The Consumer Perspective – A Stakeholder in Utility Regulation and Policy-Making?

Stakeholders are valuable resources for eliciting concerns and developing evaluative criteria since their interests are at stake and they have already made attempts to structure and approach the issue. Consumers are necessary to provide the data base and the functional relationships between options and impacts. The utility consumers are the potential victims and benefactors of proposed planning measures and are the best judges to evaluate the different options available on the basis of the concerns and impacts revealed through the other two stakeholder groups.

Consumer protection is a primary mandate of infrastructure regulators. To fulfill this mandate, regulators must ensure effective consumer/stakeholder participation in the regulatory process. First, consumer participation is essential to hold service providers accountable for the delivery of the "regulatory contract." The bargaining power is indeed unequally distributed among stakeholders: consumers are composed of diffused interest groups, who are not equipped to "voice" their concerns effectively, while service providers have the capacity to negotiate the terms of the regulatory contract directly with the regulator. Second, consumer participation provides the "checks and balances" required to ensure that the regulator does not stray from its mandate of protector of consumer rights. Depending on how effectively regulators fulfill their mandate vis-à-vis consumers, the regulatory process will benefit from a different degree of consumer involvement through three rungs of consumer engagement, namely *information, consultation* and *partnership.*

The literature exploring citizen participation in government policy-making depicts each level of citizen involvement in the political process as a distinct *rung* in the "ladder of citizen engagement," with successive rungs of the ladder corresponding to progressively higher degrees of citizen empowerment in determining the outcome of the decision-making process (Arnstein 1969). Similarly, there are different gradations of consumer participation in the regulatory process, varying to a significant extent across countries and sectors and depending on the type of regulatory model in place. The following levels of involvement could be identified as four critical rungs on the ladder of consumer participation in the regulatory process:

♦*Information.* Information is the first step toward legitimate consumer involvement in the regulatory process. At this rung of the ladder, emphasis is placed on one-way flows of communication (from regulators to consumers) with no channel provided for feedback. Hence, when consumer participation is limited to information, consumers have little opportunity to influence the outcome of the decision-making process.

♦*Consultation.* Regulators rely on consultation with consumers and other interest groups as a valuable source of non-binding advice to inform the regulatory process. Consultations can either be conducted on an ad hoc basis on specific consumer issues or throughout the regulatory process. However, if not combined with other modes of consumer involvement, consultation may not be sufficient to ensure effective consumer participation, as it offers no assurance that consumer input will be taken into account in the decision-making process.

♦*Partnership* (acting and deciding together). The third rung of the ladder, partnership, involves some degree of "redistribution" of decision-making power as consumers are granted the right to negotiate with the regulator and the other stakeholders the outcome of the regulatory process. Given the diffuse interests of the consumer constituency, effective partnership with consumers hinges on the appointment of consumer spokespersons fully accountable to the consumer constituency.

♦*Empowerment* (delegating decision-making power to consumers). At this rung of consumer engagement, consumers are empowered to manage their own infrastructure. Consumer empowerment works best when infrastructure networks are small and can be within the control of a single community—for example, small town water supply systems are often ideal candidates for local community management. However, consumer empowerment is generally unfeasible in the case of large-scale infrastructure, due to the complexity of managing diffuse consumers groups with conflicting interests.

At the first two rungs of the ladder of consumer engagement (information and consultation), consumer participation plays an advisory role. At the topmost rungs of consumer engagement (partnership and empowerment), consumer participation leads to some degree of sharing of the decision-making power. However, given that the topmost rung of the ladder (empowerment) is seldom feasible in large infrastructure industries, a three-rung ladder (information, consultation, partnership) is often times used to illustrate the different levels of consumer participation in infrastructure regulation.

Consumer participation is perceived as the most helpful in the planning stages of outreach, identifying issues and prioritizing issues. A regulatory process that emphasizes stakeholder participation, transparency and predictability will be more credible than one without these features. Procedures matter because the role played by the regulatory agency in mediating among the interests of various stakeholder groups. Participation by all stakeholders is one way in which regulators can be held accountable for their actions. It is also recognized that communication and consultation are necessary if stakeholders are to be informed of rules and allowed to contribute to regulatory discussions.

Stakeholder participation means that all stakeholders in the process – governments, firms and consumers – contribute effectively to improve the quality of regulatory decisions. Participation increases the support from all the parties to the reform process and helps to achieve more efficient and pro-consumer outcomes. Giving representation to consumers in regulation can offset the potential for capture embedded in the regulatory system and to allow the benefits of increased efficiency to spread to consumers under the form of tariff reductions.

Participation is about the involvement of all stakeholders through a process of communication and negotiation to influence decisions that affect their lives. Furthermore it leads to the creation of accountability. Consumer participation in the regulatory process is important as it balances the process and frustrates the potential for capture which is an embedded characteristic.

How do consumers participate in this business of regulation and policy-making? In principle, the three most common approaches which represent the level and depth of consumer engagement are:

Consultation
Representation
Influence

Consultation involves the accommodation of dialogue and information-sharing and can vary from one-off to ongoing consultation. Representation means institutionalizing regular access for consumers in decision-making. Influence allows for consumers to achieve a tangible impact on policy making and the delivery of utility services.

The presence of consumers in the regulation process affects the regulated firms' ability to capture as the firms must secure the support of the regulator as well as the consumers, in order to be effective. However, while consumer participation in regulation is an attempt to incorporate the concerns and voices of the poor and disenfranchised, it has its own set of problems such as a) who participates, b) how to empower them, c) how to avoid exclusion and d) how to overcome the sometimes inherent weaknesses in consumer groups for policy-making analysis, etc. This last point is very important in the context of the utilities being technically and financially complex so deficiencies in knowledge can limit and undermine consumer engagement unless we equip ourselves with those substantial skills.

It is important to also recognize that in regulation the difference in bargaining power of all the stakeholders is clear and therefore interests can sometimes be conflicting. In that context, consumer participation runs the risk of becoming just a technical device to validate decisions that perpetuate the unequal powers, unless these interests are properly defined and effective mechanisms are put in place to render the process accountable.

Depicting different forms of consumer participation as ladder rungs is a useful tool to capture different gradations in consumer participation in the regulatory process. However, the tool presents limitations. First, the ladder is a simplification, as the distinction between the different levels is often blurred. For example, even when consumer advice is not binding, consumers' opposition to regulatory reforms may be strong enough to de-legitimize the role of the regulator. Second, higher rungs of consumer participation may not necessarily lead to better regulatory outcomes, in particular in newly-established regulatory frameworks without a tradition of consumer representation. In fact, ascending the ladder of consumer participation is a lengthy and difficult process, which needs to be supported by an enabling institutional environment — the higher the rung of consumer participation, the more sophisticated the institutional environment, needs to be to accommodate additional layers of consultations.
Source: Arnstein 1969, Franceys 2004.
Another interesting form of consumer participation in the utility regulatory process is the Canadian model of "Smart Regulation". I would like to briefly explore this model. Integral to the concept of Smart Regulation is the fact that consumers must have a strong voice in the regulation of important public services and utilities. They must be vigilant in compelling government and the private sector to administer programmes and conduct business fairly and with due process. Consumers must advance the interests of individuals and consumer groups who are under-represented in issues of major public concern and must be the champion on issues regarding the delivery of important public and private utility services. Consumer groups must ensure that the public interest is not neglected by government and the private sector when decisions are made about consumer issues. In fact the Chair of the External Advisory Committee on Smart Regulation – Gaetan Lussier – declared that "Regulating is an act of public interest. It should be developed from the citizen's perspective".

In committing to the "Smart Regulation" strategy, the Canadian federal government indicated that with the new knowledge-based economy, new approaches to regulation needed to be adopted. It was recognized that regulation needed to achieve the public good while at the same time, enhance the climate for investment in the Canadian market.

One outstanding achievement of the new approach is that it provided greater incentives to improve efficiencies and introduce new service innovations and concurrently provide rate protection for the consumers. This method however was not perfect as quality of service and other problems emerged. In trying to tackle those issues, the focus shifted to identifying and dealing with the major challenges. Several areas came in for attention and some objectives were set, as it was believed that the system would improve over time.

These objectives included making the regulatory system more transparent, weakening the monopoly on information, making the regulatory system more accountable, introduce more competence to the regulatory system, making the regulatory system more independent and increasing the availability of cost awards among others. Central to this new approach also was the philosophy that if consumers want greater choice and faster access to utility services and innovations, they will have to prepare themselves to assume greater risk and take more personal responsibility for staying informed and for the choices made. At the same time, smart regulation recognizes it responsibility to educate the consumer or all will be for naught if consumers do not have the information to make informed choices in the marketplace.

The public interest is another issue which is defined by smart regulation as the assumption that there is a general interest of the community as a whole that can be affected by the actions of the governments, including regulators. Without the proper mechanisms put in place to obtain and weigh input in policy development, the better-resourced stakeholders will prevail. The challenge therefore is to balance the contending interests in making specific decisions and policy that in the end will achieve the societal and/or statutory objectives. The essential feature of smart regulation is where the unique interests must come together to strike a balance and essentially the barriers must be removed in order to realize the specific operational policies mentioned above – transparency, accountability, competence, independence and resources for the economically-disadvantages to participate.

Consumer perceptions of the regulatory process are wide and varied as exemplified in the result results of a consumer survey – UTILITY SERVICE FOR ALL: A Study on Consumers' View of the OUR and the Utility Companies – commissioned by the OUR in Jamaica. Very briefly, the results showed that the Office of Utilities Regulation (OUR) received a somewhat unfavorable rating for its customer service performance. The surprising result was that the ratings for the utility companies were higher than that of the OUR. According to the study, on a scale of one to five, with five being the highest, the OUR received ratings of between 1 and 2.45. The utility companies regulated by the OUR all received ratings above 3, with the lowest being 3.03. The survey revealed that consumers were pleased with the OUR's assistance in resolving problems however they accused the regulatory body of not doing enough to help customers, not inspecting meters properly, granting bill increases, protecting the utility companies and not ensuring that consumers receive good service from utility providers.

Those results indicate that there may be some consumer ignorance in terms of the mandate of the OUR and what the regulator does and does not do. What is instructive though is the response of consumers with respect to what else they perceive the OUR should be doing: more promotions, protect consumer rights, more vigilance in billing, work more effectively, lower utility costs, be fair with consumers and investigate complaints more thoroughly. Although the results could be viewed as disconcerting, it is my opinion that the ratings for the OUR indicate a fair performance of the regulator and that there appears to be a somewhat balanced approach to regulating utilities, within the guidelines established by law.

Finally, I trust that I have clearly conveyed some of my thoughts about the role that the consumer as a stakeholder must play in utility regulation. What I hope you will leave here with is that regardless of the participatory model employed, the principles and level of importance are the same – consensus and clarity of the rules and responsibilities of each stakeholder, including the consumer. Thank you.

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