Assessing Regulatory Performance: Measurements, Actions, Results

Scott Hempling
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The regulatory calendar is linear, one docket after another: rate cases, integrated resource plans, mergers, financings, interconnections, unbundling, market entry. The pace, the intensity, the enormity of the stakes—combined they can make a regulator feel like a cross between emergency room physician and supermarket checkout clerk. Too easily lost is the purpose of it all. That purpose is the performance of the industries we regulate. Performance is a composite of services, quality levels and cost levels, continuously improving, and reflecting the values of innovation, safety, reliability and resilience.

To make performance central, we need measurements. Those measurements assess the effects of actions—actions by the regulatory agency and other government agencies, actions by the regulated companies and actions by consumers. Only by measuring the effects of actions, can regulators be accountable for results.

Industry Performance Depends on Commission Measurements

If industry performance is the output, regulatory actions are the inputs. To link inputs to outputs, we must (1) define the consumer and public needs we want fulfilled, (2) describe the industry actions necessary to fulfill those needs, (3) identify the regulatory actions necessary to cause industry to take the necessary actions, (4) take those regulatory actions, and (5) test whether the regulatory actions taken are producing the desired effects. We must see if the inputs produce the outputs.

Each step requires measurement: "What is measured, improves." (Peter Drucker, The Effective Executive.) Measurements guide actions by setting priorities—by making some actions more important than others. Priorities cause actors to contribute toward the common goals. As Microsoft co-founder Paul Allen has written: "[I]f I have quick access to key metrics every day, my creativity stays within certain bounds—my ideas all center on how to achieve our goals." By designing measurements, then pursuing them continuously, a regulator builds the skill, influence and respect necessary to cause regulated companies to excel.

Actions to Assess: Five Categories

Industry performance results from five categories of actions, each category affecting other categories.

1. Internal agency actions: These agency actions establish the agency's own standards, priorities, interdepartmental communications, professional development priorities, and decisionmaking procedures. These internal actions are taken by the agency's chairperson, its commissioners, its chief of staff, its division directors and its professional staff. These internal actors, and their internal actions, prepare the agency for external actions—the actions necessary to influence the other government policymakers, the regulated companies, and consumers. A regulatory agency's internal actions are the seeds from which industry performance grows.

2. External agency actions: Having organized itself internally, the regulator then should deal with the three external actors. With the executive and legislative branches, the agency (a) defines common goals, (b) cooperates in allocating policymaking responsibilities according to expertise and legal authority, and (c) obtains for itself the necessary resources, deference and political support. With the regulated companies, the agency (a) sets standards, (b) establishes the compensation due the companies for satisfying those standards, (c) obtains the data necessary to assess performance, and (d) enforces the standards. With consumers, the regulator (a) listens and learns about their unmet needs, (b) establishes infrastructure investment priorities to meet those needs, (c) educates them about their responsibility to consume efficiently, and (d) establishes the prices and rules that will cause them to consume efficiently.

3. Actions by other government policymakers: Government policymakers act in three directions. First, they act on the regulatory agency, deciding its authority, its funding, its ability to hire and pay employees, and its access to information about the companies whose performance it regulates. Second, they act on the regulated companies, through legislation that establishes or affects their investment priorities and their compensation. They also determine market structures: which markets should be served by competing companies and which should be served by monopolies. Third, they act on consumers, such as by creating programs for energy conservation, universal service and low-income support.

4. Actions by regulated companies: Regulated companies affect industry performance by investing in infrastructure, operating that infrastructure, offering services and pricing plans (unilaterally in competitive markets, or with government permission in monopoly markets), and advertising. Those actions affect consumer demands.

5. Actions by consumers: Consumers affect industry performance through their own performance—their decisions about what products and services to demand, how much they use those products and services, and what prices they are willing to pay.

Results: Are Consumers Getting What They Want and Need, Consistent with Public Interest Values?

Regulated industry outcomes, measured by investment, innovation, economic development, rate levels, service quality, safety, reliability and resilience, come from the inputs of entities: the regulator, other government agencies, regulated companies and consumers. Only rarely can the regulator control the final outcome. Most of a regulator's efforts, therefore, involve directing or influencing intermediate actors and actions. Directing or influencing means acting affirmatively to produce the desired industry performance.

But in acting affirmatively, the regulator always faces constraints: constraints imposed by statute, other government bodies, economic scarcity, engineering realities, public impatience and political pressures. And then there is the constraint of the calendar. The regulator must respond constantly to applications and requests from companies—that brutal, bruising calendar that dictates regulatory action. An agency that does no more than accept its constraints and react to requests is not pursuing, and will not achieve, its mission of improving industry performance. It must act affirmatively to loosen the constraints and guide the requests, so that the results achieved are the results envisioned.