1. Why does regulatory policy matter?
2. Performance and governance of regulators
3. Performance and new policy tools: behavioural insights
1. WHY DOES REGULATORY POLICY MATTER?
What do we understand by regulation?

Diverse set of instruments by which governments set requirements on enterprises and citizens

Laws, subordinate rules, administrative formalities and rules issued by non-government bodies and self-regulatory bodies to whom government have delegated regulatory powers

At the sector/industry level, regulation can include setting prices and/or improving the operation of a market so that consumers have access to secure services and service providers receive a reasonable rate of return → role of economic regulators
Why is regulatory policy important?

Regulation is one of the three core levers for government to manage the economy (along with fiscal and monetary policy).

Greater urgency for growth-enhancing structural reforms as the crisis narrowed the scope for macroeconomic support → regulatory policy can facilitate competition and market forces in support of efficiency, equity and green growth.

Devising regulations is rarely straightforward (technical complexities, uncertainties, political constraints, unintended consequences, collateral damage, excessive cost) → importance of embedding regulatory policy discipline in policy making.
Better regulation is a key focus of OECD since 20 years

- **20 years of experience** in dealing with regulatory policy/better regulation (OECD Regulatory Policy Committee and Network of Economic Regulators)

- **Internationally recognised principles**: *Recommendation on Regulatory Policy and Governance*

- **Regulatory policy reviews** of most member countries + *Brazil (2008)*, China (2009), Russia (2005), Indonesia (2012)

- **2015: Regulatory Policy Outlook**, First systematic review of regulatory practices across OECD countries, next edition in 2018
Regulatory agencies play a key role in better regulation

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
The OECD Network of Economic Regulators supports regulators on a number of topics.
2. REGULATORS’ PERFORMANCE AND GOVERNANCE
What does it mean?

Who cares about governance – where is my train?
2007 OECD Survey on Infrastructure and Investment

Effects of regulation on investment through pricing (sector and firm-levels)

Considering also independence of regulators (legal status, own budget, decisions)

Independence contributes to a stable and credible framework for investment

Data suggest that independence of sector regulators can help establish a stable and credible framework for investment.

Policy mix: incentive price regulation has greater impact on investment when accompanied by independent regulator.

Context: greater effect of independent regulator on certain sectors - open to competition.

Best Practice Principles for the Governance of Regulators

1. Role clarity
2. Preventing undue influence and maintaining trust
3. Decision-making and governing body structure
4. Accountability and transparency
5. Engagement
6. Funding
7. Performance evaluation
Formal independence varies across countries and sectors

Index scale 0 to 6 from most to least independent

… as does the scope of action of regulators

Index scale 0 to 6 from widest to smallest scope of action

... and their level of accountability

Index scale 0 to 6 from most to least accountable

Formal and practical independence go hand in hand

<table>
<thead>
<tr>
<th><strong>Formal independence (de jure)</strong></th>
<th><strong>Practical independence (de facto)</strong></th>
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<tbody>
<tr>
<td>• Legal status of the regulator</td>
<td>• Administrative and institutional culture</td>
</tr>
<tr>
<td>• Formal relationship with ministers, ministries and other government bodies and institutions</td>
<td>• Working relationship with government</td>
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<tr>
<td>• Terms of appointment for board members and termination provisions</td>
<td>• Leadership</td>
</tr>
<tr>
<td>• Pre-employment and post-separation provisions</td>
<td>• Daily interactions with regulated industry</td>
</tr>
<tr>
<td>• Funding</td>
<td>• Setting and managing the regulator’s budget</td>
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</table>
De facto independence – “The questions never dared ask” Survey 2015

Independence Survey

Instructions from the Executive
Relation with Industry/Stakeholder
Staff
Budget

Graph showing the number of national and sub-national regulators.

Pie chart showing the distribution of sectors: Single-sector 70%, Multi-sector 15%, Dual-sector 6%, Sectoral and Competition 10%.

Column chart showing the percentage of regulators in different sectors: Energy 33%, Water 6%, Transport 13%, Communications 15%, Payment services 2%.
Choosing a director or board: who nominates and appoints?

**Authority to nominate**

- Executive: 20
- Mixed selection committee: 5
- Independent experts only: 3
- Executive and legislature: 2
- Legislature: 1
- Up to government: 1

**Authority to appoint**

- Executive: 29
- Head of state without executive powers: 9
- Legislature: 7
- Executive and legislature: 2
- Other regulator: 1

Practical guidance by the OECD for creating a culture of independence

Role clarity and responsibility
- Clarity of role and relations in law
- Outreach to gvt entities
- Strategic foresight function

Transparency and accountability
- Performance reporting
- Transparent engagement
- Feedback and appeals
- Ethics code

Financial independence
- Funding source
- Identification of needs
- Multi-yr budget
- Autonomous mngt
- Ext and int audit

Leadership
- Nomination
- Appointment
- Mandates
- Conflict of interest
- Exiting process

Staff behaviour
- Recruitment
- Incentives
- Salary scales
- Employment restrictions

Embedding governance into organisational performance: PAFER reviews

Role & Objectives
- Clearly identified role & objectives
  - Clear role and set of objectives aligned with functions and powers to inform actionable performance indicators.

Input
- Efficiency and effectiveness of Input
  - Organisational and financial performance (e.g. planned activities completed on time and on budget).

Process
- Quality of processes for regulatory activity
  - Existence and effective use of regulatory tools and processes (e.g. measurement of accuracy, timeliness, accessibility, participation, risk analysis, use of evidence).

Output
- Output from regulatory activity
  - Effective regulatory decision, actions and interventions (e.g. decisions taken which were upheld).

Outcome
- Direct outcome/impact of outputs (e.g. compliance with regulator’s decisions).
- Wider outcomes — to note that these indicators are meant to be a “watchtower” to loop back and help identify problem areas, orient decisions and identify priorities; they should be used as learning (rather than accountability) indicators:
  - Market structure (e.g. level of concentration);
  - Service and infrastructure quality (e.g. frequency and reliability of services to consumers, reliability and deployment of infrastructure);
  - Consumer welfare (e.g. ability of consumer to choose the service that best fits their preferences);
  - Industry performance (e.g. revenues, profitability, investment).
PAFER applied to diverse regulators in Colombia, Latvia and Mexico

<table>
<thead>
<tr>
<th>On-going and completed reviews</th>
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<tbody>
<tr>
<td><strong>2015</strong></td>
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<tr>
<td>Colombia: Communications Regulator (CRC)</td>
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<tr>
<td><strong>2016</strong></td>
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<tr>
<td>Latvia: Public Utilities Commission (PUC)</td>
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<tr>
<td>Mexico: Energy Regulators (external governance)</td>
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<tr>
<td><strong>2017</strong></td>
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<tr>
<td>Mexico: Agency for Safety, Energy and Environment (ASEA)</td>
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<tr>
<td>National Hydrocarbons Commission (CNH)</td>
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<tr>
<td>Energy Regulatory Commission (CRE)</td>
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<tr>
<td><strong>On-going</strong></td>
</tr>
<tr>
<td>Ireland: Commission for Energy Regulation (CER)</td>
</tr>
<tr>
<td>Costa Rica: Regulatory Authority for Public Services (ARESEP)</td>
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<tr>
<td>Superintendency of Telecommunications (SUTEL)</td>
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</table>
Key findings and performance drivers for regulators

Defining priorities and measuring progress

• Setting and communicating on priorities and trade-offs between objectives

• Linking strategy-setting, work planning and monitoring and reporting on results, for readability and visibility

• Defining a manageable number of performance indicators that cover the regulator’s internal functioning, outputs, and sector performance

Status and relations with government (ministries and parliament)

• Developing organisational culture and practice of independence

• Building effective and constructive relationship with parliament, for transparency, accountability and trust in regulatory activities

• Appropriate channels and resource allocation for policy advice to government based on enforcement and implementation experience
Key findings and performance drivers for regulators (2)

**Regulatory quality tools**
- Importance of a coherent and high level regulatory quality agenda at central government level
- Building capacity to analyse data and evidence, turn into evidence, information and learning

**Resource management**
- Reconciling “special needs” of economic regulators in attracting and managing human capital with government salary and headcount constraints
- Building alliances with other regulators to share resources and jointly address challenges

**Peer reviews**
- Identify drivers of performance and opportunities for improvement
- Demonstrate a strong linkage between governance and the drivers of performance
3. USING NEW POLICY TOOLS: BEHAVIOURAL INSIGHTS
What is behavioural insights?

• “Behavioural insights” – lessons derived from the behavioural and social sciences, including decision making, psychology, cognitive science, neuroscience, organisational and group behaviour – are being applied by public bodies with the aim of making public policies work better.

• It often involves the use of experiment and observation to identify patterns of behaviour and use these findings to inform policies and regulation.

• It is about taking an inductive approach to policy-making, where experiments replace and challenge established assumptions based on what is thought to be the rational behaviour of citizens and business.
### Application of Behavioural Insights to Improving Policy Effectiveness

<table>
<thead>
<tr>
<th>Simplification of information</th>
<th>Defaults and Convenience</th>
<th>Salience and Attention</th>
<th>Debiasing and Decision Quality</th>
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<tbody>
<tr>
<td>“know before you owe” simplified information disclosure for mortgages, credit cards and student loans, Consumer and Financial Protection Bureau, USA</td>
<td>“Kiwisaver” Auto-enrolment in 2007 led to 50% pension coverage increase, New Zealand</td>
<td>Reduction in alcohol purchases by tax made salient on price tag vs. equivalent tax levied at the till (Chetty, Looney &amp; Kroft 2009)</td>
<td>US Fuel Economy Labels – regulation by US Environmental Protection Agency to have gallons per 100miles and annual fuel cost labels in addition to miles per gallon. (Larrick and Soll 2008)</td>
</tr>
</tbody>
</table>

*Regulatory Policy and Behavioural Economics, OECD (2014)*
Example - Too Much Information: Reduction in cognitive ability by 10-20%
What does it mean for regulators? Improving consumer choice in Colombia

- Mobile services: basic or fully loaded BUT right for users?
- Regulation mandating “clear, transparent, necessary, truthful” information…working for users?
- Survey and testing by regulator (CRC) + OECD support → too much information/not at key decision points
- Tested solution: historical information on consumption

[Graph showing consumption data for different months]
What does it mean for regulators?
Supporting energy efficiency in Italy

- Improving energy efficiency through consumption data and better information
- Testing reaction to information on energy consumption
  - Awareness of energy consumptions and related costs (e.g. frequency ranges from feedback provided at the end of each round – simulating a smart meter –, or simulating the information taken from a monthly electric bill)
- Re-designing layouts of electric and gas bills
BI is being applied around the world

1. Global coverage: BI has taken root in many countries around the world and across a wide range of sectors and policy areas.

2. Variety of institutional models:
   - Nudge units appearing in both central and local governments, as well as ministries, regulators and international organisations
   - Not always steered from the centre – Units found in departments or specialized agencies, as well as established for specific projects and initiatives
BI is used to tackle a wide variety of policy problems

Applications of BI by policy areas & sectors

- Financial Products: 30
- Health and Safety: 25
- Consumer Choices: 20
- Other: 15
- Labour Market: 10
- Energy: 5
- Public Service Delivery: 5
- Environment: 5
- Telecommunications: 5
- Tax: 5
- Education: 5
BI is not as expensive as once thought

- Cost does not appear to be a significant barrier to applying BI
- “One size doesn’t fit all”: many ways to apply behavioural insights – important to target methodology to issues being addressed
Macro trends show room for improvement

Was the implemented action or decision evaluated?
To conclude:

- Regulatory agencies are the interface between regulatory regimes and markets, citizens and businesses: they are key players for growth and development.
- Governance of regulators matters for performance:
  - Both formal (de jure) and practical (de facto) independence are needed.
  - A culture of independence can act as a buffer to undue influence.
  - Good internal governance key for organisational performance (e.g. planning and monitoring, financial and human resource management, decision-making processes).
- New tools like behavioural insights can strengthen effectiveness and ensure that implementation issues are addressed in regulatory design.
- The OECD stands ready to support the regulatory policy agenda and the performance of regulators in Brazil, via a number of tools and collaborations.
Further information

OECD work on regulatory policy
http://www.oecd.org/gov/regulatory-policy/

Network of Economic Regulators
http://www.oecd.org/gov/regulatory-policy/ner.htm

Behavioural Insights