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Sent: Monday, July 31, 2023 6:03:18 PM
Subject: Comments on Regulatory Sandbox: NICI

Dear Sir
Greetings from New Indian Consumer Initiative (NICI),

In response to TRAI Consultation Paper on 'Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector', dated 19.06.2023, please find comments from New Indian Consumer Initiative.

In case of any clarifications please feel free to contact the under-signed and/or vani@indicc.in

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Response to TRAI’s Consultation Paper on ‘Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector’, dated 19.06.2023

CONTENTS

- A. INTRODUCTION
- B. SUMMARY OF RESPONSE
- C. REGULATORY DESIGN OF THE SANDBOX
- D. CLOSING STATEMENT

The New Indian Consumer Initiative (NICI), welcomes the TRAI consultation on Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector. NICI, is a community-owned platform that facilitates open discussions about the various challenges and opportunities faced by consumers in the rapidly evolving New Economy. TRAI has been a trusted regulator for Indian consumers to rely on to safeguard citizen freedoms on a consistent basis while ensuring fair market competition. While promoting innovation, regulatory sandboxes also prioritize consumer protection. Regulators set eligibility and evaluation criteria to ensure participating companies adhere to certain standards and safeguards. This helps prevent potential risks to consumers and ensures that innovative products and services meet necessary safety and quality standards. Indicc looks at consumer welfare and protection as a primary aspect of such sandboxes and wishes to comment on the consultation paper with a consumer-centric perspective.

A. INTRODUCTION:

Regulators are facing the challenge of finding ways to maximize the benefits of digital opportunities for startups and SMEs while effectively addressing the associated risks and potential harms to consumers and competition.

One approach that ICT regulators and multi-sectoral regulators can adopt is the use of sandboxes. Sandboxes can decrease regulatory uncertainty, support emerging innovators, foster collaboration and capacity-building among regulators, and enhance regulatory clarity and compliance.

Around 25% of countries worldwide have implemented regulatory sandboxes as controlled environments for regulatory experimentation in various sectors by countries like Colombia, Mexico, France, Thailand, and Saudi Arabia. These sandboxes were alternatives to the existing regulatory obligations of various sectors in these countries.

France started a regulatory sandbox in 2020. On November 5, 2020, the French Energy Regulatory Commission (CRE) ruled on the eligibility of the applications for the sandbox program¹.

Saudi Arabia started a regulatory sandbox initiative in 2018. The Saudi Arabian Monetary Authority (SAMA) launched the Regulatory Sandbox initiative in 2018 to encourage local, regional, and international fintech participation. Since then, the country has launched several regulatory sandboxes, including the SAMA sandbox, which allows experimentation in banking and payment technology, and the Capital Markets Authority (CMA) sandbox, which deals with innovative approaches to securities markets. The Saudi Digital Government Authority also launched a sandbox initiative in 2021 aimed at finding regulatory solutions for digital².

These sandboxes serve purposes such as refining new business models, facilitating market entry for small or non-traditional players, expanding connectivity, and evaluating the resilience of future networks and services.

Other countries are also in the process of adopting similar initiatives. For instance, in the Dominican Republic, a new regulation was introduced in 2023 following a consultation process in the field of ICTs. This regulation aims to promote innovation and facilitate regulatory testing, granting the authority to the regulator, INDOTEL (Instituto Dominicano de las Telecomunicaciones), to establish regulatory sandboxes³.

In Canada, there are several regulatory sandboxes available for businesses to use. The CSA (Canadian Securities Administrators) Regulatory Sandbox is open to business models that are innovative from a Canadian market perspective. Alberta also has a financial services and fintech regulatory sandbox. However, there are gaps and inconsistencies in the authorities, criteria, and processes for sandboxes across the federal government, which can lead to unfair market advantages for companies operating in one regulated sector versus another⁴.

By incorporating the sandbox within the regulatory framework, regulators can achieve the following benefits:

1. **Legal Certainty and Clarity:** Regulatory sandboxes provide participants with a clear understanding of the regulatory requirements and consequences of their actions. By operating within the sandbox, companies can test their innovative ideas under the supervision of regulators, ensuring that they comply with applicable laws and regulations. This promotes legal certainty and clarity for participants, reducing uncertainty and potential legal risk

2. **Transparency and Accountability:** The sandbox framework fosters transparency by establishing clear rules and guidelines for participants. Regulators set eligibility requirements and evaluation criteria, ensuring that participants understand the expectations and boundaries of the sandbox. This promotes accountability as participants are accountable to regulators for their actions and adherence to the established rules. It also enhances transparency for market players and consumers, who can have confidence in the regulatory oversight of sandbox activities.
3. **Balancing Innovation and Safeguarding Public Interest:** Regulatory sandboxes enable regulators to strike the right balance between promoting innovation and safeguarding public interest, consumer protection, and market stability. By providing a controlled testing environment, regulators can closely monitor and assess the impact of innovative ideas on various stakeholders. This allows them to identify potential risks and develop appropriate regulatory responses to mitigate them. The sandbox framework allows for iterative learning and adjustment of regulations to keep pace with evolving technologies and market dynamics

In summary, incorporating the sandbox within the regulatory framework provides legal certainty and clarity to participants, fosters transparency and accountability to not just the government and market players but also the consumers, and enables regulators to strike the right balance between innovation and safeguarding the public interest. By creating a controlled environment for experimentation, regulators can effectively manage risks, promote responsible innovation, and ensure consumer protection and market stability.

B. SUMMARY OF RESPONSE

1. Issues raised in the Consultation Paper:

A sandboxing framework is an alternative and additional approach to the existing ways like pilot testing programmes for testing innovations.

Our Response:

Given the paucity of the market, regulatory sandboxes can be actively leveraged by licensed industry players aiming to enhance their product and service offerings in response to the evolving landscape of digital technologies. It is the regulator that needs to strike a harmonious equilibrium between traditional players and newer players entering the market while keeping a check on digital inclusion, consumer welfare, and protection that requires regulators to demonstrate their openness in engaging with both participants and consumers. This engagement can be effectively facilitated through the utilization of regulatory sandboxes, showcasing the regulator's willingness to adapt and work collaboratively with stakeholders.

2. Issues raised in the Consultation Paper:

As an international experience example, we see Singapore introduce a sandbox in the year 2016 as part of the Smart Nation Initiative.

Our Response:

Singapore is undergoing a transformation into a Smart Nation through its Digital Strategy, which encompasses three main pillars: digital society, digital economy, and digital government.

Within the Digital Economy pillar, regulatory agility is emphasized as a crucial element⁵. To achieve this, Singapore recognizes the significance of sandboxing as a mechanism for fostering innovation and enabling experimentation.

In India's case, we need to look at digitalization and technical advances that have propelled development in the ICT sector to unprecedented levels; bringing to the center the potential of innovation and forward-looking solutions which have great potential to accelerate the achievement of the Sustainable Development Goals (SDGs).

However, this rapid scaling and evolution of digital technologies present challenges such as data breaches, digital fraud, privacy concerns, and cybersecurity risks. Addressing these challenges requires breaking down silos, fostering a culture of innovation, allocating sufficient budgets, strengthening cybersecurity measures, and addressing privacy concerns through clear regulations and frameworks. By proactively addressing these challenges, governments can navigate the digital landscape while safeguarding the interests of consumers and ensuring the benefits of digital technologies are realized. For India, while we see an increased uptake and use of frontier technologies there also is a further widening of the digital divide, leaving behind the unconnected and digitally illiterate, which has a cascading impact on social, economic, and digital cohesion.

A regulatory sandbox in India's case can be used to look at ways to overcome digital exclusion and safeguard consumer interests.

3. Issues raised in the Consultation Paper:

The oversight and governance mechanism of the sandbox.

Our Response:

The consultation paper states that the Department of Telecommunications (DoT), along with the Telecom Regulatory Authority of India (TRAI) or any other authorized entity, will oversee the sandboxing process in a transparent and accountable manner. However, the specific authority responsible for this oversight is not explicitly mentioned in the paper.

The absence of explicit details regarding the responsible entity suggests that further clarification and decision-making may be required to determine the specific authority. This could be an ongoing process where stakeholders, such as the DoT, TRAI, civil society, academia, consumers and other relevant bodies, collaborate to define the exact entity that will be entrusted with the oversight of the sandboxing process.

4. Issues raised in the Consultation Paper:

DoT/TRAI will designate one officer who will have the primary responsibility of coordinating the sandbox testing.

Our Response:

The process of appointment should be open and transparent. The person appointed should be competent enough with domain expertise and also be agile enough to cross-link inputs and regulatory requirements across sectors. The identification of stakeholders, departments and regulators with which digital communication might overlap should be taken into account. It is better to have a small committee of experts and administrators than just one person since numerous players will want to participate in the sandbox and this will burden the single offices which can cause delays in this fast pacing world of technology.

5. Issues raised in the Consultation Paper:

Associating with a Principal Applicant which is a licensed Service Provider for other applicants wishing to enter the sandbox.

Our Response:

The additional obligations of providing justifications for applying directly and then further proving efforts made by new market players to tie up with an existing Service Provider does not seem a very conducive environment for newer and/or hitherto unlicensed businesses to flourish.

In cases of a shift in the intent of the licensed Service Provider, does the Applicant's subscription to the sandbox also come under question? What if Provider gets litigated or for other reasons temporarily is forced to suspend their own operations? The regulator needs to explore other means of gate-keeping the sandbox to make it more engaging for SMEs and provide opportunities to compete with established players.

6. Issues raised in the Consultation Paper:

Funding of innovation for inclusive societal advancement and growth of the economy

Our Response:

According to TRAI, it is open to considering proposals for funding support for deserving products or services within the sandboxing process. However, it also highlights that applicants who do not require funding are more likely to be accepted. This approach may inadvertently limit the opportunities available to smaller businesses that may require financial assistance to participate in the sandbox.

The lack of specific details about the aid and resources that applicants will be provided with further compounds the uncertainty. The consultation paper does not outline any concrete provisions for financial support or resources, its terms of support and duration, or possibilities of non-financial support that will be offered to participants. This lack of information makes it challenging for potential applicants, particularly smaller businesses, individual-led start-ups and non-profits, to understand the extent of the assistance they may receive.

The emphasis on applicants making their own funding arrangements puts the onus on businesses to secure the necessary financial resources independently. While this approach encourages self-sufficiency, it may inadvertently disadvantage smaller enterprises with limited financial capabilities and resources. There can also be a case wherein a licensed service provider might want to opt to associate themselves only with a well-funded start-up as it would not require a lot of monetary help from the Principal Applicant which in this case is a licensed service provider.

To address these concerns, it would be beneficial for TRAI to provide more clarity and transparency regarding the support that will be available to participants. This could include outlining specific funding options, resources, or other forms of assistance that can level the playing field between traditional players and newer players, and ensure equal opportunities for businesses and non-profit initiatives of all sizes to participate in the sandboxing process. By providing a more detailed framework for support, TRAI can create an environment that promotes innovation and inclusion, fostering the growth of both larger and smaller enterprises within the digital ecosystem.

7. Issues raised in the Consultation Paper:

The eligibility criteria and essential conditions to be fulfilled by the Principal Applicant and Applicant mention the need for the genuineness of innovation.

Our Response:

To judge the genuineness of innovation, regulators need to set certain parameters that should be clearly mentioned. However, the process of setting these parameters should involve consultation with various stakeholders, industry experts, academicians, and other overlapping sectoral regulators and departments. Therefore, it is recommended to form a committee rather than a single office to ensure that all relevant perspectives are taken into account.

The following are some of the parameters that regulators could consider when evaluating the genuineness of innovation:

1. **Impact:** The impact of innovation on society, the environment, and the economy should be considered. The innovation should have a positive impact on at least one of these areas.
2. **Technological Achievement:** The degree of innovation and novelty of the idea should be assessed. The innovation should offer new and creative solutions to solve existing problems in the field.
3. **Team Capability:** The team's abilities should be evaluated to ensure that they have the required skills to develop and implement the innovation.
4. **Market Knowledge:** The team should demonstrate a thorough knowledge of the market they are entering, including the market size, competitive landscape, substitutes, stakeholders, and regulatory and policy framework. Primary customer research should be carried out to support market assessment, and the team should demonstrate evidence of demand for the product.
5. **Consumer Welfare:** Regulators should take steps to preempt and minimize potential risks to consumers. They should specify which actions would be grounds for removing a company from the sandbox and the consequences for such dismissal.

8. Issues raised in the Consultation Paper:

The deployment post-testing calls for an additional transition strategy along with an exit strategy.

Our Response:

Apart from the intent and the exit strategy, the transition strategy seems like an additional layer of regulatory obligation and can act as a customary burden on the participants of the sandbox. As an international experience, Columbia too, follows a similar to our proposed pathway wherein the CRC (Regulation Communications Commission) conducts licensing for the sandbox in four phases: application, evaluation, experimentation and exit strategy⁶.

C. REGULATORY DESIGN OF THE SANDBOX

The design of a regulatory sandbox cannot occur in isolation; it must be developed within the context of the national legal and regulatory frameworks, local market conditions, and the existing regulatory capacity. A sandbox program is a formal initiative that must adhere to the regulatory body's statutory mandate and align with other applicable legal and regulatory frameworks and basic principles of consumer welfare.

If there is a misalignment or policy gap between the sandbox and the existing regulatory framework, it is crucial to address this issue beforehand. Additionally, taking into account the local market conditions and regulatory capacity is crucial for the successful implementation of the sandbox. The sandbox should be designed in a way that reflects the unique characteristics and needs of the local market. This ensures that the sandbox can effectively address the specific challenges and opportunities present in that jurisdiction and society.

There is a four-phase licensing process for the regulatory sandbox in Colombia, conducted by the CRC (Regulation Communications Commission), which is available on the Digital Regulation Platform website⁷. The four phases are:

1. **Application:** The first phase involves submitting an application to the CRC, which includes a description of the product or service, the regulatory requirements that need to be waived, and the proposed testing period.
2. **Evaluation:** In the second phase, the CRC evaluates the application and determines whether the proposed product or service is suitable for testing in the regulatory sandbox. The CRC also identifies the regulatory requirements that need to be waived and the testing period. This is conducted by an expert panel.
3. **Experimentation:** The third phase involves testing the proposed product or service in the regulatory sandbox. During this phase, the CRC monitors the testing and provides guidance to the applicant.
4. **Exit Strategy:** The final phase involves exiting the regulatory sandbox. The applicant must provide a report to the CRC on the results of the testing and how the product or service can be brought to market. The CRC then decides whether to grant the applicant a license to operate the product or service.

This must be identified and managed by both the regulator and the sandbox participants. Throughout the entire process, from conceptualization to operationalization and eventual reporting and exit, the risks and welfare of consumers who will be participants and SMEs should be constantly monitored by a committee as proposed.

During the conceptualization phase of the sandbox, potential risks need to be thoroughly assessed and understood. This includes identifying risks to consumer protection, market stability, data privacy, cybersecurity, and any other relevant areas. By conducting comprehensive risk assessments, regulators can develop appropriate measures and safeguards to mitigate these risks. Once the sandbox is operational, ongoing monitoring is essential to ensure that risks are effectively managed. This involves closely observing the activities of sandbox participants, evaluating the impact of their innovations, and promptly addressing any emerging risks or concerns. Regular reporting by participants can aid in this process by providing insights into their operations, risk mitigation strategies, and any potential issues encountered.

In cases of monitoring, NICI proposes a committee comprising members from civil society, industry experts, and academicians, which can actively report and give feedback to the officer that TRAI proposes as this will help to de-centralize the process and the burden will not fall on one single officer.

Regulatory sandboxes are most relevant to markets with good supervisory capacity from the regulating authority and a high level of active, potential non-licensed players that form part of a digital technologies' ecosystem. The following are some functions of a committee overlooking a regulatory sandbox in the digital communication sector:

1. **Defining objectives:** Defining objectives from the onset is essential when establishing a regulatory sandbox. The committee should define the objectives of the sandbox, such as the types of technologies and innovations that will be tested, the duration of the sandbox, and the expected outcomes.
2. **Monitoring and evaluation:** The committee should monitor and evaluate the sandbox to ensure that it is achieving its objectives. This includes collecting data on the technologies and innovations being tested, their impact on the market, and any regulatory or consumer concerns that arise.
3. **Stakeholder engagement:** The committee should engage with stakeholders, including industry players, regulators, policymakers, and consumers, to ensure that the sandbox is meeting their needs and concerns. This includes providing opportunities for feedback and input on the sandbox and its outcomes.
4. **Disseminating information:** The committee should disseminate information on the sandbox and its outcomes to stakeholders and the public. This includes providing regular updates on the technologies and innovations being tested, their impact on the market, and any regulatory or consumer concerns that arise.

Examples of committees overlooking regulatory sandboxes in other countries include:

Germany: The Federal Economic Affairs Ministry is pursuing three objectives to strengthen regulatory sandboxes as a tool to drive digitalisation forward. These objectives include providing regulatory leeway, facilitating the exchange of information and networking between stakeholders, and disseminating information on legal possibilities and examples from practice from Germany and abroad¹⁰.

European Union: The European Parliament has policy departments that provide in-house and external expertise to support committees and other parliamentary bodies in shaping legislation and regulations related to regulatory sandboxes and innovation hubs for FinTech¹¹.

World Bank: The World Bank has published a practical guide for policymakers on how to build a regulatory sandbox. The guide includes analytical tools, examples, and templates grounded in practical experience to help regulators navigate common questions and challenges¹².

When it comes to exiting the sandbox, careful evaluation and reporting are necessary to determine the outcomes of the sandbox experiments and assess their impact on consumers and the market. Lessons learned from the sandbox experience should be publicly documented and shared to inform future regulatory decisions and future/potential Associates.

It is important to emphasize that the responsibility for risk management should be shared between regulators and sandbox participants. Regulators must establish clear guidelines and expectations, provide guidance on risk mitigation measures, and enforce compliance with applicable regulations. At the same time, sandbox participants are responsible for implementing appropriate risk management strategies and ensuring that their innovations do not pose undue harm to consumers or the market.

D. CLOSING STATEMENT:

Consumer welfare and protection is a holistic approach towards mitigating the risks involved. As the primary mandate of regulators is typically to protect consumers, it is crucial to also address consumer welfare issues with regulatory sandboxes to the best extent possible.

In a regulatory sandbox, consumer welfare is maintained through various mechanisms and considerations. Here are some ways in which consumer welfare is upheld in a regulatory sandbox:

1. **Consumer Protection Framework:** Regulatory sandboxes often have a consumer protection framework in place to ensure that participants in the sandbox prioritize the well-being and rights of consumers. This framework may include measures such as transparency, fair treatment, and dispute resolution mechanisms.

2. **Risk Mitigation:** Regulatory sandboxes aim to strike a balance between fostering innovation and managing potential risks to consumers. Participants are typically required to demonstrate how they will mitigate risks and protect consumers during the testing phase.

3. **Regulatory Oversight:** Regulatory sandboxes are overseen by regulatory authorities and expert committees that monitor and supervise the activities within the sandbox. These authorities ensure that consumer protection measures are in place and that participants comply with relevant regulations and standards.

4. **Feedback and Evaluation:** Throughout the sandbox process, regulators collect feedback from consumers and stakeholders to assess the impact on consumer welfare. This feedback helps identify any potential risks or issues that need to be addressed to safeguard consumer interests.

Examples of regulatory sandboxes that prioritize consumer welfare include:

- **Saudi Arabia:** The regulatory sandbox in Saudi Arabia focuses on consumer protection and ensuring that innovative products and services do not harm consumers⁸.

- **Colombia:** The regulatory sandbox framework in Colombia includes measures to protect consumers and ensure that new products and services are tested in a controlled environment before being introduced to the market⁹.

In summary, the design and implementation of a regulatory sandbox should be guided by the national legal and regulatory frameworks, local market conditions, and the regulatory body's capacity. Aligning the sandbox with existing policies and regulations and addressing any policy gaps will contribute to its effectiveness and provide a solid foundation for promoting innovation in a responsible and controlled manner.

Citations:

- [1]<https://www.tse-fr.eu/regulation-sandbox>
- [2]<https://www.zawya.com/en/business/fintech/saudi-central-bank-updates-its-regulatory-sandbox-framework-es6uhhem>
- [3]https://goingdigital.oecd.org/data/notes/No2_ToolkitNote_Sandboxes.pdf
- [4]<https://www.securities-administrators.ca/resources/regulatory-sandbox/>
- [5]<https://www.smartnation.gov.sg/about-smart-nation/pillars-of-smart-nation>
- [6]<https://digitalregulation.org/case-study-regulatory-sandbox-framework-in-colombia/>
- [7]<https://digitalregulation.org/case-study-regulatory-sandbox-framework-in-colombia/>
- [8]<https://www.springerprofessional.de/en/the-sandbox-in-saudi-arabia-a-regulatory-approach-and-applicatio/25534496>
- [9]<https://digitalregulation.org/case-study-regulatory-sandbox-framework-in-colombia>
- [10] <https://www.bmwk.de/Redaktion/EN/Dossier/regulatory-sandboxes.html>
- [11][https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652752/IPOL_STU\(2020\)652752_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652752/IPOL_STU(2020)652752_EN.pdf)
- [12]<https://documents1.worldbank.org/curated/en/126281625136122935/pdf/How-to-Build-a-Regulatory-Sandbox-A-Practical-Guide-for-Policy-Makers.pdf>