

Event Report



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According to the OECD¹ :

“...RIA’s most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing – questioning, understanding real-world impacts and exploring assumptions...”

Regulation is an essential part of policy instruments government use to achieve their objectives. Also, regulations affect multiple groups in society differently. However, many such effects are difficult to identify when formulating regulations. RIA could help policy makers in making informed choices by developing a good understanding of who will be affected by a regulation to what extent and how.

In the light of the above, CUTS International and National Institute of Public Finance and Policy (NIPFP) organised a Regulatory Impact Assessment (RIA) Training for Telecom Regulatory Authority of India (TRAI) officials on 16th and 17th April 2018 at TRAI office, New Delhi.

It was a 2-day training programme divided into 6 training sessions (Annexure 1). The sessions were mainly focussed on introduction to RIA, its elements and benefits. The opening address was given by TRAI chairman Dr. R S Sharma. The training sessions were delivered by the stalwarts of telecom Industry such as Professor Ajay Shah, Professor V Sridhar, Suyash Rai, Devendra Damble and Sudipto Banerjee and economists such as Professor Siddharth Mitra. Various case studies of Telecom Sector were discussed to develop better understanding of RIA among TRAI officials.

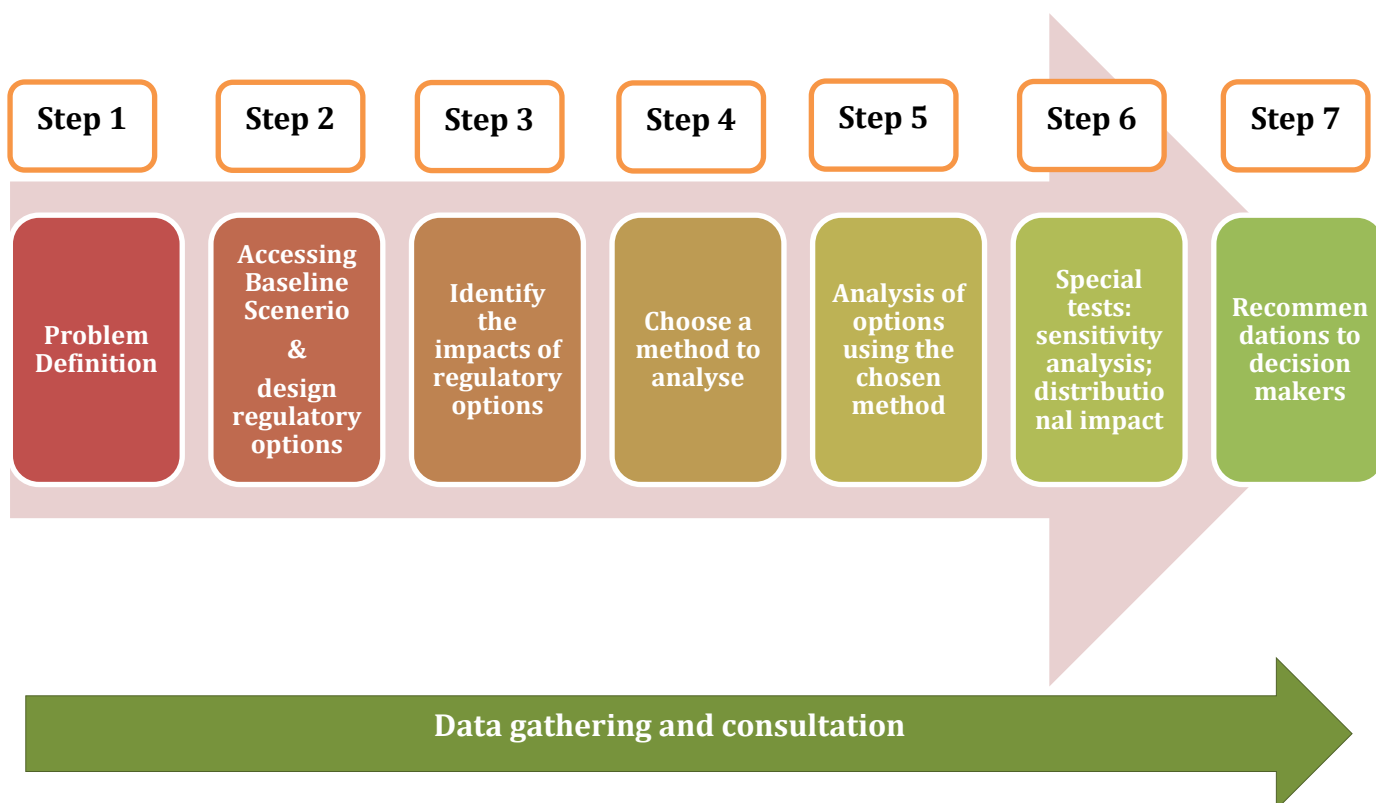
¹ Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance. OECD (2002), p 47

Summary of key points are discussed below:

Introduction to RIA

RIA is a process of systematically identifying and assessing the expected effects of regulatory proposals, using a consistent analytical method, such as cost benefit analysis. It is based on defining underlying problem and determining the core regulatory objectives. Subsequently, it involves identification of relevant policy and regulatory alternatives that are capable of achieving aforementioned objectives. Such alternatives must be assessed, using one or the other analytical methods. Consequently, decision-makers should be informed about the effectiveness and efficiency of different alternatives.²

The basic steps involved in RIA are:



It was discussed that in India regulatory regime is in its nascent stage. Though, the regulators are bestowed with administrative, financial and legislative powers but they do not have trust of stakeholders. Unlike legislators, they are not appointed through an electoral process. To earn the trust of stakeholders, regulators should enhance their internal capacities and adopt technical and logical frameworks to formulate regulations.

It was further discussed that dynamic sectors such as telecom affect different stakeholders at multiple levels. Therefore, regulations thus formed should be based on systemic analysis of cause and effect on different stakeholders and economy at large.

² Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA), OECD (2008), p 3

TRAI's process for making regulations and recommendations

This session intended to discuss the existing regulation making process followed in the TRAI. It was highlighted that according to a study³, TRAI appears to be a better regulatory authority when compared to SEBI primarily on two main parameters; a. instrument subject to legislative scrutiny; b. prior consultation process.

Also, principles of a good regulation making process such as clarity of purpose, least coercive option, transparency, consultation, and review amongst others were discussed. However, it was argued that the regulation making process should focus on substance over form.⁴

It was further discussed that while formulating regulations, inferences and opinions are often made on the basis of incomplete information which may result in market failure. Subsequently, types of market failure in the telecom sector were discussed.

In the light of the above, it was recommended that a centralised database such as FDMC⁵ should be built to overcome information asymmetry. Also, it was recommended that research programs and seminars should be organised to enhance capacity of regulators and other key stakeholders.

Furthermore, it was pointed out that regulation making process of TRAI is good but to make it better, TRAI can adopt best practices such as developing an agenda paper before coming up with a consultation paper, highlighting the problem and evidence of market failure. It was also recommended that while drafting consultation paper; authorities should evaluate various regulatory options and state the reasons for choosing an option. On the contrary, it was highlighted that TRAI develops agenda paper for some issues but it is not a well-accepted practice in the authority. It was pointed out that while such practices should be adopted but cost effectiveness of such processes should also be assessed. Subsequently, it was discussed that this practice can be adopted on a case to case basis.

Furthermore, it was opined that urgent regulations may dispense with the entire regulation making process but the authorities should issue reasoned statement clearly stating the need for such action. Therefore, it was recommended that such emergency regulations should be framed for a pre decided timeframe.

³ *Regulatory responsiveness in India: A normative and empirical framework for assessment*, Anirudh Burman and Bhargavi Zaveri, 2016

⁴ Substance over form is an accounting concept which means that the *economic substance* of transactions and events must be recorded in the financial statements rather than just their *legal form* in order to present a true and fair view of the affairs of the entity. <http://accounting-simplified.com/financial/concepts-and-principles/substance-over-form.html> accessed on 23 April 2018

⁵ Financial Data Management Centre (FDMC) a repository of all financial regulatory data, which would “serve to assist the Financial Stability and Development Council (FSDC) in conducting research on systemic risk and system-wide trends, and facilitate a discussion about policy alternatives between the members of the FSDC. <https://dea.gov.in/sites/default/files/A%20note%20on%20Financial%20Data%20Management%20Centre.pdf>, accessed on 23 April 2018

In addition, it was discussed that telecom sector is extremely dynamic in nature therefore there is a need for ex-post review of existing regulation primarily to address changes in the market dynamics.

RIA – Problem Definition

This session aimed to discuss the first step of RIA i.e. problem definition and thus assessing the need for regulatory action. It was discussed that regulations are made to address a particular problem(s). Thus, it is imperative that the problem should be defined with great care. Further, it was discussed that since problem statement is the root cause of RIA, therefore a structured process should be followed. It is widely believed that structured processes help in minimising errors.

In the light of above, strategy/ steps needed in defining a ‘*problem*’ were discussed. The first and foremost would be to identify the prevalent problems in the sector. Further, it is reasonable to assume that some of the problems would have been aroused due to the existence of other problems in the sector. Thus, it is imperative to develop clarity between causes of the problems and their unintended effects. It was further discussed that this would help in analysing the root cause of the problem. Subsequently, it will assist in analysing the effectiveness of existing regulatory framework and the need for better regulatory measures.

It was further discussed that it is critical to identify the affected population while defining the scope of problem. It was opined that the scope of the problem may influence the selection of regulatory alternatives at a later stage. Therefore, it was recommended that a framework such as ‘Problem Tree’⁶ should be used as an instrument to define problem.

In addition it was also discussed that problem definition would form the basis to determine regulatory objectives. It was opined that pertinent problem definition will assist in determining ‘SMART’ objectives.⁷ It is widely believed that effectiveness of a regulation can be measured on the basis of the extent of meeting its objective.

Estimating Cost Benefits in RIA

This session aimed to discuss the general methodology of Cost-Benefit Analysis (CBA). It is one of the methods to analyse regulatory alternatives. Further, type of costs to be considered while conducting RIA study was discussed. It was emphasised that net monetised benefits from the next best alternative should be far greater than the net monetised costs of the existing regulations and the next best alternative.

It was further debated that the next best alternative should be chosen such that it is beneficial for all the strata of the society. It has been argued that in the past, some

⁶ The “Problem Tree” is an extremely useful instrument that enables the “branching” of the problem into causes and consequences.

⁷ SMART Objectives – Specific, Measurable, Achievable, Realistic and Time-bound

regulations/ Acts⁸ are extremely beneficial for a particular group of society but detrimental for other groups. Thus, the next best alternative may not be the best in terms of net monetary value but also beneficial for every strata of the society. Consequently, it was advised that impact of a regulatory alternative should be assessed for different stakeholders separately. This would help in analysing benefits in holistic manner.

In addition, specific case studies of telecom sector were discussed. It was deliberated that regulatory alternative should not inhibit competition in the sector. While undertaking CBA distributional impact should also be assessed. It will help in analysing the impact on different stakeholders separately. Further, it was opined that such exercise would help in choosing an alternative which can provide high economic and social benefits and does not disrupt the market negatively.

In addition, it was pointed out that while calculating monetised cost and benefits, it is imperative that cautious efforts should be made to collect relevant data. It is widely believed that bias data results in ineffective regulations.

Methods of Analysis & Comparison of Options

This session aimed to discuss various methods of analysis of alternatives to existing regulatory framework. Analytical Methods such as Cost Benefit Analysis, Cost Effective analysis, Multi Criteria Analysis, and Break Even Analysis were discussed. It was highlighted that each method has different utility and would be suitable for analysis in different cases. Subsequently, deliberations on utility and suitability of these methods were done. It was pointed out that monetisation of cost and/or benefits is not always possible. For instance, estimation of the price effects due to improved competition in the market. As it happened in case of Reliance Jio, the pricing environment of the telecom sector got disrupted. Thus, method of analysis would differ depending upon the availability of relevant data.

It was also discussed that it is imperative to include Social Discount Rate⁹ (SDR) while monetising cost and benefits. It was opined that SDR is the interest rate used to calculate present value of the benefits and costs of proposed policies. It would further allow comparing of different scenarios and/or outcomes that span across time in an “apples to apples” manner.¹⁰

Stakeholder consultation, feedback and regulatory response

⁸ <https://scroll.in/article/874651/a-new-study-on-east-kolkata-wetlands-carbon-absorption-abilities-is-a-wake-up-call-for-conservation>

⁹ Social Discount Rate is the weighted average of SOC and SRTP, wherein social cost of capital (SOC) is a measure of the marginal earning rate for private business investments and social rate of time preference (SRTP) is a measure of society's willingness to postpone private consumption now in order to consume later. One of the indicator of SRTP is the earning rate on personal savings (i.e., by individuals). <https://cals.arizona.edu/classes/rnr485/ch6.htm>

¹⁰ <https://www.mercatus.org/publications/social-discount-rate>

Stakeholder consultation is an extremely critical process of RIA. It continues right from the beginning till end of the study. Stakeholder consultations take place at multiple levels at different stages of RIA. It helps in assessing the need for regulatory action and also assists in identifying and defining the scope of problem. Further, it forms the basis to understand the baseline scenario and subsequently in designing the alternatives to the existing regulatory framework.

Furthermore, it was opined that stakeholder consultation was imperative in understanding the discourses of various stakeholders. In addition, it is crucial in reasoned out prevalent issues in the sector and subsequently develop the understanding of point of consensus among the stakeholders. This will be important in framing better policies and regulation and even more so important in implementing them on ground.

For instance, regulations making process in TRAI, stakeholder consultation take place at multiple levels such as comments and counter comments on consultation paper followed by open house discussion. However, it was discussed that while this process is participatory in nature but it can be improved by tweaking point of consultations such as public consultation can be done on draft regulations rather than on consultation paper. However, the proposed change should be adopted on a case to case basis.

Conclusion:

It is evident that regulation has costs as it has benefits. Thus, it is reasonable to assume that inappropriate regulation could obstruct economic growth by creating unease in doing business. However, there are limits within economies to the amount and type of regulation to be absorbed and also enforced effectively by governments. Formulating and enforcing regulation effectively is burdensome for government administrations. Therefore, it is important that they are well designed. Thus, RIA could be one of the potent tools which safeguards formulation of effective and efficient regulation to some extent and helps in achieving the primary objective at the lowest total cost possible.

Appendix 1

Agenda for training on RIA	
Day 1	
10.00 - 10.20	Opening remarks by senior officials of TRAI, NIPFP and CUTS
10.20 - 10.30	Overview of the training programme (NIPFP) Smriti Parsheera (NIPFP)
10.30 - 11.30	Introduction to RIA, its elements and benefits Prof. Ajay Shah
11.30 - 12.30	TRAI's regulation making process, summary of NIPFP's recommendations Sudipto Banerjee (NIPFP)
12.30 - 13.30	Lunch break
13.30 - 15.30	Problem definition, objectives, analysing the need for regulation and understanding the baseline Prof. V. Sridhar (CUTS)
15.30 - 15.45	Tea break
15.45 - 17.00	Design of regulatory options, Costs/ Benefits: types, quantification, discounting Prof. Siddhartha Mitra (CUTS)
Day 2	
10.00 - 10.30	Recap of Day 1
10.30 - 12.30	Design of regulatory options, Costs/ Benefits: types, quantification, discounting Prof. Siddhartha Mitra (CUTS)
12.30 - 13.30	Lunch break
13.30 - 15.00	Methodologies for analysis, comparison of options and presentation of results Suyash Rai (NIPFP)
15.00 - 15.15	Tea break
15.15 - 16.00	Stakeholder consultation, feedback and regulatory response Devendra Damle (NIPFP)
16.00 - 16.45	Q&A session, feedback and closing remarks Amol Kulkarni/ Vishal Trehan