Utilities Policy xxx (2017) 1–11

Contents lists available at ScienceDirect

Utilities Policy

journal homepage: www.elsevier.com/locate/jup

# Measuring and comparing the distribution of decision-making power in regulatory arrangements of the telecommunication sector in Latin America

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A R T I C L E I N F O

*Article history:*
Received 28 September 2016
Received in revised form
3 January 2017
Accepted 14 April 2017
Available online xxx

*Keywords:*
Regulation
Decision making
Telecommunications

A B S T R A C T

In this paper, I measure and compare the distribution of decision-making power in regulatory arrangements in the telecommunication sectors of four Latin American countries. In particular, I measure the coordination of the decision-making process and the concentration of regulatory influence. Additionally, I measure the relative influence of each actor involved in the regulatory arrangement. To perform these measurements, I introduce, refine and apply a recently developed methodology. I found that there are significant differences across countries and across types of regulation. Furthermore, I found that the sector regulator is not necessarily the most important actor in every country.



## 1. Introduction

This paper studied one of the most relevant changes in the role of governments worldwide, namely, the rise of the regulatory state, which is the result of a process that has occurred over approximately three decades. Many countries have experienced a tendency toward the liberalization and deregulation of markets (Simmons, 2004) and a reduced role of the state (Pollitt and Bouckaert, 2011). This phenomenon has been documented in different parts of the globe, including Europe (Majone, 1994), Latin America (Jordana and Levi-Faur, 2005).The diffusion of regulatory capitalism in Latin America: Sectoral and national channels in the making of a new order., 2005) and the South (Latin America and South Asia) (Dubash and Morgan, 2012), as well as at the global level (Levi-Faur, 2005).

The concept of a regulatory state describes a situation in which governments, after liberalizing markets, use regulation as one of their primary tools to intervene in society. This form of regulation differs from previous governmental regulatory efforts in that it is performed by agencies with a certain level of independence (Moran, 2002).

Thus, in many places across the world, we experienced a process whereby governments decided not to interfere directly in different policy sectors (i.e., by having public operators) but rather to intervene indirectly through regulatory agencies.

The starting point of this paper is the argument that the regulatory framework of a given country is affected by the number of actors and government levels involved in this framework and by the institutional setting in which the actors are embedded. In turn, these factors affect the manner in which decisions are made. Furthermore, I argue that a high level of formal independence of the sector independent regulatory agency (IRA) is not necessarily equal to a predominant position of the IRA in the regulatory decision-making process. Rather, even highly formal independent IRAs interact with other regulatory actors through relationships that are called regulatory arrangements (Aubin and Verhoest, 2014), a term that refers to the manner in which a series of regulatory tasks related to a specific public policy are articulated for a series of regulatory actors.

We argue that the type of regulatory arrangement depends on the distribution of decision-making power. This organization comprises two main elements: the coordination between the regulatory actors in the decision-making process and the extent to which there is a concentration of regulatory influence in a particular regulatory actor.

Recent research has highlighted the necessity of studying

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http://dx.doi.org/10.1016/j.jup.2017.04.002
0957-1787/

regulatory arrangements, because the larger institutional setting in which sector regulators are embedded shapes the policy outcomes of regulatory reforms (Jordana and Sancho, 2004). In this sense, the division of responsibilities, power structures and political culture are key factors that shape regulatory outcomes. The concept of regulatory arrangements and the distribution of decision-making power within them is still in development. This paper is based on a theoretical and methodological framework for measuring the distribution of decision-making power in regulatory arrangements, which was previously developed by Aubin and Verhoest (2014) and Mathieu et al. (2016). Therefore, this paper draws on that effort to refine these measures and to provide an application in Latin American contexts.

Hence, I have two objectives in this study. First, based on the aforementioned methodology, I attempt to refine the techniques and instruments for measuring the distribution of decision-making power in regulatory arrangements and to implement these measures in four Latin American countries. Second, based on the results in these four countries, I would like to explore variations in the regulatory arrangements of liberalized markets across the four Latin American countries. Here, I will try to address two research questions: How can existing measures of the distribution of decision-making power in regulatory arrangements in liberalized telecommunications markets be strengthened? How is decision-making power organized in the regulatory arrangements in the telecommunications sectors of four Latin American countries?

To answer these questions, I will first conceptualize the distribution of decision-making power in regulatory frameworks. Second, I will present the methodology introduced by Mathieu et al. (2016). This methodology, which builds on mapping techniques and mathematical calculations, is modified to measure the distribution of decision-making power in regulatory frameworks. Third, I present the results of the measurements of the telecommunication regulatory arrangements in four countries in Latin America, namely, Colombia, Ecuador, Peru, and Venezuela. Finally I present the conclusions and some policy recommendations.

## 2. Conceptual framework

In this section, I define the basic concepts that allow us to understand the distribution of decision-making power in the context of regulatory arrangements. I start by discussing the concept of regulation and then I present the concept of distribution of decision-making power in regulatory arrangements.

### 2.1. Regulation

Based on Baldwin et al. (1998), we can extract three possible approaches to understanding regulation, going from narrow to broad: the narrowest definition refers to the authoritative establishment of rules through a public agency. The public agency is also responsible for monitoring compliance with those rules. The second meaning of regulation relates to the various manners by which state agencies steer the economy. The difference between the first and second definitions is that the latter includes measures such as taxation, subsidies and redistributive measures. The third meaning of regulation is the broadest and includes everything encompassed by the first two as well as all unintentional and non-state regulations (i.e., social control or self-enforced regulations). In this research, I understand regulation in its narrowest sense[1].

A second issue that has been widely discussed in the literature is the relation between regulation and competition policy. For this research, I understand this relation as explained by Jordana and Levi-Faur (2004 p. 6), who distinguish between the regulation of competition and regulation for competition to describe the positive relation between competition and regulation. Both concepts assume a positive intervention of the state in the economy but the latter implies larger capacities to do so than the former. Regulation for competition is normally implemented on a sector-specific basis and conducted by a sector regulator (IRA) that acts proactively. Regulation of competition is exercised in a broader manner (all economic sectors) and with less intrusive capacities. This type of regulation is normally conducted by the general competition authority, which acts reactively.

### 2.2. Distribution of decision-making power: coordination and concentration

The regulation of a liberalized market involves a number of decisions related to economic, social and technical regulation. Here, distribution of decision-making power refers to the distribution of influence among the different actors and the interactions that such distribution generates when actors make regulatory decisions (Farrell and Héritier, 2004; Bindseil and Hantke, 1997; Hooghe and Marks, 1999).

We propose that the formal distribution of decision-making power in regulatory arrangements has two main dimensions: (a) the degree of coordination among regulatory actors in the decision-making process and (b) the concentration of regulatory influence.

The degree of coordination refers to the extent of interaction among regulatory actors in the process of making regulatory decisions. The multiplication of relevant regulatory actors does not necessarily imply a high degree of coordination among them. A highly coordinated regulatory arrangement is one in which the process of making regulatory decisions involves a high degree of consultation, information exchange, or even co-decision making among different regulatory actors. In contrast, low coordination is exhibited when regulatory actors scarcely interact with each other in the process of adopting regulatory decisions.

It is important to note here that I understand coordination as a process and not as an outcome. Thus, in this article, coordination refers to interaction, consultation or information exchange that occurs in the process of making a regulatory decision. However, this process does not necessarily imply that the outcome will be a coordinated decision.

Concentration of regulatory influence refers to differences among regulatory actors in terms of their capacity to shape regulatory output according to their preferences. The differences among the capacities of regulatory actors to shape output can be high (high concentration of regulatory influence) or low (low concentration of regulatory influence).

Concentration of regulatory influence should not be understood as the opposite of the concept of power dispersion, which is commonly used to refer to the multiplication of actors involved in the policy process. The multiplication of regulatory actors is compatible with a high concentration of regulatory influence when, for example, regulatory decision-making procedures give the main regulatory actor a much broader influence on the regulatory process compared with the other regulatory actors. In this case, the main decision-making actor is able to shape most of the regulatory output according to its preferences and the remaining actors have little opportunity to make a genuine impact.

[1] There are several other general and critical approaches to the issue of regulation that do not directly address the intervention into any given policy sector but rather focus on the manner in which governments endeavor to regulate society to achieve a perceived desirable conduct. A clear example of this type of approach to regulation is found in the work of Michael Foucault, who approaches government and governmentality as a mechanism to control population conduct in order to align it with government interests (Foucault et al., 1991).

Please cite this article in press as: González, C.I., Measuring and comparing the distribution of decision-making power in regulatory arrangements of the telecommunication sector in Latin America, Utilities Policy (2017), http://dx.doi.org/10.1016/j.jup.2017.04.002