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WORLD BANK WORKING PAPER NO. 66

Consumer Participation in Infrastructure Regulation

*Evidence from the East Asia and Pacific
Region*

Elisa Muzzini



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Washington, D.C.

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Washington, D.C. 20433, U.S.A.
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Manufactured in the United States of America
First Printing: November 2005



printed on recycled paper

1 2 3 4 5 07 06 05

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ISBN-10: 0-8213-6380-8 ISBN-13: 978-0-8213-6380-5

eISBN: 0-8213-6381-6

ISSN: 1726-5878 DOI: 10.1596/978-0-8213-6380-5

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Library of Congress Cataloging-in-Publication Data

Muzzini, Elisa, 1975-

Consumer participation in infrastructure regulation: evidence from the East Asia and Pacific region / Elisa Muzzini.

p. cm.—(World Bank working paper ; no. 66)

Includes bibliographical references.

ISBN 0-8213-6380-8

1. Consumer protection—East Asia. 2. Consumer protection—Pacific Area. 3. Infrastructure (Economics)—East Asia. 4. Infrastructure (Economics)—Pacific Area. I. Title. II. Series.

HC460.5.Z9C636 2006
363.6—dc22

2005052342

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Foreword

On April 5–7, 2004, more than 70 officials representing infrastructure regulators from 20 East Asia and Pacific (EAP) countries gathered in Manila for the second meeting of the East Asia and Pacific Infrastructure Regulatory Forum (EAPIRF). Regulators came from the infrastructure sectors of energy, telecommunications, transport, water and sanitation. The Manila meeting was hosted by the Asian Development Bank (ADB) and co-funded by the World Bank, the ADB, and the Public-Private Infrastructure Advisory Facility (PPIAF). The role of infrastructure regulators in involving consumers in the regulatory process was discussed and debated in the first half of the meeting. The findings of a World Bank survey of EAP regulators were first presented. Participants and invited speakers then shared their experiences of how infrastructure regulators can most effectively interact with users of utility services, especially low-income customers. This report presents the results of the survey of EAP regulators and discusses lessons of experience in consumer participation that emerged during the Manila meeting.

The East Asia and Pacific Infrastructure Regulatory Forum was launched in 2003 with support from the World Bank, PPIAF and the ADB. The objective of the Forum is to promote good regulatory practices in infrastructure in the region by creating a cross-sectoral and multi-country platform in which regulators can share and learn from each other's experiences and knowledge. Experience of recent similar networks of infrastructure regulators supported by PPIAF, such as the South Asia Forum of Infrastructure Regulators (SAFIR) in South Asia and the African Forum of Utility Regulators (AFUR) in Africa, suggests that such fora are invaluable platforms to promote exchanges of experience and information between practitioners of regulation and foster the transfer of best regulatory practices across sectors and countries.

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Acknowledgments

This report was funded under a grant from the Public-Private Infrastructure Advisory Facility (PPIAF). The author would like to thank Michel Kerf, Apurva Sanghi, Philip Gray, Lorenzo Bertolini, Demetrios Papathanasiou, Marc Shotten, and Richard Franceys for their advice and helpful comments during the preparation of the report. Special thanks are due to Melissa Morris and Geline Suggang for their assistance with the preparation of the survey.

Introduction

Consumer protection is a primary mandate of infrastructure regulators. To fulfil this mandate, regulators must ensure effective consumer 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 diffuse interest groups, who are not resourced to “voice” their concerns effectively, while service providers have the capacity to negotiate directly with the regulator the terms of the regulatory contract. 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 fulfil their mandate vis-à-vis consumers, the regulatory process will benefit from a different degree of consumer involvement—as discussed in Box 1 below, three progressively higher rungs can be identified in the ladder of consumer engagement, namely *information*, *consultation*, and *partnership*.

Most East Asia and Pacific (EAP) countries are in the process of reforming their infrastructure industries, focusing on strengthening the regulatory framework and making the investment climate more predictable. In this context, assessing the status of consumer participation in infrastructure regulation is essential to ascertain whether regulatory reforms in the region are supported by adequate mechanisms to safeguard consumer interests.

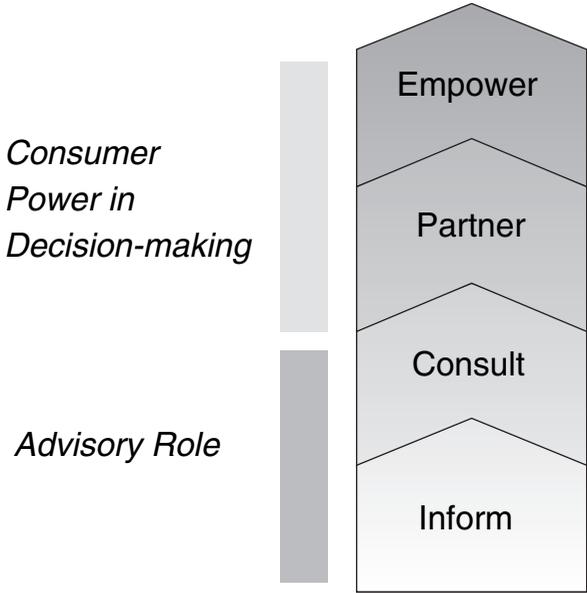
This study assesses consumer participation in infrastructure regulation in the EAP region, by addressing the following four issues:

- Does infrastructure regulation in the EAP region meet the main institutional requirements for effective consumer participation?

Box 1: Ladder of Consumer Participation in the Regulatory Process

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 of 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.



Box 1: Ladder of Consumer Participation in the Regulatory Process (*Continued*)

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, this study adopts a three-rung ladder (information, consultation, partnership) to illustrate the different levels of consumer participation in infrastructure regulation.

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.

- How effectively do regulators perform their functions vis-à-vis consumers?
- To what extent do EAP regulators rely on stakeholders and intermediaries to involve consumers in the regulatory process?
- Do EAP regulators have in place mechanisms to involve the poor in the regulatory process?

The assessment draws on the results of a survey questionnaire conducted among 45 infrastructure regulators in the region.¹ Because both current and potential customers are equally important stakeholders in the regulatory process, the study broadly defines consumers, including the population not yet served by regulated service providers.

The survey results indicate that EAP regulators have successfully begun to involve consumers in the regulatory process: consumer representation is a well-established practice in the region; in addition, most regulators draw on standard mechanisms to raise consumer awareness, resolve consumer complaints and solicit consumer input. Regulators rely significantly on stakeholders (government and service providers) and intermediaries (in particular rural community leaders, NGOs and journalists) to engage consumers in the regulatory process. However, further regulatory actions are needed to move from informing to actively consulting with consumers. In particular, more reliance should be placed on two-way channels of communication (for example, workshops) to reach out to consumers. Further regulatory interventions may also be warranted to enhance disclosure of

1. The results of the survey questionnaire were presented during the second meeting of the East Asia and Pacific Forum of Infrastructure Regulators (EAPIRF), which was held in Manila April 5–7, 2004. The questionnaire covered 45 regulatory bodies from 21 countries. Among the 45 surveyed regulators, 17 are established as independent agencies. See Appendixes A and B for a more detailed description of the sample and the survey questionnaire.

information to consumers, to hold service providers accountable for addressing consumer complaints, and to promote consumer awareness among the poor.

The study is structured as follows:

- Chapter 2 draws on survey results to discuss the extent to which EAP regulators meet institutional requirements for consumer participation.
- Chapter 3 discusses three key regulatory functions related to consumer participation, namely (i) informing consumers; (ii) resolving consumer complaints; and (iii) soliciting consumer input into the regulatory process.
- Chapter 4 assesses the extent to which regulators contract out regulatory functions to non-regulatory entities.
- Chapter 5 outlines the strategies adopted by EAP infrastructure regulators to overcome the specific challenges of involving the poor in the regulatory process.
- Finally, Chapter 6 summarizes the key findings of the survey questionnaire, highlighting the main conclusions on the status of consumer participation in infrastructure regulation in the EAP region.

Institutional Requirements for Effective Consumer Participation

Consumer participation in infrastructure regulation must be supported by an adequate institutional environment. While there are different institutional options available to support consumer participation in infrastructure regulation, any institutional environment would need to meet the following two requirements:

- The entity performing regulatory functions vis-à-vis consumers is independent from political pressure and vested interests.
- Effective mechanisms are in place to represent consumer interests.

This chapter assesses the extent to which these institutional requirements for effective consumer participation are met by regulatory regimes in the EAP region.

Regulatory Independence

Responsibility for protecting consumer interests must be conferred to an independent regulatory agency. Insulating the regulating entity from political interference and service providers' interests is essential to ensure a fair deal for consumers, in particular in countries that have only begun the process of reforming their infrastructure industries. Only entities operating at arm's length from service operators and the government are indeed able to act as impartial referees among all the stakeholders.

Regulatory independence is not widespread in the EAP region. Only 38 percent of the surveyed regulators have so far been established as independent agencies (see Appendix A

for a detailed sample description).² In the EAP region, the diffusion of the independent regulatory model is lower than in Africa, where 60–77 percent of the countries (as of 2001) have established separate regulators (not part of a ministry, government department or operator), and Latin America, where the model of regulation by an independent agency is adopted widely (AFUR 2002, Foster 2003). However, this regional comparison needs to be treated with caution, given that the true extent of regulatory independence is difficult to assess. *Formal* regulatory independence does not guarantee *per se* the insulation of the regulatory body from vested interests.³ Given that regulatory independence is a relative rather than an absolute concept, formally independent regulatory agencies do in practice achieve different degrees of regulatory independence, depending on the types of safeguards in place against political interference—see Box 2 below for a discussion of the definition of regulatory independence in the context of infrastructure regulation.

When an independent regulator is not established, the line ministry retains direct control over the regulatory process, with the exception of most of the Pacific Islands, where provision of infrastructure services is in public hands and self-regulation is the norm. In this regulatory model, publicly-owed service providers are in charge of regulating their own activities, with the line ministries performing an oversight and monitoring role. In

Box 2: Independence of the Regulatory Agency

Independence for infrastructure regulators consists mainly of two elements: (1) an arm's-length relationship with regulated service providers, consumers and political authorities and (2) the organizational autonomy necessary to attract the required expertise to perform regulatory functions effectively. However, independence is a relative rather than an absolute concept. Progress must be measured against the counterfactual scenarios where ministers would retain direct control over regulatory decision-making. In addition, the level of independence of a regulatory agency depends on the types of safeguards in place to promote its autonomy. There is consensus that the following formal safeguards are key to achieving regulatory independence:

- ◆ Providing the regulator with a distinct legal mandate, free of ministerial control;
- ◆ Prescribing professional criteria for appointment;
- ◆ Involving both executive and legislative branches in the appointment process;
- ◆ Appointing regulators for fixed terms and protecting them from arbitrary removal;
- ◆ Staggering terms so that they do not coincide with the election cycle;
- ◆ Exempting the regulating agency from civil service salary rules that make it difficult to attract and retain well-qualified staff;
- ◆ Providing the agency with a reliable source of funding, usually earmarked levies on regulated firms or consumers.

Source: Smith 1997.

2. Seventeen out of 45 regulatory entities are established as independent agencies.

3. Formal independence is not always a guarantee for effective regulation: a government regulator operating in a transparent environment could indeed be more effective in delivering benefits to consumers than an independent regulator prone to capture.

this model, achieving regulatory independence may present specific challenges given the small-scale of the regulated markets and the prevalence of self-regulation, two factors that complicate the process of disentangling the conflicting interests entrenched in the regulatory process. Setting up “umbrella regulatory agencies” in charge of overseeing different infrastructure sectors is a possible solution to contain the risk of regulatory capture in small-scale infrastructure markets (Ayres and Braithwaite 1992). Being accountable to more than one line ministry and different consumer constituencies, multi-sector regulators are indeed less prone to regulatory capture. For example, a multi-sector independent economic regulator, the Independent Consumer and Competition Commission (ICCC), has been established in Papua New Guinea in 2002. Multi-sector self-regulated agencies in charge of service provision are also in place in other Pacific Islands, namely Micronesia, Fiji, and Kiribati.

Consumer Representation

Shielding regulators from the influence of vested interests is necessary but not sufficient to guarantee a fair distribution of the welfare gains generated by the regulatory process. In any institutional environment conducive to effective consumer participation, consumers must have the option to rely on spokespersons that can articulate their interests, and counterbalance the industry perspective, which is usually very strongly represented by service providers. The responsibilities and scope of actions of consumer representatives increase as one moves up the ladder of consumer empowerment. Depending on the level of consumer engagement in the regulatory process, consumer representatives may be entrusted with a wide range of powers, encompassing the right to take judicial actions against regulatory decisions, access commercially sensitive information on service providers, take the stance of consumers during public hearings, and exercise voting rights in the decision-making body of the regulating entity. Regardless of their specific mandate, consumer spokespersons must be perceived as beginning the process towards accountability to the consumer constituency. Without the countervailing influence of consumer representatives accountable to the consumer constituency, regulators are indeed more at risk of capture by specific interest groups. This chapter discusses three of the most common mechanisms for consumer representation:

- *Setting up in-house consumer affairs bureaus.* One mechanism is to establish in-house consumer affairs bureaus (within the regulatory agency) with the mandate of representing consumer interests. Economies of scope can often be achieved by entrusting the same agency with consumer representation and regulatory functions. For example, in-house consumer departments may benefit from direct access to consumer-related information that could be used to inform the representation function. On the downside, relying solely on in-house consumer bodies for consumer representation may be insufficient to give consumers some bargaining power over the outcome of the decision-making process. In-house consumer bodies indeed lack the independence required to challenge regulatory decisions and, as a result, may prove to be ineffective in their advocacy role.

- *Appointing consumer representatives in the regulatory board.* Another mechanism is to appoint a consumer representative in the board of directors, the decision-making body of the regulating entity. This mechanism is adopted in several African countries (such as Burundi, Ghana and Senegal) and in a few countries in Latin America (Lazarini 2004, Foster 2005). Board representation has the advantage of giving consumers access to relevant information on service providers, provided that consumer representatives are not bound by a duty of confidentiality (they are able to use the information disclosed to them to the best interest of consumers). Moreover, this mechanism for consumer representation may have the advantage of establishing a direct channel for feeding consumer input into the decision-making process. When the consumer spokesperson appointed to the regulatory board is truly accountable to the consumer constituency, consumer input indeed becomes an integral part of the decision-making process. However, the cost of this mechanism for consumer representation often far outweighs its benefits. First, board representation may have the undesirable effect of trapping consumer representatives in a conflict of interest situation, by making them accountable to both the regulatory body and consumers. Second, consumer representation in the regulatory board may bring the reform process to a standstill, by empowering consumer representatives to exercise their right to halt the decision-making process. Finally, the top-down appointment of consumer representatives to the regulatory board may undermine their accountability to the consumer constituency. For example, in Papua New Guinea, the Chamber of Commerce appoints consumer representatives to the utility board of PNG Waterboard; as a result, consumer representatives may risk to be perceived by public opinion more as an advocate of vested interests of industrial customers than as representatives of the whole consumer constituency (Asian Development Bank 2002).
- *Relying on external advisory bodies.* An alternative mechanism is to entrust consumer representation to external entities (for example, non-institutionalized consumer associations or statutory consumer councils). This mechanism is currently adopted in the UK, where EnergyWatch (the gas and electricity consumer watchdog) is established as an independent statutory body, whose relationship with the regulator is defined by a Memorandum of Understanding agreed between the parties. Similarly, in England and Wales, an independent Consumer Council for Water is expected to be appointed under the Water Act 2003 to replace WaterVoice, the existing water consumer watchdog funded and appointed by Ofwat, the economic regulator.⁴ Being independent from the regulator itself, external consumer bodies are better positioned than in-house consumer departments to take a stance against regulatory decisions perceived as unfair to consumers. As a downside, independent consumer bodies risk being captured by specific interest groups at the expenses of the marginalized segments of the customer base. This risk is particularly high in developing countries, where independent consumer associations may be taken over by middle-class consumer groups whose interests are not necessarily aligned (and in fact are often conflicting) with those of the poorest customers.⁵ Moreover, consumer associations may not be able to access sufficient

4. The Consumer Council for Water will commence operation on October 1, 2005.

5. Middle-income customers advocating against tariff increase may indeed jeopardize the possibility to expand access.

funding to build the internal capacity to engage in complex regulatory debates. This suggests that countries without a history of civil society engagement may not be ready for handling sophisticated mechanisms of consumer representation such as consumer councils. In developing countries, which seldom have the long tradition of civil society organizations encountered in the UK, the onus is therefore on the government and/or regulator to support capacity building activities to empower consumer organizations in their advocacy role (Arnstein 1969).

Table 2.1 below summarizes the pros and cons of the three institutional mechanisms for consumer representation outlined above. These mechanisms are not mutually exclusive—for example, in-house consumer offices can be complemented by independent advisory bodies in their mandate to represent consumer interests, especially when regulatory capacity is constrained.

As underlined in Table 2.1, identifying the best mechanism for consumer representation poses the following two challenges:

- *Opting for integrated versus independent consumer representatives.* It is an open debate whether *independence* of consumer representation with respect to the regulatory agency is a more effective avenue for consumer representation than *integration*. Two mechanisms for retaining the consumer representation function within the regulatory body are relying on in-house consumer affairs bureaus or appointing consumer representatives to the agency board. A mechanism for separating regulation from the representation function is opting for independent consumer associations to represent consumers. One school of thought stresses that placing consumer representatives within the regulatory agency would deliver significant synergies and economies of scope. Moreover, a regulator with the specific mandate of representing consumers in the regulatory process would benefit from stronger public support and may be less prone to regulatory capture by other stakeholders. In addition, the “integrated” option may be the only feasible solution for consumer representation when there are no external bodies with the capacity to represent consumers in the regulatory process. Another school of thought argues that consumer representatives with a separate voice from the regulatory agency can campaign more effectively for consumers. This school of thought has been embraced in the UK, where the Department of Trade and Industry (1998) has recently advocated in favour of independent statutory consumer councils to represent consumers on the grounds that: “The councils will be powerful consumer advocates at the heart of the regulatory system, working constructively with the regulators, but from a position of *independence* [emphasis added] and a real concern for consumers’ interests.”
- *Ensuring the accountability of consumer representatives vis-à-vis the consumer constituency.* Consumer representatives must be held accountable to the whole consumer constituency, including poor customers who are the least equipped to promote their own interests in the regulatory process. However, there is the risk that consumer spokespersons, far from safeguarding the interests of consumers as a whole, will be captured by the most influential consumer groups. This risk is particularly high when consumer representatives are appointed through a top-down approach to the regulatory board, although independent consumer organizations

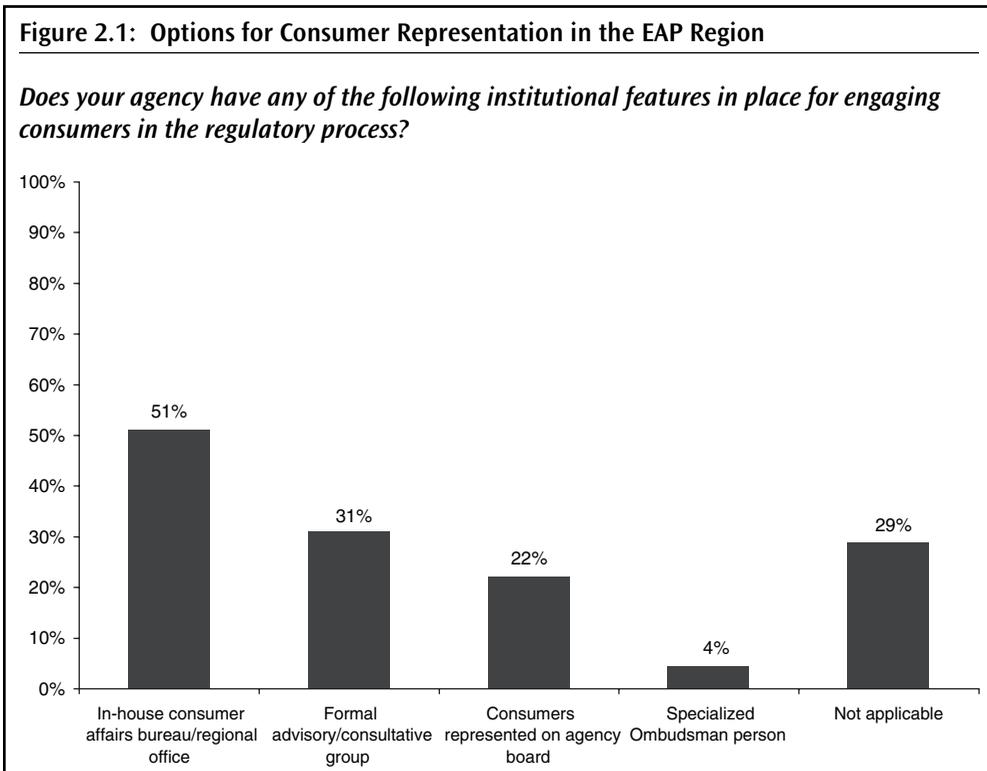
Table 2.1: Mechanisms for Consumer Representation			
	Examples	Pros	Cons
In-house consumer affairs bureau	<p>EAP region:</p> <ul style="list-style-type: none"> ◆ Community Opinion Investigation Committee, Jakarta Water Supply Regulatory body, Indonesia ◆ One Stop Public Assistance Centers, National Telecommunication Commission, Philippines <p>Other regions:</p> <ul style="list-style-type: none"> ◆ Office of Consumer Advocacy, Karnataka Electricity Regulatory Commission (KERC), India 	<ul style="list-style-type: none"> ◆ Easy access to reliable information on the regulatory process. ◆ Synergies between consumer representation and regulatory functions--in-house consumer affairs bureaus are well placed to solicit consumer information that can be used to inform the representative function. 	<ul style="list-style-type: none"> ◆ Limited scope of action to challenge regulatory decisions due to lack of independence from the regulatory agency itself.
Board representation	<p>EAP region:</p> <ul style="list-style-type: none"> ◆ Korean Electricity Commission (Korea); ◆ PNG Waterboard (Papua New Guinea), ◆ Tonga Water Board (Tonga), ◆ Department of Mines and Energy (Solomon Islands) <p>Other regions:</p> <ul style="list-style-type: none"> ◆ Consumer Association of Ghana, representing consumers in Ghana's public utility regulatory board. ◆ The <i>Association de Defense des Usagers de l'Eau</i> (Senegal), sitting on the water regulatory council and on the board of the national water holding company. ◆ A few cases in Latin America, such as the state regulator in Rio Grande do Sul in Brazil, the provincial regulator in Cordoba, Argentina, and (for a brief period) the telecom regulator in Peru. 	<ul style="list-style-type: none"> ◆ Powerful channel of information for consumer groups (if there is no duty of confidentiality). ◆ Very fluid exchange of views between consumers and regulators, if consumer input becomes an integral part of the decision-making process. 	<ul style="list-style-type: none"> ◆ Inadequacy of representation, if the board members in charge of consumer representation are captured by special interest groups and/or they are not fully accountable to the consumer constituency. ◆ Too many conflicting interests within the regulatory body may result in stalemate of the regulatory process.
External advisory body	<p>EAP region:</p> <ul style="list-style-type: none"> ◆ Consumer Forum of Malaysia. <p>Other regions:</p> <ul style="list-style-type: none"> ◆ Energywatch (UK), Watervoice (England and Wales), ◆ Electricity Consumers' Network (Karnataka—India) 	<ul style="list-style-type: none"> ◆ Capacity to challenge regulatory decisions, due to the body's independence from the regulatory agency itself. 	<ul style="list-style-type: none"> ◆ Inadequacy of representation, if the advisory body is captured by the most influential consumer groups.

Source: EAPIRF Survey 2004; Foster 2003.

are also not shielded from this risk. To counter this risk, regulators need to ensure that the interests of the marginalized segments of the customer base are adequately represented. In countries with a tradition of well-established consumer associations, making representation of vulnerable customers a statutory duty of consumer councils is an option. For example, this option has been adopted in the UK, where independent Consumer Councils have the legal mandate of “ensuring that the interests of the disadvantaged are safeguarded” (DTI 1998).

Consumer representation is a common practice in infrastructure industries in the EAP region; two-thirds of the surveyed regulatory regimes have indeed established a specific entity responsible for consumer representation. The following mechanisms are mostly adopted to represent consumers in the regulatory process in the EAP region:

- Housing consumer representatives within the regulating entity is the most widespread institutional mechanism for consumer representation. As shown in Figure 2.1 below, in half of the surveyed regulatory regimes, responsibilities for consumer representation lie with in-house consumer affairs bureaus (including decentralized offices of the regulatory body). For example, the Jakarta Water Supply Regulatory Body recently established one in-house decentralized consumer department to



Source: EAPIRF Survey 2004. Multiple-answers allowed.

represent consumers in the regulatory process, as detailed in Box 3 below. Reliance on in-house bureaus may however suggest that consumer spokespersons have limited capacity to challenge regulatory decisions.

- Entrusting consumer representation to an external body, either consumer associations (31 percent) or Ombudsmen (4 percent), is the second most common mechanism for consumer representation in the region. Box 3 discusses the case of the Malaysia's Consumer Forum, one of the most advanced mechanisms for consumer representation in the EAP region.
- Appointing a consumer representative to the regulatory board is an unusual practice, although more common in the Pacific Islands, where service providers are largely self-regulated.⁶ As discussed above, appointing a consumer representative to the regulatory board is at high risk of regulatory capture and can significantly limit the scope of consumer involvement in the decision-making process.
- Finally, 38 percent of the surveyed regulators rely on more than one mechanism for consumer representation—the most common arrangement being the combination of an in-house consumer affairs bureau with an external advisory body as in the Jakarta water sector (see Box 3).

Box 3: Examples of Consumer Representation in the EAP Region

Indonesia (water): The Jakarta Model for Consumer Representation

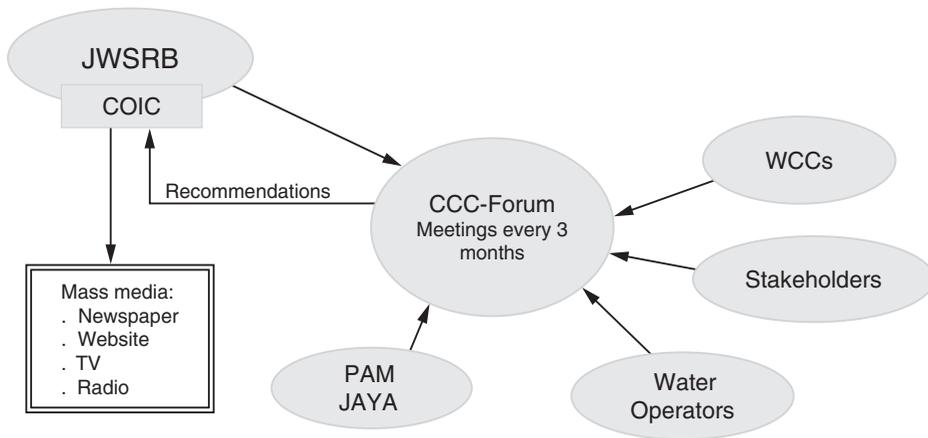
In Jakarta, consumer involvement was initiated soon after the Jakarta Water Supply Regulatory Body (JWSRB) was established in November 2001. In January 2002, the JWSRB facilitated a stakeholder meeting that led to the establishment of the Consumer and Community Communication Forum (CCC Forum) which aimed to synergize the efforts of all water stakeholders in enhancing reliability of water supply in Jakarta. Since then, the Forum has become a valuable platform for information-sharing among water stakeholders, including the JWSRB, community and consumer representatives, NGOs, government officials, PAM JAYA (the local government-owned service provider), and water operators. In parallel, the JWSRB established an in-house consumer bureau, the Community Opinion Investigation Committee (COIC), tasked with the responsibility of facilitating the functioning of the Forum, administering consumer satisfaction surveys and soliciting input from all stakeholders.

In addition, in March 2003, the JWSRB facilitated the establishment of Water Supply Customer Advisory Committees (WCCs) in five municipalities of the Jakarta province. WCCs are NGO-type non-statutory organizations with the mandate to voice consumer interests. WCCs' responsibilities include: (i) monitor level of service; (ii) raise consumer complaints on service quality; (iii) facilitate communication between consumers and water utilities on service improvement; (iv) promoting access for the poor. The JWSRB retains responsibility for disseminating the information received from the WCCs and the CCCF through the media.

The Figure below summarizes the institutional linkages between the JWSRB, the in-house COIC, the CCC Forum, and the five WCCs.

(continued)

6. Pacific Islands account for most of the cases (7 out of 10) where consumers are represented in the regulatory boards.

Box 3: Examples of Consumer Representation in the EAP Region (Continued)**Malaysia (telecom): The Consumer Forum of Malaysia**

The Consumer Forum of Malaysia (the “forum”) has been established in February 2001 under the requirement of the Communications and Multimedia Act 1998 as an independent forum in charge of representing consumer interests in the regulatory process. The forum is composed of members representing both service providers (telecommunications companies and broadcasting stations) and consumer interests (NGOs and public interest groups). Membership to the forum is open to all stakeholders upon payment of a membership fee. The forum has been entrusted with responsibilities for processing complaints, resolving disputes, promoting consumer awareness, and drafting a code of practice binding for all licensees (the General Consumer Code of Practice registered in October 2003). Among the key objectives of the code is to provide a common framework for consumer complaint handling, consumer compensation in case of a breach of the code, self-regulation and protection of consumer rights.

Source: EAPIRF survey 2004.

Performing Regulatory Functions vis-à-vis Consumers

This chapter discusses three core functions performed by regulators to ensure consumer participation in the regulatory process, without aiming to be exhaustive:

- *Informing consumers.* Regulators play a critical role in informing consumers by disclosing relevant information and raising consumer awareness. Informing consumers is a prerequisite to engage consumers further in the regulatory process: only well-informed consumers are indeed in the position to understand the benefits arising from the regulatory contract and participate effectively in consultation processes.
- *Resolving consumer complaints.* Regulators must have in place a complaint resolution mechanism to hold regulated service providers accountable to consumers for delivering the regulatory contract. The process of resolving consumer complaints entails some basic form of consultation with consumers through follow-up mechanisms to ensure consumer satisfaction with the outcome of the resolution process.
- *Soliciting consumer input.* Regulators must also solicit consumer input through consultations to take regulatory decisions perceived as fair and legitimate by all stakeholders.

Each of these three functions can lead to progressively higher rungs of consumer participation—from information to consultation. However, the factor ultimately determining the rung of consumer involvement in the regulatory process is how effectively regulators perform each of these functions. For example, in principle consumer awareness campaigns conducted through public meetings can provide consumers with a platform for discussion,

leading to a higher rung of consumer involvement than media campaigns. However, if not effectively utilized consultations may be far from providing consumers with a real opportunity to influence the outcome of the consultation process, and thus turned into a one-way form of communication.

Informing Consumers

Informing consumers is necessary to guarantee the legitimacy of the regulatory process. Any regulatory regime would be politically unsustainable if consumers failed to understand their benefits under the regulatory contract. Regulators can effectively inform consumers by disclosing relevant information and raising consumer awareness of their rights and obligations under the regulatory regime.

Disclosing Information

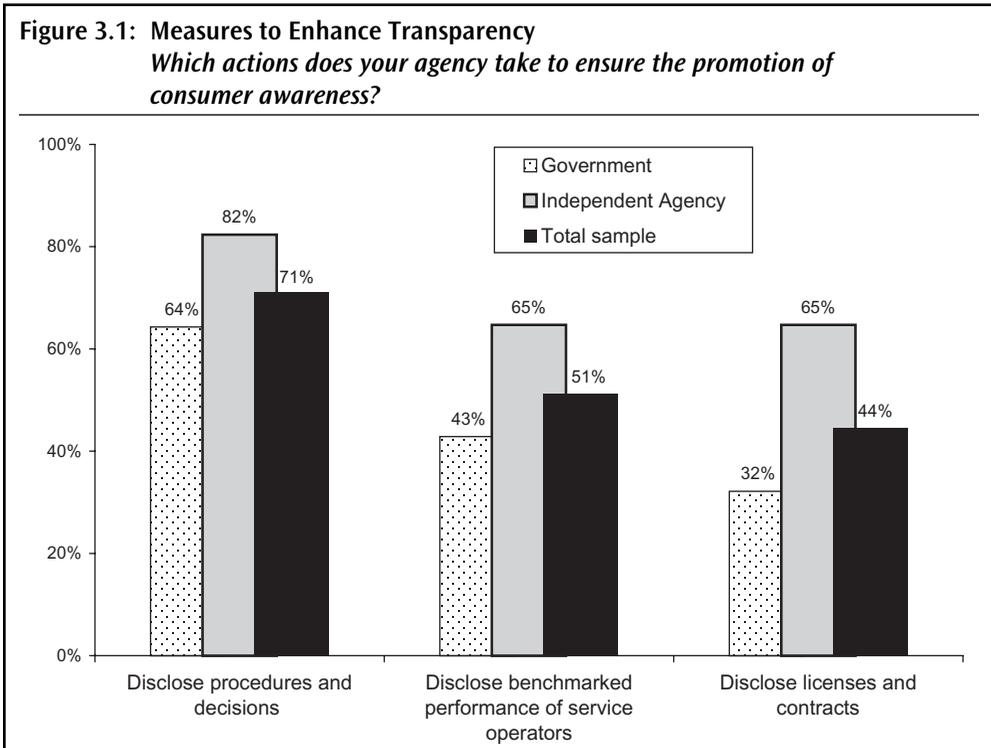
Regulators must disclose relevant information to the public to guarantee the transparency of the regulatory process. The disclosure policy of the regulating entity largely determines the degree of transparency of a regulatory regime. Essential information that regulators ought to release encompasses regulatory procedures and decisions as well as licenses and contracts awarded to service providers. In addition, disclosing benchmarked performance of service providers can enhance consumer understanding of how service providers are faring relative to each other—this piece of information being crucial when consumers have the possibility to switch to alternative service providers.

The survey results indicate that most EAP regulators adopt fairly open disclosure policies. As shown in Figure 3.1 below, 71 percent of the surveyed regulators disclose procedures and decisions; in addition, half of the regulators release to the public performance indicators of regulated service providers. However, regulators could take further steps to enhance the transparency of the regulatory process—indeed only a minority of the surveyed regulators disclose licenses and contracts awarded to service providers.

Figure 3.1 below shows that the surveyed independent regulators tend to have more open disclosure policies than government regulators. However, any comparison between government and independent regulators must be treated with caution, given that the two sub-samples are not balanced.

Raising Consumer Awareness

Regulators are responsible for raising consumer awareness, defined as consumer understanding of the role of the regulating entity as well as their rights and obligations under the regulatory regime. Public awareness campaigns are instrumental to educate consumers to exercise their rights, among others the right to raise complaints about service provision and participate in consultation processes. Awareness campaigns are also pivotal to the success of sector reforms, by contributing to promote consumer acceptance of private sector participation and consumer understanding of the benefits of sector reforms. For instance, in the water sector hygiene education campaigns are vital to make consumers aware of the health or environmental externalities associated with safe water provision; in addition, they



Source: EAPIRF survey 2004. Multiple-answers allowed.

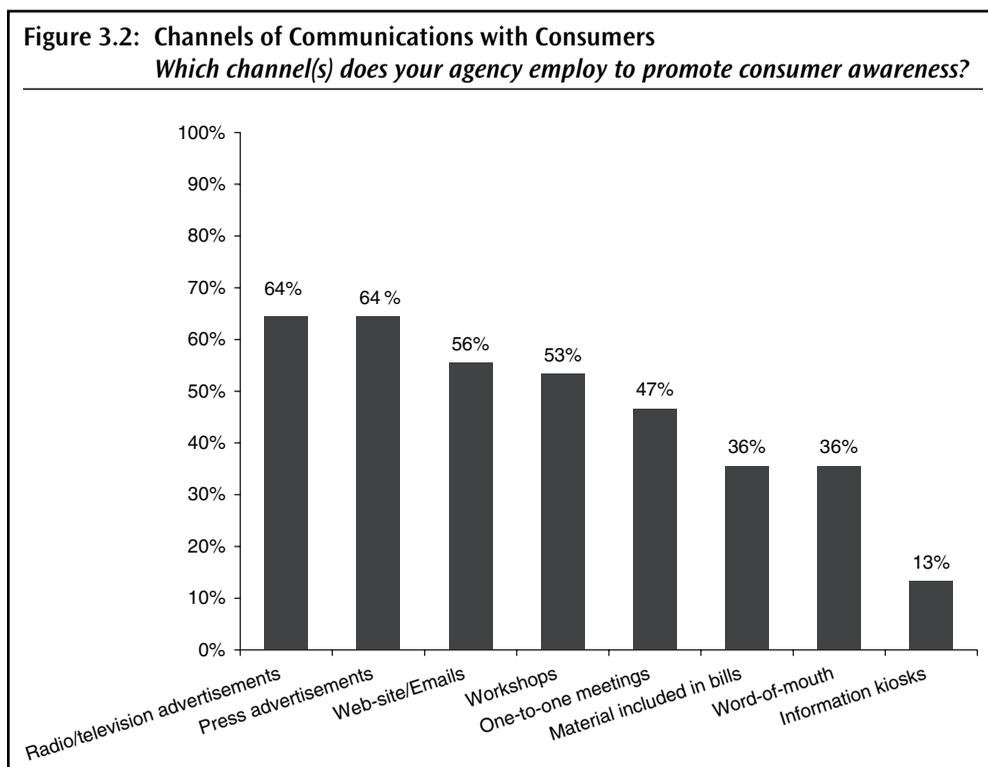
can contribute to enhance demand for better services and the related benefits accrued to end-users. For example, in Papua New Guinea, PNG Waterboard, the public water utility, runs education campaigns through the media with the objective of informing consumers of the dangers of drinking untreated water.

The surveyed regulators in the EAP region are faring relatively well in raising consumer awareness of the role of their agency, allowing for the fact that most of the agencies have been recently established. The role of the regulator and its areas of responsibility is indeed reported to be “very well known” to consumers by more than a third of the respondents (17 out of 45) and “somewhat known” by the rest of the surveyed regulators—with the exception of two regulators that considered their role “not known” to consumers.⁷

Raising public awareness of consumer rights and obligations requires the establishment of effective channels of communication between consumers and the regulatory agency. Awareness campaigns can lead to different rungs of consumer involvement in the regulatory process depending on the selected vehicle of communication. For example, workshops and one-to-one meetings have the advantage of opening up “two-way” forms of communication with consumers; as a result, they may lead to a higher rung of consumer engagement than awareness campaigns based on “one-way” forms of communication, such as the media.

7. EAPIRF survey 2004. Question: ‘How well do you think the role of your agency in your areas of responsibility is known to consumers? Very well known—Somewhat known—Not known.’

The surveyed regulators mainly rely on one-way forms of communication to raise consumer awareness. As shown in Figure 3.2 below, the media is the prevailing channel of communication with consumers. The practice of including information materials in utility bills is common in the Pacific Islands, where publicly owned service providers are often in charge of regulating their own activities. In addition, half of the regulators rely on “two-way” channels of communication (either workshops or one-to-one meetings) to reach out to consumers. If effectively utilized, two-way channels of communication can provide a platform for *both* information sharing and consultation with consumers.



Source: EAPIRF survey (2004). Multiple-answers allowed.

Resolving Consumer Complaints

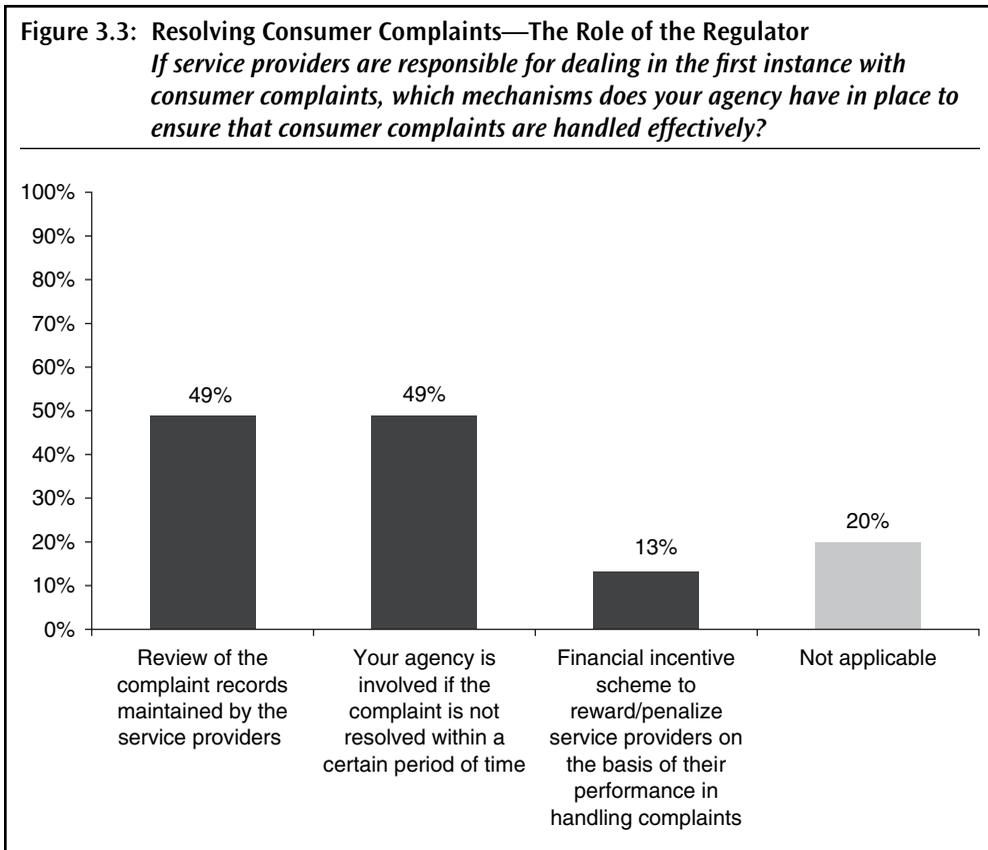
Regulators must establish effective complaint resolution mechanisms to provide consumers with simple and accessible procedures for complaint resolution on all aspects of service provision. Regulators perform several tasks as part of their obligation to resolve consumer complaints, such as handling consumer complaints, monitoring service providers' performance in solving complaints and resolving consumer disputes (unresolved consumer complaints).⁸ Effective complaint resolution mechanisms must deal with both individual complaints and systemic issues and result in fair and binding decisions for all the involved parties. If the complaint resolution scheme is set up on a vol-

8. Handling consumer complaints involves processing complaints received by consumers and directing them to the attention of service providers for resolution.

untary basis by service providers, consumers must be given the possibility to pursue legal actions in a court.

Complaint resolution mechanisms are a standard feature in most EAP regulatory regimes. In fact, more than two-thirds of the surveyed EAP regulators have established a formal procedure to deal with consumer complaints, the percentage being slightly higher among independent regulators (15 out of 17 regulators) than government regulators (18 out of 28).⁹ Half of the surveyed regulators are directly involved in handling consumer complaints. (In the other regulatory regimes, responsibility for handling consumer complaints lies in the first instance with service providers, as discussed in more detail in Chapter 4.)¹⁰

The survey results suggest that regulators may need to intervene more actively to hold service providers accountable for resolving consumer complaints. Half of the regulating agencies maintain responsibilities for monitoring the responsiveness of service providers in addressing complaints; another half retain the right to step in if the complaint is not resolved (see Figure 3.3 below); however, only six regulators have introduced financial incentives to reward/penalize service providers on the basis of their performance in resolving consumer complaints. In addition, 20 percent of the agencies do not exercise specific regulatory powers



Source: EAPIRF survey 2004. Multiple-answers allowed. Note: the sample includes all surveyed regulators.

9. However, the results need to be treated with caution given the limited number of observations available for independent regulators.

10. Twenty-two regulators represent the first port of call for handling consumer complaints.

vis-à-vis service providers to enforce complaint resolution. In this respect, infrastructure regulators in the EAP region lag to some extent behind regulators in Latin America, where regulators commonly act as an appeal body for customers, whose complaints have not been adequately resolved by the regulated company (Foster 2005).

Soliciting Consumer Input

In non-monopolistic markets, consumers reveal their preference or “voice” their dissatisfaction by exercising the option of switching to substitute products. This “check and balance” mechanism ensures that service providers do value consumer information to enhance their competitiveness against rival firms. In infrastructure markets with monopoly characteristics, where such a mechanism is not in place, customers are often locked in to the incumbent service provider. To substitute for market-based mechanisms, regulators must therefore solicit consumer input to inform the regulatory process.

Consumer satisfaction is an essential piece of information that regulators ought to solicit from consumers to make well-informed regulatory decisions. In addition, quality of service provides regulators with relevant information for setting standards of service. Information on affordability is critical for regulators directly involved in social policy issues, especially when the poor constitute a significant segment of the customer base. However, this may not be the case when there is a clear institutional separation between regulatory and policy-making functions, with the latter being performed by the relevant line ministry. Information on consumption patterns is also key for regulators to assess investment requirements. Finally, information on billing-related matters can be instrumental to assess whether the payment system responds to customers’ needs, although this piece of information is often more helpful to service providers, which are directly responsible for billing customers, than to regulators.

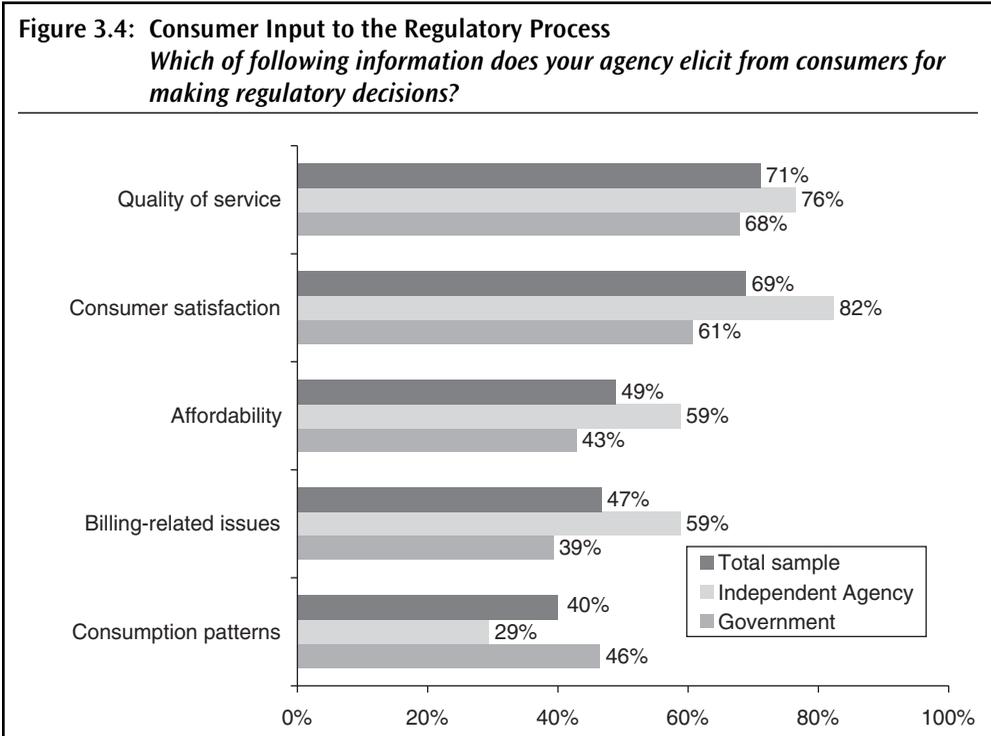
Quality of service and consumer satisfaction are the two pieces of information most often solicited by the surveyed regulators to inform the decision-making process (see Figure 3.4 below). The survey results also suggest that most surveyed regulators are involved in social policy issues, as they actively solicit information on affordability from consumers.

Informal consultations with consumer representatives are the most common mechanism in place to solicit information from consumers, being adopted by almost 80 percent of the surveyed regulators. Almost two-thirds of the surveyed regulators draw on formal channels (either public hearings or formal consultations with consumer advisory bodies) to consult with consumers.¹¹ In addition, half of the surveyed regulators rely on *both* formal and informal channels to interact with consumers.¹²

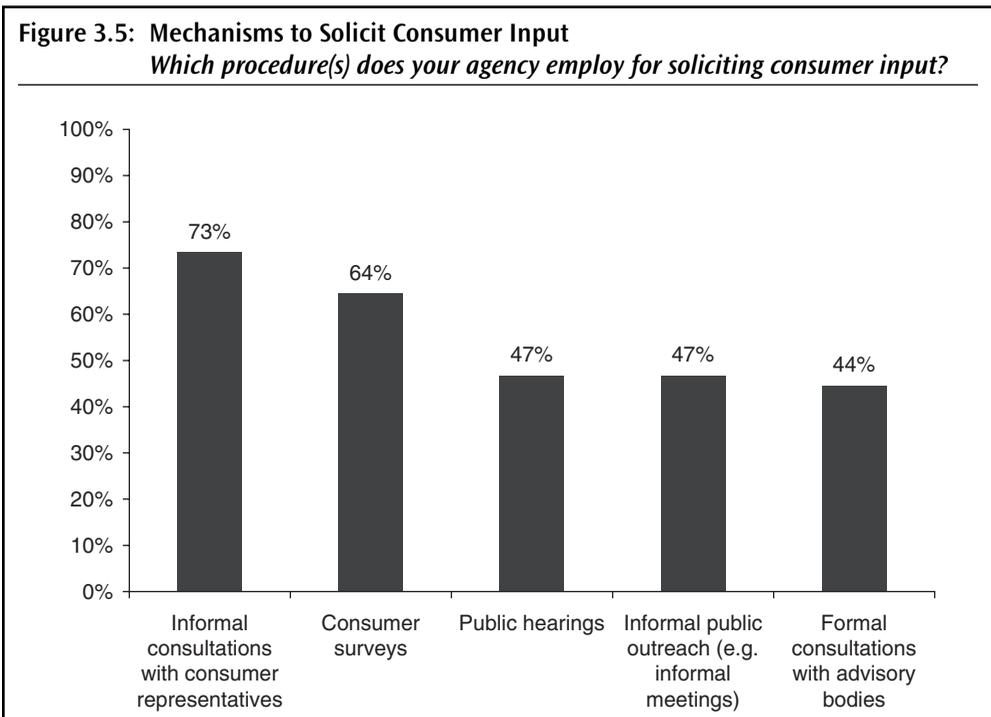
Figure 3.5 below sheds more light on the different types of channels used by the surveyed EAP regulators to solicit consumer input. For example, formal consultations with consumer advisory bodies and public hearings are adopted by respectively 44 percent and 47 percent of the surveyed regulators. Designing consumer surveys to solicit input from consumers is also a very common practice among regulators in the region.

11. 78 percent (35) and 64 percent (29) of the surveyed regulators rely respectively on informal and formal mechanisms to interact with consumers.

12. 47 percent (21 regulators) rely on both formal and informal mechanisms of consultations.



Source: EAPIRF survey (2004). Multiple-answers allowed.



Source: EAPIRF survey (2004). Multiple-answers allowed.

Contracting Out Regulatory Functions vis-à-vis Consumers

Contracting out regulatory functions has both benefits and limitations. Regulators often contract out regulatory functions to stakeholders (for example, government, service providers or consumer associations) or intermediaries (for example, NGOs, rural community leaders or journalists) to reduce regulatory costs and supplement in-house regulatory capacity. However, several challenges arise when regulatory functions are contracted out. First, delegating regulatory functions can jeopardize consumer protection, if the delegated entities are not fully accountable to the regulator. To avoid loss of accountability, the regulator must keep an oversight role over the external entities performing regulatory functions. Second, the scope for contracting out may be limited in countries without a tradition of consumer organizations in infrastructure industries. In these circumstances, the regulator must dedicate significant internal resources to ensure effective consumer participation in the regulatory process.

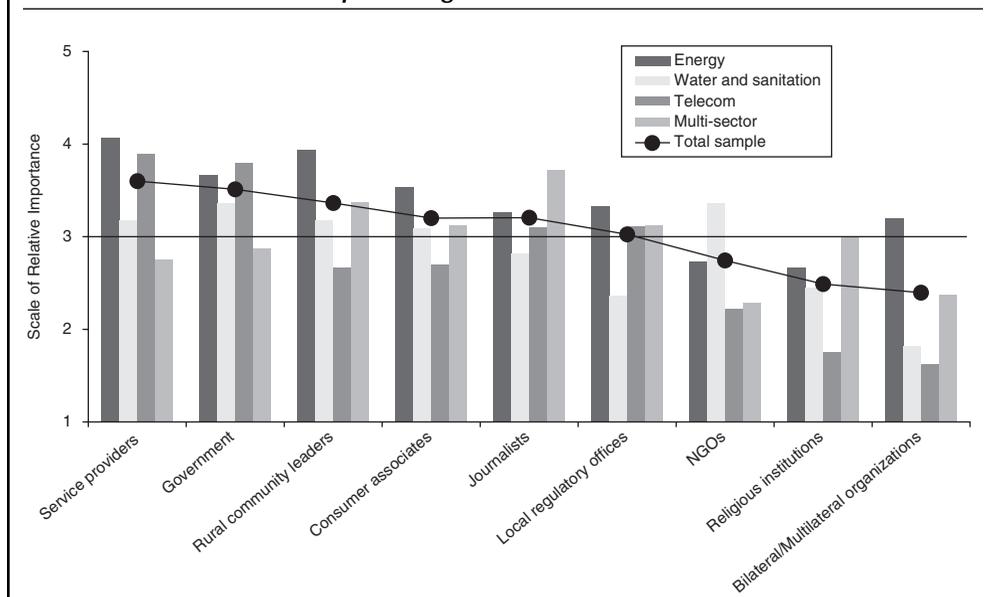
This chapter discusses the extent to which regulators contract out their regulatory functions vis-à-vis consumers to external entities. Overall, the survey results suggest that contracting out regulatory functions vis-à-vis consumers is a relatively widespread practice in the region.

Informing Consumers

Regulators can effectively inform consumers by disclosing relevant information and raising consumer awareness. While the regulators are primarily responsible for disclosing information, stakeholders and intermediaries can play an instrumental role in raising consumer awareness, in particular when the regulatory agency is centralized.

Overall, surveyed regulators highly value the role of government and service providers in raising consumer awareness (see Figure 4.1 below). Moreover, regulators rely on a wide range

Figure 4.1: Effectiveness of Intermediaries in Raising Consumer Awareness
On a scale from 1 and 5, how would you rank the role of the following intermediaries in promoting consumer awareness?



Source: EAPIRF survey 2004. Note: 1—insignificant, 2—fairly significant, 3—significant, 4—important; 5—very important; NA = Not applicable.

of intermediaries to reach consumers. Intermediaries are to a large extent sector-specific. Energy regulators tend to leverage the influence of rural community leaders to reach consumers; water and sanitation regulators rank NGOs as the most effective intermediaries, while multi-sector agencies consider journalists the most valuable intermediary. On the contrary, consumer associations are not perceived as playing an important role in informing consumers. This may indicate that only a few consumer associations in the EAP region have so far built the capacity required to play a significant role in the regulatory process.

Resolving Consumer Complaints

Effective complaint resolution hinges on the concerted effort of regulatory agencies and stakeholders, including service providers and consumer organizations. The first issue to be addressed in designing a formal complaint system is to identify the role of different stakeholders at each stage of the complaint resolution process. The following entities may be involved in resolving consumer complaints:

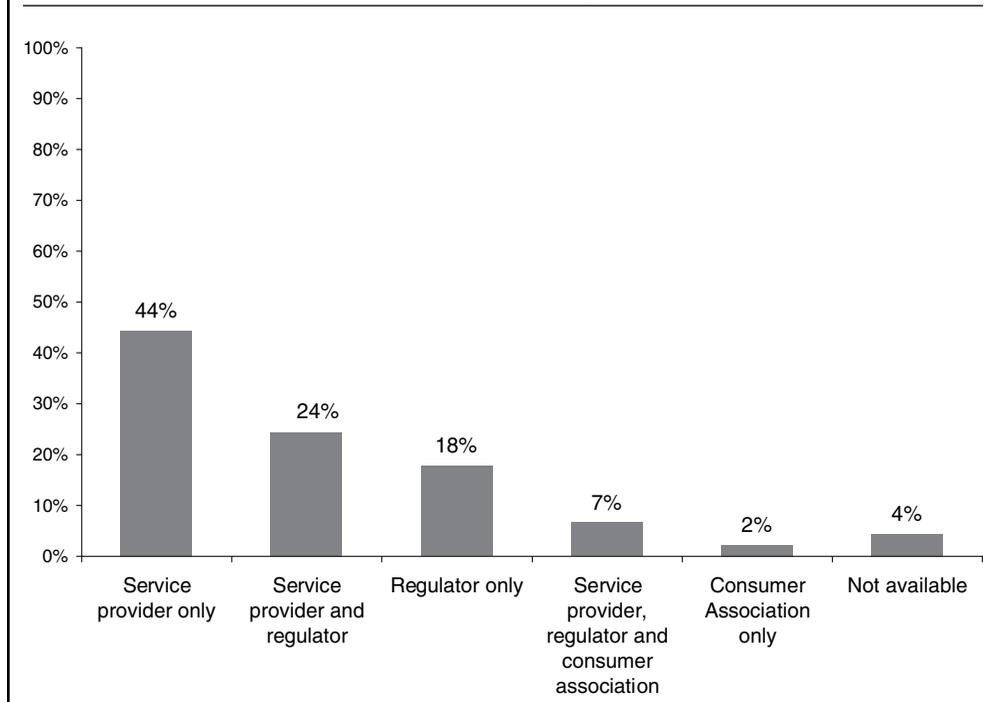
- *Regulated service providers.* Service providers often represent the first port of call for handling consumer complaints. This is for example the case in the UK, where in 1992 the Competition and Services Utilities Act made consumer complaint provisions part of license requirements.
- *Regulatory bodies.* Regulators can also act as first port of call for handling consumer complaints and directing complaints to the attention of service providers for timely

resolution. The advantage of this option is to give regulators access to information on service providers' performance, without the need for retrieving consumer complaint data from the service providers. However, handling consumer complaints is a resource-intensive task that may require the establishment of a dedicated in-house consumer office. This option may therefore be unfeasible when there are significant constraints in regulatory capacity, as it is often the case for newly established regulators in developing countries. Even if regulators contract out complaint-handling functions, they must retain an oversight and monitoring role over service providers' performance and the right to step in should service providers not deal with the complaints effectively.

- *Consumer associations.* Consumer associations often play a key role at different stages of the complaint resolution process, for example by acting as a first port of call for collecting consumer complaints and facilitating resolution of consumer disputes. Based on Consumer International's experience, involving consumer associations in the complaint resolution process can deliver significant economies of scope if consumer associations also act as consumers' spokespersons in the regulatory process, because the complaints received from consumers can be effectively used to inform consumer representation (Lazzarini 2004). For example, this arrangement is currently in place in the UK, where independent Consumer Councils are meant to provide "one stop shops" for consumer complaints not resolved by utility companies (DTI 1998).
- *Ombudsmen.* Ombudsmen can also be involved in the complaint resolution process. This is for example the case in several Latin American countries (Peru, Argentina and El Salvador) and in Macedonia, where the jurisdiction of Ombudsmen, originally conceived as defenders of human rights, has started to extend to infrastructure industries. For instance, in Macedonia, the Ombudsman recently ruled against the practice of random customer disconnection from electricity supply in areas where the billing system does not enable service providers to detect delinquent customers. Consumer International is currently assessing whether the Ombudsman model could be exported to other Eastern European countries (Lazzarini 2004). As discussed below, Ombudsmen have also been established in Australia with the specific remit of solving disputes between consumers and electricity businesses.

Service providers represent the first port of call for handling consumers' complaints in most of the surveyed EAP regulatory regimes (see Figure 4.2 below). For example, in the Philippines, the Energy Regulatory Commission (ERC) has mandated the largest distribution utility in the country, the Manila Electric Company (MERALCO), to establish Consumer Welfare Desks in all its branch offices to handle consumer complaints; only un-resolved complaints are submitted to the in-house consumer department of the regulatory agency, the Consumer Affairs Service. Similarly, in the Malaysian electricity sector, Consumer Welfare Desks have been established within each service provider to handle consumer complaints.

Overall, half of the surveyed regulatory bodies are directly involved in the process of handling consumer complaints: 18 percent of the regulators represent the first and (unique) port of call for handling consumer complaints; in addition, 33 percent adopt a

Figure 4.2: First Port of Call for Handling Consumer Complaints*Consumer complaints are directed in the first instance to . . .*

Source: EAPIRF survey 2004. Multiple-answers allowed.

“mixed” complaint handling procedure, where consumers have the choice as to whether to direct complaints to regulators, service providers or consumer associations. For example, the National Telecommunication Commission of the Philippines has set up local One Stop Public Assistance Centers in collaboration with telecom companies to address consumer complaints and public concerns. There are currently 14 regional centres nationwide, providing decentralized complaint-resolution assistance to consumers.

Consumer associations do not play a significant role in resolving consumer complaints; on the other hand, a few significant exceptions are to be acknowledged, namely the Consumer Forum in Malaysia and the Yayasan Lembaga Konsumen Indonesia (YLKI) in Indonesia:

- *Consumer Forum (Malaysia)*. In the Malaysian telecom sector, the complainant must first give the opportunity to the relevant licensee to provide resolution for the complaint; however, the consumer, if not satisfied with the resolution of the complaint by the licensee, can ask for referral to the Consumer Forum, an independent consumer organization (see also Box 3). If the Consumer Forum does not succeed in resolving the complaint, the consumer may then lodge a complaint to the Malaysia Communications and Multimedia Commission (MCMC).
- *Yayasan Lembaga Konsumen Indonesia (Indonesia)*. In Indonesia, the YLKI has devised a quasi-judicial mechanism of intervention to resolve consumer com-

plaints. YLKI collects complaints from consumers across all infrastructure sectors over a 3–4 month period; once a sufficient number of consumer complaints are gathered, YLKI organizes a joint meeting with the regulator, the service providers, the complainants and the media, where YLKI acts as a mediator, in order to facilitate the resolution of the complaints.

Similarly, Ombudsmen hitherto have not played an active role in resolving complaints in EAP infrastructure industries. However, sector-specific Ombudsmen have been established as autonomous dispute resolution offices of last resort in two Australian regions, Tasmania and South Australia.¹³ In these two regulatory regimes, consumer complaints are directed in the first instance to licensed service providers and referred to the Electricity Industry Ombudsman only if unresolved. Although the regulatory agencies do not handle individual consumer complaints, they retain responsibility for investigating systemic complaints.

Soliciting Consumer Input

There is limited scope for contracting out responsibilities for soliciting consumer input. The regulatory body is the entity best placed to identify the type of consumer input required to inform the regulatory process. However, there are best practice examples of partnerships between the regulator and stakeholders in conducting joint research on consumer issues—for example, in the water sector in England and Wales, Ofwat, the economic regulator, commissioned in partnership with various stakeholders a joint national survey on consumer priorities to inform the 2004 price review.¹⁴ The joint investigation was intended to address the coordination problems that arose at the 1999 price review, when each stakeholder conducted its own consumer survey using different methodologies. As a result, the differences in methodology significantly limited the scope for comparing results and reaching mutual agreement on consumer priorities.

13. Tasmania and South Australia are respectively under the regulatory jurisdiction of the Office of the Tasmanian Energy Regulator and the Services Commission of South Australia (ESCOSA).

14. The consumer survey was jointly commissioned by the Department for Environment, Food and Rural Affairs (Defra), the Welsh Assembly Government, Ofwat, WaterVoice, the Environment Agency, the Drinking Water Inspectorate, English Nature, Wildlife and Countryside Link.

Involving the Poor in the Regulatory Process

Should regulators be called upon to pursue socio-political objectives, even when there is a clear structural separation between policy-making and regulatory functions? There may be an argument for pursuing social policy objectives through the political process, leaving the regulatory framework unfettered, on the grounds that social interventions involve redistribution of resources. However, a clear demarcation between regulatory and social policy is often impossible. Inevitably, regulators are confronted with technical decisions that have key social implications, especially in sectors where the priority is expanding access to the un-served population. The demarcation between regulatory and social interventions is particularly blurred in the EAP region, where most regulators (in particular government agencies) are actively involved in designing pro-poor policies, as highlighted in Box 4 below.¹⁵

Accounting for the perspective of the poor involves specific regulatory challenges, which need to be addressed within the frame of a coherent pro-poor strategy. Key challenges include, among others:

- Reaching out to the poor by conducting pro-poor awareness campaigns;
- Consulting the poor on a broader range of issues than the rest of the customer base, including affordability issues; and

15. Based on the survey results, government regulators tend to be more involved in pro-poor policies than independent regulators, with 75 percent of the surveyed government being responsible for designing pro-poor policies, against 59 percent of independent regulators (see Figure 5.1). However, the fact that only 59 percent of government regulators solicit information on affordability (see Figure 3.4), while 75 percent design pro-poor policies, suggests that government regulators may need to scale up their effort to solicit information from vulnerable customers. The results need however to be treated with caution, given the limited number of independent regulators in the sample.

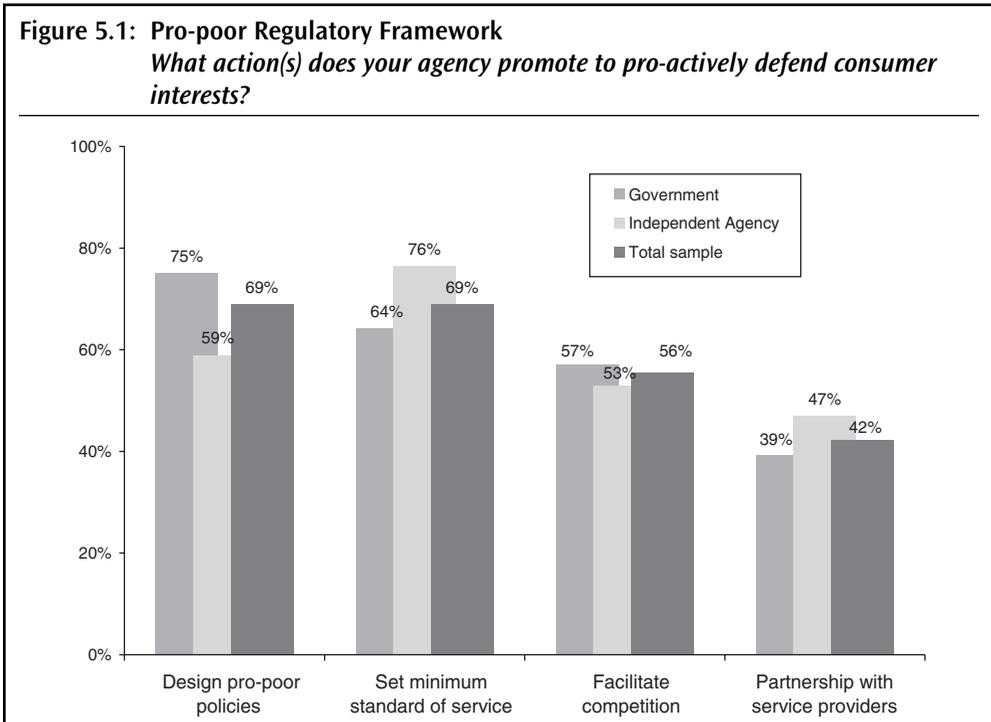
- Accounting for the needs of the poor, by partnering with stakeholders and intermediaries in designing the regulatory regimes.

Without aiming to be exhaustive, this chapter discusses two instruments EAP regulators rely on in pursuing a pro-poor regulatory strategy, namely pro-poor awareness campaigns and partnership arrangements.

Box 4: Designing a Pro-poor Regulatory Strategy

Addressing the needs of the poor requires an integrated approach cutting across different areas of intervention. Regulators have a number of instruments available to shape a pro-poor regulatory strategy, including:

- ◆ *Designing pro-poor policies.* Regulation is often set within a broader strategy of social policy interventions. Figure 5.1 below indicates that most regulators are actively involved in the design of pro-poor policies; main areas of intervention include subsidy schemes, universal service obligations and access policies.
- ◆ *Setting minimum standards of service.* Regulators must ensure that quality of service provision is in line with users' expectations and meet minimum standards. Seventy percent of the surveyed regulators are involved in setting minimum quality standards. Regulators concerned with the welfare of the poor may also consider setting lower quality standards in areas underserved by traditional utilities to expand access.
- ◆ *Fostering competition.* Competition can deliver benefits to customers by widening the range of products available on the market, constraining price increases and improving quality of service. As shown in Figure 5.1 below, 56 percent of the surveyed regulators in the EAP region take actions to facilitate the development of competition. However, the scope for competition differs significantly across sectors. For example, all telecom regulators have taken steps to develop competition in the market, against 50 percent of the regulators in the electricity sector. In the water sector, the nature of local monopoly of the industry significantly restraints the scope for introducing competition, although some forms of competition can be introduced by benchmarking service providers' performance or allowing unregulated service providers to compete with regulated utilities. However, in the EAP region, only 3 out of 11 surveyed water and sanitation regulators have so far taken steps to introduce forms of competition in water supply.
- ◆ *Partnering with service providers to introduce pro-poor payment schemes.* Introducing payment schemes tailored to the needs of low-income customers is critical to solve affordability issues, in particular in relation to connection fees. Forty-two percent of the surveyed regulators partner with service providers to design payment methods suitable for the poor. For example, the Office of the Tasmanian Energy Regulator, Australia require service providers to develop credit policies for customers willing to pay for service provision but unable to access commercial credit lines.
- ◆ *Designing disconnection policies.* Bans on disconnection are not to the benefit of low-income consumers, as they fail to distinguish between customers in financial hardship from those simply unwilling to pay their bills. Companies do need the threat of disconnection to secure payment from those who are able to pay but choose not to. However, a balance must be struck between ensuring timely debt recovery and protecting the rights of those customers who genuinely cannot pay. Customer disconnection for non-payment of bills ought indeed to be complemented by safeguards to protect consumer rights during the disconnection process, such as adequate notice periods before disconnection. Seventy percent of the surveyed regulators in the EAP region do allow disconnection for non-payment of bills, while the remaining 30 percent do not have a specific disconnection policy in place. The survey results indicate that independent regulators tend to set slightly stricter disconnection policies than government regulators, requiring an average notice period of 2.3 weeks to disconnect delinquent customers, compared to an average notice period of 3.2 weeks for government regulators.



Source: EAPIRF survey 2004. Multiple-answers allowed.

Pro-poor Awareness Campaigns

Raising consumers' awareness is even more important in the context of a pro-poor regulatory strategy. For example, poor consumers, when served by non-traditional service providers, are often unaware of the advantages of switching to regulated service providers in terms of better quality of service and cost savings. However, reaching out to the poor is complicated by the geographical isolation of low-income communities, which are often located in the most remote areas within the regulatory jurisdiction. Regulators must therefore devise specific awareness campaigns targeted to the poor.

The survey results suggest that regulators in the region may have to scale up their effort in reaching out to the poor: as yet, the majority of the regulators have not devised specific strategies to promote consumer awareness among the poor. However, a minority (40 per cent) of surveyed regulators do target the poor with specific awareness campaigns. Most of these regulators tailor their awareness campaigns according to whether the poor are located in rural or urban areas of their jurisdiction. Pro-poor consumer awareness strategies can be classified in the following three categories on the basis of the selected vehicle of communication:

- Developing information strategies based on the media, by running pro-poor media campaigns (for example, Philippines, telecom).
- Taking active steps in involving local communities in the regulatory process, by organizing road shows and informal meetings in local communities (for example, Cambodia and the Philippines, water; Solomon Islands, energy), conducting occa-

sional one-to-one visits (Indonesia and Tonga, water), reaching out to communities through local religious groups (Solomon islands, energy).

- Establishing special consultative bodies to reach out to the poor, by funding community groups (Australia) or relying on water and sanitation committees (Lao).

The picture emerging from the survey results is that a flexible and informal approach is mostly used to reach out to the poor among the surveyed regulators. However, the feasibility of this approach depends on the size of the regulatory jurisdiction as well as on the structure of the regulating agency. An informal approach may indeed be unfeasible when the regulatory agency has a large jurisdiction and a very centralized structure. This is consistent with the fact that informal pro-poor awareness campaigns are mostly conducted in small countries (such as the Pacific Islands) or in the water sector, where regulation is often decentralized at the municipality level given the local nature of service provision.

Partnership Arrangements

Given the specific challenges of involving the poor in the regulatory process, broader partnerships between regulators and stakeholders are crucial to effectively involve them in the regulatory process. There are examples of successful partnerships between regulators and governments in the EAP region. For example, in Papua New Guinea, the Independent Consumer and Competition Commission (ICCC), an independent regulatory agency, is working in partnership with the government in the implementation of community services obligations (see Box 5 below for a more detailed description of this partnership arrangement). Partnerships between regulators and service providers are also a relatively common practice: 42 percent of the surveyed regulators work in partnership with service providers to design methods of payment more suitable to the needs of the poor (see Figure 5.1), including negotiation of deferred connection fees or payment discounts for poor consumers.

Box 5: Papua New Guinea Community Service Obligations

Although in Papua New Guinea all consumers are under the ICCC's regulatory responsibility, part of the population is not directly supplied by the regulated service providers because of affordability or availability issues. As part of its overall privatization program, the Government of Papua New Guinea has set in place binding Community Services Obligations (CSO) for all major State-owned service providers to the benefit of consumers in underserved areas. Under this arrangement, major utility service providers, such as Telikom PNG and PNG Power, are required to connect rural households to their network at their own cost and recover these expenses through tax credits from the Government. For example, under its revised regulatory contract in the telecommunications industry, Telikom PNG is required to connect a phone for every 500 persons in the rural areas, including villages with less than 500 persons who have special needs.¹ The regulatory functions of the ICCC in this arrangement are:

- ◆ Promoting the effective operation of the CSO scheme in accordance with the CSO Principles for the benefit of consumers;
- ◆ Monitoring and reporting on the performance of regulated entities in complying with CSO obligations;
- ◆ Administering CSO funding and conducting appropriate audits to ensure compliance with CSO obligations.

Source: EAPIRF survey 2004.

¹ Although finalized, the arrangement will be implemented upon conclusion of Telikom's partial sale.

Conclusions

The paper has discussed consumer participation in infrastructure regulation in the EAP region, drawing on the results of a survey questionnaire completed by 45 regulators in the region. The assessment of consumer participation in the EAP region has been informed by the following conceptual framework.

Three main rungs can be identified in the ladder of consumer engagement in infrastructure regulation, namely information, consultation and partnership. Moving up the ladder of consumer participation is a lengthy and difficult process, which needs to be supported by an enabling institutional environment. In addition, higher rungs of consumer participation may not necessarily lead to better regulatory outcomes, in particular in developing countries where regulators do not have yet the capacity to handle sophisticated consultation processes.

Among the key institutional requirements for effective consumer participation are the independence of the regulatory agency from political interference and vested interests and reliance on consumer spokespersons to represent consumers' interests. The institutional mechanisms for consumer representation can be classified into two broad categories, depending on whether the representative entity is located *within* or *outside* the regulatory agency. It is however an open debate whether integration or independence of consumer representation with respect to the independent agency is a preferable option for consumer representation.

Key regulatory functions vis-à-vis consumers include: (i) informing consumers; (ii) resolving consumer complaints and (iii) soliciting consumer input. Each of these functions may in theory lead to a progressively higher rung of consumer participation in the regulatory process, from information to partnership. However, the level of consumer participation in the regulatory process is ultimately determined by how effectively regulators perform their functions vis-à-vis consumers.

There is scope for contracting out regulatory functions vis-à-vis consumers to stakeholders and intermediaries. For example, government and service providers can play an important

role in raising consumer awareness, while service providers and consumer associations can function as a first port of call for resolving consumer complaints. On the other hand, there is limited scope for delegating responsibilities for soliciting consumer input to external entities, as regulators are expected to possess better knowledge than other stakeholders on the type of information required from consumers to inform the regulatory process.

The demarcation between regulatory and social intervention is often blurred, as regulatory decisions inevitably have key social implications. Regulators have therefore the obligation to involve the poor in the regulatory process to ensure that their needs are adequately addressed. However, regulators face specific challenges in reaching out to the poor. Targeted awareness campaigns and broader partnerships between regulators and stakeholders are among the instruments regulators often deploy to meet the challenges of engaging the poor in the regulatory process.

In light of this conceptual framework, the following conclusions can be drawn from the survey results on the status of consumer participation in infrastructure regulation in the EAP region.

Institutional requirements for consumer participation. Regulatory independence and consumer representation are among two main institutional requirements for consumer participation:

- *Regulatory independence.* Regulatory independence is not widespread in the EAP region, with less than 40 percent of the surveyed regulators being established as independent agencies. However, formal independence may not be an accurate measure of the true extent of autonomy of the surveyed agencies. Indeed, independence is a relative rather than absolute concept and, as such, matters more in the long- than in the short-term.
- *Consumer representation.* Consumer representation is a common practice in the region. The onus of consumer representation is mostly on in-house consumer bureaus. Only a minority of regulatory regimes rely on external advisory bodies (such as consumer councils or consumer associations) to represent consumers. Reliance on in-house consumer representation suggests that consumer spokespersons may have limited capacity to challenge regulatory decisions, being located within the regulating agency.

Performing regulatory functions. The following main conclusions can be drawn on the role of the regulators in engaging consumers in the regulatory process (see summary in Table 6.1):

- *Informing consumers.* The majority of the surveyed EAP regulators adopt fairly open disclosure policies as far as procedures, decisions and benchmarked performance of service providers is concerned. As yet, only a minority disclose to the public licences and contracts with service providers. Regulators could therefore take further steps to enhance the transparency of the regulatory process by ensuring that licenses and contracts are also made available to the public. The media is the prevailing communication channel for raising consumer awareness among the surveyed regulators. In addition, half of the regulators conduct awareness campaigns using two-way communication channels (for example, workshops, or one-on-one meetings). Two-way forms of communication, if effectively utilized, can potentially lead to a higher rung of consumer engagement than media campaigns.

Table 6.1: Consumer Participation in Infrastructure Regulation

Function	Scope of Regulatory Action	Channels	Responsible Entity
Informing consumers	<p>(1) Enhancing the transparency of the regulatory process. Information disclosed to the public includes:</p> <ul style="list-style-type: none"> ◆ Procedures and decisions (71%) ◆ Benchmarked performance of service providers (51%) ◆ Licenses and contracts (44%) <p>(2) Running consumer awareness campaigns. The role of the regulator is reported to be “Very well known” (1/3 of surveyed regulators) or “Somewhat known” to consumers (2/3)</p>	<p><u>One-way channels:</u> Media (64%)</p> <p><u>Two-way channels:</u> Workshops (53%) One-to-one meetings (47%)</p>	<p>Regulator supported by</p> <ul style="list-style-type: none"> ◆ Government and service providers ◆ Sector-specific intermediaries (for example, NGOs in water, rural community leaders in energy)
Resolving consumer complaints	<p>(1) Half of the regulators are directly involved in handling consumer complaints.</p> <p>(2) Regulators not directly involved retain responsibilities for:</p> <ul style="list-style-type: none"> ◆ Reviewing the complaint records maintained by the service providers (49%) ◆ Stepping in if the complaint is not solved within a specific period (49%) ◆ Setting a financial incentive scheme to reward/penalize service providers on the basis of their performance in handling complaints (13%) 	<ul style="list-style-type: none"> ◆ Formal complaint resolution mechanisms (2/3 of the surveyed regulatory agencies) 	<ul style="list-style-type: none"> ◆ Service provider only (44%) ◆ Service provider and regulator (24%) ◆ Regulator only (18%) ◆ Service provider, regulator and consumer associations (7%) ◆ Consumer associations only (2%)
Soliciting consumer input	<p>Input elicited includes:</p> <ul style="list-style-type: none"> ◆ Quality of service (71%) ◆ Consumer satisfaction (69%) ◆ Affordability (49%) ◆ Billing related issues (47%) ◆ Consumption pattern (40%) 	<ul style="list-style-type: none"> ◆ Informal consultation / outreach strategies (78%) ◆ Formal meetings and/or public hearings (64%) ◆ Both formal and informal channels (47%) 	<p>Regulator</p>

Note: Percentage of regulators within bracket.
Source: EAPIRF survey 2004.

- *Resolving consumer complaints.* Most of the surveyed EAP regulators have in place formal procedures to deal with consumer complaints. However, almost one-third of the surveyed agencies do not exercise any regulatory power vis-à-vis service providers to enforce complaint resolution. This suggests that regulators may need to intervene more actively to hold service providers accountable for resolving consumer complaints.
- *Soliciting consumer input.* Quality of service and consumer satisfaction are the two inputs most often solicited from consumers to inform regulatory decisions. Informal channels (either informal consultations or informal outreach strategies) are mostly used to consult with consumers, although more than half of the surveyed regulators also rely on formal channels (either public hearings or formal consultations with consumer advisory bodies) for consumer consultations.

Contracting out regulatory functions. The practice of contracting out regulatory functions vis-à-vis consumers is relatively widespread in the EAP region. For example, the surveyed regulators highly value the role of government and service providers in raising consumer awareness. In most of the regulatory regimes, service providers also represent the first port of call for handling consumer complaints. Moreover, regulators tend to leverage the expertise of sector-specific intermediaries (such as NGOs in the water sector and community leaders in the energy sector) to reach out to consumers. The available evidence also suggests that consumer associations may not be actively engaged in the regulatory process in infrastructure industries in the region. As yet, consumer associations do not appear to play a significant role in either informing consumers or resolving consumer complaints.

Involving the poor in the regulatory process. Almost two-thirds of the surveyed regulators are directly involved in setting pro-poor policies. This implies that EAP regulators must take active steps to involve the poor in the regulatory process to ensure that their needs are adequately addressed. However, the survey results suggest that regulators in the region may have to scale up their effort in reaching out to the poor. As yet, only a minority (40 percent) of the surveyed regulators do target the poor with specific awareness campaigns. Moreover, most rely on informal strategies (mainly based on-to-one meetings and occasional visits to local communities). On the other hand, there are examples of successful partnerships between regulators and stakeholders in designing pro-poor policies. In particular, half of the surveyed regulators rely on partnerships with service providers to design pro-poor payment schemes.

Overall, EAP regulators have successfully begun to involve consumers in the regulatory process. The available evidence indeed indicates that the surveyed regulators are moving from merely informing to actively consulting with consumers. However, regulators must take further actions to move up to the rung of consultation in the ladder of consumer engagement depicted in Box 1. In particular, consumer participation would benefit from the following regulatory actions: more systematic reliance on two-way channels of communication for awareness campaigns, more open disclosure policies, tighter regulatory interventions to hold service providers accountable for resolving consumer complaints and more effective strategies to reach out to the poor.

APPENDIXES

Sample Description

The results of the survey questionnaire were presented during the second meeting of the East Asia and Pacific (EAP) Forum of Infrastructure Regulators held in Manila April 5–7, 2004. The survey questionnaire covered 45 regulatory bodies from 21 countries and from all infrastructure industries (15 energy regulators; 11 regulators in water and sanitation; 10 regulators in telecom; 1 transport regulators and 8 multi-sector regulators). Among the 45 surveyed regulators, 17 are established as independent agencies.

Regulators contacted for EAP Survey

Energy [15]

- | | |
|--|---|
| 1. Office of the Tasmanian Energy Regulator, Australia | 8. Ministry of Industry and Handicraft, Lao |
| 2. Electricity Authority of Cambodia, Cambodia | 9. Energy Commission, Malaysia |
| 3. Fiji Electricity Authority, Fiji Islands | 10. Energy Regulatory Authority, Mongolia |
| 4. Ministry of Energy and Mineral Resources, Indonesia | 11. Energy Regulatory Commission, Philippines |
| 5. The Oil and Gas Downstream Regulatory Body, Indonesia | 12. Energy Market Authority, Singapore |
| 6. Energy Planning Unit, Kiribati | 13. S.I. Electricity Authority, Solomon Islands |
| 7. Korean Electricity Commission, Korea | 14. Energy Policy and Planning Office, Thailand |
| | 15. Ministry of Industry, Vietnam |

Transport [1]

16. Maritime Industry Authority, Philippines

Water and sanitation [11]

17. Department of Potable Water Supply, Cambodia
18. National Urban Water Quality Centre, China PR
19. Water Supplies Department, Hong Kong
20. Jakarta Water Supply Regulatory Body, Indonesia
21. Water Supply Authority, Lao
22. PNG Waterboard, Papua New Guinea
23. MWSS Regulatory Office, Philippines
24. Samoa Water Authority, Samoa
25. Department of Mines and Energy, Solomon Islands
26. Department of Water Resources, Thailand
27. Tonga Water Board, Tonga

Telecommunications [10]

28. Telecom Regulation MPTC, Cambodia
29. Ministry of Information Industry, China PR
30. Office of the Telecommunications Authority, Hong Kong
31. Department of Post and Telecommunications, Lao
32. Malaysian Communications and Multimedia, Malaysia
33. Communications Regulatory Commission, Mongolia
34. National Telecommunications Commission, Philippines
35. Post and Telegraph Department, Thailand
36. Department of Communications, Tonga
37. Ministry of Infrastructure & Public Utilities, Vanuatu

Multi-sectoral [8]

38. Essential Services Commission of South Australia (ESCOSA), Australia
39. Commerce Commission, Fiji Islands
40. Ministry of Domestic Trade and Consumer Affairs, Malaysia
41. Chuuk Public Utility Corporation, Micronesia
42. Kosrae Utilities Authority, Micronesia
43. Yap State Public Service Corporation, Micronesia
44. Department of Transportation, Communications and Infrastructure, Micronesia
45. Independent Consumer and Competition Commission, Papua New Guinea

Countries

1. Australia
2. Cambodia
3. China PR
4. Fiji Islands
5. Hong Kong
6. Indonesia
7. Kiribati
8. Korea
9. Lao
10. Malaysia
11. Micronesia
12. Mongolia
13. Papua New Guinea
14. Philippines
15. Samoa
16. Singapore
17. Solomon Islands
18. Thailand
19. Tonga
20. Vanuatu
21. Vietnam

	Agencies		Sector				Multi-sector
	Total	Independent	Energy	Water and Sanitation	Telecom	Transport	
Australia	2	2	1				1
Cambodia	3	1	1	1	1		
China PR	2	1		1	1		
Fiji Islands	2	1	1				1
Hong Kong	2			1	1		
Indonesia	3	2	2	1			
Kiribati	1						1
Korea	1	1	1				
Lao	3		1	1	1		
Malaysia	3	2	1		1		1
Micronesia	4	2	1				3
Mongolia	2	2	1		1		
Papua New Guinea	2	1		1			1
Philippines	4		1	1	1	1	
Samoa	1			1			
Singapore	1		1				
Solomon Islands	2	1	1	1			
Thailand	3	1	1	1	1		
Tonga	2			1	1		
Vanuatu	1				1		
Vietnam	1		1				
Total	45	17	15	11	10	1	8

Survey

EAP Country Survey on Consumer Issues in Utility Regulation

1. Please give us the following background information on your regulatory agency

A. Country _____

B. Name of regulatory agency _____

C. Year of establishment _____

D. Type of organization

Government Independent agency

E. Sector(s) of responsibility

Energy Water and sanitation

Telecom Transport

Other (please specify)

F. Please list the primary duties / objectives of your agency

1. _____

2. _____

3. _____

G. How many service providers does your agency regulate?

- Privately owned companies _____
- Publicly owned companies _____
- Mixed ownership companies _____
- Not applicable (please specify why)

H. How many customers (approximately) are supplied by regulated service providers?

Total customers _____ of which: Households _____

I. How many households are under your regulatory responsibility but are not directly supplied by regulated service providers?

2. Is the protection of consumer rights explicitly mandated in legislation?

Yes No

(Only if you answered Yes to the previous question) Consumer protection is mandated in:

- General consumer law
- Utility-specific law
- Sector law (e.g. electricity law)
- Decrees / contracts / licenses with legal status
- The law under which your agency is established
- Other (please specify)

3. On a scale from 1 to 5, how would you rank the following stakeholder groups in terms of importance to your agency's role? (1—very low, 2—low, 3—medium, 4—high, 5—very high)

- Representatives of
 - Industrial/commercial consumers
 - Domestic consumers/households
- Representatives of service providers
- Other government officials

4. On average, what percentage of your agency's time is spent dealing directly with consumers?

- 0–5%
- 6–10%
- 11–25%
- 26–50%
- Over 50%

5. What action(s) does your agency promote to pro-actively defend consumer interests?

- Designing pro-poor policies (e.g. subsidy schemes)

Please describe briefly the actions taken

- Setting legally binding minimum standard of service

- Facilitating the development of competition among service providers

Please describe briefly the actions taken

- Working in partnership with service providers to introduce more flexible payment schemes targeted to poor consumers

Please describe briefly the actions taken

- Not applicable

- Other (please specify)

6. Does your agency have a specific customer disconnection policy for non-payment of bills?

Yes No

(Only if you answered Yes to the previous question) Customer disconnection for non-payment of bills is

- Banned

- Always allowed, with no notice requirement

- Allowed when a notice of __ weeks is provided to the customer

7. Which of following information does your agency elicit from consumers for making regulatory decisions?

- Affordability (e.g. utility bill as a percentage of total income)

- Consumption pattern

- Consumer satisfaction

- Quality of service

- Billing-related matters

- Other (please specify)

8. Which procedure(s) does your agency employ for soliciting consumer input?

- Public hearing
- Informal consultation with consumer representatives
- Informal public outreach (e.g. informal meetings)
- Formal consultation with advisory bodies
- Consumer surveys
- Not applicable
- Other (please specify)

9. Does your agency have any of the following institutional features in place for engaging consumers in the regulatory process?

- In-house consumer affairs bureau/staff
- Specialized Ombudsman person
- Regional offices
- Consumers represented on agency board
- Formal advisory/consultative group
- Not applicable
- Other (please specify)

Please provide further information on any of these features:

10. On the average, how would you rate the importance of consumer input for:

	Very helpful	Somewhat helpful	Not helpful
Making regulatory decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Educating consumers on their rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Building public support for the agency and its decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. Which actions does your agency take to ensure the promotion of consumer awareness—consumer understanding of their rights and obligations under the regulatory system, as well as of the role of your agency?

- Disclosing licenses and contracts
- Disclosing procedures and decisions
- Disclosing benchmarked performance of service operators vis-à-vis consumers
- Not applicable

- Other (please specify)
-
-
-

12. Which channel(s) does your agency employ to promote consumer awareness?

- Web-site/Emails
 - Radio/television advertisements
 - Press advertisements
 - Material included in bills
 - Word-of-mouth
 - Workshops
 - Information kiosks
 - One-to-one meetings
 - Not applicable
 - Other (please specify)
-
-
-

13. Does your agency have a specific strategy to promote consumer awareness among the poorest rural members of society?

Yes No

(Only if you answered Yes to the previous question) Which communication medium does your agency employ to interact with this consumer group?

14. Does your agency have a specific strategy to promote consumer awareness among the poorest urban members of the society?

Yes No

(Only if you answered Yes to the previous question) Which communication medium does your agency employ to interact with this consumer group?

15. On a scale from 1 and 5, how would you rank the role of the following intermediaries in promoting consumer awareness? (1—insignificant, 5—very important)

- Journalists
- NGOs
- Religious institutions
- Service providers
- Government
- Rural community leaders

- Bilateral/Multilateral organizations
- Local regulatory offices
- Consumer associations

16. How well do you think the role of your agency in your areas of responsibility is known to consumers?

- Very well known
- Somewhat known
- Not known

17. On the average, how many complaints about the quality of utility service are received each year:

- In total? _____
- From domestic customers/households? _____

18. Is there a formal standard procedure in place to deal with consumer complaints?

Yes No

(Only if you answered Yes to the previous question) Please describe the main features of the complaint handling procedure.

19. Consumer complaints are directed in the first instance to:

- Regulatory agency
- Central office
- Local offices
- Service providers
- Local courts/arbitrators
- Consumer association
- Other (please specify)

20. If consumer complaints are directed in the first instance to your agency, what mechanism(s) does your agency employ for eliciting/processing complaints?

- Dedicated telephone line
- Complaint handling form with follow-up mechanism through telephone or mail
- Web-site/E-mails
- Information included in bills
- Not applicable
- Other (please specify)

21. If service providers are responsible for dealing in the first instance with consumer complaints, which mechanisms does your agency have in place to ensure that consumer complaints are handled effectively?

- Review of the complaint records maintained by the service providers
- Financial incentive scheme to reward/penalize service providers on the basis of their performance in handling complaints
- Your agency is involved if the complaint is not resolved within a certain period of time
- Not applicable
- Other (please specify)

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Consumer Participaton in Infrastructure Regulation is part of the World Bank Working Paper series. These papers are published to communicate the results of the Bank's ongoing research and to stimulate public discussion.

This paper assesses consumer participation in infrastructure regulation in the East Asia and Pacific region (EAP). The assessment draws on the results of a survey questionnaire conducted among 45 infrastructure regulators in the region. It finds that EAP regulators have successfully begun to involve consumers in the regulatory process: consumer representation is a well-established practice in the region; and regulators draw on standard mechanisms to inform consumers, resolve consumer complaints, and solicit consumer input. However, regulators must take further actions to firmly move up the "ladder of consumer engagement," from merely informing to actively consulting with consumers. In particular, consumer participation would benefit from more open disclosure policies, more effective strategies to reach out to the poor, and tighter regulatory intervention to hold service providers accountable for resolving consumer complaints.

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ISBN 0-8213-6380-8

