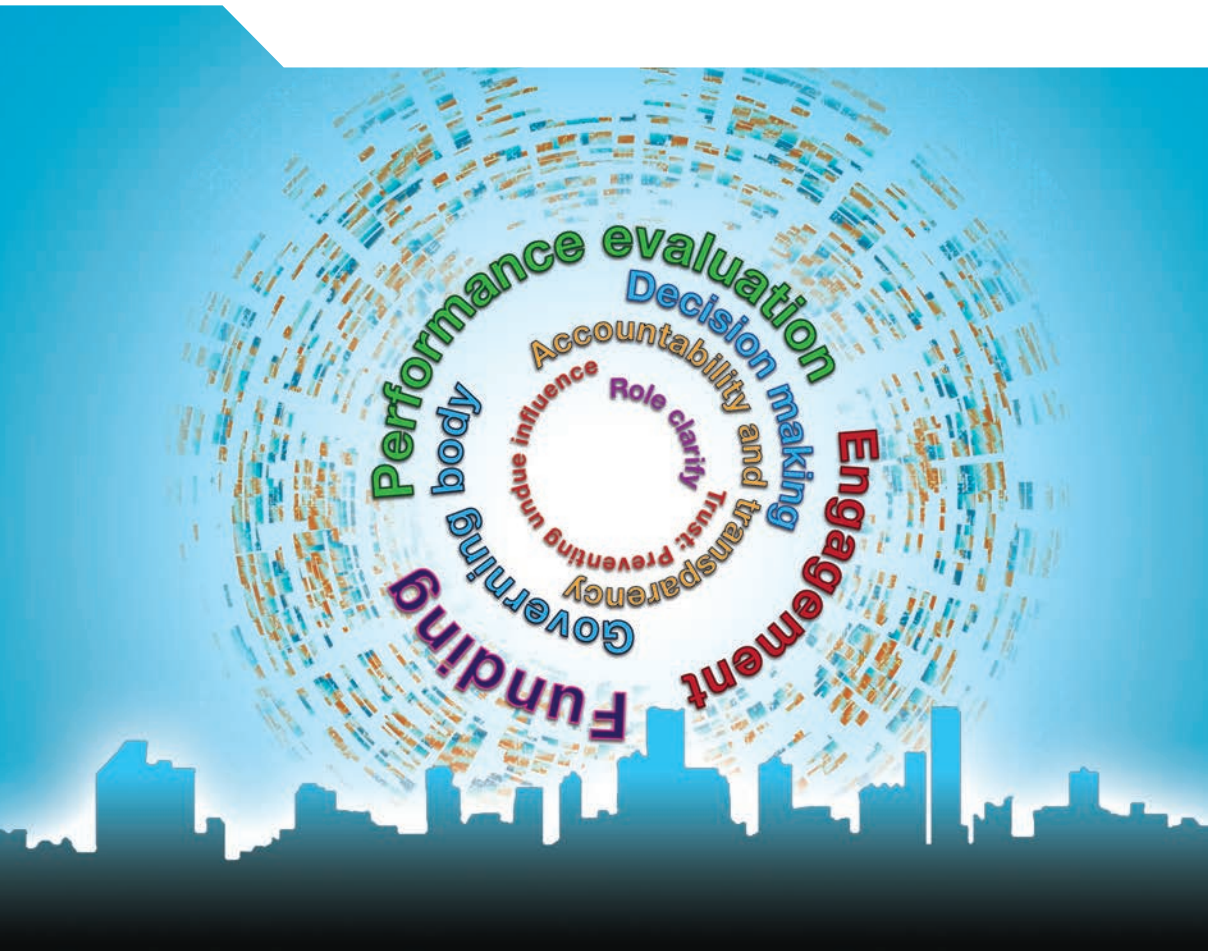




Driving Performance at Colombia's Communications Regulator



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Foreword

Achieving positive outcomes for society, the environment or the economy hinges on the effective performance of regulators. Measuring regulators' performance is a fundamental function of a “world class” regulator and can help strengthen the contribution of regulatory policies to sustainable growth and development. However, measuring performance is challenging, starting with the definition of what should be measured and including the attribution of outcomes to regulators' actions and the availability of robust and relevant indicators and evidence-based evaluation methodologies.

To start addressing these challenges, the OECD has developed a methodology that identifies some of the building blocks of a robust performance assessment framework. The methodology draws on the OECD's long-standing work on measuring regulatory performance, including the *OECD Framework for Regulatory Policy Evaluation*, and the *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators*, which proposes an overarching governance framework to drive performance improvements of regulators. This report applies the methodology to Colombia's Communications Regulation Commission (*Comisión de Regulación de Comunicaciones, CRC*).

The analysis presented in this report identifies the existence of the institutions, processes, approaches and practices that can help the regulator better assess its own performance. It does not assess the performance of the regulator. It is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards.

The methodology informing this report and its application to the CRC has benefitted from inputs and consultation from a wide range of economic regulators and went through a rigorous peer-review process. The initial methodology was presented at the second meeting of the OECD Network of Economic Regulators (NER) on 14 April 2014. NER members provided feedback that was used to inform the first application of the methodology to the CRC. Three NER members were an integral part of the team that prepared the report. An initial draft of the report was discussed at the third meeting of the NER on 5 November 2014.

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- Francisco Xavier Salazar Diez de Sollano, Chair, *Comisión Reguladora de Energía*, Mexico and President, Ibero-American Energy Regulators Association (ARIAE);
- Daniel Brown, Director, Strategy and Policy, Office of Rail Regulation, United Kingdom; and
- Antonello De Tommaso, Head of the EU and International Affairs Office, *Autorità per le Garanzie nelle Comunicazioni*, Italy.

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Acronyms and abbreviations

AGCOM	<i>Autorità per le Garanzie nelle Comunicazioni</i>
ANE	National Spectrum Agency (<i>Agencia Nacional del Espectro</i>)
ANTV	National Television Authority (<i>Autoridad Nacional de Televisión</i>)
BSC	Balanced Scorecard
CONPES	Council on Economic and Social Policy (<i>Consejo Nacional de Política Económica y Social</i>)
CRE	Energy Regulatory Commission (<i>Comisión Reguladora de Energía</i>)
CRC	Communications Regulation Commission (<i>Comisión de Regulación de Comunicaciones</i>)
CRT	Telecommunications Regulation Commission (<i>Comisión de Regulación de Telecomunicaciones</i>)
DAFP	Civil Service Administrative Department (<i>Departamento Administrativo de la Función Pública</i>)
DNP	National Planning Department (<i>Departamento Nacional de Planeación</i>)
ICT	Information and Communication Technology (ICT)
MINTIC	Ministry for Information and Communication Technology (<i>Ministerio de Tecnologías de la Información y las Comunicaciones</i>)
NER	Network of Economic Regulators
ORR	Office of Rail Regulation

SIC	Superintendence of Industry and Commerce (<i>Superintendencia de Industria y Comercio</i>)
SIIF	Integrated Financial Information System ((<i>Sistema Integrado de Información Financiera</i>))
USD	United States Dollars

Executive summary

Colombia's Communications Regulation Commission (*Comisión de Regulación de Comunicaciones*, CRC) has developed a comprehensive system for assessing its own performance that includes a set of objectives and a number of indicators to monitor the internal processes and activities aimed at achieving these objectives.

The CRC strives to align human and financial resources with strategic objectives. It is relatively autonomous in managing its budget and hiring professional staff. It has an open and non-hierarchical internal structure that facilitates horizontal and team work.

The CRC is also committed to improving its performance through better decision-making processes and goes beyond statutory requirements for the preparation of regulation. This effort stands out and is to be commended, as the development and use of *ex ante* impact assessment is at an early stage in Colombia.

As it strives to strengthen its performance assessment framework, the CRC is confronted with a number of challenges.

Strategic objectives

CRC strategic objectives are organised around a Balanced Scorecard (BSC), which allows for tracking internal and external dimensions of an organisation. Strategic objectives focus strongly on internal management processes. This internal focus entails the risk for the regulator to be perceived as excessively in-ward looking and not outcome-based.

The CRC is a special administrative unit attached to the Ministry for Information and Communication Technology, with technical, administrative and financial autonomy. The Minister chairs the Board. The close institutional relationship between the Ministry and the CRC does not make it easy to set clear boundaries between policy and regulatory functions. This is an issue which is common to other regulatory commissions in Colombia.

The CRC shares some responsibilities for regulating the sector with other agencies and has no control on regulatory enforcement, which affects CRC capacity to achieve its strategic objectives and be accountable for outcomes.

Input

There is a structured system for linking human resources performance to organisational performance. As the CRC relies heavily on team work, the system strives to take into account (and separate) individual and team performance. This system can help improve individual and organisational performance. However, it could also create false expectations on the extent to which actions by individuals and teams can be solely responsible for organisational outputs and outcomes, especially when these outputs and outcomes are not fully within CRC control. Moreover, while the quality of the existing staff is not in question, there might be room for assessing whether the CRC already has all the necessary skills to perform well and meet new responsibilities.

Process

The CRC is planning to develop a more structured approach to *ex ante* impact assessment, including a more in-depth analysis of the costs and benefits of proposed regulation. Success hinges in part on addressing key challenges that go beyond the CRC powers, including strict liability rules.

The short mandate of the CRC Commissioners – three years with no staggering mandates – and the role of the Minister as chair of the CRC Board could weaken the capacity of the CRC to take a long-term perspective to the regulation of the sector and shield regulatory decisions from the electoral cycle and political interference. This is a particularly important issue in Colombia as the government has a 30% stake in Movistar, the second largest mobile market operator in Colombia.

Output and outcome

The CRC monitors some output and outcome indicators, including response time to information requests and rates. However, these are not the only output of CRC regulatory activities. Examples of other output indicators could be based on regulatory decisions or interventions that the CRC makes. Moreover, when assessing its performance, the CRC has developed only few indicators that assess the quality of regulatory processes. This is an area where the CRC can track and show performance. Moreover, *ex post* assessment covers only few regulatory decisions and provides little evidence on market outcomes of regulatory interventions. In addition, there is limited data on compliance with regulation.

Key recommendations

- Streamline strategic objectives, ensure that they reflect a clear separation between policy and regulatory functions and institutionalise external stakeholders' participation in defining strategic objectives.
- Advocate for an institutional set up that guarantees the full independence of the CRC Board from the executive and make a clear distinction between the policy functions of the executive and the regulatory functions of the regulator.
- Develop a systematic policy for assessing the *ex ante* impact of regulation and introduce a proportionality test for more in-depth cost/benefit analysis.
- Advocate for better regulatory policy across the government and make a case for strong accountability mechanisms (to be distinguished from personal liability).
- Evaluate the skills and capacity that the CRC currently has in light of the objectives, functions and responsibilities that the CRC will need to meet in the medium-term.
- Rebalance the current set of performance indicators through greater attention for regulatory outputs, quality of regulatory processes and some key economic and market trends.
- Streamline the measurement of input indicators (currently focusing on internal management) to focus on those that can have a direct impact on process and outputs of regulatory activities.
- Make a clear distinction between internal performance, on which the CRC has control, and market performance, on which the CRC does not have direct control.
- Systematically track and analyse broad market data and trends together with qualitative/perception data for improved understanding and learning but avoid creating automatic causal links between internal performance and market trends.
- Consider an integrated in-depth *ex post* evaluation of the stock of telecommunication regulation.

Assessment and recommendations

Strategic objectives

The CRC has developed a comprehensive system for setting its strategic objectives and linking them to its daily work. The CRC prepares a Strategic Plan that identifies the key objectives the CRC intends to achieve over a four-year time-frame. The strategic objectives stem in part from the CRC's own analysis of key market trends and consumer needs. The strategic objectives are organised around a Balanced Scorecard (BSC), a tool initially developed for private organisations and increasingly used also by public ones, which allows for tracking internal and external dimensions of an organisation and linking them to the organisation's strategic objectives. Internal working groups (composed of CRC staff) and the Board participate in the definition of these objectives. Strategic maps stemming from the objectives guide the implementation of the actions for each of the internal working groups and inform the daily management of CRC staff. The Strategic Plan also informs an annual Regulatory Agenda that identifies the regulations the CRC intends to develop to meet the objectives identified in the Strategic Plan.

Strategic objectives focus strongly on internal management processes. More than half of the eighteen strategic objectives that the CRC has set for the period 2014-18 relate to internal management processes. These objectives can help drive internal performance, which can in turn facilitate the achievement of objectives related to market performance (for example, competition and service quality). The risk, however, is for the regulator to be perceived as excessively in-ward looking and not outcome-based. This strong internal focus might also reflect a process for setting strategic objectives that does not systematically institutionalise the involvement of external stakeholders, reflecting the lack of consultation standards for regulatory policy in Colombia. The risk, however, is to fail to sufficiently balance government needs with the demands and perceptions of operators and end-users. Other regulators have put in place permanent advisory bodies to provide external feedback on the regulator's plans (in addition to specific regulatory interventions) which could be extended to provide feedback on setting strategic objectives (Box 1).

Box 1. Institutionalising stakeholder participation: Mexico’s energy regulator

Mexico’s Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE) has established two advisory bodies – one for hydrocarbons and one for electricity – with the purpose of discussing CRE’s regulatory plans (in addition to specific regulations that will be submitted to public consultation).

These advisory bodies were constituted by representatives of different stakeholders: investors, utilities, consumers, government and academia. Following the introduction of an energy reform in 2013, CRE will replace these two bodies with an “Advisory Board”, a body that is formally established in the commission statutes.

Source: Information provided by CRE, October 2014.

The respective roles of the ministry and the regulator in setting the CRC’s strategic objectives are not clearly defined. The CRC is a special administrative unit attached to the Ministry for Information and Communication Technology (*Ministerio de Tecnologías de la Información y las Comunicaciones*, MINTIC), with technical, administrative and financial autonomy. The Minister chairs the Board of the CRC. The Director of the National Planning Department (*Departamento Nacional de Planeación*, DNP) is also a member of the Board. Whereas the respective roles of the Ministry and the CRC are defined in the law, in practice, this institutional arrangement seems to create some confusion on the functions and role of the CRC, especially in setting and updating strategic goals. For example, the CRC contributes to the preparation of the constitutionally mandated National Development Plan, prepared by DNP at the beginning of each four-year government term as well as sector strategies, notably the information technology strategy prepared by the MINTIC. At the same time, the CRC is expected to support the implementation of national and sector policies related to the deployment of infrastructure in the Information and Communication Technology (ICT) sector, besides promoting competition. It also plays a significant advisory role to the Ministry. It is not uncommon for regulators to be assigned policy functions, provided that the boundaries between policy and regulatory functions are clearly set and disclosed. The close institutional relationship between the Ministry and the CRC does not make it easy to set these boundaries. This is an issue which is common to other regulatory commissions.

The CRC shares some responsibilities for regulating the sector with other agencies and has no control on regulatory enforcement, which affects the CRC’s capacity to achieve its strategic objectives. The CRC shares responsibility for regulating the electronic communications sector with two other agencies, the National Television Authority (*Autoridad Nacional de Televisión*, ANTV) and the National Spectrum Agency (*Agencia Nacional del Espectro*, ANE). Moreover, while the CRC develops and issues regulations, Colombia’s competition and consumer protection agency, the Superintendence of Industry and Commerce (*Superintendencia de Industria y Comercio*, SIC), is responsible for enforcing regulations related to consumer policy and competition. The MINTIC has the power to issue fines for failing to comply with regulations. This division of responsibilities between regulatory functions and enforcement functions is not limited to the communication sector. Yet, it calls into question the capacity of the CRC to effectively achieve its objectives and be accountable for outcomes.

Recommendations

- ***Streamline strategic objectives.*** Eighteen strategic objectives make it hard to focus on accountable competence, reduce risk of regulatory creep and maximise impact. Focusing on a few high-level objectives (e.g. competition, consumer access) can help assess performance against some key outcomes. These outcomes should not be based on internal management compliance.
- ***Clarify the CRC role and, to the extent possible, ensure that strategic objectives reflect a clear separation between policy and regulatory functions.*** This might require re-thinking the formal institutional relationship between the Ministry and the CRC, and CRC advisory role to the Ministry.
- ***Hold the CRC directly accountable only for those objectives for which it has a direct control.*** As the CRC does not have control over the entire regulatory cycle (and in particular on the enforcement of the regulations it issues), the effective achievement of its objectives can be seriously undermined. These limitations need to be clearly acknowledged in the choice and prioritisation of the strategic objectives as well as in the evaluation of CRC performance.
- ***Institutionalise external stakeholders’ participation in defining strategic objectives.*** An official institutional mechanism for involving external stakeholders in defining strategic objectives and regulatory interventions could help better balance the needs of

operators and end-users with CRC internal processes. While the CRC has a good reputation for consulting stakeholders, this institutionalisation will assist in maintaining this reputation and strengthen transparency and accountability mechanisms. The experience of Mexico's CRE, presented above, could provide some guidance.

Input

The CRC strives to align human and financial resources with strategic objectives. The Regulatory Agenda, which identifies the regulatory interventions that the CRC plans to develop in the course of the year, provides the framework for allocating human and financial resources. Co-ordinators determine budget needs in line with planned activities and discuss it with staff. The annual budget is prepared with the participation of all the co-ordinators of the internal working groups.

The CRC is relatively autonomous in managing its budget and hiring professional staff, although, as a special administrative unit attached to the MINTIC, it is subject to government general rules and processes. The CRC is financed through annual contributions from communication companies and operators. The CRC sets the amount of the contribution, which cannot exceed 0.1% of the gross income of the company's revenues. The CRC budget is part of the national budget, follows the guidelines issued by the Ministry of Finance and is part of the negotiations the MINTIC conducts with the Ministry of Finance for the preparation of the budget. The CRC is relatively autonomous in hiring professional staff and can directly recruit professionals. Some caps exist on the total staff that it can hire.

The open and non-hierarchical internal structure of the CRC facilitates horizontal and team work and requires staff to carefully track inputs and deliverables. Staff work across different projects developed by the internal working groups to implement the Regulatory Agenda; they keep track of individual inputs and deliverables for internal management purposes. This structure leverages different resources across the organisation and avoids the creation of stovepipes. It contributes to the emergence of a shared commitment to achieving CRC strategic objectives. It provides also strong incentives to monitor inputs and deliverables. At the same, it imposes significant demands on all staff for tracking performance information; the time that staff spend on this task might not always be accounted for.

The CRC has a structured system for linking human resources performance to organisational performance. Regular meetings between managers and staff evaluate staff performance. As the CRC relies heavily on team work, the system strives to take into account (and separate) individual and team performance through individualised BSCs that stem from the organisation's BSC. The system links performance with tangible incentives for approximately one third of professional staff. The CRC has allocated significant resources to this exercise. This system can help improve individual and organisational performance. However, it could also create false expectations on the extent to which actions by individuals and teams can be solely responsible for organisational outputs and outcomes, especially when these outputs and outcomes are not fully within CRC control.

The CRC benefits from a capable and dynamic staff, whose professionalism and competence are recognised by government and external stakeholders; new responsibilities might require an assessment of the existence of the needed skills. While the quality of the existing staff is not in question, there might be room for assessing whether the CRC already has all the necessary skills to perform well and meet new responsibilities. For example, the CRC has issued a new regulation on regulatory accounting that will require a more direct control of the CRC on regulated entities and technical steering and interaction with highly skilled consultancy support. The CRC is also committed to strengthening its internal decision-making process; it plans to conduct impact assessments for regulatory decisions more systematically, with more in-depth quantified cost-benefit analysis of regulatory decisions. These new responsibilities will require either new skills or the development of skills and capabilities that already exist within the CRC.

When tracking the use of inputs for meeting the strategic objectives, the **CRC should not confuse (good) internal management indicators with performance indicators.** This focus probably follows logically from the strong emphasis in the strategic objectives on internal management. This is the basic premise in the BSC methodology also. The purpose of performance-focused indicators for regulators is fundamentally different from indicators for any private organisation's management as the institutional structure of regulators and therefore their performance needs to take into consideration issues like independence, accountability, transparency.

Recommendations

- *Assess the resources dedicated to track inputs and deliverables and, more generally, performance information and consider possible mechanisms to better distribute some of these demands on staff time.* The time staff spend on these tasks could be better accounted for and more resources be provided for this purpose. Concentrating some of these functions within a dedicated structure or team could also free up staff time, while preserving the horizontal structure of the CRC.
- *Evaluate the skills and capacity that the CRC currently has in light of the objectives, functions and responsibilities that the CRC will need to meet in the medium-term.* Such evaluation should take into consideration the implications of its expected role in assessing accounting practices of regulated entities and a more extensive and in-depth use of cost/benefit analysis. Sufficient skills and capacity in these areas will be important factors affecting CRC performance. This evaluation could also take into consideration the existence of processes and resources for developing existing skills and capacity, including through training, secondment or exchange of best practices and mutual support with communication regulators from other countries through multilateral networks or bilateral agreements.
- *Streamline the measurement of input indicators (currently focusing on internal management) to focus on those that can have a direct impact on process and outputs from regulatory activities for the performance measurement framework.* There should be a clear reason for including the indicators for the purposes of measuring performance, which are different for the purposes of monitoring activities, management, auditing, etc.

Process

The CRC governance structure could weaken the capacity of the regulator to fully shield decision-making processes from the electoral cycle and guarantee a fully independent and evidence-based approach to regulation. The President of the Republic appoints the three Commissioners who sit on the Board along with the Director of DNP, who has Cabinet-level rank. The Minister chairs the Board, which cannot meet if the Minister is not present. The mandate of the three Commissioners lasts for three years and there is no requirement for staggered mandates (although the terms of the three Commissioners do not currently overlap, creating

some *de facto* staggering).¹ This governance arrangement implies that appointed Board members might not serve beyond the mandate of an elected government, which is four years. The short mandate of the commissioners has the potential to weaken the capacity of the CRC to take a long-term perspective to the regulation of the sector and affect the CRC capacity to develop decision-making processes that effectively shield regulatory decisions from the electoral cycle and any political interference. This is particularly important as the Colombian government has a 30% stake in Movistar, the second largest mobile market operator. Other regulators have developed governance arrangements that help guarantee the independence of the regulator’s decision-making (Box 2).

Box 2. Board composition and appointments: AGCOM, CRE and ORR

Italy’s Autorità per le Garanzie nelle Comunicazioni (AGCOM)

Law 481 of 1995 (establishing the regulatory authorities for public utilities) and Law 249 of 1997 (establishing AGCOM) define AGCOM’s governance system, including Board structure, appointment mechanism, and members’ requisites. The Italian Senate and the Chamber of Deputies elect half of AGCOM’s Board members, respectively. The elected members are appointed by a decree of the President of the Italian Republic. The Prime Minister nominates a Chairman, in agreement with the Minister for Communications. The nominee is subject to the binding opinion of the relevant parliamentary committees of the Senate and the Chamber of Deputies, which can hold hearings of the nominee. Following a favorable opinion by two-third of the members of each relevant parliamentary committee, the Chairman is appointed by a decree of the President of the Italian Republic. In 2011, following a spending review, the number of Board members was reduced from 9 to 5.

Board members’ mandate lasts 7 years, longer than the 5-year term of the legislature, and is not renewable. There are strict incompatibility rules, including the prohibition to perform any type of professional or advisory activity, to be administrator or employed in public or private entities, to hold any type of office, including elective roles or roles at political parties, or interests, also indirect, in sector undertakings. Employees of the public administration are “suspended” from their office for the whole duration of the mandate. The “cooling off” period after the termination of the mandate is of 2 years (down from 4 years as established in the Law of 1995, to align it with European average length of cooling-off periods). The strict application of the cooling-off period and the appointment mechanism of the Board have helped ensure AGCOM independence.

1. The mandate of the Commissioners can be renewed. In practice, no Commissioner has ever served more than a mandate.

Box 2. Board composition and appointments: AGCOM, CRE and ORR (cont.)

Mexico’s Energy Regulatory Commission (*Comisión Reguladora de Energía, CRE*)

The 1995 Energy Regulatory Commission Act established a Board composed of 5 commissioners, one of whom was appointed Chair. The President made the appointments based on a proposal by the Secretary of Energy. Mandates were staggered and lasted 5 years. In 2008, Congress passed an amendment establishing fixed start and end dates for mandates: 1st January for the start date and 31st December for the end date. Any replacements would have to complete the term of the replaced Board member. In 2011, a new reform established that the Senate ratifies the appointments.

Following a 2013 energy reform, a Coordinated Energy Regulatory Agencies Act of 2014 replaced the Energy Regulatory Commission Act. The Board of CRE has been expanded to 7 members, and the mandate of the commissioners has been extended to 7 years, with fixed dates for mandates’ start and end. The Senate appoints Board members on the basis of proposals made by the President. Commissioners need to have a minimum of 5 years of experience in the sector and at least one year of no ties with the regulated entities previous to the appointment. This mechanism, along with the fact that the energy regulators are established in the Constitution, guarantees a very high degree of independence and a long term view on the sector.

UK’s Office of Rail Regulation (ORR)

The structure of the ORR Board and appointment of its members were established in primary legislation in 1994 when the ORR was created. The Board is composed of executive directors from within ORR and non-executive directors, with a slight majority of non-executive directors; there is a non-executive Chair. Board appointments are made by the Secretary of State following a recommendation from the Civil Service which is made after a competitive and merit-based selection process in line with the UK’s Civil Service Code. All Board members are required to execute their responsibilities independently of the government of the day. Non-executive directors typically commit 2-3 days per month to ORR, and are selected from areas of commerce and academia inside and outside the transport sector. In practice, the independence of the Board is underpinned by the United Kingdom’s strong institutional history of independence within the Civil Service, and there is no practical mechanism by which the government is able to exert undue influence over the decisions made by the ORR Board.

Source: Information provided by AGCOM, CRE and ORR, October 2014.

The CRC is committed to improving its performance through better decision-making processes and goes beyond statutory requirements for the preparation of regulation. The CRC has established a structured system for the preparation of regulations, with different phases (blue, yellow, green documents) and periods for consultation with stakeholders which are longer than the period usually required for government policies and draft regulation. The CRC is also planning to develop a more structured approach to *ex ante* impact assessment, including a more in-depth analysis of the costs and benefits of proposed regulation. This effort to implement a good practice regulatory tool stands out and is to be commended, as the development and use of *ex ante* impact assessment is at an early stage in Colombia, with relatively few institutions conducting it. An in-depth cost/benefit analysis for all regulatory proposals could put heavy additional demands on the CRC and its staff and create a need for capacity building of staff. However, other countries have recognised this issue and either introduced threshold tests or adapted the central government requirements for the preparation of *ex ante* impact assessments by regulators (Box 3).

Box 3. *Ex ante* impact assessment for independent regulators in the United Kingdom

Similar to the approach followed by central government departments, all policy proposals of UK independent regulators should include either a *proportionate* Impact Assessment or a clear justification of why an Impact Assessment is not needed. The UK Treasury’s “Green Book” provides consistent guidance to public bodies on the methodology for cost benefit analysis and impact assessments.¹ Draft versions of the Impact Assessment are submitted to public consultation, updated to reflect feedback and published alongside conclusions.

1. www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government.

Source: Information provided by ORR, October 2014.

At the government level, some progress is being made in supporting better regulation, which could in turn further support the CRC commitment to improve regulatory quality. On 2 October 2014, the National Council on Economic and Social Policy (*Consejo Nacional de Política Económica y Social*, CONPES) approved a Better Regulation Policy for Impact Assessment (*Mejora Normativa: Análisis de Impacto*). This newly-approved policy starts addressing the lack of a comprehensive government-wide regulatory policy for *ex ante* impact assessment. The policy provides for the establishment of a co-ordination body that would help develop *ex ante* impact assessment across the government over the next

three years. This policy could enhance and facilitate agency-driven initiatives.

However, important challenges remain, including the liability of public officials. Public officials in Colombia are subject to strict liability rules. Personal liability creates a strong disincentive to integrate *ex ante* impact assessment into the regulatory process or forecast impacts of regulatory decisions as these analyses could be legally used against CRC officials by operators, consumers and supreme audit institutions like the Office of the Comptroller General (*Contraloría General de la República de Colombia*) and the Office of the Inspector General (*Procuraduría General de la Nación*).

Risk assessment is limited to internal organisational risks, which could in turn limit the CRC capacity to assess market performance and access. As required for all public agencies in Colombia, the CRC assesses the internal risk of the projects it implements. This risk assessment includes the risk of capture or undue influence from external stakeholders. Yet, no assessment is conducted on risks that could impact the regulated markets and could require regulatory action (or some continuous monitoring).

When assessing its performance, the CRC has developed only few indicators that assess the quality of regulatory processes. This is an area where the CRC can track and show performance. The indicator on the timeliness of conflict resolution processes appears to appropriately address a quality dimension of conflict resolution as timely decisions can minimise market disruption and support confidence in the regulatory framework for investment and consumer satisfaction. Other indicators, however, address procedural matters that do not directly relate to the CRC quality of regulatory processes and tools (e.g. contributions in international scenarios) and seem to be partly driven by the search for quantification rather than relevance.

Recommendations

- ***Advocate for an institutional set up that guarantees the full independence of CRC Board from the executive.*** The close relationship between the CRC and the executive needs to be re-assessed, if the CRC is to develop decision-making processes that are evidence-based and perceived as shielded from any political influence. The *OECD Review of Telecommunication Policy and Regulation in Colombia* also recommended that the CRC becomes truly independent from the government (OECD, 2014a). This is particularly important as the government has a 30% stake in a major regulated entity.

- ***Mark a clear distinction between the policy functions played by the executive through MINTIC and DNP and the regulatory functions of the CRC.*** This would help ensure that the CRC can take a long-term perspective to the regulation of the sector and help guarantee separation between functions related to the public ownership of some regulated entities and regulatory functions. The experience of other regulators, presented above, could provide some guidance.
- ***Develop a systematic policy for assessing the ex ante impact of regulation co-ordinated with the CONPES' Better Regulation Policy for Impact Assessment.*** The CRC can play a lead role and be a real champion in supporting the use of impact assessment. Current processes could be scaled up through internal requirements for more systematic cost-benefit analysis.
- ***Introduce some proportionality or threshold test for more in-depth cost/benefit analysis to be conducted for regulation with expected significant impacts on the market and/or users.*** The CRC could require internally that all regulation includes an initial regulatory test with a more in-depth analysis of costs and benefits for major regulatory decisions and a more systematic assessment of market risks. The experience of the United Kingdom, presented above, could provide some guidance.
- ***Advocate for better regulatory policy across the government and make a case for strong accountability mechanisms (to be distinguished from personal liability).*** As recommended in the *OECD Review of Regulatory Policy in Colombia* (OECD, 2013b), the government should, as a key priority, implement a formal regulatory policy, which is explicit, binding, and consistent across the whole-of-government, establishing the procedures, institutions, and tools that will be used to pursue high-quality regulation. Requirements for regulatory quality would help ensure that regulatory decisions are based on evidence and analysis. Institutions should be held accountable for the analysis following these requirements, and personal liability for evidence (not for wrongdoing) should be removed and replaced with appropriate accountability mechanisms to ensure personal professional responsibility.
- ***Reflect the strong efforts undertaken by the CRC towards strengthening regulatory processes in the performance assessment framework through indicators that measures the quality of regulatory processes.*** The CRC's processes for improving decisions are key performance drivers that should be measured against the

standards that the CRC is developing (for example, through a measurement of the scope, extent and impact of the public consultations conducted at the different stages of the process and the measurement of the scope and extent of the impact analysis that is conducted *ex ante*).

Output and outcome

The CRC strives to bring together performance information on external and internal performance and collects significant amounts of data, particularly on internal management processes and outputs. The BSC tracks *i)* sector-level impact; *ii)* management of financial resources; *iii)* internal processes; and *iv)* organisational development. To feed information into the BSC, the CRC collects significant amounts of data on its internal performance, mostly focusing on inputs. In parallel, the CRC also collects market data (e.g. prices and level of concentration), industry data (e.g. data traffic and quality of communications) as well as qualitative and quantitative data on consumers' satisfaction and perceptions, including some international benchmarks.

While the key advantage of the CRC's BSC is to bring together the different dimensions that can determine the performance of an organisation, the BSC is a management tool that might not fully meet the standards of a robust performance assessment framework for an economic regulator. The BSC does not distinguish between internal management processes such as human resources, financial management or project management, and regulatory processes and tools, which is the key driver to produce quality regulatory outputs and outcomes. As an organisational management tool the BSC appears to have proved effective in aligning internal resources and management processes with CRC objectives and functions. As a tool for measuring the performance of the CRC as a regulator, the BSC might not be best suited to map regulatory process to regulatory outputs and outcomes.

Focus on internal processes appears to be also reflected in the choice of indicators, which show an excessive focus on input indicators. The CRC monitors some output and outcome indicators, including response time to information requests and rates. However, these are not the only output of CRC regulatory activities. For example, indicators could address the quality of the pricing decision and information requests by the CRC to operators. Examples of other output indicators could be based on regulatory decisions or interventions that the CRC makes such as production of regulations, the completion of an activity (such as consumer protection campaign), or results of industry action (percentage of decisions challenged and upheld).

Indicators of the quality of regulatory outputs would also need greater attention as would indicators of consumer welfare, industry and market performance. Other telecommunication regulators have developed approaches that take into consideration some market trends particularly relevant for the sector (Box 4).

Box 4. Tracking trends in the telecommunication sector: Italy's communications regulator

Market and technical trends are monitored with a multi-level system of data and information gathering. Information is collected through questionnaires submitted on a regular basis to operators. Key indicators are grouped under four categories: *i)* revenues; *ii)* volumes; *iii)* investments; and *iv)* employment. These data provide a complete set of information available to the policy maker and stakeholders, updated quarterly and published on AGCOM website. These data allows AGCOM to analyse market performance and identify strengths and weaknesses in the Italian telecommunication sector in terms of competitive dynamics, investments, innovation in networks and services, consumer satisfaction.

AGCOM has implemented several web based systems, all fed by stakeholders' data. They include:

- *Informativa Economica di Sistema (IES)*: this database collects demographic and economic data on the activities performed by operators of the communications sector, in order to collect information needed to fulfil legal and regulatory obligations (including, inter alia, market analysis, AGCOM annual report to Parliament, annual assessment of the *Sistema Integrato delle Comunicazioni*) and to regularly update the statistical internal data base.
- *Registro degli operatori di comunicazione*: this database collects information on the ownership structure of communications companies and allowing the application of media rules (anti-concentration thresholds, limits for investments of foreign companies etc.).
- *Catasto Nazionale delle Frequenze*: this database collects information on the use of the electromagnetic spectrum for broadcasting services (this information is used for spectrum management and planning).

Next to using these data for specific regulatory proceedings, AGCOM relies on these data to prepare its annual report to Parliament. In addition, it provides data to European and international institutions committed to measure progresses achieved in the communications sector.

**Box 4. Tracking trends in the telecommunication sector:
Italy's communications regulator (cont.)**

Overall, the market trends tracking system in place at AGCOM provides an efficient degree of flexibility, minimising the administrative burdens for companies. Questionnaires are submitted on a regular basis, allowing stakeholders to plan in advance their internal activities, while specific requests for information within decision-making processes are tailored on case-by-case needs. The regular publication of press releases facilitates the circulation of information, alerting stakeholders and experts on new trends arising from data.

Source: Information provided by AGCOM, October 2014.

***Ex post* assessment covers only few regulatory decisions and provides little evidence on market outcomes of regulatory interventions.** There is a requirement for all regulatory commissions to conduct an *ex post* assessment of regulatory decisions every three years. The assessment is conducted by an external consultancy following a public tender. It usually focuses on eight to ten regulatory decisions and tries to assess the impact of these decisions on the market. The CRC selects the regulatory decisions which are to be assessed. OECD countries have introduced policies for systematically assessing the impact of regulation (Box 5).

Data on regulatory quality would need greater attention. For example, there is limited data on compliance with regulation, at least within the CRC. Compliance data is particularly important to ensure that regulations achieve their objective. If compliance rates are low, it is important to identify whether there is a problem in the design of the regulation or in its enforcement. This analysis might be jointly conducted with the enforcement body. MINTIC has established a Commission on ICT data that brings together the different agencies with some responsibility (and data) for the sector, including the CRC. The Commission can facilitate the exchange of these data, if they exist, or help collect these data, if they are not already available.

The CRC is required to report to a number of institutions, with different purposes and objectives. The CRC prepares an annual Management Report for the Presidency of the Republic and the Comptroller-General, one of Colombia's supreme audit institutions. It also provides inputs into MINTIC's annual report to Congress. It also organises an annual Accountability Hearing open to the public, where it presents data on its own performance. The data used for these different purposes can vary in scope, depth and areas covered.

Box 5. Use of *ex post* assessment by economic regulators

Italy's AGCOM

AGCOM evaluates the impact of existing regulations when considering new regulatory obligations, either asymmetric (e.g. non-discrimination obligation imposed on Significant Market Power/SMP operators) or symmetric (e.g., mobile number portability obligations applicable to all market players). This approach is consistent with the current EU regulatory process for the sector, which is based on an evaluation of the state of the market and of the effectiveness of regulation in place in order to identify possible refinements with a time horizon of three to five years.

Mexico's CRE

CRE is establishing an Evaluation Committee, chaired by CRE Chairman and composed of relevant CRE directors, which will evaluate the effectiveness of the regulatory policy implemented by CRE in terms of the objectives set by the Governing Board, as well as energy policy issued by the Department of Energy. In the evaluation, the Committee will consider the extent to which the regulation promotes the efficient development of the energy industry, promotes competition in the industry, protect the interests of users, develops appropriate national coverage and addresses the reliability, stability and security of supply and the provision of regulated services. The Committee will set a calendar for the periodic assessment of implemented regulation as well as the scope of the assessment.

United Kingdom's ORR

While an *ex post* assessment is not mandated for independent regulators, it is nevertheless considered best practice for regulators to follow an equivalent policy. In practice, ORR does conduct *ex post* assessments. The UK Treasury's 'Magenta Book' provides consistent guidance and methodology for *ex post* impact assessment (which can be resource intensive).¹

1. <https://www.gov.uk/government/publications/the-magenta-book>.

Source: Information provided by AGCOM, CRE and ORR, October 2014.

Recommendations

- ***Rebalance the current set of performance indicators through greater attention for regulatory outputs and some key economic and market trends.*** The current set of indicators could be less biased towards input and project indicators. It would be important to improve the measurements of the quality of regulatory processes and tools as they can provide the necessary information to track and

improve regulatory outputs and some of the outcomes that could be linked to them. Wider outcome indicators with no direct causal link such as consumer welfare and industry performance could provide a reality check the CRC could use to identify problem areas, orient decisions and set priorities. They would serve as a dashboard for a “watchtower” to loop back and inform the definition of CRC strategic objectives. These indicators would be a learning tool rather than an accountability tool.

- ***Make a clear distinction between internal performance, on which the CRC has control, and market performance, on which the CRC does not have direct control.*** The CRC should continue to monitor internal performance and use this information to improve the efficiency of its internal processes and ensure that resources are used efficiently and effectively.
- ***Systematically track and analyse broad market data and trends together with qualitative/perception data for improved understanding and learning but avoid creating automatic causal links between internal performance and market trends.*** Market data could focus on a set of key indicators of market performance in Colombia and, possibly, in other countries. This would include, at a minimum, industry costs, degree of concentration in the market to be complemented with qualitative data such as customer satisfaction. This data should be used as a key learning tool.
- ***Map data collection to specific organisation needs.*** Data collection could be assessed and, to the extent possible, streamlined to make sure that it serves specific purposes. The CRC should ensure that the following data are available and used:
 - *Quantitative market data*, tracked over the long-term and including international benchmarks, for setting overall strategic objectives;
 - *Qualitative market survey data* of *i) industry and ii) customers* (including customer complaints and media), for helping decide priorities, and measuring perception of market progress over time;
 - *Focused market studies/in depth assessment of impact on business (or other relevant dimensions)*, for building the case for regulatory interventions;

- *Management data*, for internal administration, efficiency and internal performance (benchmarked with other regulators and public bodies);
 - *Regulatory quality data* (including compliance rates), for assessing the efficiency and effectiveness of regulatory policies;
 - *Cost/benefit analysis of proposed regulation*, for assessing possible regulatory actions and tracking progress against initial assumptions.
- ***Systematically collect data on compliance with regulation.*** Compliance data can provide an important reality check to help assess the effectiveness of the regulations that the CRC issues (but does not enforce).
 - ***Enhance inter-agency co-operation on sector data collection.*** The recently-established Commission on ICT data within MINTIC is helping streamline data requests to regulated entities. The Commission can explore additional opportunities for co-operation on data collection, including the establishment of joint databases.
 - ***Continue to use international comparative data on key market trends (e.g. prices and service quality).*** The CRC already collects some international comparative data on consumer protection, prices and service quality. This effort should be encouraged, including through co-operation with other regulators in the region as well as regional networks of telecommunication regulators like *Regulatel*.
 - ***Consider an integrated in-depth ex post evaluation of the stock of telecommunication regulation.*** An *ex post* assessment can provide valuable information on the functioning of the market and the effectiveness and efficiency of the regulations issued by the CRC. Ideally, regulations should not be analysed in isolation but their cumulative impacts should be considered. To feed into the planning exercise and regulatory activities, *ex post* assessment needs to be more comprehensive, with at least some objective requirements for selecting the regulations to be included. Such an assessment could be conducted by an independent central agency in charge of assessing the performance of public policies. The information provided by the *ex post* analysis should be used for improving the regulation of the telecommunication sector and reduce unnecessary burdens. The performance of the CRC should not be automatically traced back to the performance of regulations.

Chapter 1

Assessing CRC performance framework

Analytical framework

The analytical framework that informs the report draws on the work conducted by the OECD on measuring regulatory performance, the governance of economic regulators, as well as findings from the regulatory policy and public governance reviews.

OECD countries and regulators have recognised the need for measuring regulatory performance. Information on regulatory performance is necessary to better target scarce resources and improve the overall performance of regulatory policies and regulators. However, measuring regulatory performance can prove challenging. Key challenges include:

- *What to measure:* evaluation systems require an assessment of how inputs have influenced outputs and outcomes. In the case of regulatory policy, the inputs can focus on: *i)* overall programmes intended to promote a systemic improvement of regulatory quality; *ii)* the application of specific practices intended to improve regulation, or, *iii)* changes in the design of specific regulations.
- *Confounding factors:* there is a myriad of contingent issues which have an impact on the outcomes in society that regulation is intended to affect. These issues can be as simple as a change in the weather, or as complicated as the last financial crisis. Accordingly, it is difficult to establish a direct causal relationship between the adoption of better regulation practices and specific improvements to the welfare outcomes that are sought in the economy.
- *Lack of data and information:* countries tend to lack data and methodologies to identify if regulatory practices are being undertaken correctly and what impact these practices may be having on the real economy.

The *OECD Framework for Regulatory Policy Evaluation* starts addressing these challenges through an input-process-output-outcome logic, which breaks down the regulatory process into a sequence of discrete steps. The input-process-output-outcome logic is flexible and can be applied both to evaluate practices to improve regulatory policy in general, and also to evaluate regulatory policy in specific sectors, based on the identification of relevant strategic objectives. It can be tailored to economic regulators by taking into consideration the conditions that support the performance of economic regulators (Box 1.1).

Box 1.1. The input-process-output-outcome logic sequence of the *OECD Framework for Regulatory Policy Evaluation*

- *Step I. Input:* indicators include for example the budget and staff of the regulatory oversight body.
- *Step II. Process:* indicators assess whether formal requirements for good regulatory practices are in place. This includes requirements for objective-setting, consultation, evidence-based analysis, administrative simplification, risk assessments and aligning regulatory changes internationally.
- *Step III. Output:* indicators provide information on whether the good regulatory practices have actually been implemented.
- *Step IV. Impact of design on outcome (also referred to as intermediate outcome):* indicators assess whether good regulatory practices contributed to an improvement in the quality of regulations. It therefore attempts to make a causal link between the design of regulatory policy and outcomes.
- *Step V. Strategic outcomes:* indicators assess whether the desired outcomes of regulatory policy have been achieved, both in terms of regulatory quality and in terms of regulatory outcomes.

Source: OECD (2014), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214453-en>.

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* identifies some of the conditions that support the performance of economic regulators. They recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, in order to improve the overall effectiveness of regulators and promote growth and investment, including by supporting competition. Moreover, they acknowledge the positive impact of the regulator's own

internal process—how the regulator manages resources and what processes the regulator puts in place to regulate a given sector or market—on outcomes (Box 1.2).

Box 1.2. Overview of the OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators

1. *Role clarity*: for a regulator to understand and fulfil its role effectively it is essential that its objectives and functions are clearly specified in the establishing legislation. The regulator should not be assigned objectives that are conflicting or should be provided with management and resolution mechanisms in case of conflicts. The legislation should also provide for clear and appropriate regulatory powers in order to achieve the objectives, and regulators should be explicitly empowered to co-operate and co-ordinate with other relevant bodies in a transparent manner.
2. *Preventing undue influence and maintaining trust*: independence from the government and from the industry that is regulated is crucial to improving regulatory outcomes by allowing the regulator to make decisions that are fair and impartial. It is important that regulatory decisions and functions are conducted with upmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring rule of law, encouraging investment and having an enabling environment for inclusive growth built on trust. This requires a pro-active approach to regulating that is accessible by regulated entities and yet within the national strategic priorities. To maintain trust in the regulator, directions and communication with the political process should be clear and transparent. In addition there should be criteria for the employment of the governing body and staff of the regulator that protects from any conflicts of current or future interest.
3. *Decision making and governing body structure for independent regulators*: regulators require governance arrangements that ensure their effective functioning, preserve its regulatory integrity and deliver the regulatory objectives of its mandate. The governing body structure of the regulator (e.g. a single head or a board of directors) should be determined by the nature of the regulated activities and their motivation. The membership of the governing body should also protect from potential conflicts of interest or influence from the political process and should be ultimately for the public interest.
4. *Accountability and transparency*: businesses and citizens expect the delivery of regulatory outcomes from government and regulatory agencies and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: *i*) ministers and the legislature; *ii*) regulated entities; *iii*) the public. The expectations for the regulator should be published and regulators should

Box 1.2. Overview of the OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators (cont.)

regularly report on the fulfilment of their objectives, including through meaningful performance indicators. Key operational policies and other guidance material, covering matters such as compliance, enforcement and decision review should be publicly available. Regulated entities and the public should have the right of appeal of preferably through a judicial process and the opportunity for independent review of significant regulatory decisions should be available.

5. *Engagement*: the knowledge of regulated sectors, businesses and citizens affected by regulatory schemes assists to regulate effectively. Regulators should also regularly and purposefully engage with regulated entities and other stakeholders to enhance public and stakeholder confidence in the regulator and to improve regulatory outcomes.
6. *Funding*: the amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objectives. Funding levels should be adequate and funding processes should be transparent, efficient and simple.
7. *Performance evaluation*: it is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to those it is accountable toward and helps to build confidence in the regulatory system. The regulatory decisions, actions and interventions of the regulator should be evaluated through performance indicators. This creates awareness and understanding of the impact of the regulator's own actions and helps to communicate and demonstrate to stakeholders the added value of the regulator.

Source: OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* can be further operationalised by considering the institutional, organisational and monitoring conditions for good regulatory policy. These conditions or operational drivers have been identified in a number of OECD Reviews of Regulatory Reform and horizontal projects like Better Regulation in Europe. They also build on the OECD Public Governance Reviews that identify key drivers for efficient and effective public governance (Box 1.3).

Box 1.3. Institutional, organisational and monitoring conditions for good regulatory policy

Institutions and organisation

- Strategy, leadership and co-ordination
- Institutional structure
- Budgeting and financial management
- Management systems and operating processes
- Human resource management (recruitment, retention, training and development)
- Relations and interfaces with Government bodies, regulated entities and other key stakeholders.

Monitoring and evaluation

- Performance standards and indicators
- Performance processes and reports
- Feedback or outside evidence on performance

Source: OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264116573-en>; OECD (2010), *OECD Reviews of Regulatory Reform, Australia, Towards a Seamless National Economy*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264067189-en>; OECD *Better Regulation in Europe*, Reviews in 15 countries, www.oecd.org/gov/regref/eu15; OECD Public Governance Reviews, www.oecd.org/gov/publicgovernancereviews.htm.

Taken together, these elements provide the building blocks against which the framework used by the CRC to assess its own performance can be reviewed (Table 1.1).

Table 1.1. **Criteria for assessing regulators’ own performance framework**

References	Strategic objectives	Input	Process	Output & outcome
Best Practice Principles for the Governance of Regulators	<ul style="list-style-type: none"> • Role clarity 	<ul style="list-style-type: none"> • Funding 	<ul style="list-style-type: none"> • Maintaining trust and preventing undue influence • Decision making and governing body structure • Accountability and transparency • Engagement 	<ul style="list-style-type: none"> • Performance evaluation
Institutional, organisational and monitoring drivers (OECD Regulatory and Governance Reviews)	<ul style="list-style-type: none"> • Objectives and targets • Functions and powers 	<ul style="list-style-type: none"> • Budgeting and financial management • Human resources management 	<ul style="list-style-type: none"> • Strategy, leadership and co-ordination • Institutional structure • Management systems and operating processes • Relations and interfaces with Government bodies, regulated entities and other key stakeholders • Regulatory management tools 	<ul style="list-style-type: none"> • Performance standards and indicators • Performance processes and reports • Feedback or outside evidence on performance

Methodology

The analytical framework presented above informed the data collection and the analysis presented in the report. Accordingly, the assessment of the CRC performance framework focuses on:

- **Strategic objectives:** to identify the existence of a set of clearly identified objectives, targets, or goals that are aligned with the regulator’s functions and powers, which can inform the development of actionable performance indicators;

- **Input:** to determine the extent to which the regulator’s funding and staffing are aligned with the regulator’s objectives, targets or goals, and the regulator’s ability to manage financial and human resources autonomously and effectively;
- **Process:** to assess the extent to which processes and the organisational management support the regulator’s performance;
- **Output and outcome:** to identify the existence of a systematic assessment of the performance of the regulated entities, the impact of the regulator’s decisions and activities, and the extent to which these measurements are used appropriately.

Data and information informing the analysis presented in the report were collected through a questionnaire and a fact-finding mission to Colombia:

- **Questionnaire:** the questionnaire developed by the report’s team and completed by the CRC provided a snapshot of the *de jure* status of the performance assessment framework developed by the regulator and the background information for the fact-finding mission. The questionnaire built on the inputs of NER members provided after the 14 April 2014 meeting, peer-reviewers’ contributions and other questionnaires.
- **Fact-finding mission:** the mission took place on 8-12 September in Bogotá and was the key tool to understand how the performance assessment framework works in practice, completing the *de jure* information obtained through the questionnaire with *de facto* state of play. The value of the mission was twofold: meeting with key stakeholders in the country and identifying initial recommendations through daily debriefings of the team comprised of OECD secretariat staff and peer reviewers. At the end of the mission, the team shared with the regulator’s management preliminary findings and ideas for possible recommendations to test their feasibility and goodness of fit.

During the fact-finding mission, the team met with a number of CRC staff from across the institution, including human resources management, customer service and regulation, government relations, financial and market analysis, legal affairs. The team also met with other government institutions and external stakeholders, including:

- The Ministry for Information and Communication Technology;
- The National Planning Department;
- The Superintendence of Industry and Commerce;

- The National Television Authority;
- The National Spectrum Agency;
- *Cámara Colombiana de Informática & Telecomunicaciones;*
- *Asociación Nacional de Empresas de Servicios Públicos y Comunicaciones;*
- *Asociación Colombiana de Ingenieros;*
- *Comités de Desarrollo y Control Social a los servicios públicos domiciliarios, tecnologías de la información y las comunicaciones.*

Chapter 2

Regulatory context

Institutions

Colombia has a presidential system, with a directly-elected President and a bicameral Congress. The 1991 Constitution established a Constitutional Court with judicial-review powers and gave Congress a central role in law making. However, the power of the President remains significant; the President appoints all Cabinet members and the heads of all autonomous agencies. Although the 1991 Constitution focuses on generating a balance of power between the executive, legislature and the judiciary, it confirms the right of the executive to introduce legislation related to the structure of ministries, salaries of public employees, foreign exchange, budget, external trade and tariffs, and national debt, among other areas (OECD, 2013a).

Executive

Within the executive branch, various institutions intervene at different stages of the regulatory cycle. They include:

- **The President’s Office** (*Oficina de la Presidencia*). It oversees and co-ordinates the implementation of the President’s agenda, the formulation and execution of policy priorities set in the National Development Plan (Box 2.1). It works with other government institutions to develop and implement multi-sector, horizontal policy initiatives to advance the presidential priorities.
- **The National Council on Economic and Social Policy** (*Consejo Nacional de Política Económica y Social*, CONPES). It is the highest national planning authority and serves as the advisory body to the government on all policy related to the economic and social development of the country. It co-ordinates and guides the government agencies responsible for the government’s economic

and social policy. It studies and approves documents regarding general economic and social policy development. Most importantly, it approves the final proposal of the four-year National Development Plan (Box 2.1).

Box 2.1. The National Development Plan

The 1991 Constitution mandates the formulation and enactment of a National Development Plan that guides the President's term in office with respect to policies and expenditures. The National Development Plan of Colombia is essentially a blueprint for managing the government's national development strategy. It legitimises all strategic initiatives to be implemented by the government over the President's term.

The Plan is prepared in consultation with a wide range of civil-society organisations and citizens' groups, including representatives of the country's ethno-cultural minorities, and then presented to Congress for its enactment into law during the first semester of the president's mandate.

The Plan articulates a broad framework to co-ordinate capital investment across levels of government.

Source: OECD (2013a), *Colombia: Implementing Good Governance*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264202177-en>.

- **The National Planning Department** (*Departamento Nacional de Planeación*, DNP). It approves procedures and guidelines for the design, monitoring and evaluation of all programme and project content included in the National Development Plan. Similarly, the Department co-ordinates all government agencies to ensure the proper enforcement and implementation of the content of policies, programmes and projects contained in the Plan. Its Director is appointed by the President and holds a Cabinet-level position. DNP serves as CONPES Secretariat.
- **Ministries** (*Ministerios*). They are responsible for putting forward national public policies in their area of competence.
- **Regulatory Commissions** (*Comisiones de Regulación*). They are responsible for setting tariffs and regulating specific sectors. They are special administrative units, e.g. autonomous entities with administrative, technical, and financial independence. The CRC is one of them.

- **Superintendence** (*Superintendencias*). They are responsible for functions of control and supervision. They oversee the implementation of regulation in specific sectors and might supervise ministries, regulatory commissions, and local authorities (OECD, 2013b).

Legislature

The legislature in Colombia is divided into two chambers: the Senate and the Chamber of Representatives, which operate through constitutional and legal standing commissions. It adopts ordinary or common laws next to statutory laws, regulating citizens' fundamental rights and obligations and institutional matters, and framework laws, regulating matters of general interest and setting principles and norms. Congress establishes Commissions that may conduct *ex post* evaluation of certain laws (OECD, 2013b).

Judiciary

The judiciary can limit the excessive use of regulations and normative initiatives and promotes regulatory quality considerations. Two examples illustrate this:

- The Constitutional Court (*Corte Constitucional*) has played an important role in addressing citizen's unconstitutionality claims on laws and decrees with the force of law, issued by government. The Constitutional Court case law contributed to establishing the limits of certain laws and regulations. In addition, it has made pronouncements on the application of the contents of ordinary laws that contain specific economic regulations in various fields, in particular on issues affecting economic freedom and private initiative (OECD, 2013b).
- The State Council (*Consejo de Estado*) is the highest administrative court. It can overturn, in its sphere of competence, decrees and resolutions by the national government that are considered unconstitutional. It is the only instance for citizens' complaints against regulations issued by administrative authorities, considered as administrative acts, and the second instance for appeals presented by citizens to the administrative courts. The State Council can declare nullity of regulations which infringe higher norms. This tendency has increased in the last few years (OECD, 2013b).

Supreme audit institutions

The framework governing the public control system is laid down in the Constitution, which establishes external control institutions that are completely independent from the three branches of government. The differentiation between external and internal auditing is also anchored in the Constitution, which sets out the main components of Colombia's control system. At the central level, the control system is made up of the two following bodies:

- The Office of the Comptroller-General of the Republic of Colombia (*Contraloría General de la República de Colombia*) is an independent government institution that acts as the highest level of fiscal control in the country. Its mission is to oversee the proper allocation of public funds (in terms of results achieved through spending and investments) and contributes to the modernisation of the state by means of continuous improvement in fiscal management by various public entities.
- The Office of the Inspector General of Colombia (*Procuraduría General de la Nación*) is an independent public institution overseeing the public conduct of those officials occupying public office and exercising a public mandate, thus overseeing the correct functioning of government institutions and agencies (including the police). The Office of the Inspector General of Colombia is not a judicial institution. The Inspector General is mandated to safeguard the rights of citizens, guarantee human rights protection and intervene in the name of the people to defend the public interest.

Two other entities – although not being formally part of Colombia's control institutions – also play a key role within the country's control system:

- The Office of the Attorney General of Colombia (*Fiscalía General de la Nación*) was incorporated in 1991 with the enactment of the new Constitution. It belongs to the judicial branch of government and possesses full administrative and budgetary autonomy. Its main purpose is to ensure the efficient and prompt administration of justice for citizens. This includes anti-corruption oversight as well as oversight over the functioning of the public sector as a whole at all levels.
- The Auditor General of Colombia (*Auditoría General de la República*) is an autonomous organ of the state created by the 1991 Constitution to oversee and control audit institutions. As auditor of the Government of Colombia it reports directly to the Office of the

Inspector General of Colombia. The Auditor General is thus a second-tier financial supervisory body responsible for monitoring the fiscal management of the country's *Contraloría General* and its sub-national counterparts in departmental and municipal comptrollers' offices, and ensuring that fiscal supervision is conducted in an efficient and effective manner (OECD, 2013a).

Recent developments in regulatory policy

On 2 October 2014, CONPES approved a Better Regulation Policy for Impact Assessment (*Mejora Normativa: Análisis de Impacto*). The policy establishes a Committee for Normative Improvement, which will develop tools for improving the quality of regulations and provide some capacity building support for the use of these tools. The committee will be composed of key central government agencies and ministries, including the Ministry for Information and Communication Technology (*Ministerio de Tecnologías de la Información y las Comunicaciones*, MINTIC). The DNP will serve as the technical secretariat. At the end of the three years, it is expected that tools to control the quality of regulations (for example, *ex ante* impact assessment) will be mandatory and new institutions will be created to provide some central regulatory oversight function (CONPES, 2014).

Competition

The Constitution of 1991 fundamentally changed the role of the government, moving away from an interventionist role as the sole service provider and opening up the economy to private sector participation. The government has been rather proactive in promoting competition by eliminating barriers and restriction in product markets. The government extended its pro-competition vision through Law 1340 of 2009, which makes it mandatory to consult the Superintendence of Industry and Commerce (*Superintendencia de Industria y Comercio*, SIC) on proposed regulations that could have an impact on competition, but its opinions on the proposed regulatory policies are non-binding (OECD, 2013b).

Box 2.2. Superintendence of Industry and Commerce (SIC)

The SIC is the competition, consumer protection, industrial property and personal data protection authority in Colombia. It regulates competition law enforcement, including antitrust investigation and merger review for all industries. It is also responsible for protecting consumers and enforcing general and specific consumer protection provisions for telecommunication services, as well as responsible for intellectual property issues.

Box 2.2. Superintendence of Industry and Commerce (SIC) (cont.)

The SIC may investigate abuses of dominant position or, more broadly, apply competition law, investigate anti-competitive agreements and cartels, review mergers and acquisitions, and develop binding provisions for telecom service providers to comply with the legal provisions on consumer protection, and enforce such instructions.

The powers of the SIC were considerably reinforced by Law 1340 of 2009, which transferred many of the powers held by sector agencies to the SIC. Except for consumer-related issues in the television broadcasting services, all the powers for the application of competition and consumer protection law now fall under the responsibility of the SIC.

Source: OECD (2014), *OECD Review of Telecommunication Policy and Regulation in Colombia*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264208131-en>; OECD (2013), *Colombia: Implementing Good Governance*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264202177-en>.

The telecommunication sector

The telecommunication sector in Colombia has developed significantly, especially in the mobile services (voice and broadband), since the liberalisation of the sector in the early 1990s. Many firms are beginning to offer triple play bundles. The mobile sector has attained a relatively high penetration rate, just below the OECD average. The fixed sector has a low penetration rate and has exhibited a decrease in recent years. This reflects a trend in many countries where residential users replace fixed lines with mobile services to a greater or lesser extent depending on the attractiveness of the fixed broadband services available over those lines. Residential users represent over 84.3% of fixed lines and business below 15.7% in the second quarter of 2013 (OECD, 2014a).

The unequal population distribution in Colombia results in a high gap in access to information and communication technologies (ICTs) between urban and rural areas. For example, the district of Bogotá accounts for 16% of the population and 35.2% of fixed lines, but large geographic areas such as Amazonia account for 0.13% of the population and only 0.03% of fixed lines. In addition, the gap in ICT use between large and small firms is also high. For example, in the third quarter of 2012, only 20% of Colombian SMEs were connected to the Internet. Closing this gap is important given that 96.4% of firms in Colombia are microenterprises (OECD, 2014a).

Since the enactment of Law 1341 in 2009, Colombia has made significant progress in the regulatory framework for the telecommunication sector, especially in terms of convergence of the sector. The law allows market entry through registration, if no spectrum is involved, to ease the entry of telecommunication operators as licenses are no longer tied to services, and the operators no longer need to enter into a contract with the State (OECD, 2014a).

The telecommunication sector, however, still faces significant barriers to infrastructure deployment. The level of competition needs to be improved in fixed, mobile and broadband services, as further developments in broadband are required to ensure that the benefits of ICTs are fully exploited throughout the economy. The mobile market is very concentrated (tables 2.1 and 2.2), while the broadband market is an oligopoly between Claro (cable modem, 31.20%), UNE-EPM (DSL and cable modem, 26.55%) and Movistar, where the Colombian government has a 30% stake (DSL, 18.98%). The fixed-line market is relatively fragmented, with 21 participants providing local and long-distance services, and the pay television market is divided between around 40 local cable operators, 2 satellite pay television operators, and 4 national cable television operators. Claro (Telemex) dominates also this market, with a 43.71% market share (OECD, 2014a).

Table 2.1. **Mobile market share for postpaid, Q2 2014**

Operator	Ownership	Share (%)
Claro	America Móvil, Mexico	53.34
Movistar	Telefónica, Spain (and 30% stake of the Colombian government)	30.17
Tigo	Brand of Colombia Móvil; consortium of the two largest Colombian publicly owned, fixed-line operators (ETB and UNE-EPM); now majority-owned by Millicom (Luxembourg)	12.58

Source: CRC, October 2014.

Table 2.2. **Mobile market share for prepaid, Q2 2014**

Operator	Share (%)
Claro	56.42
Movistar	21.77
Tigo	16.83
Uff Móvil	1.01
UNE EPM	0.25
Virgin Mobile	2.99
Avantel	0.09
Móvil Exito	0.55
ETB	0.08

Source: CRC, October 2014.

Chapter 3

From CRC objectives to outcomes

The CRC was established in 1992 as the Telecommunications Regulation Commission (*Comisión de Regulación de Telecomunicaciones*, CRT), in order to regulate and promote investment in the telecommunication sector, in the aftermath of a series of reforms aimed at liberalising the Colombian economy. In 2009, the CRT became the CRC and its mandate was progressively expanded to cover more broadly communication services, including postal services.¹ The CRC is currently responsible for the mobile market, fixed-line market, broadband (fixed-line and cellular) market, postal services, and broadcasting infrastructure (TV, but not the content). It is an autonomous agency attached to the MINTIC.

Strategic objectives

Principles: The legislation that grants regulatory authority or a regulatory function to a specific body should clearly state the objectives of the legislation and the powers of the authority. Unless clear objectives are specified, the regulator may not have sufficient context to establish priorities, processes and boundaries for its work. In addition, clear objectives are needed so others can hold the regulator accountable for its performance.

Source: OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

Objectives and targets

The CRC sets its strategic objectives through a four-year strategy. The first strategy was launched in 2003. The current strategy, the third prepared by the CRC, covers the period 2014-18 and identifies 18 objectives and key actions to achieve them, covering both external/market performance (e.g.

promote competition and investment in the ICT sector) and internal/management performance (e.g. guarantee effective procurement of goods and services) (Table 3.1).

CRC strategic objectives are reviewed annually, in order to respond to emerging needs and better align the objectives with regulatory changes, national development plans and MINTIC guidelines. The annual reviews include the participation of the appointed members of the CRC Board, Co-ordinators of Internal Working Groups that are responsible for guiding the daily work of CRC, consultants, and professionals from different disciplines. Workshops and interviews help gather information on CRC internal management issues, on the economy as well as the markets and sectors for which the CRC is responsible. The CRC management meets to discuss the key findings of the workshops and discuss the relevance and effectiveness of the strategy. The results of the annual review are presented to all staff of the CRC and published on the official website.²

Table 3.1. CRC strategic objectives 2014-18

Objectives	Actions
Sector-level objectives	
1. Promote competition and investment in the ICT sector.	Consolidate a convergent regulatory framework that promotes sector competition and investment.
2. Contribute to the development of Information and communications technology sector to maximise users' welfare.	Have a positive impact on the inclusion of the population in the information society and promote users' empowerment.
Management of internal resources	
3. To ensure effective management of resources	Control that financial resources are properly used in fulfilling the Institution's mission in a transparent, efficient and effective manner.
Internal processes	
4. To promote conditions of free and fair competition, and prevent and correct market failures.	Analyse market conditions in order to prevent and detect possible failures and generate the necessary regulatory framework to correct those and to promote competition
5. Increase user welfare, starting from simpler and inclusive rules, promoting ICT usage.	Formulate rules that recognise users and providers' behaviour, in order to promote the proper exercise of their rights. Encourage usage of ICT to exercise their rights.
6. Promote the sharing and infrastructure deployment on the ICT sector.	Define regulation that encourages infrastructure sharing for effective use of networks. Support national and sectorial policies related to the deployment of infrastructure in the ICT sector.
7. To recognise and understand users' behaviour in an environment of technological convergence.	Identify motivations and incentives that induce users behaviour, in order to take it into account in the decisions to be adopted by the entity.
8. Promoting quality in the provision of ICT services.	Define quality conditions in the provision of ICT services

Table 3.1. The CRC's strategic objectives 2014-18 (cont.)

Objectives	Actions
9. Facilitate innovation in the provision of services, content and ICT applications, within a secure environment.	Foster a regulatory framework that facilitates innovation in the provision of services, content and ICT applications, taking into consideration cybersecurity guidelines.
10. Strengthen the positioning and CRC external relations.	Efficiently manage international co-operation, co-ordinated work with State agencies and relationships with other stakeholders.
11. Disseminate CRC information in a friendlier and simpler manner.	Transmit to all external and internal users, relevant information in plain language, through different means
12. Resolve disputes in a timely manner.	Intervene in direct and concretely, with timeliness and quality, when resolving disputes.
13. Having permanently, integrated and reliable information.	Manage permanently and timely the information required; identify new information needs and regularly update information requirements. Validate the content of the information reported.
14. Serve our clients promptly and with quality.	Respond to requests submitted to the CRC, in a complete, clear manner, and within the terms established.
Organisational development	
15. Stimulate an organisational environment that maximises engagement and employee satisfaction.	Organise activities which foster an organisational environment that generates a sense of belonging and commitment of the staff.
16. Having productive, talented and willing people to work together.	Manage human resources so that the CRC adequate staff to meet the goals set.
17. Guarantee effective procurement of goods and services.	Provide the goods and services required by the entity for its efficient and effective operation.
18. To count with the necessary resources to carry out activities related to the processes of the CRC.	Provide physical and technological resources enabling and promoting innovation in the CRC processes, thus improving productivity.

The CRC also participates in the strategic planning of the government. The DNP, the Director of which is a member of the CRC Board, discusses with the CRC the priorities related to the regulator's functions and responsibilities to be included in the constitutionally-mandated 4-year National Development Plan. CRC strategic objectives are in principle aligned with the National Development Plan's objectives. In addition to the National Development Plan, the CRC also contributes to and is expected to align its strategic objectives with the national ICT plan prepared by the MINTIC, whose Minister chairs the Board of the CRC. The *Plan Vive Digital II* for 2014-18 was recently approved, while the National Development Plan for 2014-18 is under preparation, following the 2014 presidential elections.

Every year, the CRC prepares a Regulatory Agenda to translate the actions identified in the strategy into regulatory interventions. The Regulatory Agenda identifies the areas and projects on which the CRC will focus its efforts. A draft of the Regulatory Agenda is shared with government and external stakeholders, who have an opportunity to comment and provide feedback. The Regulatory Agenda is approved by the Board of the CRC.

In order to align the daily work of the CRC with the strategic objectives, the CRC has established strategic maps for each of the internal working groups (Table 3.2). The strategic maps identify key objectives for each of the working groups, actions to achieve them and indicators to guide the work of the working groups and inform the daily management of CRC staff. They help management regularly track progress towards the implementation of the strategy by providing a snapshot of the status of implementation of different projects and as an early warning mechanism on delays or problems to be addressed.

Table 3.2. **Strategic maps of the internal working groups**

Working groups	Objectives	Actions	Indicators
Executive co-ordination	Ensure effective resource management	Control that financial resources are properly spent on fulfilling the mission of the organisation in a transparent, timely and effective manner	% of Investment Budget Executed
	Strengthen positioning and the CRC's external relations	Efficiently manage international co-operation, co-ordinated work with State agencies and relationships with other stakeholders.	Number of inputs and contributions in national and international scenarios % of progress on the project related to the regulatory agenda OECD Recommendations
	Having highly productive human resource focussed on results	Manage the resource in order to have the appropriate and necessary staff to meet the goals of the Institution	Performance Assessment (Personal and Skills Balanced Scorecard) Workload Compliance with the training plan
Administrative management	Timely management of administrative procedures in order to contribute to the achievement of the organisational objectives	Contribute to the implementation of effective administrative processes in order to ensure compliance with organisational objectives	# Awareness of administrative management
	Ensure compliance with the record management according to the requirements set	Comply with record management as stipulated in the General Archives Act	% of compliance with the record management improvement plan.

Table 3.2. Strategic maps of the internal working groups (*cont.*)

Working groups	Objectives	Actions	Indicators
Financial management	Manage the budget and monitoring its implementation	Control that financial resources are properly used in fulfilling the mission of the Institution in a transparent, efficient and effective manner	monthly executed budget / monthly planned budget
	Ensure that financial statements faithfully reflect the economic reality of the CRC	Guarantee compliance with the obligations relating to the accounting and tax information, within the deadlines and in accordance with the provisions in force	Requirements of controlling agencies and tax authorities promptly answered / Total requirements
Planning	Ensure, maintain, and monitor organisational and quality management systems to comply with the various administrative efficiency plans developed by the CRC	Follow up on activities of strategic management, quality and internal systems by CRC officials Monitor and ensure that the activities stated in the action plan, anticorruption plan, management development plan, plan strategy administrative efficiency and accountability are met	Meeting the objectives of internal processes % Compliance with CRC plans
	Contribute to the development of the ICT sector to maximise users' welfare	To have a Positive impact on the inclusion of the population in the information society and promote users' empowerment.	NSU user NSU operators (information /queries)
Customer service	Rank the most frequent requests filed for the purposes of generating regulatory initiatives when appropriate	Quarterly rank requests received so as to identify which topics generate more dissatisfaction among users	% Of requests classified quarterly / total requests received at the CRC
	Guarantee the quality of the product generated Contribute with strategies to assure and safety of the population	Control the quality of products Contribute to the consolidation of security and protection strategies for managing issues related to infrastructure, theft, emergencies and disasters	Products Quality Index Non-conforming product % Progress on security projects
Government relations and advice	Provide timely and quality advice to state agencies on ICT issues	Respond to requests by state entities, including the Congress, with swift and quality advice	% Appropriate government advisory Average response time requirements of Congress

Table 3.2. **Strategic maps of the internal working groups** (*cont.*)

Working groups	Objectives	Actions	Indicators
Legal advice and dispute resolution	Resolve disputes in a timely manner.	Intervene in direct and concretely, with timeliness and quality, when resolving disputes.	% of compliance with times set for dispute resolution processes.
International relations and communications	Strengthen the position and relationship of the CRC	Efficiently manage international co-operation, co-ordinated work with State agencies and other sector actors.	Number of inputs and contributions in national and international scenarios % Of project progress with respect to the OECD Recommendations

Functions and powers

The CRC key functions include the establishment of the general regulatory framework for the provision of communication services and the promotion of competition. The CRC directs its efforts primarily to prevent anticompetitive and restrictive commercial practices through regulation. While prices are freely set by the market, the CRC can intervene through price regulation, whenever it detects a market failure, insufficient competition, or when the services offered by the operators do not meet required standards. The CRC can issue regulation concerning technical and economic aspects related to the sector, including interconnection, access, essential facilities' usage, remuneration for services. The MINTIC has the power to issue fines for failing to comply with regulations (Box 3.1).

In relation to the promotion of competition and consumer policy, the CRC is responsible for issuing regulations that promote competition in the sector and SIC, which is attached to the Ministry of Trade and Industry, is responsible for ensuring compliance with consumer policy and competition law.³ This separation of regulatory and enforcement powers dates back to the early 1920s, when this institutional setting was regarded as guaranteeing greater control on regulatory decisions. In practice, there are relatively limited exchanges between the CRC and the SIC on the definition of CRC strategic objectives and, more broadly, CRC performance assessment framework. SIC decisions and CRC objectives are aligned with the government development objectives.

Box 3.1. CRC powers and functions

- Tariff regulation;
- Setting quality standards for service provision;
- Defining technical/industry standards;
- Promoting market competition;
- Managing scarce communication resources;
- Information and data gathering;
- Monitoring of service delivery performance;
- Customer engagement;
- Consumer protection and dispute resolution (a function shared with Colombia's competition authority, SIC);
- Promote uniform systems of accounts e.g. for financial accounts.

Input

Principles: Funding sources may include budget funding from consolidated revenue, cost-recovery fees from regulated entities, monies from penalties and fines and interest earned on investments and trust funds. This mix of funding sources should be appropriate for the particular circumstances of the regulator. To promote efficiency and equity, it should be made clear who pays for the regulator's operations, how much and why.

Source: OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

Resources for meeting the regulator's objectives and targets

The CRC is widely perceived as having sufficient financial and human resources to meet its strategic objectives. The CRC is financed through annual contributions of the registered communication companies and operators, on the basis of the gross income they reported in the previous

year. The CRC sets the amount of the contribution, which cannot exceed 0.1% of the annual gross revenues. For 2014, the regulated operators were charged a rate of 0.0685% of their annual gross revenues, and the CRC budget amounted to approximately USD 8 million. For 2015, the CRC budget, still under discussion, is expected to amount to approximately USD 13 million.

The CRC workforce is composed mostly of professional staff and has been relatively stable over time. Turn-over is relatively low. The CRC had 80 staff members in 2014, with the professional staff accounting for more than 80% (Table 3.3).

Table 3.3. CRC workforce, 2010-14

Year	Supporting staff	Professional staff	Total
2014	11	69	80
2013	11	69	80
2012	9	55	64
2011	9	55	64
2010	11	53	64

Staff is recruited through a competitive process that follows the rules established for all government agencies. Professional and supporting staff broadly falls under two categories:

- *Open-ended contracts*: this type of contract primarily applies to advisers, which constitute approximately one-third of the professional staff. They are recruited at the initiative of the CRC, through a competitive process validated by the Civil Service Administrative Department (*Departamento Administrativo de la Función Pública*, DAFP), the governing body in matters of human resources management and development at the service of the State, and the Presidency. They can be dismissed by the CRC.
- *Administrative careers*: these are career civil servants who are recruited through a general recruitment process conducted by the National Commission on Civil Service. They tend to join the CRC from other government agencies and their employment follows general civil service rules.

Managing financial resources

The CRC is relatively autonomous in the preparation and implementation of its budget. However, since the CRC is administratively attached to the MINTIC, the budget follows the procedures of all government agencies and ministries. The CRC draft budget is reviewed by the MINTIC, the Ministry of Finance and DNP, before being approved by Congress as part of the national budget. The CRC must report all expenses through the government-wide Integrated Financial Information System ((*Sistema Integrado de Información Financiera*, SIIF). Investments must be based on projects registered with the DNP.

Within this institutional set-up, the CRC has made efforts to align its budget with the strategic objectives. The Regulatory Agenda, which identifies the regulatory interventions that the CRC plans to undertake every year to meet its strategic objectives, informs the preparation of the draft budget. Each co-ordinator determines the budget needs on the basis of the activities to be developed. The Financial Management Co-ordinator consolidates this information, which is discussed by staff and management before the draft budget is finalised.

The execution of the budget is organised around the different projects that the CRC is implementing. The projects are not mapped to specific strategic objectives in the budget table. The CRC tracks the execution of the budget through the SIIF.

Managing human resources

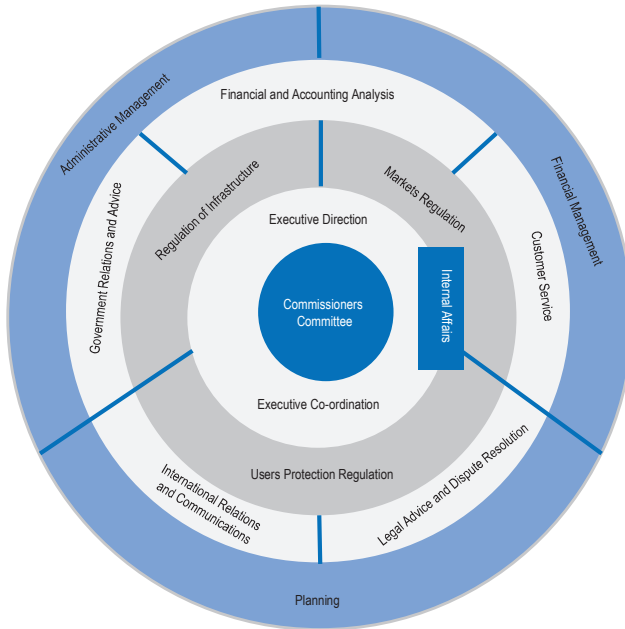
The CRC has a relatively open and non-hierarchical internal structure, which appears to be quite unique among regulatory agencies and facilitates horizontal work. It does not have units or departments; rather, the organisation is structured around thematic working groups, led by a co-ordinator, which are mapped to the strategic objectives (Figure 3.1).

Staff shares its time across different projects undertaken by the different working groups, which can thus benefit from multidisciplinary teams composed of economists, lawyers, engineers and accountants. Each project includes a timeline and specific milestones and deliverables. Staff monitors hours spent on the different projects and deliverables. At the end of each quarter, every team conducts performance meetings and presents a report to the CRC executive director. This process tends to use significant amount of staff time.

The quarterly reporting is also used for evaluating the performance of staff. Advisers can receive a bonus that can amount to up to 50% of their total salary (this system does not apply to career civil servants). The

evaluation takes into account individual performance (50%) and team performance (50%).

Figure 3.1. CRC organisational structure



The CRC is committed to constantly improving the working environment. In 2013, it conducted a survey among staff, with questions related to salary, workload, stress at work and how it affects the relationship of the CRC with external stakeholders. The survey did not signal particular issues among staff and is helping better integrate administrative and professional functions.

Process

Principles: Regulators require governance arrangements that ensure clarity of roles and effective functioning, preserve regulatory integrity and deliver on the mandate’s regulatory objectives. Balancing accountability and engagement is equally important. Regulators are generally accountable to three groups of stakeholders: *i*) ministers and the legislature; *ii*) regulated entities; and *iii*) the public. The knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes are also important to regulate effectively.

Source: OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

Role clarity and trust

Policy and regulatory functions tend to be closely intertwined, reflecting in part the institutional relationship between the MINTIC and the CRC. The Minister chairs the Board of the CRC. Moreover, the Board cannot meet without the Minister. The Minister also chairs the Board of the agency responsible for regulating the spectrum, the National Spectrum Agency (*Agencia Nacional del Espectro*, ANE) and is a member of the Board of the agency in charge of regulating the television sector, the National Television Authority (*Autoridad Nacional de Televisión*, ANTV). Moreover, another member of the executive, the Director of the DNP, who has Cabinet-level rank, is a member of the Board of the CRC.

The CRC shares responsibility for regulating the sector with other agencies and institutions (Table 3.4). For example, the MINTIC is ultimately responsible for sanctioning non-compliance with regulations issued by the CRC. The SIC, the competition authority, is responsible for enforcing regulation related to consumer protection. The Constitution requires that all governmental agencies collaborate in order to promote efficiency. In practice, while there is no formal co-ordination arrangements, the CRC and the other agencies operating in the sector maintain a regular informal dialogue. The role of the Minister as President or member of the different Boards also ensures some policy coherence and the resolution of possible conflicts.

Table 3.4. **Institutions with regulatory responsibilities in the communication sector**

Institution	Mandate (in relation to regulation of the sector)	Areas of joint competencies with the CRC
Ministry for Information Technology and Communications (MINTIC)	Design, development, adoption and promotion of policies, plans, programmes and projects in the field of ICT	<ul style="list-style-type: none"> - The Minister chairs the Board of the CRC. - Power to impose fines for non-compliance with regulation, whereas the CRC can only impose fines on issues related to missing or incorrect information provided by operators.
Superintendence of Industry and Commerce (SIC)	Investigation of breaches of competition regime in various markets including telecommunications	<ul style="list-style-type: none"> - Assessing proposed regulations and issuing an opinion on the impact on competition. - Protecting consumers and enforcing consumer protection provisions.
National Television Authority (ANTV)	Licensing, content regulation, monitoring & control, spectrum assignment, development of public television, promotion of television industry	<ul style="list-style-type: none"> - Television infrastructure.

Table 3.4. **Institutions with regulatory responsibilities in the communication sector** (*cont.*)

Institution	Mandate (in relation to regulation of the sector)	Areas of joint competencies with the CRC
National Spectrum Agency (ANE)	<p>Advising MINTIC in the design and formulation of policies and plans related to radio-electric spectrum management.</p> <p>Studying and proposing optimal models for controlling the use of radio-electric spectrum, including satellite services.</p> <p>Controlling the use of radio-electric spectrum except for spectrum destined to video broadcasting services.</p> <p>Carrying out spectrum management activities.</p> <p>Studying and analysing parameters for spectrum valuation and the establishment of the spectrum fee regime.</p> <p>Conducting investigations, imposing sanctions, ordering operators to cease operations and confiscating equipment in cases of infringement of the spectrum regime or illegal usage of spectrum</p>	Spectrum use

Source: CRC and OECD (2014), *OECD Review of Telecommunication Policy and Regulation in Colombia*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264208131-en>.

Decision making and governing body structure and accountability

The Board of the CRC is composed of:

- The Minister for Information and Communication Technology;
- The Director of the DNP;
- Three Commissioners appointed by the President of the Republic for a period of three years, renewable once,⁴ and with no mechanism for staggering their mandate.

Daily decision making relies on:

- The Commissions' Session, comprised of the Minister, the Director of the DNP or the Director's delegate, the three Commissioners and the Executive Co-ordinator, which approves the Regulatory Agenda and all regulatory proposals.
- The Executive Director, appointed by the Board among the three Commissioners, who is in charge of the daily administration of the CRC.

Planning meetings, composed of the three Commissioners, the Executive Co-ordination, and co-ordinators of the internal working groups are held once a month to discuss strategic management, budget, procurement status, issues to be presented to the Commissions' Session. Moreover, there is a Co-ordinators' Committee, where only internal groups' co-ordinators participate. Meetings are carried out at least three times a month in order to review cross-cutting issues such as indicators, targets, workloads, to prioritise activities, and, when necessary, prepare reports for the Commissioners.

Supervision of the management of each institutional process is performed on a quarterly basis. Each internal working group holds a Strategic Analysis Meeting with all the team members, and analyses the results of that quarter. Also, meetings are held at a corporate level, with the participation of the Commissioners, the Executive Co-ordination and Co-ordinators, to analyse the results of the internal groups meetings.

Processes and tools for regulatory quality

The CRC has developed a structured internal process for the development of regulatory interventions. It first prepares a **blue document**, which identifies the issue that might require CRC intervention, details possible interventions and allocates internal resources. It also prepares a **green document**, which details the proposed regulation and includes an *ex ante* impact analysis. These are internal documents. It then prepares a **yellow document**, which develops the regulatory intervention and describes its expected outcome. This document is submitted to public consultation.

The *ex ante* impact analysis includes:

- Potential benefits for competition;
- Investment/costs for operators;
- Adjustments to information requirements for operators in order to facilitate the monitoring of the regulation; and
- Enforcement and compliance requirements.

The impact analysis also includes a competition checklist that follows the OECD Competition Assessment Toolkit.⁵ The SIC reviews the proposed regulation and can issue recommendations for possible modifications aimed at improving the competition regime. While the recommendations are not binding, failing to integrate them needs to be justified in writing.

The level of quantification of the benefits and costs of the regulation tends to be relatively limited and quantified benefits and costs are not usually included in the proposed draft regulation that is published for public

consultation. Civil servants in Colombia are subject to strict liability rules (Box 3.2). These rules might provide strong disincentives to forecast impacts of regulations and publish them. The CRC plans to conduct more in-depth *ex ante* regulatory impact analysis of proposed regulations, which however would be mostly used for internal use only.

Box 3.2. Legislation related to liability of civil servants in Colombia

When performing their functions, civil servants are subject to the following legislation:

- Law 734 of 2002 Disciplinary Code, defining unlawful conducts, investigation procedures and sanctions, www.secretariassenado.gov.co/senado/basedoc/ley_0734_2002.html.
- Law 610 of 2000 amended by Law 1474 of 2011, establishing the administrative proceedings to be conducted by the Comptroller General in order to identify omission and negligent management of financial resources by public officials, www.secretariassenado.gov.co/senado/basedoc/ley_0610_2000.html and www.secretariassenado.gov.co/senado/basedoc/ley_1474_2011.html.
- Laws 599 and 600 of 2000 and Law 904 of 2004, identifying, within the criminal code, misconducts by civil servants, www.secretariassenado.gov.co/senado/basedoc/ley_0599_2000.html; www.secretariassenado.gov.co/senado/basedoc/ley_0600_2000.html; www.secretariassenado.gov.co/senado/basedoc/ley_0906_2004.html#1.

Source: Information provided by CRC, October 2014.

The CRC seeks to carefully consider alternative to regulation and the possible burden imposed by regulatory interventions on operators and users. Once an issue has been identified, the CRC makes an analysis of international best practices and discuss the issue with operators affected in the market before considering a regulatory intervention.

The CRC has also developed a risk map which includes all internal processes. The map is structured according to the methodology established by the DAFP. The map covers the causes, effects, external or internal factors, related processes and control, mitigation, monitoring and contingency plans in the event the risk materialises. The co-ordinators of the internal working groups fill in the map, which is reviewed by the Internal Affairs Division of the CRC. The risk map is monitored quarterly and a general assessment is conducted every year.

Engagement

The CRC publishes all draft regulations and the annual Regulatory Agenda on its website.⁶ The Regulatory Agenda includes a timeline for the preparation of proposed regulations and public consultations. Decree 2696 of 2004 requires a consultation period of 30 days, although CRC tends to grant longer periods for consultation. Comments and feedback are published on the CRC website. The comments received are answered by the Commissioners through a final document, which explains in detail why the CRC has adopted (or not adopted) the comments.

Output and outcome

Principles: Measuring the impacts of regulatory actions and decisions helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to whom it is accountable and helps build confidence in the regulatory system. The regulatory decisions, actions and interventions of the regulator should be evaluated through performance indicators. This creates awareness and understanding of the impact of the regulator's own actions and helps to communicate and demonstrate to stakeholders the added value of the regulator.

Source: OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

Collecting performance information

Regulated entities

The CRC can request information regarding operator's performance on a monthly, bi-monthly, quarterly, annual basis.⁷ Challenges related to collecting performance information from regulated entities include:

- Comparability of information across operators;
- Quality of the information provided;
- Timely delivery of information.

In order to address these challenges, the CRC has introduced new reporting formats, following discussions with stakeholders in the industry, in order to improve the quality and comparability of data. While operators recognise the importance of providing information to the CRC for monitoring and decision-making purposes, information requests can be demanding and the use and purpose of the information provided is not always clear.

Other government institutions

Data and information related to the sector is scattered across different agencies. The MINTIC has recognised this issue and has established a Commission on ICT data that brings together the different agencies with some responsibility (and data) for the sector, including the CRC. The Commission meets regularly to take stock of the data collected by the different agencies and consolidate them, in order to avoid multiple requests to operators. Participating agencies are expected to feed data on ITC use and access (i.e. internet, telephones and television) on a dedicated website.⁸ The CRC is already providing data for the website. The ANE should soon start to do so and the ANTV is considering this possibility.

Regulator

The CRC collects significant information and data on its internal processes. Working groups meet quarterly to discuss progress on individual projects and produce progress reports with data and information mostly on internal processes.

The CRC also systematically collect data on complaints through a call centre and by consulting with the SIC, to which complaints are usually filed. It also conducts an annual survey among users on the perception of the quality of service.

Assessing the performance of the regulated entities

The CRC assesses the performance of regulated entities by monitoring the information that is reported by each of them, focusing on offers, rates and levels of service quality. The CRC has developed indicators to measure the quality of the service provided by the regulated entities, which includes dropped-call rates, data-transmission speed, and network availability (Annex A). The CRC also monitors competition in the mobile market. Part of this information feeds into a Bulletin of the ICT industry that CRC publishes annually.

Information asymmetry is a key challenge that the CRC faces in assessing the performance of the regulated entities. In order to address this challenge, the CRC requests specific information to regulators (beside the information that is self-reported). It also relies on sectorial sources of information at the international level, including ICT indicators developed within the Partnership on Measuring ICT for Development.

Assessing the performance of the regulator

Performance indicators

Since 2003, the CRC has been using the Balanced Scorecard (BSC) methodology to assess its performance. The BSC brings together both the internal and external dimension of an organisation, in order to evaluate performance (Box 3.3).

Box 3.3. The Balanced Scorecard methodology

The Balanced Scorecard (BSC) methodology is used to monitor the performance of an organisation and/or its employees in terms of the organisation's strategic goals and objectives. The BSC is a table that contains numbers to assess specific features associated with an organisation, matched to the 'target' values for each. This is, then, reviewed by the managers to compare the actual performance with the desired performance.

A BSC represents different organisational perspectives. Traditionally, these perspectives focus on customers, financial performance, process, and learning and growth. All the strategic objectives within the 4 perspectives are linked to each other, and the strategy map helps to identify and describe the causal relationships. A Strategy Map places the four perspectives in relation to each other to show that the objectives support each other.

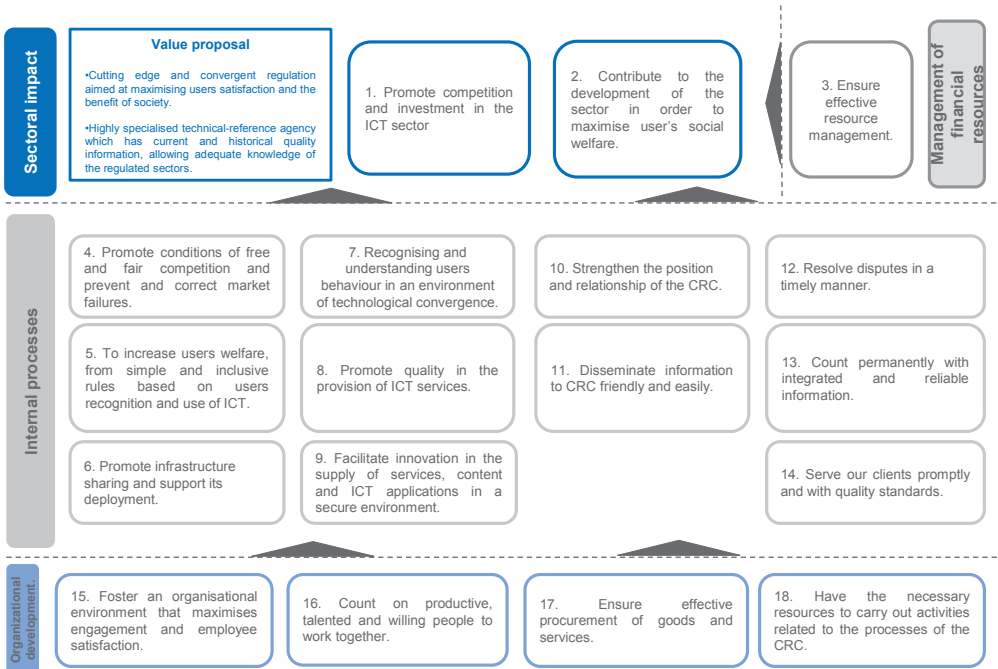
The BSC methodology emerged, primarily, for private sector organisations and has been extended to non-for-profit organisations and public sector organisations. For these organisations, performance is not measured through financial indicators, as it is usually the case for private sector organisations. Rather, their performance tends to be measured by the effectiveness in providing services to constituents.

Source: Balanced Scorecard Institute website:

<http://balancedscorecard.org/Resources/About-the-Balanced-Scorecard>, Advanced Performance Institute: www.ap-institute.com/Balanced%20Scorecard.html.

The BSC maps the CRC's 18 strategic objectives to four dimensions: *i)* sector-level impact; *ii)* management of financial resources; *iii)* internal processes; and *iv)* organisational development (Figure 3.2). The CRC has developed 25 indicators to monitor performance along these four dimensions (Annex B). It also collects indicators on service quality and competition (Annex A).

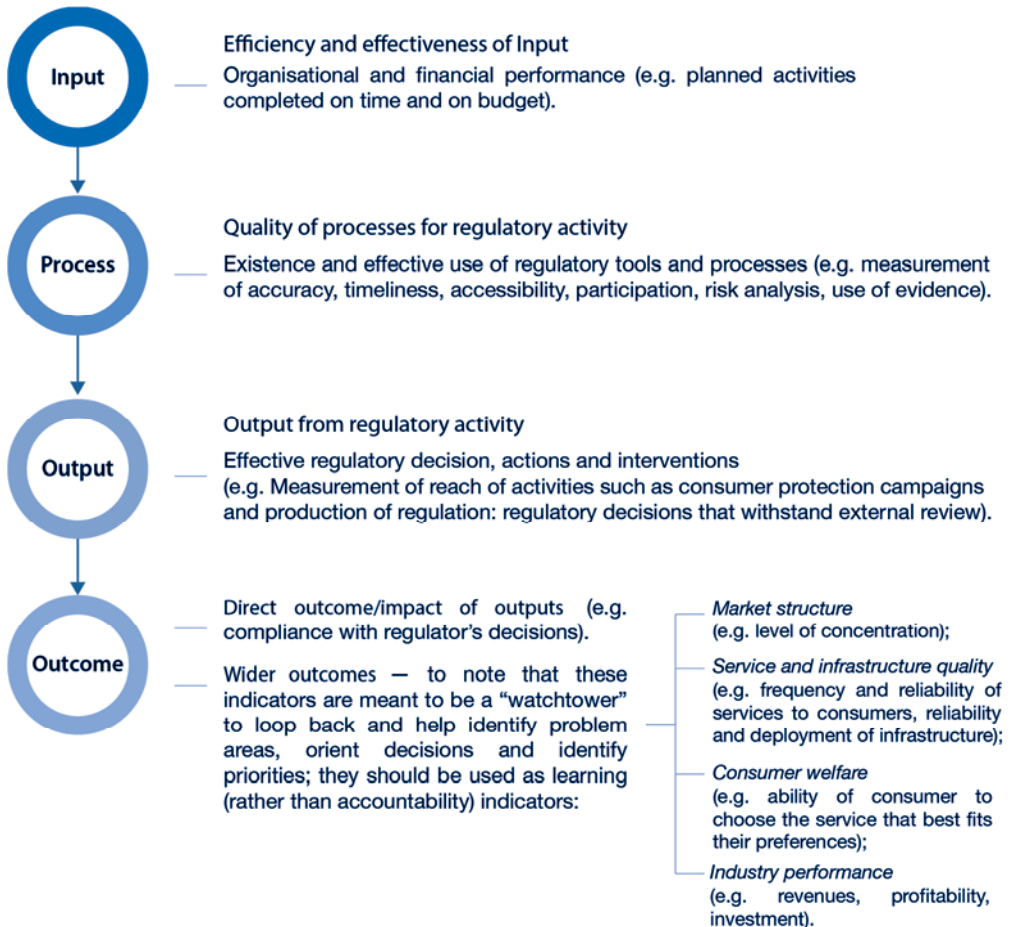
Figure 3.2. CRC Balanced Scorecard



Source: CRC.

For public entities such as regulators, it is difficult to transpose performance management tools and the indicators that are associated with them from the private sector. The tools can bring value to the management of the organisation but the complexity of performance expectations for regulators compared to a private entity means that these tools may not be fully satisfactory and will inevitably have limitations.

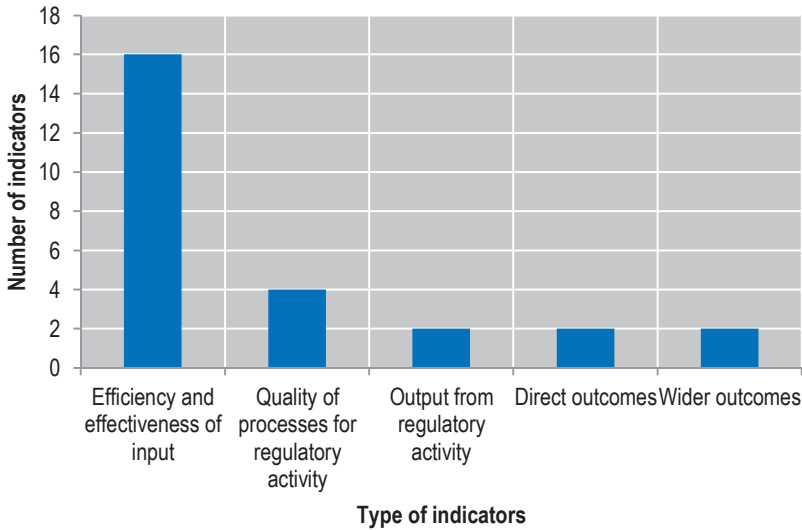
For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator's activities, with the purpose of seeking reliability and usability of the regulator's activities. Performance assessment is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards (OECD, 2004). Accordingly, performance indicators need to assess the efficient and effective use of a regulator's inputs, the quality of regulatory processes and identify outputs and some direct outcomes that can be attributed to the regulator's interventions. Wider outcomes should serve as a "watchtower", which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure 3.3).

Figure 3.3. **Input-process-output-outcome framework for performance indicators**

Note: This framework was proposed in the initial methodology discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.

Classifying the CRC indicators along the input-process-output-outcome framework shows an excessive focus on input (Figure 3.4). This might be in part the result of the reliance of the BSC methodology, which appears to be more a management tool than a performance assessment tool. The BSC could well be a fit-for-purpose performance tool for private entities but not the best performance assessment framework that fits public entities’ needs.

Figure 3.4. Classification of CRC indicators



Note: The service delivery indicators presented in Annex A are included under wider outcomes, counting for one. This is due to the fact that the CRC does not explicitly include them in the BSC monitoring framework.

Source: Annex B.

A closer analysis of the indicators can provide some insights into the extent to which these indicators are “fit for purpose”, and whether they can truly measure performance. The *indicators of the efficiency and effectiveness of input* seem to appropriately address the execution of the budget, the efficiency in the use of resources (procurement), staff performance (personal BSC) and the effective use of training activities. Assessing the working environment also appears to be important to determine the conditions for an effective use of human resources. Some indicators, especially those related to specific projects, could be consolidated and refined to serve as an assessment (rather than a management) tool (Table 3.5).

Indicators of the quality of processes for regulatory activity might need some attention. This is an area where the CRC can track and show performance since it is putting a strong emphasis on the quality of regulatory processes and strives to reach out to stakeholders (see above “Process and tools for regulatory quality” and “Engagement”). The indicator on the timeliness of conflict resolution processes appears to appropriately address a quality dimension of conflict resolution as timely decisions can minimise market disruption and support confidence in the regulatory framework for

investment and consumer satisfaction. Other indicators, however, address procedural matters that do not directly relate to CRC quality of regulatory processes and tools (e.g. contributions in international scenarios) and seem to be partly driven by the search for quantification rather than relevance (e.g. quantification of free press).

Table 3.5. **CRC indicators of efficiency and effectiveness of input**

Organisational and financial performance	Proposed areas for improvements/refinements
<ul style="list-style-type: none"> ● Budget execution 	
<ul style="list-style-type: none"> ● Procurement efficiency 	
<ul style="list-style-type: none"> ● Training impact 	
<ul style="list-style-type: none"> ● Personal Balanced Scorecard (BSC) and skills 	
<ul style="list-style-type: none"> ● Compliance with improvement climate and culture survey 	<p>These are important and innovative qualitative indicators assessing working environment through a staff survey. They could be consolidated into one indicator focusing on results.</p>
<ul style="list-style-type: none"> ● Annual result of organisational climate and culture survey 	
<ul style="list-style-type: none"> ● Progress on market analysis projects 	<p>These indicators could be consolidated into a single indicator tracking the percentage of planned activities completed on time and on budget.</p>
<ul style="list-style-type: none"> ● Progress on user projects 	
<ul style="list-style-type: none"> ● Progress on infrastructure projects 	
<ul style="list-style-type: none"> ● Progress on quality projects 	<p>The individual progress of each project would remain of use for management purposes, but not for performance measurement.</p>
<ul style="list-style-type: none"> ● Progress on projects focused on innovation and safety 	
<ul style="list-style-type: none"> ● Progress of projects related to information 	
<ul style="list-style-type: none"> ● Advance in upgrading physical resource plan 	
<ul style="list-style-type: none"> ● Advance in systems plan 	<p>These indicators could be consolidated into a single indicator that tracks the performance of physical resources used by the CRC.</p>
<ul style="list-style-type: none"> ● Technology management satisfaction survey 	
<ul style="list-style-type: none"> ● Timely management of new developments 	
<ul style="list-style-type: none"> ● Timely management of new developments 	

Table 3.6. CRC indicators of quality of processes for regulatory activity

Existence and effective use of regulatory tools and processes	Proposed areas for improvements/refinements
<ul style="list-style-type: none"> • Timeliness of conflict resolution processes 	
<ul style="list-style-type: none"> • Number of inputs and contributions in international scenarios 	<p>This indicator appears to be focusing on procedural matters rather than on actual quality of CRC regulatory processes. It can be useful as a management tool. Alternative indicators could include benchmarking of regulatory decisions against international standards.</p>
<ul style="list-style-type: none"> • Quantification of free press (i.e. coverage of CRC regulatory decisions in the free press, in order to measure dissemination) 	<p>This indicator appears to measure press coverage of CRC decisions, but provides limited information on the quality of CRC processes. This indicator could be integrated with an indicator measuring the transparency of CRC processes or participation of stakeholders in regulatory decisions.</p>
<ul style="list-style-type: none"> • Average response time to Congress 	<p>The indicator only partly captures quality, which would need to be measured through, for example, Congress' feedback to CRC response to a request.</p>

The CRC has in place processes for the quality of decision making that are not currently reflected in the current set of indicators and could be added. These indicators could measure the quality of the staged process for regulatory interventions/actions (blue/yellow/green documents), for example through a measurement of the scope, extent and impact of the public consultations conducted at the different stages of the process. The CRC efforts on implementing impact analysis could also be used to assess the quality of the processes that the CRC adheres to (for example, through a measurement of the scope and extent of the impact analysis that is conducted *ex ante*. If there are standards that the CRC sets itself in the regulatory decisions, actions, interventions or activities, these could also be elements of the performance measurement framework. These indicators should have a link, to the extent possible, with the direct regulatory outputs of CRC interventions.

The *indicators of the outputs from regulatory activity* would also need a better definition. They currently focus on response time and rates, which is however not the only output of CRC regulatory activities. For example, indicators could address the quality of the pricing decision and information requests by the CRC to operators (Table 3.7).

Table 3.7. CRC indicators of outputs from regulatory activity

Effective regulatory decision, actions and interventions	Proposed areas for improvements/refinements
<ul style="list-style-type: none"> • Average response time • Procedures' Average Response Rate 	These indicators might need a better definition in order to better link it to the objectives the CRC is meant to reach and the processes it is using to achieve them.

Examples of other outputs could be based on regulatory decisions or interventions that the CRC makes such as production of regulations, the completion of an activity (such as consumer protection campaign), or regulatory decisions that withstand external review. The CRC's outputs should also relate back to its objectives to ensure it has stayed within its remit but also map onto the direct outcomes.

The *outcome indicators* focus on user satisfaction, which is assessed through a regular survey. This appears to be logically consistent with the output indicators. They appropriately measure satisfaction not only with service quality (wider outcomes) but also with CRC activities (direct outcomes). Additional indicators to be considered would include measurements of consumer welfare (e.g. switching from one operator to another) and industry performance (for example, revenues). These indicators would provide a reality check the CRC could use to identify problem areas, orient decisions and set priorities (Table 3.8).

Table 3.8. CRC indicators of direct and wider outcomes

Direct and wider outcomes	Proposed areas for improvements/refinements
Direct outcomes (impacts of regulatory outputs) <ul style="list-style-type: none"> • User satisfaction with the information communicated through the different internal communication channels • Serving concerns and requests of users through social networks 	These indicators should focus on users' satisfaction with CRC regulatory decisions.
Wider outcomes (market, service, welfare, industry) <ul style="list-style-type: none"> • User satisfaction with the quality of service • Service quality indicators and competition 	These indicators could also include a consumer welfare dimension (e.g. switching) and industry performance (e.g. finance and profitability).

The *wider outcome* indicators will most likely not have a direct causal link with the *direct outcome* indicators. This is the challenge faced by all economic regulators. Nonetheless, this is the test against which many regulators are held accountable. The CRC performance framework should accept the CRC's role as being one of the actors that can contribute to the performance of the communication sector in Columbia. However, it should also recognise that it is not the only one and should frame these *wider outcome* indicators as a dashboard for a “watchtower” to loop back and inform the strategic objectives of the CRC. These are learning indicators rather than indicators for accountability purposes.

Ex post assessment of regulatory interventions

Regulatory commissions have to conduct reviews of their regulatory frameworks every three years, submit the evaluation to the President of the Republic and publish them on their websites.⁹ The review should include an impact analysis of the overall regulatory framework, along with an assessment of the sustainability, viability and dynamism of the sector, indicating the effect of existing regulations and the way they have affected the private sector, citizens and society in general. Each regulatory commission is responsible for preparing the terms of reference for such analyses, which are subject to a consultation process.

CRC *ex post* assessments focus in particular on impacts on competition, users' welfare and the industry in general.. The CRC selects between eight and ten regulations that had the greatest impact on users and contract an external organisation to conduct the assessment. The last assessment was conducted in 2012, covering regulations issued between 2009 and 2011.

Reporting

The CRC is required to submit annual reports to the Congress, Attorney General's Office, and Comptroller General of the Republic. Further, the CRC makes an annual Accountability Hearing to the citizens, which consists of a public hearing that seeks to enable citizens to exercise social control over the activities of the entity and the management that it gives to the allocated resources. User representatives, controlling agencies, governmental agencies and regulated entities, among others, are invited to the hearing.

Use of CRC Performance Assessment Framework

The CRC has been exemplary in striving to measure its performance through the BSC and requesting this review by the OECD. Measuring the performance of economic regulators is challenging across the world. An

element that might add complication is the timing and circumstances for addressing performance assessment indicators. If the framework is a response to a situation other than simply the good regulatory governance of the regulator, then the exercise becomes more difficult due to external pressures.

By undertaking this performance assessment, the CRC should remain proactive in its development and use of performance assessment as a key internal governance tool first and foremost. Good internal governance is expected to support also better results from audits or responses to accountability structures. Nevertheless, the use of this framework should remain primarily as an internal driver of improving performance and as learning tool to be of most value added to the CRC.

Notes

1. Relevant legislation includes Laws 1341 of 2009, 1369 of 2009 and 1507 of 2012.
2. www.crcom.gov.co.
3. Law 1340 of 2009 established SIC as the sole competition authority in Colombia.
4. In practice, no Commissioner has ever served more than a mandate.
5. OECD Competition Assessment Toolkit, www.oecd.org/competition/assessment-toolkit.htm.
6. www.crcom.gov.co/es/pagina/la-crc.
7. Law 1341 of 2009; Resolution 3496 CRC 2011.
8. <http://colombiatic.mintic.gov.co/602/w3-article-616.html>.
9. Decree 2 696 of 2004.

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Annex A

CRC service quality indicators

Name of indicator	Methodology	Unit	Period	Data source
Data transmission speed reached	It is calculated by dividing the size of the test file between the time required for a complete and error-free transmission.	Kbps	Qtly	Web browsing, FTP and email.
Data transmission failed	Correspond to those in which the file is not received complete and error-free before the expiration of timer	%	Qtly	File transmission request
One-way delay	It is half the time, measured in milliseconds, which is required to run a Ping (ICMP Echo request / reply) to a valid IP address	ms	Qtly	Number of samples
SGSN availability percentage	Percentage of time in which the SGSN or a replacing element remains in service and operational.	%	Qtly	Time in service
Failure rate PDP context activation	Probability that a PDP context cannot be activated.	%	Qtly	Unsuccessful attempts of PDP contexts and total number of attempted PDP context activation
Percentage of fallen PDP context	Probability that a PDP context is deactivated without user's intention.	%	Qtly	Number of fallen PDP contexts and total number of successfully activated PDP contexts
PING	Time it takes for a packet to travel from a source to a destination and return.	ms	Qtly	Field measurements
FTP media data rate	Measurement of FTP data transfer rate, over the entire time of connection to the service, after a data link has been successfully established.	Kbps	Qtly	Field measurements

Name of indicator	Methodology	Unit	Period	Data source
HTTP media data rate	HTTP data transfer rate measured throughout the time of connection to the service, after a data link has been established successfully.	Kbps	Qtly	Field measurements
Number of damages per 100 lines in service	Total damage arising during the period affecting the service with respect to total telephone lines in service provider has.	No.	Qtly	Damage, failure, claim and total lines in service
Mean time to recovery	Average time in calendar days used by the company to fix a flaw in the phone service	Days	Qtly	Sum of time to repair damage and total number of repairs in the quarter
Dropped calls rates	Percentage of incoming and calls origination, which once they are established i.e., they are assigned a channel, are interrupted without user intervention due to causes within the operator's network	%	Mthly	Calls dropped without users' intention and total calls successfully completed calls
Percentage of successful attempts not call in a radio access network	Percentage relationship between the amount of call attempts which could not be established, due to the congestion of the equipment, and the total number of call attempts	%	Mthly	Sum of successful establishments and attempts to establish signaling channels, and Sum of successful establishments and attempts to establish traffic channels
Availability of network elements	Percentage of time in which the network element remains in service and operational.	%	Mthly	Time in service of each network element
SMS completion percentage	Proportion of short text messages sent from the SMSC of the home network and SMSC correctly received in the destination network.	%	Mthly	Short text messages sent and received messages

Competition

Colombian mobile market competition index	$d = \sqrt{(x_2 - x_1)^2 + (y_2 - y_1)^2}$ Variable X: HHI index Variable Y: Stenbacka index The HHI and Stenbacka are calculated from subscribers and estimated service revenue	Concentration level of the mobile market	Qtly	Global Wireless Matrix (GWM) del Bank of America Merrill Lynch (BoAML)
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Notes: %: percentage. No.: number. Ms: millisecond. Qtly: quarterly. Mthly: monthly. Kbps: kilobit per second.

Annex B

CRC performance indicators

Name of indicator	Methodology	Unit	Period	Data source
Budget executed	Budget executed monthly * 100 / budget monthly planned	%	Mthly	Budget execution
Progress market analysis projects	Actual progress/ Pre- programmed progress	%	Mthly	Progress timetable
Progress user projects.	Actual progress/ Pre- programmed progress	%	Mthly	Progress timetable
Progress infrastructure projects	Actual progress/ Pre- programmed progress	%	Mthly	Progress timetable
Progress on quality projects	Actual progress/ Pre- programmed progress	%	Mthly	Progress timetable
Progress on projects focused on innovation and safety	Actual progress/ Pre- programmed progress	%	Mthly	Progress timetable
Number of inputs and contributions in national and international scenarios	Contributions / events attended to	%	Qtly	Participation in international events
Average response time to the Congress	Average days	Days	Qtly	Requests from Congress
Quantification of free press	Value of CRC publications in national and international media	COP	Qtly	Publications
User satisfaction with the information communicated through the different internal communication channels	Customer Satisfaction Surveys	No.	Qtly	Surveys
Serving concerns and requests of users through social networks	Customer Satisfaction Surveys	No.	Qtly	Surveys

Name of indicator	Methodology	Unit	Period	Data source
Timeliness of conflict resolution processes	Number of days of administrative actions	Days	Qtly	Administrative acts
Progress of projects related to information	Actual progress/ Pre-programmed progress	%	Mthly	Timetable progress
Average response time	Total Sum of response days Quarter / total number of consultations in the Quarter.	Days	Qtly	Applications processed
Procedures' Average Response Rate (<i>Tasa Media de Respuesta</i> , TMR)	Total Sum of response days during the Quarter / total paperwork served in the Quarter	Days	Qtly	Paperwork processed in the period
User Satisfaction: Quality of service	Sum of scores of the survey	No.	Qtly	Survey
Compliance with improvement climate and culture plan (internal)	Compliance with activities of the improvement plan	%	Qtly	Improvement Plan
Annual result of Organisational Climate and Culture survey	Methodology applied by the Consulting Firm - Biannual measurement	%	Biannual	External Evaluation
Performance Assessment (BSC Personal and Skills).	Simple average of the assessments made in the period evaluated.	%	Semester	Performance Evaluations
Training Impact	Average Relevance of Training assessed in the period	%	Qtly	Training
Procurement efficiency	Awarded first stage / planned * 100	%	Qtly	Contracts
New developments timely attended	% Development / media attended	%	Qtly	Requirements
Technology Management Satisfaction Survey.	Service Rating	No.	Qtly	Surveys
Advance in upgrading physical resources plan.	# of requests met, / # of applications received	%	Qtly	Applications received
Advance in systems plan	Activities executed * 100 / programmed activities	%	Qtly	System plan

Notes: No.: number; %: percentage; COP: Colombian Pesos; Qtly: quarterly; Mthly: monthly.

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Driving Performance at Colombia's Communications Regulator

This report has been developed in close co-operation with the OECD Network of Economic Regulators.

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