

Best practices being adopted on fit-for-purpose digital regulation tools for consumer protection

Study period
2022-2025

Question 6/1

*Consumer information,
protection and rights*

Interim deliverable
2023

Executive summary

This is the first interim (annual) deliverable for Question 6/1 of ITU-D Study Group 1 for the study period 2022-2025. It focuses on regulatory mechanisms for the digital ecosystem that are fit-for-purpose.

The digital ecosystem presents significant challenges for regulators and policy-makers. The short development cycles of new or disruptive technologies lead to opportunities but also require constant monitoring of the regulated market to enable prompt action.

Such action can arise from a regulatory perspective, whereby non-compliance with regulations is investigated and penalized, or from collaboration on effective actions and solutions with the regulated entities, to guide and induce the market to introduce effective solutions to consumers' problems.

It seems that there is still a growing demand from consumers not only for the guarantee of rights defined in national rules and regulations, but also for the satisfaction of expectations arising from a user experience perspective that is appropriate for their legitimate interests.

Regulators and policy-makers thus have to manage (i) increasingly agile and flexible regulatory instruments and implement diagnostic tools that allow them to gather data and evidence to assess consumer demands, (ii) the problems they face and (iii) the conduct of the market players involved in solving regulatory problems. This calls for an alignment between the regulatory tools managed by the regulator and public policy objectives.

The regulatory and policy tools should be designed and implemented in a way that contributes to the achievement of these objectives in specific contexts and to an improvement in services, the subsequent satisfaction of the consumer, and the sector's ongoing development.

Whether it is the increase of a specific and objectively monitored indicator or other public objective, the regulatory tool must be aligned with these objectives.

Introduction

Policy and regulatory tools should also be proportional and limited to the extent necessary to achieve public policy objectives; they should not lead to an undesirable situation or to undue or inefficient limitation of economic freedoms or of innovation in the regulated market.

In other words, the regulatory tools used by national regulatory authorities should be fit-for-purpose, intervening in the market to the extent necessary to achieve the intended public policy goals and striking a balance between regulatory compliance, on the one hand, and facilitating innovation, competition and consumer protection, on the other.

One factor to be observed by the regulator, as is explained below, is how the regulated entities conduct themselves in relation to the public policy objective; this can be taken into consideration when defining fit-for-purpose regulatory tools and approaches.

This can be achieved by means of a process that takes into account the perspectives and experiences of multiple stakeholders using mechanisms such as public consultations, calls for evidence, data collection, analysis of complaints and other tools, including less formal dialogue.

A multistakeholder perspective on data and information collection to identify the regulatory problem and appropriate regulatory tools

Informational asymmetry between the regulator and market agents is a core concept of market regulation theories. In their activities, regulators often do not have as much information about the market as the regulated entities do, which can affect the quality of regulation.

With regard to consumer protection, regulators often have a specific mandate to promote competition and protect consumer interests. They achieve this in several roles: as researchers, as convenors, as analysts and as decision-makers. Each role requires adequate resourcing and often benefits when the regulator is independent and can discharge its mandate with limited exposure to competing interests.

Regulators as researchers

The first step is to establish and prioritize a specific regulatory problem based on an initial, broader analysis of the regulated subjects, in our case, consumer protection issues. This diagnostic phase should focus on gathering and analysing data and evidence to identify specific problems and prioritize them within the local context.

Consumer complaints, for instance, can be examined to determine the most common regulatory problems or those that have the greatest impact on consumers, as demonstrated by Brazil's contribution¹ on the adoption of responsive regulation theory in consumer issues within the Brazilian telecommunication sector.

It is important to note that the issue on which most complaints are received, for example, may not necessarily

be the one to prioritize. It could have a deeper root cause that, if addressed, possibly even with less expenditure of effort, might lead to a decrease in the chosen indicator. For example, a high number of consumer complaints about unauthorized charges may not necessarily require action on the billing mechanisms themselves, but rather on how companies are presenting their offers to consumers.

Regulators as convenors

Once the problem has been identified and prioritized, regulators should take proactive steps to reduce the existing informational asymmetry around the specific problem using data and analyses, soliciting information, collecting data and engaging in dialogue with stakeholders (e.g., consumer protection associations, service providers, consumers).

Nigeria's contribution² describes two interesting dialogue opportunities: Telecom Consumer Conversations, held in universities, youth camps, villages, markets, professional bodies, townhalls, trades fairs, ICT conferences, etc.; and the Telecom Consumer Parliament, a high-level dialogue forum held twice a year to address critical and contemporary issues affecting the nation's telecommunication industry and during which key industry players gather to exchange ideas on salient issues affecting the consumers of telecommunication services in Nigeria.

The perspectives of consumers, regulated entities and other entities involved in the issue can be crucial for a regulator's decision-making, not only on the regulatory tools to be used but also on risk assessment and on other relevant elements.

Regulators as analysts

Once a significant body of knowledge has been obtained, a well-defined scope of work can be developed with clear objectives for all involved. This will lead to prioritization of efforts and encourage a focus on concrete results.

The idea is to always have qualitative and quantitative indicators and ensure that what is being requested will allow the entities concerned to comply with the rules and regulations - complaints, for example, indicate the quantity and specifics of consumer difficulties and concerns.

Periodic inspections should always be considered during diagnosis, when measuring implementation level, and during more intensive investigation of or search for non-conformity when monitoring does not achieve the desired results.

Monitoring of consumer satisfaction and indices should be constant and consistent, and specific and intensive action can be taken when the data provide the necessary evidence.

Furthermore, the regulator needs to establish how the consumer behaves in the market in relation to the regulatory intervention that may have been put in place. This is also a source of information on the experiences,

¹ <https://www.itu.int/md/D22-SG01.RGO-C-0039/en>

² <https://www.itu.int/md/D22-SG01.RGO-C-0020/>

concerns and challenges that consumers face in the market.

With regard to monitoring and evaluation, regulatory impact assessments, specifically of the impact on consumers, would also enable reviews of the regulatory interventions employed in the market.

Kenya's contribution³ identifies this need by reviewing its consumer education and empowerment strategy, one of the pillars is "Empathize and Understand Consumers".

As stated in the Best Practice Guidelines⁴ of the Global Symposium for Regulators 2023, regulators need research and foresight capacity:

Regulators increasingly need internal research capacity and resources to explore and anticipate market trends, regulatory challenges, and the impact of new technologies on markets and consumers. Strategic research and foresight are important to inform regulatory discussions and decisions in a timely and systematic manner, enabling proactive, proportionate, and targeted regulatory action.

As ICTs facilitate new dimensions of digital transformation, it becomes increasingly urgent for regulatory capacity to anticipate consumer harms from new or emerging technologies.

Regulators as decision-makers

Adequate and well-tailored regulatory interventions require reliable data, stakeholder consultation and independent analysis. As regulators shape the markets that they regulate, this process of gathering evidence, consulting stakeholders and analysing relevant indicators can lend legitimacy to the regulator's actions. This, in turn, can make regulators more effective at protecting consumer interests.

Calibrating the regulatory response based on the behaviour of the regulated entity

Some regulators adopt definitions and reciprocal reinforcement of penalties (punishment) and incentives (persuasion) to achieve regulatory compliance and improve service provision. Incentives are considered essential and generally take precedence over penalties, although all strategies should be available for use as the specific case requires, without a predetermined adoption order or preference.

Experience of this practice has shown that regulatory intervention is useful and more successful when the regulator's actions and standards are capable of encouraging companies in the sector towards one direction and provide guidance and corrections when necessary.

The consolidation of a more responsive regulation and the measurement of its effectiveness depend on the availability of tools and processes that are transparent to those involved and able to promote adjustments in the behaviour of the regulated entities towards the objectives

- adjustments that can vary for objective reasons, owing to the regulated subject matter and the desired outcomes, but also to subjective factors relating to the dimension and characteristics of the regulated entities.

The regulated entities should be seen as participants in regulation, but ideally in an increasingly proactive manner, which requires a reorientation of the weight of responsibilities (the organization and structuring needed to achieve the results), where responsibility is increasingly assumed by the regulated entities. On the other hand, the regulator is not merely a supervisor of this process but maintains its proactive role in guiding this organization and in its responsibility to ensure that agility and results meet the demands of consumers and society.

Beyond discussing incentives for compliance with rules and regulations, the very nature of regulating an economic sector in which goods are produced and services developed to achieve specific goals means that any initiative should be essential and required. Therefore, a model focused solely on standardizing behaviours or preventing and excluding non-conforming behaviours is not sufficient.

Experience has shown that focusing on incentives has led to gains in agility, resource efficiency, effective allocation of efforts, and particularly more lasting corrections to problems. Prioritizing the actions of companies based on evidence of the most pressing needs and issues also enables service providers to adjust, implement and adapt their processes, and thereby to resolve real societal and consumer demands; as a result, consumers benefit from solutions without needing to repeatedly resort to service providers and regulatory authorities to have flaws corrected.

In this context of increased participation by incentive-driven regulated entities, it is the regulator's responsibility to create an environment, provide suitable guidance for compliance with regulations and encourage ethical practices among business entities.

Thus, incentives are not rewards for fulfilling obligations but instead further the creation of a favourable and secure environment for compliance with rules and regulations (including by encouraging the regulated entities) in which penalties (external consequences) are not seen as routine.

Within this context, the experiences outlined in the last section below also point to aspects, such as the need to strengthen internal control in regulated entities, and to use and reduce the informational burden of continuous inspections in favour of control through goals and indicators - which also aligns with the demands for transparency and accountability, not only from the regulated entities but also from the regulatory authority itself.

In this way, both the regulated entities and the regulatory authority should be accountable for the results achieved and the benefits delivered to society, rather than simply reporting the actions and procedures carried out.

It is understood that the common visualization and establishment of a repertoire of tools is a highly relevant task for the continuity and strengthening of responsive actions, even though it may not be possible or desirable to predict a single rigid flow.

³ <https://www.itu.int/md/D22-SG01-C-0138/>

⁴ https://www.itu.int/itu-d/meetings/gsr-23/wp-content/uploads/sites/20/2023/06/GSR-23_Best-Practice-Guidelines-E.pdf

First and foremost, the problem-solving process should be open to the interests of those involved as much as possible, so that it can provide a response to the current real demands of consumers and society, while also considering the internal perspectives of companies on possible challenges and feasible changes.

This may require some negotiation with company departments to assess the issues and potential solutions, typically focusing on the adoption of best practices based on elements of user experience knowledge.

Regarding the outcomes, the goals must be clear to all involved parties. This clarity ensures the proper alignment of efforts and encourages the achievement of desired results. The purpose of the measures adopted should also be fair and in proportion to the intended response, and the possibility of more significant and impactful measures, as needed, should also be clear.

To assess the success of the initiatives and outcomes, it is important to establish and define indicators that demonstrate whether the regulatory interventions are capable of alleviating consumer difficulties and addressing societal concerns on the issues.

This includes a greater representation of internal company interests (perspectives from various departments and necessary improvements) and external values (actual demands of consumers and society) to ensure the integrity of the actions.

Regulation demands a strong evidential foundation to support the requirements being made regarding implementation. Therefore, qualitative and quantitative indicators demonstrating the impact of what companies are being asked is recommended.

For instance, consumer complaints indicate the number and specific difficulties faced by consumers. Periodic inspections should be considered if the ongoing monitoring does not achieve the desired results.

The experience of the United Kingdom⁵ illustrates this important point. The Core Switching Tracker and Switching Experience Tracker survey both overall trends in consumer switching of ICT services and consumers' experiences in switching service providers. By looking at switching trends but also the specific experience of switching, the regulator is able to obtain a more detailed understanding of barriers that could impede consumer choice in a competitive market and suggest a divergence from the preferred market outcomes.

In the course of responsive regulation, adjustments can be made throughout the processes, aided by tools, in accordance with the characteristics and relevance of the issues, the conduct and responses of the regulated entities, and the outcomes presented. Such adjustments support the satisfactory resolution of the problems identified and the enhancement of services.

At the conclusion of the responsive process, the results should be disseminated and communicated clearly so that society can be made aware of the outcome of the efforts and service providers can compare them against their sector-wide endeavours.

Another aspect to be noted is that cultural change among stakeholders may be gradual and several stages may be needed to complete and consolidate the new process. This involves raising awareness and commitment, including among top management, instilling specific skills in teams, and ultimately institutionalizing the model. In some cases, companies have realized the benefits and cost savings of resolving issues in a responsive manner, redirecting efforts towards internal team work instead of escalating administrative debates. This has enhanced their image and led to gains in shareholder interest.

In conclusion, apart from continuous monitoring and the effective functioning of internal company compliance, there will also be a need for reflection on the instruments used, periodic scope reviews, and the identification of solutions that keep pace with technological changes and the behaviour of typical users in the sector.

Monitoring and evaluation of results

Constant monitoring of consumer indices and satisfaction is essential, and targeted and intensive action can be taken when the data indicate a need.

Both for the initial success of the proposed implementation and for sustaining the results of the adoption of regulatory tools, the agreed general principles and requirements constitute best practices that should be applied consistently in the ongoing monitoring of issues through each company's internal compliance efforts, serving as the foundation for responsive actions.

It is important to note that, especially after the deadline for implementation has passed, the effectiveness of the regulatory tool used must be monitored using the wide range of data and information available to the regulator, such as consumer complaints, news items, social media monitoring, inspections and direct requests for information from the regulated entities.

This section highlights some of the regulatory tools and mechanisms that have had a positive impact on consumer satisfaction and complaints.

Brazil's contribution⁶ discusses the practical application of a responsive regulation approach. Once the problem has been identified and delimited, the Brazilian National Telecommunications Agency (Anatel) evaluates which mechanism is appropriate for solving the issue. Various indicators are collected and monitored, such as the number of complaints received by Anatel as a result of the problem.

In Australia⁷, telecommunication consumer regulation is a topic of ongoing public discussion focused on ensuring that it remains fit-for-purpose in a dynamic and fast-changing sector, with continuous engagement between government, regulators, the sector ombudsman and consumer groups. Several instruments are subject to mandatory periodic review, such as the Telecommunications Consumer Protections Code, which is required to undergo an independent review every five years.

⁵ <https://www.itu.int/md/D22-SG01-C-0237/>

⁶ <https://www.itu.int/md/D22-SG01.RGQ-C-0039/en>

⁷ <https://www.itu.int/md/D22-SG01.RGQ-C-0061/en>

In certain instances, the minister of the day has determined that the evidence supports transposing certain rules from industry codes into direct regulation. Where this has occurred, it has tended to have a positive impact. The Minister for Communications held a consumer roundtable in March 2023, during which various stakeholders supported transposing further rules into direct regulation, in response to emerging issues impacting vulnerable consumers.

Best practices identified in the contributions

The workshop⁸ contributions and presentations demonstrated the growing need for enhanced consumer protection frameworks and identified this as a core concern of the regulatory authorities.

In the Democratic Republic of the Congo⁹, to ensure that the processes set up by mobile network operators for handling complaints guarantee the rights of consumers, the regulatory framework stipulates strict compliance with the practical measures to be implemented and the methods for handling complaints. Some examples of such measures are the consumer complaint form on the regulatory authority's website, a consumer hotline and periodic surveys of customers' quality of experience.

Rwanda's contribution¹⁰ shows that the national regulatory authority, in order to protect consumers, promotes best practices in the delivery of quality of service and value for money among service providers and follows up on matters of consumer concern raised through various media.

In order to involve consumer groups in the decision-making process, the Regulatory Authority for Telecommunications/ICT of Côte d'Ivoire (ARTCI) established the Consumer Committee in 2022 (contribution¹¹). The Committee is an advisory body that formulates opinions, proposes decisions and makes recommendations to the ARTCI Regulatory Council. In addition, the ARTCI emphasizes the importance of creating permanent proximity centres for consumer education and complaint handling. The centres provide regular training and information activities and are responsible for collecting data on all malfunctions and complaints related to non-compliance with current standards, as reported by consumers, to alert administrations and regulators.

This model of collaboration and proximity between administrations/regulators and consumers creates a trusted ecosystem and significantly enhances knowledge of consumer protection and rights.

Nigeria's contribution¹² discusses interesting dialogue opportunities that are useful for protecting, informing and educating telecom consumers to ensure that they are well informed of their rights and privileges and that their complaints are heard and resolved. For developing countries with multiethnic and multilingual populations, the benefits of having various channels to

educate consumers and seek redress can only bolster the telecommunication market.

Kenya's contribution¹³ shows that the regulator is responsive to changes in the regulatory environment, putting in place a strategy aimed at heightening the regulator's sensitivity to consumers lived experiences so as to develop mechanisms that enhance consumer information, knowledge, skills and confidence in the ICT market.

The United Kingdom's contribution¹⁴ details how the national regulatory authority collects and reports on consumer trends in switching, serves as an example of how research data is used to inform regulatory actions and demonstrates the importance of data collection when attempting to identify demand-side market indicators.

Australia's contribution¹⁵ centres on the consumer-focused rules and obligations that apply at the retail level. It provides an overview of Australia's telecommunication regulatory framework, the main legislation, subordinate legislation (e.g. industry standards or service provider determinations), self-regulation (industry codes) and economy-wide consumer protections, including the Australian Consumer Law.

The Comoros contribution¹⁶ presents as an example of regulatory tools the creation of a digital observatory to which the national regulatory authority allocates the resources needed to collect, analyse and disseminate technical, economic and legal information of interest to consumers.

The Brazilian contribution shows the results of experiments with an alternative model of regulatory problem solving based on the responsive regulation theory. The experience has demonstrated the strategy's effectiveness in protecting consumer rights and reducing consumer complaints overall.

Conclusion

In conclusion, the best practices in terms of fit-for-purpose regulation to protect consumer rights usually include one or more of the principles below.

- a) **Identification and definition of the problem to be addressed:** The scope must be well defined, and the expected objectives must be clear to those involved, so that they prioritize efforts and are incentivized to achieve the desired results. The purpose of the measures adopted should also be in proportion to the desired results, and the possibility of more compelling actions and measures, as needed, should also be made clear.
- b) **Openness to joint solutions:** The solution process should be as open as possible to the interests of those involved, so that it affords a response to the current real demands of consumers and society, and considers companies' views on possible difficulties, viable changes, problem evaluation and possible solutions, which generally focus on the adoption of

⁸ <https://www.itu.int/en/ITU-D/Study-Groups/2022-2025/Pages/meetings/session-Q6-1-may23.aspx>

⁹ <https://www.itu.int/md/D22-SG01.RGQ-C-0031/en>

¹⁰ <https://www.itu.int/md/D22-SG01-C-0155/en>

¹¹ <https://www.itu.int/md/D22-SG01.RGQ-C-0042/en>

¹² <https://www.itu.int/md/D22-SG01.RGQ-C-0020/en>

¹³ <https://www.itu.int/md/D22-SG01-C-0138/>

¹⁴ <https://www.itu.int/md/D22-SG01-C-0237/en>

¹⁵ <https://www.itu.int/md/D22-SG01.RGQ-C-0061/en>

¹⁶ <https://www.itu.int/md/D22-SG01-C-0132/en>

best practices based on elements of user experience after prioritization of themes and initial diagnosis.

- c) **Need for objective performance measurement:** The focus should be on improving services, but this is not always visible from the subjective evaluations. The regulator should have a strong evidence base to support the demands being made regarding implementation of the proposed corrections. Regulators should always have qualitative and quantitative indicators to determine that what is being requested is proportional and necessary for the company to comply with the rules - complaints, for example, can indicate the quantity and points of consumer difficulties. Periodic inspections should always be considered, during diagnosis, the measurement of implementation, and the more intensive investigation or search for non-conformities when monitoring does not achieve the desired results. Monitoring of consumer satisfaction and indices should be constant, and specific and intensive action should be taken when the data indicate that it is required.
- d) **Industry good governance and compliance:** Both for the initial success of proposed implementation and for the maintenance of results, the agreed general principles and requirements constitute good practices that should consistently applied when monitoring topics through the internal compliance of each company, as a foundation for responsive action.
- e) **Transparency and disclosure of results to society:** The work should be disseminated and communicated in such a way that society can learn about its results and that providers can also compare the results of efforts in the sector. This can better inform regulatory debates and better enable certain stakeholders, such as consumer groups, to participate.
- f) **Diversity and flexibility of the measures to be adopted:** Regulation should always be focused on the satisfactory solution to identified problems and the improvement of services, which allows adjustments to be made throughout the processes, with the help of responsive tools, according to the characteristics and relevance of the issues, the conduct and responses of the regulated parties, and the results presented.
- g) **Enabling cultural changes among stakeholders:** Cultural changes happen gradually, and several stages may be necessary to complete and consolidate the new process. This involves awareness and commitment, including from top management, acquisition of specific competencies by teams, and finally institutionalization of the model. In some cases, companies have realized the benefits and cost savings of solving problems in a responsive manner, directing efforts towards the work of internal teams instead of escalating administrative debates, ultimately enhancing their image and generating greater shareholder interest.
- h) **Evolution and improvement of monitoring:** It is necessary to continue studies and discussions on the perpetuation and continuity of results, in order to avoid or mitigate the loss of effectiveness of the measures over time. Thus, in addition to continuous monitoring and good functioning of companies' internal compliance, there will still be a need to reflect on the expansion of instruments to be used, periodic scope reviews, and identification of solutions that keep pace with technological changes and the behaviour of typical users in the sector.

Annex

It is important to note that this annual deliverable also takes account of the deliberations and contributions of the workshop held on trends in consumer protection regulatory instruments to enable digital transformation. The workshop provided a platform for participants to discuss and learn about best practices for developing policies and regulations to protect consumers in telecommunication and digital markets, based on collaboration and communication between regulators and regulated entities, considering different stakeholders' perspectives, as well as the use of graduated

consequences that are proportional to the severity of non-compliance. It was followed by discussions of how such policies and regulations can be evidence-based, outcome-based and incentive-based, promoting self-regulation or co-regulation to increase confidence among all those involved, especially consumers.

For further information, consult:

Thematic workshop on the topic of "Trends in consumer protection regulatory instruments to enable digital transformation", held on 17 May 2023: <https://www.itu.int/en/ITU-D/Study-Groups/2022-2025/Pages/meetings/session-Q6-1-may23.aspx>

Q6/1 Final Report for the 2018-2021 study period: "Consumer information, protection and rights: Laws, regulation, economic bases, consumer networks": <https://www.itu.int/en/myitu/Publications/2021/07/22/12/33/Consumer-information>

Follow the work of **ITU-D Study Group 1 Question 6/1 for 2022-2025** *Consumer information, protection and rights*

Question 6/1 website www.itu.int/en/ITU-D/Study-Groups/2022-2025/Pages/reference/SG1/questions/Question-6-1.aspx

Mailing lists: d22sg1q6@lists.itu.int subscribe [here](#)

ITU-D study groups Web: www.itu.int/itu-d/sites/studygroups/

Share your feedback on devSG@itu.int Tel: +41 22 730 5999

ITU Publications

Published in Switzerland, Geneva, 2023

ITU Disclaimer: <https://www.itu.int/en/publications/Pages/Disclaimer.aspx>



International Telecommunication Union
Place des Nations, CH-1211 Geneva Switzerland