Google

A Regulatory Toolkit for the Digital Economy

April 2021

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Introduction

This deck was created to discuss Regulatory Tools at a high level. For a deeper dive you can check out the full white paper.

General objectives for regulatory policy

Promote fair competition	**Increase the amount and accuracy of information in the market**
Protect consumers and others from harm	**Address impacts of negative externalities**

Innovative services and rapidly evolving markets require thoughtful, considered approaches from regulators and policymakers

Critical questions for policymakers in highly fluid technology markets, include:

Is there an issue in the market that warrants regulatory attention?

What is the issue and its scope?

What is the significance of the issue? Is it resulting in harm?

What may be causing the issue?

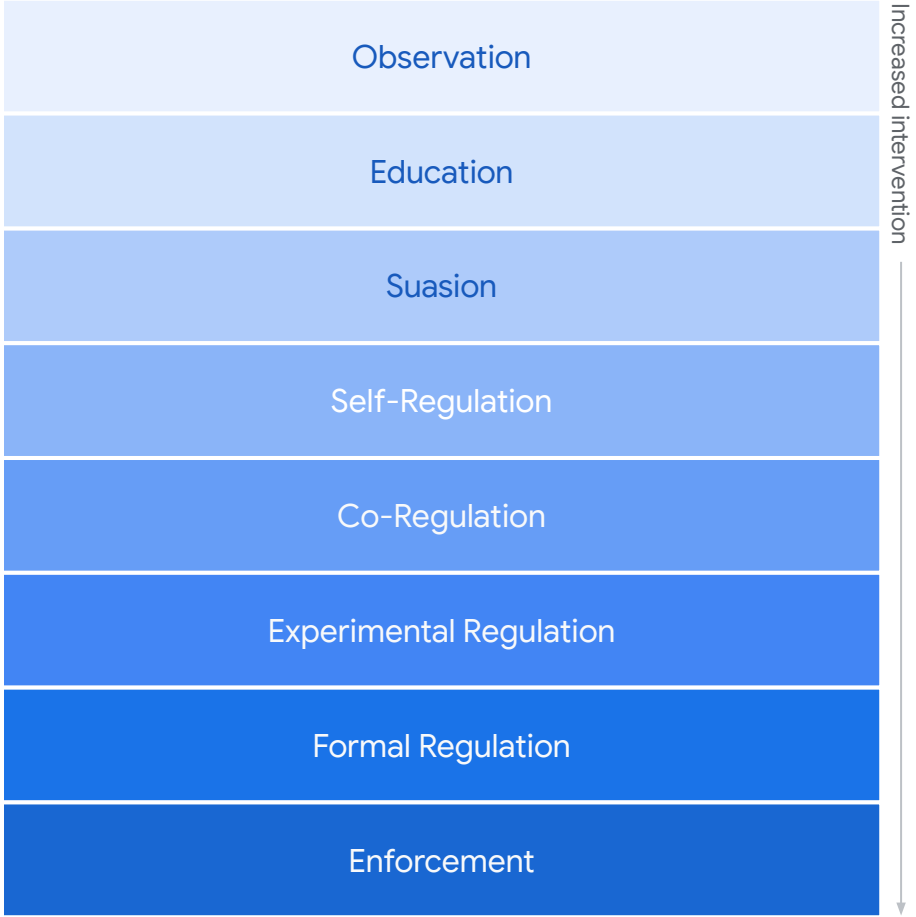
Is government intervention necessary to address it?

What action(s) can effectively address the issue while limiting unintended or adverse impacts?

Decision makers should consi options carefully

There are a variety of regulatory tools available, each with its own opportunities and challenges.

To avoid making counterproductive, ineffective, or unnecessarily restrictive regulatory decisions, especially in dynamic markets, decision makers should carefully consider the most appropriate form of regulatory action, starting with observation.



Case studies show how regulators have used these tools*

- U.S. FAA UAS Integration Pilot Program
- UK Office of Gas and Energy Markets (Ofgem) Innovation Link
- Monetary Authority of Singapore (MAS) Fintech Regulatory Sandbox
- European Cyber Security Month
- Australia Financial Capability Strategy
- UK NewsWise
- FTC & NHTSA Connected Cars Workshop
- EU Business Innovation Observatory
- UK Ofcom Research into Online Harms
- U.S. Children's Online Privacy Protection (COPPA) Rule
- EU Audiovisual Media Services Directive
- U.S. Federal Aviation Administration
- Internet Corporation for Assigned Names and Numbers (ICANN)
- UK Code of Broadcast Advertising
- CARU Safe Harbor Program for US Children's Online Privacy Protection Act (COPPA)
- U.S. Federal Trade Commission
- Consumer Affairs Victoria
- UK Competition and Markets Authority

*This deck does not seek to endorse the approaches in the selected case studies that are included within each chapter, but to provide illustrations across a range of applications.

FULL CASE STUDIES IN ACCOMPANYING WHITE PAPER

Observation

For a deeper dive on observation you can check out the full white paper.

Observation is the foundation for effective regulation

Key methods of observation

Workshops

Surveys

Research

Complaints data

Behavioral economics
As regulators increasingly incorporate behavioral economics into their analysis and modelling, **robust observation becomes even more important** to understand the factors driving conduct.

Key questions

How is the market operating today?

Does industry understand regulatory policy?

Is current regulation effective?

Are there market failures or other issues to address?

What is the cause of the issue(s)?

Is regulatory action needed?

Benefits of observation

Take smart regulatory action
By identifying issues or concerns in a given market, the causes of any concerns, their magnitudes, and the likely evolution of the market, regulators can develop informed strategies.

Prioritize their efforts
Detailed information helps regulators focus on issues and actions that will best achieve policy goal.

Frame issues for stakeholders
Deeper understanding promotes better justification for action. This can help regulators establish and maintain credibility, and encourage active stakeholder participation in policymaking.

Challenges for observation

Developing a full picture
A limited range of sources will provide an incomplete understanding of the market. This may occur, for example, by focusing on consumer or competitor complaints without also considering the positive experiences of non-complainers; or relying on publicly available information, without also soliciting inputs from industry and subject matter experts.

Prolonged observation can lead to unnecessary delays
Extensive processes may prevent regulators from acting when there is a clear need for regulation or an industry is proactively seeking regulation. It may be appropriate in certain circumstances for regulators to limit the timeframe for observation..

Effective observation

Leverages third party resources
Third party researchers often are better equipped to conduct research activities, which can reduce costs to regulators, and specialists may help obtain and analyze relevant, statistically significant results.

Uses diverse and comprehensive inputs
Additional sources of information might include: research conducted by consumer groups, academics, trade associations, localities, industry, or consulting firms; workshops or similar public fora; surveys of consumers or businesses; and focus groups.

Assesses issues and concerns
For example, regulators should consider providing opportunities to share information confidentially. This may allow industry and other stakeholders to discuss market practices, technological innovations, business practices, and other issues with regulators more robustly.

May involve collaboration with other regulators
Authorities in other jurisdictions or with overlapping oversight responsibilities may have additional insights into the potential effects of regulatory intervention and how market practices may evolve in the long term.

Observation - case studies

FTC & NHTSA Connected Cars Workshop

- Solicited multi-stakeholder inputs
- Collaboration between regulators
- Focus on benefits and challenges
- Prompted industry to address relevant issues without regulation.

EU Business Innovation Observatory

- Uses third parties to produce reports
- Assesses trends, opportunities, barriers
- Seeks to inform policymakers and regulators across sectors

UK Ofcom Research into Online Harms

- Engages market research firms to study consumer attitudes
- Encourages information sharing between regulators
- Considers potential impacts of intervention

LINK TO FULL CASE STUDIES

Education

For a deeper dive on education you can check out the full white paper.

Education campaigns inform users, industry and other stakeholders

Methods

Short-term awareness-raising on pertinent issues

Workshops

Instructional campaigns

Comparison tools to support consumers

Topics can include:

Applicable legal frameworks

Market practices

The costs/benefits of engaging in certain actions

The potential impacts of new technologies,
business practices, or regulatory policy

Benefits of education

Less interventionist, and can be highly effective; suitable for dynamic markets
Education initiatives are easier to craft and adapt than more interventionist regulatory tools, such as formal regulation. Particularly beneficial for markets involving innovative and rapidly evolving technologies. Regulators can address potential issues by positively influencing behavior.

Helps reduce costs for regulators
Regulators typically can launch education initiatives without having to go through time-consuming, notice-and-comment proceedings like those associated with formal regulation. Moreover, education initiatives generally do not require ongoing oversight or enforcement activities.

Challenges for education

Regulators may lack relevant experience
Regulators tend to have strong experience in traditional, core activities like promulgating and enforcing regulations, may not have extensive experience in designing campaigns. Effective education initiatives must have clearly defined objectives, target the appropriate audience, and engage that audience.

Poorly designed, it can risk unintended negative consequences
For example, when regulators warn consumers about potential risks in a market, they must take care not to cause undue alarm or other unintended side effects.

Effective education

Defines and evidences the objectives
Explicitly defined policy objectives, informed by consumer and market research, will help campaign design and delivery. Behavioral economic models can help to assess likely motivations and factors influencing consumer behavior and identify paths of influence.

Coordinates with relevant stakeholders
Working with other stakeholders may help reach target groups, for example, where companies have ready access to audiences through email or social media; in some cases, regulators may require that industry pay for education initiatives; and for content delivered in schools, regulators should coordinate with schools, colleges and education agencies.

Develops engaging, accessible content
To promote audience engagement, develop memorable, interactive or multimedia content that is delivered via familiar and regularly used channels/modalities.

Targets the right audience
Taking into account the composition and characteristics of the relevant audience, including: age, social demographic, education level, rural/urban location, type of consumer, and channels used by that audience to find consumer information.

Evaluates and learns from past efforts
Helps identify opportunities to improve future initiatives and policies.

Education - case studies

European Cyber Security Month

Annual campaign

Focuses on specific cybersecurity issues

Delivered via multiple channels

Collaboration with a wide range of partners

Australia Financial Capability Strategy

Financial literacy campaign developed in partnership with industry

Coordinates with schools to integrate with curriculum

Online tools for specific financial issues

UK NewsWise

News literacy program developed by NGOs

Leverages online games to engage with younger audiences

Targeting populations at higher vulnerability for misinformation

LINK TO FULL CASE STUDIES

Suasion

For a deeper dive on suasion you can check out the full white paper.

Suasion influences behaviour without formal action

Regulator's decision: should we run a suasion initiative?	Factors	Inputs	Suasion methods
	Policy goals - market behaviours seeking to be influenced Enforcement strategies	Up-to-date observational findings Behavioural understandings Cost/Benefit analysis	Publishing best practices Naming and shaming Convening workshops Issuing warnings Praising favored practices

Benefits of suasion

Preserves regulatory flexibility
Compared to more interventionist tools, suasion can more readily be adapted in light of changed circumstances.

May be deployed more rapidly
Especially if the regulator has a robust market understanding and evidence base. Suasion does not require regulators to engage in lengthy notice-and-comment processes.

Can enhance efficiency
For example, regulators can communicate their expectations to support market participants adapting their behaviors without the agency having to conduct a formal rulemaking. Suasion may also avoid prohibiting potentially beneficial practices in markets or activities where the impacts of formal regulation may not be fully understood.

Challenges for suasion

Requires trust
Industry must believe in the regulatory objectives, and in the regulator's compliance expectations or enforcement priorities.

Intervention must be possible
Industry participants must believe that the costs of ignoring regulatory appeals will exceed the costs of following them.

Requires policy coherence
Without clearly defined objectives or a full understanding of industry motivations and applicable regulatory frameworks, regulators risk launching suasion campaigns that fail to achieve desired goals and that may create market confusion.

May become less effective over time
Industry willingness to engage voluntarily may fluctuate. For example, if it becomes aware that not all firms are changing their behaviors, incentives will be reduced.

Effective suasion

Defines objectives
Before undertaking suasion campaigns, regulators should identify the specific behaviors they wish to influence, and confirm that sufficient justification exists to support changing market behavior.

Uses the right channels for the circumstances
Regulators can deploy suasion via speeches at industry conferences, comments before legislative or other government bodies, press releases, social media, direct conversations with market participants, published reports, or media briefings. As statements can move markets and greatly impact the marketplace, timing is also a key consideration.

Avoids overuse
Suasion efforts may lose effectiveness if used too frequently. Regulators should therefore assess whether the time is right for suasion.

Minimizes benefits to firms that ignore suasion
Market participants must feel confident that “non-compliers” will not be able to unfairly capitalize on the advantages obtained by ignoring regulatory calls to adopt best practices. Regulators can praise firms that adopt best practices, maintain pressure on and bring public attention to those that do not, and credibly indicate the possibility of formal regulation.

Suasion - case studies

UK Ofcom Phone and Broadband Customer Service Report

Annual public report comparing customer service for mobile, home broadband, and landline services

Easily accessible to consumers shopping for services, including and online tool for comparing selected providers

Support and resources for journalists
Incentivises firms to improve service

US FTC and Online Behavioral Advertising

2007 - Convened multi-stakeholder workshop to address privacy concerns regarding OBA

FTC identified self-regulation as solution, and published/sought comments on proposed principles

Spurred prompt industry action - the Digital Advertising Alliance formed in 2009

Hong Kong Privacy Commissioner - Ethical Accountability Framework

Data privacy regulator partners with think tank to develop guidance

Financial sector regulators join data privacy regulator to promote framework adoption

Consistent messaging from regulators with overlapping areas or responsibility

LINK TO FULL CASE STUDIES

Self-Regulation

For a deeper dive on self-regulation
you can check out the full white paper.

Private sector collaboration to address societal concerns

Self-regulation may take place in parallel with less invasive action by a state regulator

Benefits of self-regulation

Effectiveness
Industry expertise may promote more practical solutions

Accountability
Industry may be more likely to comply with standards it has developed

Potential for faster implementation
Does not require regulators to gather an evidence base and market understanding

Transparency of market practices
Especially for frameworks that rely on publicly reported independent audits or assessments

Challenges for self-regulation

A credible framework
For self-regulatory frameworks to have long-term impact and efficacy, self-regulation must transparently impose substantive requirements backed by enforcement mechanisms.

Free-riding
Non participants may benefit from the reputational benefits of co-regulation without undertaking any of the industry costs or constraints associated with self-regulation.

Benefits of PBR compared to prescriptive regulation

Supports lower regulatory costs, flexibility and innovation for industry
Setting goals and letting market actors use their expertise to determine the best way to meet them may result in lower prices and a greater range of options, especially in dynamic and innovative sectors. Technology-neutral policies avoid picking 'winners and losers'.

More effective and efficient outcomes
PBR allows regulators to focus on policy goals and industry on how to meet them.

Appropriate for dynamic or evolving sectors
PBR enables regulators and industry participants to accommodate market and technological developments

Compared to prescriptive rules, potentially more supportive of global trade
PBR can reduce the risk of conflicting approaches between jurisdictions.

Challenges for PBR

Requires substantial resources
As compared to less interventionist measures, PBR typically can consume time and resources that may, in certain circumstances, be better spent elsewhere.

May increase uncertainty
If performance requirements are unclear, regulated entities may unnecessarily limit or forego otherwise effective compliance approaches. Under less interventionist regulatory regimes, entities may be willing to engage with regulators to understand expectations. Under unclear PBR-based frameworks, the risk of enforcement may dissuade firms from coordinating with regulators.

Potentially burdensome for SMBs
While many firms may prefer the flexibility offered by PBR as compared to prescriptive regulation, other market participants, including small businesses, may prefer the certainty of understanding exactly what they need to do to comply.

Amendments can take time
Given the formal notice and comment process requirements for formal regulation, regulatory frameworks—including PBR—can be difficult to change and update to respond to evolving market conditions. As a result, once performance-based regulations are adopted, they may become entrenched even where technologies and markets adapt to render the regulations obsolete.

Effective self-regulation

Transparent development
When an industry seeks self-regulation in an attempt to satisfy regulatory concerns, there is a risk that critics may view the process as self-serving or uninformed. Self-regulatory initiatives can address this by adopting fair, transparent processes.

Broad industry buy-in
Regulators and the public may view weak participation by industry or sectoral firms as a sign that the framework does not address an important issue or that the industry, as a whole, lacks concern about the issue and a commitment to it.

Input from acknowledged experts
Promoting confidence in the standards agreed.

Independent third-party review
Promoting additional credibility and helping to avoid “blind spots,” including areas of potential concern to regulators/other stakeholders that are not readily understood by industry.

Accountability mechanisms

Self-regulation - case studies

International Organization for Standardization (ISO)

Global network of national standards bodies (165 countries)-develops and publishes international standards for array of industries and markets

Engages market research firms to study consumer attitudes

Development process involves consumers, industry experts and country representatives

European Advertising Standards Alliance

Pan-European framework for promoting/facilitating self-regulation

Develops best practices for self-regulation

Provides a cross-border complaint mechanism

Guidelines for self-regulatory systems in specific markets

Data Driven Marketing Association of Singapore

Non-profit trade organization for the marketing industry

Monitors and enforces a code of practice

Dispute resolution mechanism for members / customers/ public

Strong accountability mechanism backed by sanctions

LINK TO FULL CASE STUDIES

Co-Regulation

For a deeper dive on co-regulation you can check out the full white paper.

Private sector collaboration with regulators

There are numerous models of co-regulation, with differing levels of regulator involvement

Examples of co-regulation include:

The development of internationally recognized standards, guides, and recommendations;

Internationally recognized private sector conformity assessment systems;

And Mutual recognition arrangements.

Benefits of co-regulation

Industry accountability
Industry may be more likely to comply with standards it has directly shaped.

More flexibility
Co-regulation provides flexibility in the regulatory design process to the benefit of both regulators and business.

Mutual education
Collaboration may provide regulators with insights into market practices, and industry on the interests of regulators.

Enhances efficiencies for regulators
For example, private sector participants can, depending on the framework, support implementation, assess compliance, or maintain responsibility for enforcement.

Challenges for co-regulation

Getting the right stakeholders in the room

Clear process design
The risk of regulatory uncertainty may be increased if the process If the process is not well-designed for collaboration or lacks firm deadlines..

Free-riding
New entrants may benefit from the reputational benefits of co-regulation, if they are shared by all industry actors, without undertaking any of the industry costs associated with co-regulation.

Effective co-regulation

Strong state-industry collaboration
Promoting constructive communication and cooperation among private and state actors.

Clear standards and accountability mechanisms
To demonstrate that industry is subject to substantial obligations and that the co-regulatory framework is more than aspirational guidance. Enforcement responsibilities can be allocated to industry, regulators, independent third parties, or to a combination.

Clearly defined process
All stakeholders must understand and commit to their roles in the regulatory process and to the deadlines set for milestones.

Input from acknowledged experts
Promoting confidence in the standards agreed.

Co-regulation - case studies

Internet Corporation for Assigned Names and Numbers (ICANN)

Global coordination of Domain Names To perform functions in the public interest, contracts with government agencies

Diverse private & public participants

Clear allocation of responsibilities; developed a Consensus Playbook to facilitate multistakeholder initiatives that lead to productive outcomes

UK Code of Broadcast Advertising

Regulator delegates development and administration of the code of conduct to private sector organization (ASA)

Clear allocation of responsibilities via statute and memorandum of understanding

Regulator maintains oversight

CARU Safe Harbor Program for US Children's Online Privacy Protection Act (COPPA)

Industry-established framework for COPPA compliance

CARU sets and monitors standards

CARU will work with members on voluntary self-correction, and can refer uncooperative firms to the US Federal Trade Commission

LINK TO FULL CASE STUDIES

Experimental Regulation

For a deeper dive on experimental regulation you can check out the full white paper.

Experimental regulation supports innovation, both in the market and in policy approaches

Regulators observe and supervise the testing, refinement, and deployment of innovative technologies within defined markets or subject to specific operating parameters.

Regulators may partner with private enterprise, states or localities, academic institutions, or other organizations.

TYPES OF EXPERIMENTAL REGULATION

Sandboxes	Firms use innovative technologies or business practices within controlled environments under regulatory supervision. Established within limited timeframes and limited markets.
Waivers & Exemptions	For example, where existing regulations appear to be outdated or ill-suited for innovative technologies or business practices.
Pilot programs	
Experimental licenses	

Benefits of experimental regulation

Promotes innovation & competition
By supporting the development, testing, and rapid deployment of new technologies and services. May reduce regulatory barriers for new firms/SMBs.

Reduces unintended consequences
For example, where the rules apply to technologies, not foreseen when the regulations were designed.

Provides teaching opportunities
To learn about the benefits and potential issues associated with new technologies and offerings. Sandboxes allow trial and error before making regulatory or policy decisions.

Supports market growth
Signals to the entrepreneurs a willingness in that jurisdiction to encourage and enable innovation.

Challenges for experimental regulation

A short-term solution
It tends to be temporary and subject to modification; it does not take the place of broad, long-term regulatory frameworks that may offer industry enhanced certainty about the state of the marketplace or more expansive market deployment opportunities.

Criticism if not transparent
To avoid unfairness, regulators must clearly articulate the guiding principles, shared goals,
and relevant rules of the experimental regulatory approach to all relevant stakeholders.

Requires investment
Regulators and participants must allocate sufficient staffing, time and resources to ensure a successful sandbox programme.

Effective experimental regulation

Clear publication of participation requirements

These help guide agency action, and provide companies with the certainty they need to assess whether to participate.

Coordination with regulators having overlapping jurisdictions

In sectors subject to a variety of regulatory and authorities, all relevant regulators should be consulted in designing the program. Without collaboration and broad buy-in from relevant regulators, industry participants may be reluctant to participate.

Use of programs designed to deliver useful insights

For example, by **carefully defining regulator data needs.** Regulators and industry must agree up front the types of information that will be collected, what parties will have access to the information, and how it will be shared. And by **encouraging diverse participation** - to avoid unduly favouring participant regulated entities, and to support generalized conclusions.

Experimental regulation - case studies

South Korea Automated Driving Initiatives

Ministry of Land, Infrastructure and Transport (MOLIT) pilots for cooperative-Intelligent Transport Systems (C-ITS)

Designed to attract innovative firms to Korea and to improve traffic safety

In 2018, MOLIT opened the Korea Automobile Testing and Research Institute (KATRI)-testbed for self-driving vehicles, open to all industry players, incl. start-ups, research institutes, and universities

UK Office of Gas and Energy Markets (Ofgem) Innovation Link

Regulator delegates development and administration of the code of conduct to private sector organization (ASA)

Clear allocation of responsibilities via statute and memorandum of understanding

Regulator maintains oversight

Monetary Authority of Singapore (MAS) Fintech Regulatory Sandbox

Clearly defined objectives, participation criteria, and experiment boundaries

Time-limited programs with evaluations at conclusion

Safeguards designed to minimize effects of failures

LINK TO FULL CASE STUDIES

Formal Regulation

For a deeper dive on formal regulation
you can check out the full white paper.

Formal regulation may be performance-based or prescriptive

Performance-based (PBR)

Rules that establish performance goals without requiring or prohibiting specific methods, processes, or other activities to achieve that goal.

PBR has gained increasing global support over the last few decades, including from the OECD and WTO.

Prescriptive (aka “command and control”)

Rules that impose specific requirements, actions, or prohibitions related to market activity

Use cases:

1. High risks of identifiable harm
2. Consumers cannot make informed choices
3. Need for consistency in compliance approaches

Performance-based and prescriptive examples

Performance-based (PBR)	Prescriptive
Directs presentation of ads in a manner that "reasonably" conveys to consumers that the purpose of the message is to advertise or promote a product or service	Requires disclosure that "this is an advertisement" in a font size larger than any surrounding text
Mandates "reasonable" security measures when transmitting sensitive information	Mandates use of 3DES encryption when transmitting sensitive information
Requires "reasonable" notice about the use of facial recognition technologies in facilities	Requires 90cm x 60cm signs disclosing the use of facial recognition technologies at every point of entry

Formal regulation can result in rules that contain both performance-based and prescriptive provisions.
For example, a hybrid rule could include performance-based triggers for the application of prescriptive design requirements, or prescriptive triggers for the application of performance-based requirements.

Effective performance-based regulation

Establishes and communicate clear goals
Drafted in plain language and with appropriate guidance.

Provides guidance and compliance tools
Including tools to support measuring or verifying performance.

Involves industry during design process
To provide input on existing and future technologies, products, and capabilities.

Considers exemptions or other relief if standards unduly burden certain firms

Performance-based regulation - case studies

Australian National Transport Commission Automated Vehicles

The Australian Road Rules, promulgated well before automated vehicles were designed, contained PBR standards which were nevertheless capable of application to automated vehicles

2017 enforcement guidelines provided an indication of how the standard might be applied in the absence of a driver, while still leaving flexibility for interpretation

EU Cybersecurity of Network and Information Systems Directive

Requires “appropriate and proportionate” safeguards

Emphasizes flexibility in light of evolving technologies

Directs regulators to avoid imposing undue financial and administrative burdens on regulated firms

UK Gas and Electricity Markets

Ofgem regulates utilities by setting targets for reliability, availability, customer service, social obligations, safety, and environmental stewardship

Financial incentives offered for achievement of performance goals

Performance levels benchmarked for industry comparisons

LINK TO FULL CASE STUDIES

Benefits of prescriptive regulation compared to PBR

More streamlined compliance review than PBR
Regulators can observe whether required conduct took place.

Promotes understanding of compliance requirements
Clearly drafted rules may provide certainty and reduce the burden on regulated entities.

Challenges for prescriptive regulation

Costs to regulators of designing and defending
Required level of detail may need more agency resources / significant consultation. May also enhance litigation risks for regulators.

Inefficiencies, especially in dynamic/evolving markets
By their nature, prescriptive rules are not adaptable or flexible, and are. unlikely to accommodate emerging risks, and may fail to capture unforeseen benefits of regulated technologies or activities. Regulators risk picking market winners if a single solution is mandated for industry.

Risks to innovation
If rules prevent industry finding better ways of achieving policy goals.

Amendments can take time
Given the formal notice and comment process.

Impeding trade and regulatory cooperation
Inconsistent prescriptive regulations increase non-tariff barriers.

Considerations for prescriptive regulation

May be appropriate for defined markets posing high risk of harm
In areas of higher risk to public life or health, less prescriptive tools may not fully address that risk.

Collaboration with diverse stakeholders promotes effectiveness
Industry may be better situated to provide information on how proposed rules will impact business practices or promote regulatory objectives, especially in emerging tech sectors and in sectors evolving to new processes and products.

Communicate expectations clearly
Highly complex or internally inconsistent regulations create challenges for industry, thereby reducing compliance.

Substantial costs warrant careful consideration of the necessity and benefits

Accountability mechanism
Regulators may consider including waiver mechanisms that allow regulated entities to seek and obtain authorizations to adopt alternative means of achieving regulatory goals.

Prescriptive regulation - case studies

US Children's Online Privacy Protection (COPPA) Rule

Aims to give parents control over the online collection and use of children's personal information

Focused on potential harms to children under 13

Detailed rules supported by guidance documents

Industry can submit self-regulatory prescriptive proposals for approval

EU Audiovisual Media Services Directive

Requires EU Member States to adopt laws prohibiting certain advertising for tobacco products and the immoderate consumption of alcoholic beverages

Encourages co-regulation and self-regulation without relinquishing authority to engage in formal regulation

US Federal Aviation Administration

Regulates mature manned aviation industry with limited competition

Substantial risks associated with safety failures

Compliance costs similar across the industry

Regulation aims to promote public trust

LINK TO FULL CASE STUDIES

Enforcement

For a deeper dive on enforcement you can check out the full white paper.

Enforcement tools can penalize non-compliance, deter others, and provide redress

Regulator's decision: how to enforce?	Factors	Inputs	Enforcement methods
Regulators generally have some discretion regarding which tools to use and when to use them, although applicable legal frameworks may specify the available tools or impose other limitations.	Policy goals Enforcement strategies	Up-to-date observational findings Behavioural understandings Cost/Benefit analysis	Criminal penalties Warning letters Cease-and-desist orders Injunctions Civil penalties License suspensions

Benefits of enforcement

When less interventionist actions are ineffective, transparent, fair and reasonable enforcement can:

Create incentives to comply
Helping reduce risk or prevent harms, promoting trust within markets, and enhancing the public interest

Promote stable markets
If industry understands that regulators will deploy enforcement tools in a transparent, fair, and reasonable manner, they more efficiently design compliance programs.

Support collaboration between industry and regulators
Industry may be more willing to engage with regulators to address emerging or unsettled issues.

Engenders support for policy objectives
Regulators can build support by explaining their enforcement priorities, factual/legal grounds supporting enforcement activities, and how enforcement has benefited consumers.

Challenges for enforcement

Can have a chilling effect on developing technologies,
especially if the underlying compliance requirements are not entirely clear or well-developed.

Uninformed enforcement leads to poor regulatory outcomes
If influenced primarily by limited sources, such as by isolated consumer complaints or advocacy groups, regulators risk focusing their attention on issues that concern a small percentage of stakeholders, with little risk to the market.

Poorly prioritized enforcement can impede broader policy goals
For example, if a regulator is seeking to keep consumer costs low, it may wish to consider action that does not result in smaller businesses existing the market, so increasing consumer costs.

Arbitrary, biased, or poorly prioritized enforcement reduces trust in regulators
And may increase costs for regulators as oversight bodies overturn decisions.

Effective enforcement

Prioritizes enforcement targets
Regulators should deploy limited enforcement resources where they can have the most impact, for example in case of systemic failures by a firm or group of firms.

Uses enforcement tools that will maximize benefits
Regulators should consider the degree to which the tools available will help achieve policy objectives. For example, warning letters may be sufficient to both change the target's behaviors and signal to the market that the regulator is monitoring compliance. And enforcement alternatives, such as self-reporting with time for correction, may better promote compliance.

Establishes clear objectives
Regulators should provide tools to support compliance (guidance, checklists etc).

Considers potential impacts of enforcement
Typically, enforcement actions will have impacts on non-compliant firms, and also current and prospective market participants.

Considers measures being taken by stakeholders or other regulators
Self-regulatory bodies, advocacy groups, or other regulators may already be taking action to address specific market issues.

Approaches to enforcement - case studies

US Federal Trade Commission

Focus on violations likely to cause substantial consumer injury

Educate industry regarding compliance expectations

Recognize importance of international collaboration

Review impacts of prior enforcement actions to identity lessons learned

Consumer Affairs Victoria

Assess impacts of enforcement and available tools before taking action

Consider the tool(s) that will best achieve desired outcomes in specific circumstances (e.g., a warning letter may be sufficient to deter)

UK Competition and Markets Authority

Adjusted enforcement priorities in light of SARS-CoV-2 pandemic

Provided detailed guidance to educate firms about shift in enforcement approach and priorities

LINK TO FULL CASE STUDIES

Thank you.

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Backup case studies

Experimental regulation - case studies

US FAA UAS Integration Pilot Program

National authorities partnered with localities and industry to test/ evaluate integrating civil/public drone operations.

Supported the drafting of formal regs, including by identifying ways to improve local, state and tribal communication, and address security and privacy risks.

Enabled innovation and data sharing in controlled environment.

UK Office of Gas and Energy Markets (Ofgem) Innovation Link

Sandbox for innovators to trial/launch products, services, methodologies or business models across the energy sector.

Features include: relief from specific rules, and guidance on interpreting how regs may apply.

Attracts diverse participants (2017-19: 200+).

Monetary Authority of Singapore (MAS) Fintech Regulatory Sandbox

Clearly defined objectives, participation criteria, and experiment boundaries

Time-limited programs with evaluations at conclusion

Safeguards designed to minimize effects of failures.

LINK TO FULL CASE STUDIES

Performance-based regulation - case studies

U.S. Traffic Safety Regulations

NHTSA establishes performance-based regulations for motor vehicle safety

Measurable standards

Effective and efficient promotion of safety, while allowing manufacturers to experiment, innovate, and differentiate their vehicles and parts

EU Cybersecurity of Network and Information Systems Directive

Requires “appropriate and proportionate” safeguards

Emphasizes flexibility in light of evolving technologies

Directs regulators to avoid imposing undue financial and administrative burdens on regulated firms.

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