

From: sva@cuts.org
To: "Sanjeev Kumar Sharma" <advbbpa@traigov.in>
Cc: "SanjayKumar" <jtadv-bbpa@traigov.in>, amk@cuts.org
Sent: Monday, July 17, 2023 7:01:34 PM
Subject: CUTS Comments on TRAI Consultation Paper on 'Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector'

Dear Mr. Sharma,

Greetings of the day!

CUTS expresses its gratitude to the Telecom Regulatory Authority of India (TRAI) for inviting comments on the [Consultation Paper](#) on "Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector".

We are pleased to submit our comments on it, which have been attached herewith for your kind perusal. We would be grateful if you could kindly acknowledge receipt of the same.

We hope our submission would be useful to understand the consumer's perspective. Please feel free to reach out to us, in case of any queries/clarifications.

Thanking you,
Warm regards,
Shiksha

Shiksha Srivastava
Senior Research Associate
CUTS International, Jaipur
Tel: +91 141 2282821-3 Ext:115
Fax: +91 141 2282485
Mobile: 93261 34339
Email: sva@cuts.org
Web: www.cuts-ccier.org



Also at Lusaka, Nairobi, Accra, Hanoi, Geneva, Delhi, Calcutta and Washington, D.C

TRAI Consultation Paper on
Encouraging Innovative Technologies, Services, Use Cases, and Business Models through
Regulatory Sandbox in Digital Communication Sector

CUTS Comments

I. Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Telecom Regulatory Authority of India (TRAI) for inviting comments on the Consultation Paper (CP) on *Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector*.¹

II. About CUTS

CUTS in its 39 years of existence, has come a long way from being a grassroots consumer centric organisation headquartered in Jaipur², having centres in Delhi³, and Kolkata⁴, to now opening overseas Resource Centres in Vietnam⁵, Kenya⁶, Zambia⁷, Ghana⁸, Switzerland,⁹ and in the United States of America¹⁰. It continues to remain an independent, non-partisan, and non-profit economic policy think tank while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE);¹¹ Centre for Consumer Action, Research & Training (CART);¹² Centre for Human Development (CHD)¹³; and Centre for Competition, Investment & Economic Regulation (CCIER)¹⁴.

CUTS has been working towards improving the regulatory environment through evidence based policy and governance-related interventions across sectors and national boundaries. It has conducted various studies and events in the telecommunications (telecom) sector, such as

¹ https://www.trai.gov.in/sites/default/files/CP_19062023_0.pdf

² [CUTS International – Consumer Unity & Trust Society \(cuts-international.org\)](https://cuts-international.org)

³ <https://cuts-international.org/DRC/>

⁴ <https://cuts-crc.org/>

⁵ <http://www.cuts-hrc.org>

⁶ <https://cuts-nairobi.org/>

⁷ <https://cuts-lusaka.org/>

⁸ <https://cuts-accra.org/>

⁹ <http://www.cuts-geneva.org/>

¹⁰ <http://cuts-wdc.org/>

¹¹ www.cuts-citee.org

¹² <https://cuts-cart.org/>

¹³ <https://cuts-chd.org/>

¹⁴ <http://www.cuts-ccier.org/>

Demystifying Reality from Myth for 5G in India¹⁵; Coding and Enforcing Mobile Internet Quality of Standards in India¹⁶; Consumer Broadband Labels for Greater Transparency & Informed Consumers;¹⁷ Towards Effective Choice: A Nation-Wide Survey of Indian TV Consumers;¹⁸ among many others. Currently, CUTS is undertaking studies on ‘Elements of Ethical Framework for 6G and Creating Opportunities for India and Australia,’¹⁹ ‘Understanding and Highlighting Stakeholders’ Perspectives on Caller Name Presentation (CNAP) in Telecommunication Services,’²⁰ ‘Understanding and Highlighting Consumers’ Perspectives in the debate of regulation of Over the Top (OTT) Communication Services,’²¹ and ‘Bringing Forth a Consumer Perspective on Wi-Fi 6E’²². Based on such evidence-based studies, CUTS is pleased to submit its comments on the Consultation Paper, which have been discussed in subsequent sections.

III. Recommendations to TRAI

CUTS has approached the proposal of introducing a regulatory sandbox framework from a consumer interest perspective. The regulatory sandbox framework should benefit investors, Indian markets and the economy at large. But there have been instances when innovation without proper regulatory oversight has caused damage to investors and economies. It is imperative that new technology intensive models and innovations are deployed with proper regulatory oversight and risk mitigation safeguards. Consumer interest should be considered and appropriate safeguards should be built within the regulatory sandbox framework.

The recommendations on the Draft Framework of Regulatory Sandbox (as provided in Annex-1 of the CP) are as follows:

1. A conscious effort is needed to ensure that sandbox does not remain limited to service providers or for new products/ services/ onboarding mechanisms. There are several challenges around service usage, including quality of services, grievance redress, fraud prevention, and dispute resolution. A range of entities (not limited to service providers) might be working on/ interested to work on innovations in these areas. The sandbox must provide opportunities to such solutions and entities.

¹⁵ [5G in India \(cuts-ccier.org\)](http://cuts-ccier.org)

¹⁶ [Coding and Enforcing Mobile Internet : Quality of Standards in India - ccier \(cuts-ccier.org\)](http://cuts-ccier.org)

¹⁷ [Project Launch Meeting “Consumer Broadband Labels: For Greater Transparency & Informed Consumers” - ccier \(cuts-ccier.org\)](http://cuts-ccier.org)

¹⁸ <http://cuts-ccier.org/pdf/research-report-towards-effective-choice-a-nation-wide-survey-ofindian-tv-consumers.pdf>

¹⁹ [Ethical 6G – Identifying Elements of Ethical Framework for 6G and Creating Opportunities for India and Australia - ccier \(cuts-ccier.org\)](http://cuts-ccier.org)

²⁰ [Understanding and Highlighting Stakeholders’ Perspectives on Caller Name Presentation \(CNAP\) in Telecommunication Services - ccier](http://cuts-ccier.org)

²¹ [Understanding and Highlighting Consumers’ Perspectives in the debate of regulation of Over the Top \(OTT\) Communication Services - ccier](http://cuts-ccier.org)

²² [Understanding Consumer Perspectives on 6GHz Band - ccier](http://cuts-ccier.org)

- 2.** The minimum net worth requirement for participating in a sandbox may be counterproductive to the objective of facilitating innovations. Depending on the proposed innovation, if the applicant possesses required financial and technical resources, it should be allowed in the sandbox. The regulator should publish reasons for rejecting an application in the public domain.
- 3.** The regulator should specify the rationale of how it determines whether the solution is innovative enough and there is a genuine need to test. It might be useful for the regulator to lay down standards in advance so that entities have clarity on when to approach a sandbox. Reasoned decisions would also be helpful in this regard.
- 4.** In case several applications are seeking relaxation of similar regulatory requirements, the need for such regulatory requirements to continue to remain should be dispassionately studied using the Regulatory Impact Assessment (RIA) framework.
- 5.** There should be a mechanism to compare the claims of consumer benefit in the application and actual results. This should be available in the public domain.
- 6.** The decisions regarding sandbox application, and the results of sandbox use, should be transparent and available in public domain.
- 7.** Wherever testing with consumers is involved, regulators should have a mechanism to take consumer feedback either directly or through consumer organisations.
- 8.** The application for sandbox should be reviewed by an independent committee, representing regulators, govt, consumers, industry, and experts.
- 9.** It will be useful to clarify how ‘maximum exposure’ (page 30) to consumers will be determined. It should not be limited to financial exposure, but include risks emanating from data collected, services obtained, etc.
- 10.** The risks and protections should be appropriately explained to consumers while their consent is sought.
- 11.** There should be a mechanism for external independent evaluation of the results to prevent any preconceived notions of bias.
- 12.** The regulator must ensure that consumer interests are not harmed in the sandbox/ appropriate redress is enabled, and it should not pass on the baton to service providers or other regulators in this regard.
- 13.** Learning from regulatory sandboxes in other sectors, the regulator may consider defining 3-4 priority areas in which applications will be accepted initially. This will help the regulator in building internal capacity.
- 14.** Given that the financial sector has significant experience of sandboxing, joint workshops with financial sector regulators and stakeholders could be organised for knowledge sharing.

15. Given that testing may run up to 12 months, appropriate timely periodic disclosures to consumers should be provided.
16. During the testing, the consumers should have all rights and mechanisms to file a complaint and provide feedback to the regulator.
17. In case of revocation of permission, appropriate reasons must be provided and published in public domain.
18. The regulator should clearly define what it means by public interest while revoking the permission.
19. The decision to provide funding support to proposals must have adequate reasons, and should be published in the public domain.

The specific issues arising from the CP are summarised below:

1. Regulator should ensure clarity of objectives

As per the CP, the scope of the regulatory sandbox under the framework (P.27) *“includes any new DC service or technology that requires testing in a controlled environment. This framework is applicable to all entities or individuals concerned to test products or services or applications related to DC technology.”* Furthermore, the objective has been broadly laid out as *‘promoting innovation, protecting consumer interests, and mitigating potential risks associated with new technology and business models’*.

Taking this into account, the objectives of the sandbox must be consistent with the legal mandate of the regulator and must be in line with national and global development strategies. These strategies or principles include national development plans, digital strategies, and the United Nations Sustainable Development Goals.

It is the onus of the regulator, to ensure that the objectives of the sandbox are clear to all prospective participants and stakeholders. There should be clear emphasis on what the Sandbox is not intended and cannot be used for. The framework for the implementation of the particular sandbox should clearly set out the sandboxing duration, and the process of evaluation. Also, the process of making regulatory decisions of general application post the sandboxing participation, should be clarified to all stakeholders.

2. Regulatory Sandbox should not replace pilot testing or any other existing regulatory measures

As per Paragraph 1.5 (Page 2) *“A sandboxing framework is an alternative and additional approach to the existing ways (like carrying out pilots) for testing innovations. While some*

innovations may only require a pilot approach, others may require access to live data and subscribers, which can be achieved through a sandboxing framework. Further, such sandboxes can be of great help to small entrepreneurs.”

Given the benefits, resource demand and challenges that come with regulatory sandboxes, there should be utmost clarity on the conditions which warrant sandboxing as well as of the desired outcome. It is also important to abandon the other regulatory tools, which have existed and might be applicable to the proposed innovation.²³

The purpose of a regulatory sandbox is to test market ready solutions against regulation, which is different from the purpose of a test licence which is intended to test the feasibility and viability of a particular technology or solution for the market. A new solution can go from testing with a test licence to a regulatory sandbox where it will ascertain security and market fit in a regulatory context.²⁴

A regulatory sandbox is not an incubator innovation. Solutions that enter the sandbox must be market ready and control tested; when they enter the sandbox the focus is on whether the new technology or solution will fit into the existing regulatory framework and what regulations need to be adjusted to meet this new solution²⁵. An innovation testbed or hub is an initiative to help startups and large companies leverage intellectual capacity to nurture new ideas, generate business models and concepts, and develop new technologies.

3. Need for sandboxing to be clearly established

The decision-making process to be undertaken by the regulator before undertaking sandboxing should scrutinise the need to sandbox. The figure 1, illustrates the process of the analysis to be undertaken before sandboxing. It prompts the regulator to ask critical questions, so as to reduce the risk of the sandbox leading to (i) distortions in the market, (ii) acting as an imperfect substitute for other regulatory enablers or frameworks, (iii) creating an uneven playing field or, (iv) acting as a *de facto* gatekeeper or substitute for interactions with traditional licensing or regulatory processes.²⁶

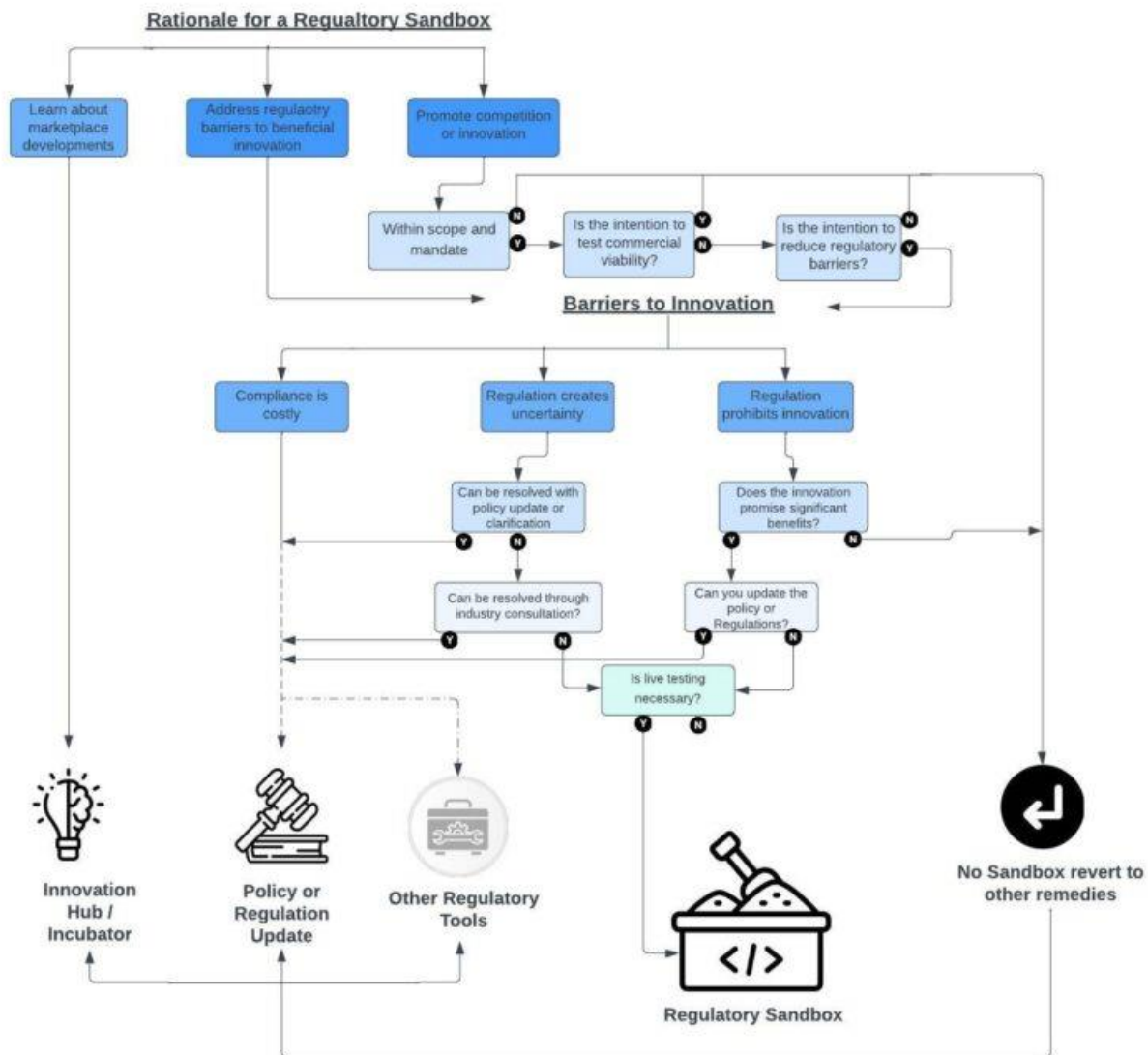
The rationale of the decision and along with the decision on undertaking regulatory sandbox should be published and made available in the public domain.

²³ [A case for ICT Regulatory Sandbox | Digital Regulation Platform](#)

²⁴ Jenik,Ivo and Schan Duff. 2020. [How to build a regulatory sandbox: A practical guide for Policymakers](#). CGAP

²⁵ *Ibid.*

²⁶ Jenik,Ivo and Schan Duff. 2020. [How to build a regulatory sandbox: A practical guide for Policymakers](#). CGAP



[Figure 1]²⁷

4. Conduct regulatory impact assessment in collaboration with stakeholders

Another important consideration of sandboxing is to assess the alternatives. The regulator should assess whether other regulatory tools that are already in use can be used for assessing the innovation’s success. Moreover, Regulatory Sandboxing should be preceded by a regulatory impact assessment (RIA)²⁸. The regulator should first examine the cost of compliance, whether sandboxing is fit for purpose and how it can be done efficiently.

²⁷ Ibid.

²⁸ <https://www.oecd.org/gov/regulatory-policy/ria.htm>

The regulator, together with the potential participant, through the results of RIA, should examine whether there is any ambiguity or uncertainty in the current regulatory framework, and how it can be revised to promote efficiency. Lastly, the regulator and the potential participant need to establish where regulation may prohibit innovation. In such instances both would benefit from RIA and regulatory sandbox. This ensures that there is regulatory efficiency in the existing regulatory frameworks, and that the sandbox is not trying to reinvent the wheel but rather facilitating for regulations that do not exist.

Along with conducting RIA, competition impact assessment (CIA) of existing regulations will also be needed.²⁹ Both have been recognised as important elements of an evidence-based approach to policy making.³⁰ RIA helps to identify and plug regulatory bottlenecks and ensures that regulations meet their intended objectives. CIA helps to identify distortions to competition arising from regulations and facilitates the maintenance of a level-playing field for all market players.

5. Adopting structured stakeholder consultations

The process of structuring stakeholder consultations is pivotal in the conceptualization and design of regulatory sandboxes. This process not only sets the tone for transparency, eligibility, stakeholder collaboration, and resource capacity but also significantly influences the objectives of the sandbox. The governance framework and institutional structures play crucial roles in shaping the objectives of the sandbox and informing stakeholder engagement and collaboration. It is imperative for the regulator to invest time in consultations to effectively map stakeholder engagements and establish collaborative frameworks with other regulators.

Given the cross-cutting nature of digital communication technologies across various sectors of the economy and their vertical integration, a collaborative approach to sandboxing schedule be adopted. This approach allows regulators to leverage resources and insights from other regulators, thereby enhancing the effectiveness of the sandbox.

Once the stakeholder and collaborative frameworks have been designed, the capacity and resources can be explored among all stakeholders and regulators involved. The regulatory sandbox necessitates significant resource commitment owing to the nature of sandbox operations and the oversight required by the regulator.

In the final phase of conceptualization, the regulator needs to clearly define the eligibility criteria and timeframes for the application processes, participation in the sandbox, and exiting the sandbox.

²⁹ [Comments by CUTS International on The Report of the Working Group on FinTech and Digital Banking Consumer Unity & Trust Soci](#)

³⁰ [Competition Assessment Toolkit - OECD](#)

This clarity is essential for ensuring the smooth operation of the sandbox and successful engagement of all stakeholders.

6. Interest of Consumers need to be protected to avoid harms

The framework considers and covers Consumer protection (Page 30), as one of the essential conditions. However, protection of data of the consumers and their privacy should also be included within the same. The privacy of consumers is their fundamental right³¹, and as the sandboxing will involve analysing the consumer data, it should be ensured that this data is not misused or leaked. It is also important for the consumers to be aware of the potential privacy implications of participating in the sandbox, and then be able to give informed consent.

Therefore, from the consumer protection perspective, the importance of data protection cannot be overstated. In the digital age, personal data have become a valuable asset, and its misuse can lead to severe consequences for consumers. Therefore, robust data protection measures are not just a legal requirement but a crucial aspect of consumer protection. By ensuring the privacy and security of consumers' personal data, we can enhance their trust in digital services, thereby promoting their wider adoption and use.

7. Institutionalise activity-based grievance redress and establish collaborations with experienced organisations for better implementation

The CP states that there is potential for some legal issues coming up, such as those relating to consumer losses in case of failed experimentation. (Page 6) But grievance redress has not been sufficiently dealt with. The framework mandates a “defined grievance redressal mechanism and user rights (Page 34).” But, the regulator should establish a well-defined mechanism of grievance handling and the consumers participating in the same should be made aware of the mechanism before consenting to the participation.

Organisations such as CUTS³², with extensive experience in consumer protection and regulatory issues, can provide valuable insights and guidance. These collaborations can facilitate cross-learning, allowing the regulatory sandbox to benefit from best practices and lessons learned from other contexts. This collaborative approach can also foster a culture of continuous improvement, with ongoing feedback and learning opportunities contributing to refinement of the sandbox over time.³³

³¹ Fundamental Right to Privacy - Supreme Court Observer

³² <https://cuts-ccier.org/>

³³ Comments by CUTS International on The Report of the Working Group on FinTech and Digital Banking
Consumer Unity & Trust Society



Moreover, these collaborations can be extended beyond the implementation phase. Experienced organisations can also contribute to the monitoring and evaluation of the regulatory sandbox, providing independent assessments of its performance and impact. This can help ensure accountability, enhance transparency, and inform future iterations of a sandbox.

The institutionalisation of activity-based grievance redresses and the establishment of collaborations with experienced organisations are not just desirable but essential for the successful implementation of the regulatory sandbox. This approach can ensure that the sandbox is not only an innovative testing ground for new ideas, but also a robust and responsive system that effectively addresses the needs and concerns of all stakeholders.