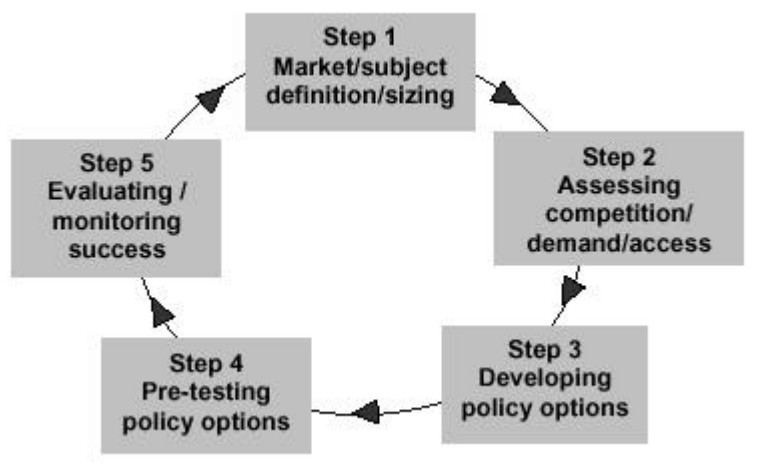
OFTEL developed an extensive consumer research program starting in 1999 which it uses throughout the full range of its work. OfTel publishes the results of its research and future research plans on a regular basis through OFTEL News. A recent news update published at the time of this report covers work done for residential and business groups. Residential research includes fixed telephony (i.e. the demographics of homes without a fixed line terminal, consumer spending on fixed line services, telecommunications services awareness and use of personal numbering services), Internet (method of accessing the Internet, type of package, and ISPs used, average time spent on-line each week, satisfaction with Internet service) and mobile telephony (penetration rates, switching behavior, use of mobile services abroad).

OFTEL recently released Consumer Research Program Guidelines to set out the ways in which research can be used to assist its decision-making. It is a simple and straightforward step-by-step procedure to conduct research geared towards regulatory decision-making. The guidelines steps are:

1. Any group of consumers can be examined ranging from the entire population of a country to a very specific segment (e.g. users of a particular product or service, or specific age or income groups).
2. Market research can contribute to some or all of the main stages of a project, program or case and, if used in conjunction with other sources of information, can assist in ensuring all decisions are based on sound evidence.
3. Market research can provide evidence from two main perspectives:
 - Customers – residential consumer and business behavior and attitudes
 - Suppliers - market behavior – e.g. what advice and information people are provided and how suppliers behave

¹¹ Taken from OfTel's web site, http://www.oftel.gov.uk/publications/about_oftel/2002/mare0602.htm

Box 29: OFTEL's Consumer Research Program and Guidelines (Cont'd)
Key stages of a project, program, where market research can contribute



Step 1: Market/area definition and sizing

How many consumers are using particular services, products, and suppliers? Are consumers substituting services to the extent that prices are constrained?

Step 2: Assessing level of competition, demand for and access to services

Which consumers use what services, products, and suppliers? What prevents consumers from making greater use of available choices? Which consumers pay more than they need to do they know / care?

Step 3: Developing policy options

Should the market/area being investigated be changed? Are any new policies or changes to existing policies needed? How could the market/service/area otherwise be improved?

Step 4: Testing policy proposals prior to introduction

How might consumers react to changes in the market? Who would use the new service supplier? What might assist the new market entrant to succeed, why might it not succeed?

Step 5: Evaluating and monitoring impact of policies once introduced

Has the policy achieved the intended impact on the market? What kind of improvements to benchmarking or other measurements are needed?

Research can be used to evaluate whether consumer information or initiatives have been successful (i.e. whether it was used/useful, whether consumer behavior/awareness changed as a result of the information).

A variety of research techniques are used to gather and analyze this information.

Surveys (phone, face to face, postal, Internet) samples can be drawn from the whole population, in any country, to specific subgroups, e.g., Internet customers, payphone users, those calling specific destinations, homes without a fixed phone.

Discussion groups and indepth interviews explore topics in considerable detail, diaries of individual behavior, generating ideas to assist policy development.

Mystery shopping. Mystery shopping is a market research term that refers to a researcher that acts as a consumer to determine what consumers are told about products, services, and suppliers.

Source: Oftel. www.oftel.gov.uk/publications/about_oftel/2002/mare0602.htm

10. Conclusions and recommendations

Consumers organizations are quite critical of consumer protection policies for telecommunication services. These have not been well defined and their enforcement level is low. Countries that have introduced competition, private operators, and national regulatory authorities are rated slightly better from a consumers' perspective but still fail to meet consumer expectations. Moreover, the majority of consumer organizations rate regulators overall performance as either mediocre or poor. Thus, consumer protection policies are of paramount importance to bring about sustainability to sector reforms.

Only a handful of consumer organizations view regulators' decisions as transparent. Consumer organizations believe that regulators are far better about publicizing fines imposed on operators and publishing rules that concern consumers. Consumer organizations, however, have little awareness of regulators' research activities and complaint resolution measures.

Among the areas that need to be improved, consumers point out customer service handled by the regulator, education on consumer rights and how to exert them, and foremost of all, participation and representation in the regulatory processes. Consumers feel that they were excluded from the initial decision-making process that led to sweeping changes in the provision of telecommunication services, including market structure, ownership and tariff regulation. Consumers organizations report cases where they have effectively enhanced the regulatory process, especially on consumer protection policies. However, they recognize that they need to improve their technical skills to be a more effective counterpart. Support to consumer organizations from the State, especially in less developed countries where subscription revenues do not cover association overheads, is needed and is also welcome.

The public sector may play several roles on consumer protection policies, including both protection and defense. Each role adds value to services provided to the consumer. These roles may be assigned to several government agencies: the general consumer agency, the telecommunication regulator, Ministries and Ombudsman among others. The regulator typically does not represent consumers, although some countries do have representatives appointed in their decision-making bodies. In some countries, the regulator may have the mandate to perform all roles except representation, which may be assigned to an ombudsman. Of course, not all countries ensure that all of these roles are assigned either to the government or private sector.

Because there are so many consumer issues to be addressed, policy makers and regulators must carefully define roles and allocate responsibilities between the public and private sector to avoid shifting responsibilities from operators to the regulator and to identify which activities, such as consumer complaint call centers, may better be outsourced to the private sector. It is in the regulator's best interest to create incentives for establishing policies that place a greater burden in terms of effort and costs on the private sector while ensuring adequate consumer protection.

Consumer complaint statistics in a number of countries demonstrate that telecommunication complaints generally rank at the top of all complaints registered—even after sector reforms and government-sponsored consumer programs have been implemented. An effective action plan to increase consumer satisfaction requires an understanding of the reasons why telecommunication consumers complain.

Implementation of improved end-user services will often require active involvement of the regulator since operators that exhibit market dominance often lack incentives to improve services.

Most specific consumer rights regarding telecommunications services are applications derived from general domestic consumer protection laws or from the United Nations Guidelines for Consumer Protection. It may be unwise to create a single set of telecommunications consumer protection principles since these are often developed to address specific local issues which evolve rapidly and

may become out-of-date. That said, a number of countries have adopted similar measures to provide consumer protection in the telecommunications sector. The most common policies are those regarding complaint resolution processes and the power to fine operators. It is a good practice for regulators to encourage both operators and consumers to participate in the creation of Codes of Practice that include dispute resolution procedures which may rely on the parties to resolve such disputes at the onset.

The extent to which consumer protection policies need to be codified is an on-going discussion. Some countries advocate the formal codification of consumer rights in law. Others argue that a better approach is to define general principles in a guideline and leave specific claims to be solved by jurisdictional dispute resolution bodies or Alternative Dispute Resolution mechanisms.

Several countries do not yet have formal institutional process to resolve complaints. Such complaints are particularly difficult in a monopoly environment coupled with limited consumer protection measures. The consumer is often limited to a choice between no service or bad service. A better option may be to resolve such complaints through formal institutional procedures such as arbitration, telecommunication ombudsmen, or administrative court-type institutions.

Although consumer associations cite clear improvement on the part of regulators in terms of transparency, disclosure of information, and establishing formal consultative institutions, they remain disappointed with current formal procedures. There are, however, some promising recent experiences or projects regarding consumer participation that could help regulators to improve the way they consult with consumers. Joint ventures on specific projects that include consumers associations, regulators and other government agencies may be an effective way of fostering closer working relations between consumers and the regulator. Consumer associations seek to forge alliances with national regulatory authorities so they may more effectively participate in regulatory processes.

Interactive consumer services refer to all methods regulators employ to communicate with individual consumers. Using the media to communicate with individual consumers is particularly challenging for regulators who must compete for the attention of the average individual consumer with news and entertainment services offered by a host of information providers. Moreover, it is often difficult to assess the costs and effectiveness of the different means used to convey the regulator's messages. At a minimum, regulators should aim to be reached easily by interested consumers. This includes creating a user-friendly Internet-site updated on a regular basis. It is important for regulators to incorporate a consumer's perspective when deciding the location of the headquarters and any branch offices. Regulators' offices are often located in government buildings that cannot be accessed by low-income groups at a reasonable cost.

Implementing consumer call centers is the next logical step. A simple, low-budget project may rely on current personnel to handle a relatively low number of calls, so that the incremental costs of providing the service remain modest. Later, the regulator may consider migrating to a system capable of handling more calls at lower unit costs, and which can analyze the data generated from the calls.

Regulators may even consider implementing a call-service center with training provided by local call-center operators. Call centers accessible throughout the country can be established, especially if regulators and consumers share the costs of calls. Operators should be able to provide a call-sharing scheme by which the regulator pays for long distance calls but consumers pay for local calls. Call centers enable regulatory bodies to increase the number of consumer complaints they resolve and provide a valuable service for consumers residing in towns where the regulator maintains no office. This information enable regulators to identify regulatory loopholes or new consumer protection initiatives. The publication of rules in the official governmental newspaper or registrar provides an excellent opportunity to include non-technical and user-friendly presentations of consumer-oriented rules.

Massive media advertisement campaigns are generally too expensive for regulatory agencies. However, specific educational mass-media campaigns may be needed to educate consumers about major changes in the market, such as introducing “calling party pays” tariffs, new numbering plans, or opening the long-distance market to competition.

School textbooks are another useful but often neglected channel to educate consumers about their rights. Education is a powerful albeit long-term action to shape people’s attitudes about enforcing their rights as consumers. Nevertheless, very few government agencies use the educational system to inform consumers about their rights and duties.

Analysis of consumer claims and complaints to call centers are not by themselves sufficient to develop consumer protection policies. Research is needed to identify actual and predicted consumer problems, to assess the impacts of regulatory policies and operators’ market strategies, and to devise best practices. Continuous research is of paramount importance, especially to repeal, update, or phase-out policies that are no longer needed. Agreements between the regulator and universities or research institutions may enable the regulator to obtain independent, high-quality and affordable research.

Appendix

Organizations that participated in the surveys

Consumer Organizations

Americas

1. Argentina – Consumidores Argentinos
2. Bolivia – Comité de Defensa del Consumidor
3. Brasil – Instituto Brasileiro de la Defensa del Consumidor
4. Chile – Organización de Consumidores y Usuarios de Chile
5. Chile – Consejo Nacional de Consumidores y Usuarios
6. Colombia – Consumidores Colombia
7. Ecuador – Tribunal Ecuatoriano de Consumidores y Usuarios
8. El Salvador – Centro para la Defensa del Consumidor
9. Guyana – Guyana Consumers Association
10. Jamaica – Consumer Affairs Commission
11. Mexico – Asociación Mexicana de Defensa del Consumidor
12. Nicaragua – Liga por la Defensa del Consumidor
13. Peru – Asociación de Consumidores y Usuarios
14. Peru – Defensoría del Pueblo
15. República Dominicana – Fundación por los Derechos del Consumidor

Africa

1. Benin – Que Choisir Benin
2. Cameroon – National Movement of Consumers
3. Niger – Association de Defense des droits des consommateurs
4. Seychelles – National Consumers Forum
5. Zambia – Zambia Consumers Association

Asia-Pacific

1. Australia – Australian Consumers Association
2. China – Hong Kong Consumer Council
3. Fiji – Consumer Council of Fiji
4. India – Consumer Education and Research Center
5. India – Voluntary Organization in the Interest of Consumers Education
6. Malasia – Persatuan Penngguan Selangor dan Wilayah Perseutuan

Europe

1. Armenia – Union for Protection of Consumer Rights
2. Czech Republic – Consumers Defense Association of the Czech Republic
3. Croatia – Croatian Association for Consumer Protection
4. Kazakhstan – National Consumers League
5. Spain – Confederación de Consumidores y Usuarios
6. France – La Fédération de la Consommation du Logement et du Cadre de vie

Regulators

Americas

1. Argentina – Comisión Nacional de Comunicaciones
2. Bolivia – Superintendencia de Telecomunicaciones
3. Colombia – Comisión de Regulación de Telecomunicaciones
4. Colombia – Superintendencia de Industria y Comercio
5. Costa Rica – Autoridad Reguladora de los Servicios Públicos
6. Peru – Organismo Supervisor de la Inversión Privada en Telecomunicaciones
7. Dominican Republic – Instituto Dominicano de las Telecomunicaciones

Africa

1. Uganda –Uganda Communications Commission

Asia-Pacific

1. Australia – Australian Communications Authority
2. Mongolia - Communications Regulatory Commission
3. Nepal – Nepal Telecommunications Authority
4. Malaysia – Malaysian Communications and Multimedia Commission

Europe

1. Austria – Rundfunk und Telekom Regulierungs – GmbH
2. Denmark – National IT and Telecom Agency
3. Estonia – Estonian Communication Board
4. Finland – Finnish Communications Regulatory Authority
5. Germany – Regulierungbehörde für Telekommunikation und Post
6. Malta – Malta Communications Authority
7. Ireland – Office of the Director of Telecommunications Regulation
8. Portugal – Autoridad Nacional de Comunicaciones
9. Slovak Republic – Telecommunications Office
10. Sweden – Post & Telestyrelsen, National Post & Telecom Agency
11. United Kingdom – Office of Telecommunications