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Policy and transparency
mechanisms in public utility
companies

Results from the first Evaluation Exercise

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Corporacion Transparencia por Colombia

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Marcela Restrepo Hung (A)
Margareth Florez
(through April 2009)

***Corporacion Transparencia por
Colombia***

www.transparenciacolombia.org.co
transparencia@transparenciacolombia.org.co

Autopista Norte N° 114 – 78m, suite 101.
Tel. 214 6870 Cel. 310 – 787 58 92
Fax. 637 3603

Direction, general design and coordination of the survey

Alma Rocio Balcazar
*Program Manager of Private Sector
Corporacion Transparencia por Colombia*

Design of the Model and Coordination of its application

Martha Elena Badel Rueda

Survey Assistants

Luz Agela Diaz
Lina Marcela Escobar M.

Edition

Bernardo Gonzalez

Graphic Composition

aZoma Criterio Editorial Ltda.

Yara Prada

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Introduction

More and more societies worldwide are currently turning their eye towards companies to determine if their endeavors, in addition to the creation of wealth for their shareholders or owners, do effectively generate value for society and thus contribute to the improvement of its conditions of equity and wellbeing on their communities. It is in this manner that they begin to systematically demand corporate values such as Business honesty, impartiality, professional objectivity, trustworthiness and transparency, values which in course of the professional exercise do not impair the Rights of the stakeholders or the sustainability of the natural and social environment into which it incorporates.

For this reason, it is clear the worldwide trend for business opportunities in a global market to be handles with the highest standards of ethics and transparency within a perspective of providing Solutions to poverty, inequality and the preservation of the planet. In the corporate culture, transparency consolidates as a fundamental pillar for the creation of social worth¹.

¹Nunez, Georgina, "La Responsabilidad Social Corporativa en un marco de desarrollo sostenible". (Social Corporate Responsibility within a framework of sustainable development): Series "Medio Ambiente y Desarrollo", CEPAL (2004). This study on corporate social responsibility in Latin America identifies three Concepts common in the definitions of Social Corporate Responsibility at the International level (i) the social relevance of the company as a corporate citizen that actively participates in the improvement of life quality of the populations, (ii) Management of its effects, that is, that companies responsibly identify and assume the effects that may derive from their value chains , and (iii) consultation and communication with stakeholders..

The Opening, conceived as access to complete, timely, comprehensive, reliable and comparable information, as well as dialogue, Communications and consultation created through transparency amongst the various stakeholders, enables companies to generate spaces of confidence and to contribute to achieve equity and improvement in the wellbeing of the community and, at the same time, to gain faithful consumers, suppliers and workers and to accomplish better valuation by society. In this manner, the strengthening of a responsible and transparent corporate exercise is not merely on the way to becoming a competitive advantage but, instead, a guarantee for all those that relate with the companies and a right demandable by society.

Matters such as corporate ethics, sound corporate governance, dialogue with and opening to customers, citizen control and participation are turning into strategic elements of corporate Management and more so when serving essential needs of the communities, as are public utilities.

In the public utilities sector, ethical and transparency standards are an essential condition since in this sort of corporate activity there is convergence of the care for public concerns pursuant to the wellbeing of incumbent citizens and private sector management to inject efficiency and quality to the rendering of the services.

Such convergence of private sector and high social function demands a commitment that can not be postponed for companies to contribute to the generation of value in a transparent and sustainable manner².

In Light of these considerations, Transparencia por Colombia and Fundacion AVINA made a decision to promote and propose, to private and public companies leaders in the rendering of public utility services, to construct and apply a measurement tool that permitted promotion of ethics and transparency in their business relationships while at

² A situation of fair balance must be reached in competitive scenarios when dealing with topics such as dissemination or reserve of information, particularly that which is of interest to users, while at the same time ensuring reserve of such information that may affect competition, referring to strategic aspects of the production of the goods matter of the service or in terms of commercial practices. The above, with exception of those situations listed under Article 63 of the Commercial Code.

the same time raising their standards through the application of independent and permanent measurement.

To this call answers were received from Isagen, Empresa de Energía de Bogotá, Electricaribe, Promigas, Empresas Públicas de Medellín, Telefonica-Telecom, Aguas de Manizales and the Salas Group (Aguas de la Sabana and the cleaning companies of Pasto and Manizales). With their participation it was possible to initiate this first exercise with presence of each of the following sub-sectors: energy and gas, water and basic cleaning and communications.

With the participation of delegates from the above companies construction and application was accomplished, after a period of ten months, of a model for evaluation that will be a reference for future continuation of this process in a constant and consistent manner.

Taking into account International referents, the group defined those elements that better adjust to the concept of transparency and designed a battery of eleven elements and 48 variables for measurement of those policies and practices incorporated in corporate management. The exercise was conducted on the basis of four key topics: opening (availability of complete, timely and reliable information); dialogue with customers; corporate ethics and governance; and control (self-imposed control mechanisms and procedures that warrant compliance with the underlying processes).

The process for compilation of information was carried through visits to companies and consultation with stakeholders: Partners, shareholders and investors on one side and, on the other side, customers, suppliers and members of the society in which they operate.

The Project had a Consultative Committee integrated by former Bogotá-mayor Paul Bromberg, promoter of The Observatory of Public Services; Mauricio Lopez, technical secretary of Andesco – the National Association of Domiciliary Public Services; and by three delegate superintendents, respectively, those for Energy and Gas; Telecommunications and, Water and Sanitation of the Superintendence for Domiciliary Public Services – SSPD (as per its Spanish initials).

In order to preserve the independence and transparency of the process, the companies, at the instance of their involvement with the Project, adhered to rules of

participation with Transparencia por Colombia, through which they committed to respect the autonomy of Transparencia regarding the evaluation process and to inform public opinion, in a permanent manner, the progress and outcome of the project.

This document compiles the evaluation model and its background, main findings and conclusions as found in the first evaluation of the model through a group of ten companies, all Readers in the sector of public utilities in Colombia.

The document is divided in five sections: in the first, there is presentation of the core Concepts that regulated the development and application of the models; this section underlines the importance of transparency in public utility companies.

The second section presents the regulatory environment applicable to the public utility sector in Colombia starting with the Political Constitution of 1991 and the reforms to the model for corporate governance of the public utility companies, on the basis of laws 142 and 143 of 1994 by means of which the government is the guarantor of their social function and there is an opening for private companies and user to play an outstanding role.

The third section presents the structure of the evaluation model, its indicators/ratios and variables; sources of information and methodology for calculation. The fourth section depicts the main findings and outcome of the pilot evaluation.

In the fifth section presentation is made of the conclusions reached alter the first application of the measurement process.

Last, Corporacion Transparencia por Colombia would like to express its appreciation to those public utility companies that attended the challenger to initiate, as pioneers, the process for measurement of transparency in the sector; to those institutions that support the convocation and to the persons that, through their efforts and work, made such initiative a reality. We also want to take this opportunity to make a call for other companies in the sector to reach a decision to participate in this exercise to promote ethics and transparency in their businesses.

Marcela Restrepo Hung
Executive Director (A)
Transparencia por Colombia

An approach towards
transparency in public
utilities

Rendering of public utilities services³ is associated with the quality of life enjoyed by user citizens, their level of economic and social development and is therefore demandable that all actors participant in such activity, such as companies, regulatory and surveillance and control entities and the very State perform under the highest transparency standards.

In Colombia, during the past few years, public utility services are rendered within a scenario of free competition in which there is concurrence of private and public companies. This competitive framework is considered to be a positive incentive for the sector and an efficient tool for enhancement of citizen wellbeing. In this scenario participant companies engage in a non-dilatable commitment to contribute to generation of value in a manner which is transparent and sustainable to the country and the State bears the commitment to warrant the social functions of these services, thus serving as guarantor of their efficient, continued and uninterrupted availability to all Colombians.

Within an environment with these features, transparency enables construction of a situation of trustworthiness, safety and frankness between the company and the society - consumers and stakeholders - in which all responsibilities, procedures and rules are determined, fulfilled, clearly disseminated and open to participation and questioning by all stakeholders.

³ Within the context of constitutional law, public utility service is defined as “any activity which fulfillment must be regulated, warranted and controlled by government given the fact that fulfillment of this activity is of indispensable nature for the performance and development of social interdependence and because, additionally, it has a nature that can not be warranted except by the intervention of the dominant power. Duguit, Leon. *Manual de Derecho Constitucional*, Jose G. Acuña and Francisco Beltran (translation with prologue and appendix) 2a. ed., Madrid, LibreríaEspañola y Extranjera Príncipe 16; 1926; pp. 71 y 73

Transparency is therefore the practice to place information in a public screen for any person or group of interest to know it, review it, analyze and use it as a mechanism of responsibility, participation or interaction and control in order to warrant fulfillment of stated objectives and goals of corporate Management.

On the basis of this concept, four implicit elements of corporate transparency have been identified, that serve as support of the model proposed for evaluation of public utility companies and on which there is definition of factors to be measured.

Opening: understood as access to complete, timely, comprehensive and reliable information, comparable for the stakeholders in accordance with standing legal norms and desired standards. Information that is valued on the basis of a minimum and significant supply to stakeholders⁴, such as partners, shareholders and investors, customers, suppliers and society in general.

Dialogue with Users: understood as the interaction created by companies with their own stakeholders on the basis of a clear policy for delivery of information. In the case of public utility companies, priority is given to the relationship between users and the services rendered. Evaluation is based on policies of transparency implemented by the companies and on those mechanisms designed for and set in motion to answer to customer-users needs and expectations, in order to reach levels of satisfaction, fidelity and confidence.

Clear Rules: formally issued, known and learned by all. The provider company is transparent when adopting and implementing norms, principles and values of ethical nature⁵.

⁴The theory of stakeholders was born as a strategic aspect of corporate Management. To its pioneer, Professor Edward Freeman, co-director of Olsson Center for Applied Ethics at University of Virginia, *stakeholder* "is a group or an individual who may affect or become affected by the achievement of corporate goals and objectives", which enables us to understand the company as a plurality of agents with whom there is also an establishment of a series of relationships derived from a legal, social or moral contract. Also, there are reciprocal expectations in terms of performance and, as a result, this theory is probably one of the most frequently used for development of Theoretical-practical approaches of corporate social responsibility Stakeholders are affected by the decisions, actions and policies of the company and of its sound performance.

⁵ Companies must be ethically profitable, amongst other reasons: i) to carry most harmonic relationships with customers, suppliers and employees; ii) to enhance the end quality of the product; iii) because an organization with integral personnel does own a most important asset; iv) because an ethical performance leads to a reduction in the number of problems, which in turn reduces operating costs; v) because the ethical values of the senior management do favor its natural leadership; vi) because working environment improves; vii) it helps to the construction of a decent society. (Amartya Sen, 2001).

A company is transparent for as long as its various levels are aware that decisions are made on the basis of values and that there is a general conviction that this is so and it is a direct concern of corporate government. Corporate government provides the structure for determination of company's objectives and as such it determines the means to be used in order to reach such objectives and for the supervision of their fulfillment⁶.

Control: companies must ensure availability of procedures, plans, methods, norms and mechanisms for verification and evaluation, be it due to existence of legal dispositions or by their own initiative - of internal or external nature, to warrant compliance with and fulfillment of Management goals and objectives.

The model developed for evaluation does consult and adopt several important International references which, although in compliance with standards, principles and measurements of sustainability and methodologies for social reporting, also acknowledge corporate transparency as a fundamental prior mandate for companies to be socially responsible. They refer to common elements of transparency such as dissemination of information, corporate governance, ethical and anti-corruption policies; to the standards applied to value chain and the dialogue with stakeholders. Within this perspective, transparency is a Basic means for achievement of a true social commitment (please refer to annex, chart 1)⁷.

⁶ OCDE principles (2004) define corporate government as "the relationships between senior Management of a company, its Board of Directors or management Council, shareholders and other stakeholders. Corporate governance also provides the structure for establishment of company's objectives and determines the means to be used in reaching said objectives and the supervision of their fulfillment."

⁷ Other initiatives and experiences also consulted do value and evaluate practices for transparency and corporate governance as the fundamental elements of socially responsible management, amongst them, the Green Book of the European commission, Norm ISO 26000, certifications of Ethical and Socially Responsible Management such as SGE: 21 issued by Foretica Espana, the Aldama Report or the Report prepared by the Special Commission for Encouragement of Transparency and security in the markets and quoted societies (Spain) and the Sarbanes Oxley Act.

**Regulatory Framework for
the rendering of public
utility services in
Colombia**

The Social Function of the State

Prior to the adoption of the Constitution of 1991 and the enactment of the reforms consecrated in Laws 142 and 143 of 1994, the rendering of public utility services was a monopoly of state nature through municipal and decentralized national providers of the services, service tariffs set by a National Tariffs Board and with large political meddling of the State in the service companies, their management and their tariffs⁸. After adoption of the 1991 Constitution and enactment of said Laws, room was opened for rendering of public services and the participation of privately owned companies.

Notwithstanding the above, the existence of a freely competitive market is not simply sufficient for citizens to enjoy quality and wide coverage of public utility services. The State, on the basis of the above mentioned reforms, assumes the role of guarantor of the social function of public services. It is the role of the State to regulate, supervise and plan the general policies, placing this function in the president of the Republic through Regulatory Commissions, of legal nature, that define the specific regulatory frameworks applicable to each service and through The Superintendence of Public Services, of constitutional origin⁹, in charge of their surveillance and control. This aspect does not exclude other entities that share responsibilities in the public services area such as the Ministry of Environment, Housing and Territorial Development; the National Planning Department and the various municipalities, amongst other (please refer to the Annex, chart 2).

⁸ Cede, Universidad de los Andes and Andesco (2005). "The evolution of domiciliary public utility services in the last decade" (*Evolución de los servicios públicos domiciliarios en la última década,*) Bogota, December 2004

⁹ Article 370 of the Political Constitutions and Article 75 of Law 142 state that the President of the Republic will exercise control, inspection and surveillance of those entities engaged in domiciliary public utility services and all other services to which such Law is applicable, through the Superintendence of Domiciliary Public Services, particularly through the Superintendent and its delegates.

The Political Constitution assigned the legislator the capacity to enact the general regime; that is, the establishment of Basic regulations regarding the nature, extension and coverage, Essentials character of domiciliary public utility services, determination of competences, general criteria applicable to their rendering and, finally, its tariff regime, amongst other matters¹⁰.

In terms of sharing of public utility service competences by the Executive and Legislative branches of public power, the latter was granted capacity to determine the structure (Commissions) that will be in charge of setting in motion those policies adopted¹¹. These Commissions have been empowered to regulate matters such as monopolies and unfair competition; tariff regulation (defined under a regime of freedom applicable to all companies, the establishment of methodologies for adoption of formulas required for tariff setting purposes and the establishment of criteria for granting of subsidies); regulation of service quality and corporate Management.

Such delegation of functions has, since the very issuance of the ruling, a wide series of positions¹², through which there is particular clarifying of base regulation, such as understanding that the delegable nature of the presidential function to the respective commissions does not constitute a regulatory tool for completion of the law or filling of gaps which it may have left and least of all to substitute the legislator if the latter has not issued any disposition.

From the same legal frameworks already mentioned commence to appear the principles of openness and transparency that seek to ensure and warrant the rendering of public utility services. These principles are translated into Rights of their users and obligations of their providers, regulatory entities and other entities of supervision and control. These elements of transparency, together supportive of the model, converge and connect into the regulatory Framework (please refer to Annex, chart 3).

¹⁰ Office for Technical legislative Attention – Congress of the Republic – Survey on the background of Public Utility Services (2003).

¹¹ Article 69 of Law 142 of 1994 creates special administration units with administrative, technical and financial independence, attached to the Ministry specifically in charge of each service, that is: The Commission for Regulation of Telecommunications; - CRT, attached to the Ministry of Telecommunications; The Commission for regulation of Energy and gas – CREG, attached to the Ministry of Mines and Energy; the Commission on Potable Water and Basic Sanitation, attached to the Ministry of Environment.

¹² In the website of the Constitutional Court, the following sentences were found that deal with the nature, functions and scope of the legislative capacity: SC 1162 de 2000, SC 150 de 2003, SC1 120 de 2005 y SC 396 de 2006.

Participation of the Private Sector

The reforms consecrated through Laws 142 and 143 of 1994 sought, amongst other objectives, economic efficiency, alignment of incentives –i.e. that private and public companies operated under the same rules –, participation of the private sector, solidarity and universality in order for all to have access to such services. It was also sought to accomplish institutional re-ordination through a separation of the functions on policy and regulations from those of supervision and control.

Given the fact that public utility services require massive investment and significant knowledge and technology, the larger financial capacity of the private sector has permitted to achieve enlargement of coverage and improvement in the quality of the service, factors that together have positive incidence on user satisfaction. However, despite such progress, efforts are yet to be made to strengthen and renew the functions of the State in terms of surveillance, regulation and control, in order for the private sector to feel motivated to invest in public utility services and to ensure that business are managed and governed under standards of transparency and ethics.

Also, it may not be forgotten that providers of public utility services exercise a public function: (i) through the exercise of the right of access and interconnection to the distribution Networks they own; (ii) the possibility to set tariffs of exorbitant nature in the contracts they undertake; (iii) the right of the providers to make use of public space, temporarily using properties, rights of way and the mandatory divestiture of real estate for purposes of the service; (iv) the decision capacity, at a corporate level, on matter such as claims, complains and recourses of the users of the services; and (v) the unilateral setting of service tariffs and the charge of those expenses associated with the general service.

The role of the users¹³

Within this regulatory Framework, users enjoy, on the one side, larger freedom to choose

¹³ Colombian legislation makes use of a concept of user linked to administrative law and the theory of public service; article 14 of Law 142 of 1994 defines a user as the natural or legal entity that benefits from the rendering of a public service, be it as owner of the property to which such service is connected or a direct receiver of the service; the latter is also denominated consumer. However, the proposed evaluation model makes reference to a customer as a more proper denomination in terms of market economics and because it entails a tight relationship with the provider company in terms of satisfaction of expectations and services.

better market options, particularly in the field of telecommunications¹⁴ and, on the other hand, higher participation and a more active relationship with the service companies, participating in a recommending and proposal manner through the feature of the control speakers in Development and Social Control Committees. The dispositions of Decree 1429 of 1995 determine, amongst other, the responsibilities of the control speakers, as follows:

- Inform users of their Rights and duties and support them in their defense and fulfillment;
- Receive user reports, proceed to their evaluation and propose correction measures to the competent authorities;
- Promptly attend all consultations, claims and filings as presented to the Committee, to prepare and submit reports to the Committees and to propose required actions.

Additionally, public utility companies must process requests submitted by the control speakers (Article 64, numeral 64.4, Law 142 of 1994).

Also, in this new regulatory framework, possibility was created for users to have access to mechanisms such as the Petition Right, the government way (resource for reposition and appeal), administrative silence and tutorship for the defense of their Rights and improvement in overall living conditions.

Difficulties of the new model for management of public utility services

In practice, this regulatory framework has registered difficulties in terms of compliance, a matter that has been under analysis by various regulatory and control entities, which have issued warning about the difficulties and lack of functionality of the sector that affects its governability and hence limit or prevent fulfillment of the social function of the State in terms of the rendering of public utility services. It is clear that some of those difficulties do have a negative impact on the policies and practices of transparency at public utility service companies.

¹⁴ The right of competition seeks to defend the freedom of the consumer against eventual abuse from the providers and against restrictive practices and abusive accumulation actions.

Some of those analyses, which are deemed useful for the revision of the outcome of the present study, are presented below.

Documents issued by the National Council on Social and Economic Policy – CONPES and the National Planning Department.

Document Conpes 3241 of 2003, regarding policy guidelines for government owned companies engaged in distribution of electric energy, when referring to company Management following issuance of the new service scheme established under the regulatory Framework of Laws 142 and 143 of 1994, acknowledges that results from application of this policy has not fulfilled expectations “...because the Management problems faced by government owned companies engaged in the distribution and commercialization of electric energy led to considerable costs, amongst which it worthy to mention the following: (i) the bankruptcy of eight electric generation companies in the Atlantic Coast and their later liquidation by the Superintendence of Domiciliary Public Utility Services – SSPD; (ii) the take over of the companies operating in Cali, Cauca, Choco, San Andres and Cauca and the intervention by SSPD, in 2002, of company Electrificadora de Tolima; and (iii) the permanent deterioration of companies engaged in distribution and commercialization of electric energy in the middle of the country, where all management performance ratios have historically fallback”¹⁵.

In document Conpes 3384 of 2005, that promotes sound corporate governance in public utility companies, it is mentioned that the administration and Management of public utility companies majority owned by the central government, there were found “wide-spread frontiers between social objectives and their corporate development, framed in recurrent events such as (i) limitation in rendering of accounts; (ii) lack of precise information and low reliability of available information Systems; (iii) absence of corporate governance practices; (iv) Management with tendency to engage in non-profitable or non-sustainable investments; (v) high administration costs; and (vi) high level of un-funded labor related and pension related obligations”¹⁶ .

Document Conpes 3385 of 2005, concerning private sector participation in domiciliary public utility services also makes policy recommendations in such private participation through acknowledgement that “ difficulties of the public utility service model to reach required corporate transformations, regulatory plurality and institutional ordainment that involves so many institutions that results in dilution of their competences and responsibilities and in regulations not responsive to new market conditions”.

¹⁵ Losses of 14 energy companies of the former ICEL group moved from 20.4% in 1991 to nearly 30% in 2001.

¹⁶ During the period 2002-2005, fifteen majority government owned companies had nineteen general managers.

Instances of Control and Surveillance

The office of the general Comptroller of the Republic¹⁷ (2002), in course of its analysis of citizen agendas on public utility services considered that “the scheme for regulation, surveillance and control of this sector has not functioned and presents serious problems regarding: (a) lack of independence by regulators because the Experts, ministers and directors of entities related to this sector are appointed by the President of the Republic; (b) lack of capacity by the Superintendence of Public Services to provide answers to and impose corrective actions to management problems of companies engaged in public utility services and lack of capacity of this Superintendence to convert into an institutional support for the promotion of citizen participation in benefit of its functions of prevention, surveillance and control. This entity is overwhelmed in the fulfillment of its functions taking into account the number of entities supervised and its low technical capacity”¹⁸. Along this same line of reasoning there arise serious questioning regarding promotion of citizen participation¹⁸ through the so-called Committees for Development and Social Control of Public Utility Services “that enjoy a marginal role limited to service complains and that have no relevant incidence on the fundamental aspects of the sector of public utility services”.

The Commission for regulation of Waters and Sanitation, by means of a document published in 2006 regarding regulatory impact on water, sewage and garbage disposal, confirms the warning voices that raise from the various sector son the seriousness of the situation for the water and Basic sanitation sectors through stating that “water supplier companies, in terms of corporate structure, remain largely atomized and in many cases (particularly the smallest providers) lacking any entrepreneurial practices”.

The Management Report of the Superintendence of Public Services – 2007, confirms the above diagnosis for the water, sewage and garbage disposal sector, which prevails to date: “the sector of water and sewage, contrary to other sectors in the field of public utility services, is characterized by its extensive atomization, heterogeneity and geographic dispersion. From the various service providers analyzed by the SSPD, some 342 cover more than 2,500 users and 1,546 providers

¹⁷ The Office of the General Comptroller of the Republic, Embassy of the Netherlands (2006) Citizen Agendas for Domiciliary Public Utility Services, SPD.

¹⁸ The Superintendence of Domiciliary Public Services, SSPD, has since 2006 engaged in the promotion of its participation through the so-called Programs for Itinerant Surveillance, with a rather precarious coverage that is only sufficient for 38% of all national municipalities, as per its own 2008 management report..

Service a lower number, including municipal and direct providers, user associations, cooperative bodies and other authorized organizations". The above situation is reflected in the figures published by the Commission for Regulation of Water – CRA (as per its Spanish initials), submitted by the Superintendence of Public Services in October 2008 as a component of its *Rendering of Accounts*¹⁹, 45.95% of all providers of potable water and basic sanitation are in situation of high risk ²⁰ and, in the case of exclusive providers of sanitation services, the level is 43.18%.

Such difficulties in terms of rendering of public utility services are also reflected in two user performance ratios: (a) the Lumber of complains²¹ and (b) their level of satisfaction.

Although Turing the past few years the Lumber of complains filed before the Superintendence had declined on an annual basis (between 6% and 9% in 2007), by 2008 there were over 85,000 claims filed by unsatisfied users²² figure which accounts for a 27% increase, situation that does not include the number of users that approach service providers directly for filing of their demands and complains (see annex, graph 1). As to the reasons for the complains, most causes remain unchanged: between 2003 and 2008, as per a report published by Superintendence of Public Services, most common cause for complain was alleged high consumption accounting for some 33% of total complains, followed by unidentified charges at over 24% and charges for services not rendered at 14%.

On the other hand, the general results from the Surrey on User Level of Satisfaction, NSU (as per its Spanish initials) prepared by the National Consulting Service for the

¹⁹ Superintendence of Public Services (2009 Annual Report of Public Services in Colombia (2007), Bogota, June.
²⁰ High Risk: The Commission for Regulation of Potable Water, through Resolution 315 of 2005, established a methodology for qualification of personal risk derived from water, sewage and sanitation services. The methodology establishes two main indicators for determination of risk levels: the aggregate financial indicators (IFA, as per its Spanish initials) and the operational and quality aggregate (IOCA), depending on the service, which possible inter-combination determines the actual level of service risk.

²¹ The 2007 Report issued by the Superintendence of Public Services indicate that 20% of all complains are cored on alleged high consumption, 19% on non-identified charges and 9% on services not rendered.

²² As per a report issued by the Territorial Directorship of SSPD, over 89% of these complains are submitted under Recourse of Appeal, Positive Administrative Silence and Petitions, complains and filings, respectively.

Superintendence of Public Services, the result is that although there is a slight improvement in most ratios, during 2005 the average level of satisfaction was 67.67% and this ratio registered a minor improvement at 69.33% during 2007. The water supply service gets the lowest rating of user satisfaction at 65.8% in 2005 and moving farther down to 65.03% in 2007 (see annex, chart 4).

Such user non-satisfaction, coming from past years, is also reflected – in an unquestionable manner- in the latest results (2007) of the opinion surveys conducted in course of the Project denominated “How are we doing?”²³ in cities such as Medellin, Cali and Bogota. The service tariff issue concentrated most complains in public utility services (high service tariffs, service charges above actual consumption levels, service cut-offs, service quality). Such lack of satisfaction goes clearly against two of the principles consecrated in Law 142 of 1994, first the principle of simplicity: “it is hereby understood that service tariffs will be constructed in such a way that they facilitate their understanding, application and control” and second, the principle of transparency of the tariff system that “shall be explicit, completely public to all parties involved in the service and to users”.

And the Latin American overall perception on public utility services holds certain similarities to the Colombian case. According to a Survey conducted by publication Latinobarometro, citizen satisfaction regarding public utility services has not registered any mayor variation Turing the past three years: on the average, some 26% of the region reports high satisfaction, 25% claims medium level of satisfaction and 48% indicate low satisfaction. In the Colombian case, a slight level of improvement in satisfaction is perceived by an increase in average satisfaction from 27% to 32% of those pooled during 2008 and a decrease in low satisfaction from 42% to 37% (please refer to annex, chart 5).

²³ The Project “How are we doing” is a form of citizen initiative (foundations, unions, companies, and communications media) to follow-up on evolution of quality in the cities.

Another interesting result is that of the Survey for Latin America; when the question is asked on how satisfied citizens are on the basis of quality and price of those services privatized in Colombia, only 34% expressed to be much more satisfied and more satisfied, a result that is only slightly above the Latin American average (32%). These low regional percentages are explained by the fact that citizens in the region are less satisfied with the private rendering of the services and thus demand a higher level of State intervention (see annex, graph 3).

Along this same line of thought, there is a perception amongst pooled individuals in Latin America that certain public services must largely be in the hands of the State, particularly potable water and electric services (see annex, graph 4).

Although it is fair to recognize the benefits of the model in terms of quality and coverage and the good intention of the State to generate a sector with a higher level of participation by the private sector and the users of the services, the imperfections of the model may have led to Congress to promote another two initiatives²⁴ regarding regional regulation and surveillance and on the so-called anti-monopoly agencies in the international context²⁵.

²⁴ This without taking into consideration the findings of the Referendum on Water that, during the month of September, 2008, completed its processing before the office of the National Registry of Civil Status for further presentation and discussion by Congress.

²⁵ These initiatives are aimed to seek and transform the International scheme for regulation, surveillance and control of public utility services and the so-called "Law of Information Technologies and Communications" – TIC that eliminates the current functions of the Superintendence of Public Services SSPD and proposing one single competent authority. Such sole authority assumes elimination of the functions of the Superintendence regarding the defense of the competition system in the public utility services in general and proposes that said functions be attached to the Superintendence of Industry and Commerce, whose authority is to supervise observance on restricted commercial practices and unfair competition, consumer protection, intellectual property and promotion of competition.

The Evaluation Model

Factors and indicators of the Model

The model for evaluation defines four factors which are equivalent to four elements that together comprise the concept of transparency adopted for purposes of this example: opening, dialogue with customers, clear rules, and control. A total of eleven indicators are applied: four of them in Opening since they apply to availability of information by stakeholders; two are applied to Dialogue with customers, associated with the functioning and efficacy of the customer service system. Two indicators are applied to the factor of Clear Rules, corresponding to ethics and corporate governance; and one indicator is applied to Control, measuring those instruments or tools anticipated for implementation of additional controls.

Measuring of the factor Opening is conducted on the basis of 26 variables; Dialogue with Customers is measured through application of 12 variables; in the case of Clear Rules 10 variables are used; thus a total 48 variables for evaluation.

The model used primary and secondary sources of information for purposes of measurement, in which 90% of information was gathered through the public offering made by companies, complemented with information collected through filing of a brief questionnaire – some thirty questions – that permitted validation of certain information obtained from secondary sources.

Below follows a presentation –in schematic manner – of factors used as basis for measurement, the indicators associated with each of them and pertinent information sources consulted.

Factor - Opening

It establishes the prompt, timely, reliable and comprehensible availability of information for stakeholders of public utility service companies.

INDICATOR		WHAT IT MEASURES/SOURCE OF INFORMATION
1	Information to partners, shareholders and investors	Measures minimum information and significant information delivered to this category of stakeholders regarding corporate risks, profitability, economic, social and environmental sustainability and operations, which have impact on minority investors, through direct verification at the websites of the companies, consultation of their SUI at the SSPD and the Superintendence of Industry and Commerce (SIC).
2	Information to Customers	Measures direct information and significant information delivered to this category of stakeholders concerning true and clear information on products and services, access conditions and service quality, through the sources listed in the item above and at the customer service offices.
3	Information to suppliers	Measures direct information and significant information delivered to this category of stakeholders regarding true and clear information on commercial opportunities and criteria for selection and evaluation, through utilization of sources listed in item 1 above
4	Information to society	Measures direct information and significant information delivered to this category of stakeholders regarding true and clear information on service impact, return and contribution to local development, through use of the sources listed in item 1 above.

Dialogue with Customers

This item establishes those customer service Systems and other mechanisms that ensure relationships of inclusion and equity for the satisfaction of needs and expectations of the customers.

INDICATOR		WHAT IT MEASURES/SOURCE OF INFORMATION
1	Customer Service Systems	Establishment, through direct verification by Transparencia por Colombia, of the existence and functioning of minimum instruments and additional efforts oriented to provide customer service.
		Determines the existence of responsible and skilled personnel for customer service purposes, by means of a questionnaire filled-out by company
		Engages in follow-up and evaluation of minimum instruments of the Customer Service System through direct verification, information supplied by SSPD and a questionnaire filled-out by the company.
		Verifies existence of preventive and corrections programs and actions applicable to the Customer Service System through direct verification, information delivered by SSPD and a questionnaire completed by company.
		Verifies channels and mechanisms for interaction between company and control speakers as well as openings for social control, by means of direct verification and a questionnaire filled-out by company.
		Determines the existence of sanctions by means of information furnished by SSPD and SIC.

Clear Rules

Asserts the existence and fulfillment of regulations, principles and ethical values adopted and immersed into organizational culture, that together permeate the model of corporate governance in order to achieve sounder synchronizing with stakeholders.

INDICATOR		WHAT IT MEASURES/SOURCE OF INFORMATION
1	Corporate Ethics	Establishes documentation requirements on principles and ethical values of the company through direct verification and a questionnaire filled-out by the company.
		Confirms the existence of processes for Communications, orientation and training on principles and ethical values to company personnel.
		Establishes the existence of consultation and reporting instances by means of a questionnaire completed by the company.

	Establishes alignment of suppliers and contractors into the environment of principles and ethical values of the company.
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2	Corporate Governance	Verifies formalization of sound practices of corporate governance and the existence of minimum contents regarding concrete policy and measurement mechanisms on issues such as: (i) General Shareholders Assembly, for facilitation of shareholder participation and the guarantee of their rights and equitable treatment; (ii) Board of Directors, regarding its composition, functioning and suitability , and the manner in which it secures the rights and equitable treatment of shareholders and upholds the quality of corporate information delivered to its various stakeholders; (iii) dissemination of financial and non-financial information as a fundamental means to relate to stakeholders; and (iv) the periodic evaluation of corporate governance practices and their delivery to stakeholders.
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Control

This factor establishes the existence of mechanisms, procedures, plans and methods of evaluation and verification, self-imposed by company in order to warrant fulfillment of goals and objectives set by corporate management.

INDICATOR		WHAT IT MEASURES/SOURCE OF INFORMATION
1	Additional or self-imposed controls	Determination of existence of agreements, adhesions, principles, awards, acknowledgements, ratios and evaluations which are additional to those legally mandatory , through direct verification conducted by Transparencia por Colombia.

Methodology

The evaluation model measures those policies and transparency mechanisms of public utility services companies, regardless of the legal nature of the service supplier or the corporate purpose it is engaged in and regarding their condition before the public utility service itself, all companies engaged in the rendering of public utility services must fulfill minimum transparency standards. The pilot exercise evaluates a group of companies on the basis of the four factors; nevertheless, there are certain particularities derived from the legal nature of some of them that have incidence in their corporate governance and thus affect their relationships with their customers, as is the case of energy generation companies.

In a similar manner, the model took into consideration the various stakeholders as they relate to public utility service companies for which satisfaction there are certain corporate policies and transparency mechanisms of mandatory nature.

The score obtained from application of the 48 variables was weighted depending on whether related to minimum information or mechanisms or whether related to significant information and mechanisms. A minimum information or mechanisms is defined as that which is produced or implemented by the company in order to fulfill or comply with a legal regulation or disposition or that is interpreted in the context of a market that is basic for purposes of corporate transparency, for instance the financial information of the company. Significant information or mechanisms is defined as those that go beyond what is required from companies by their regulatory framework and is considered as an additional effort of the company; an standard that should be imposed.

Through the application of this evaluation model to the group of public utility service companies, particular results were obtained for each indicator or variable as well as findings of general nature that are grouped as either sound practices or recommendations. Establishment was also made of standards and mechanisms of transparency that Could be applied to other companies in the sector or aspects in which companies should concentrate their efforts and continue to manage in order to raise their standards and practices of transparency.

Evaluation of these companies corresponds to the 2007 fiscal year and it is expected that the model is applied with annual periodicity. In order to improve the quality of later exercises, the efforts made by companies to shorten information gaps (usually ranging between six months and one year) become fundamental for the achievement of timely exercise and results and in accomplishment of a commitment to adopt, promptly and with determination, those measures necessary or those improvement plans derived from the measurement recommendations, that may result in better later evaluations.

Compilation of Information

Information must be available under the following conditions:

Reliability – Company must ensure that information placed at disposition of stakeholders is reliable; to do so it must implement mechanisms or controls that warrant veracity of information provided.

Comprehensible – Company must make sure that information covers all key issues and that nothing is left out. This condition is particularly important when regarding product and services information addressed to customers, that includes conditions for access, pre-sale, post-sale and sale of goods and services.

Sources of information for evaluation of public utility services companies include publicly available information such as:

- Management Reports
- Social Responsibility Reports
- Internal or External Audit, Management or Outcome reports
- Documents on corporate governance such as the rules of the board of directors or shareholders assemblies (not applicable to government owned commercial or industrial enterprises)
- Public documents such as Codes of Ethics, Codes for Corporate Governance and their respective evaluations
- Performance Evaluations
- Customer Satisfaction Surveys
- Publications, magazines and brochures
- Corporate information displayed in corporate websites.

Also included is the questionnaire prepared by Transparencia por Colombia and completed by the various companies in order to complement information complied directly.

Additionally, information was requested to the regulatory Commissions, the Superintendence of Industry and Commerce, the Superintendence of Public Services and the SUI of the Superintendence of Public Services.

Calculation

The four factors of transparency, i.e. Opening, Dialogue, Clear Rules and Control all have the same weight for purposes of the final score: 25 points each and together add from 0 to 100 points, in which 0 is the minimum grade achieved and 100 is the maximum grade, which accounts for the highest standards of transparency.

For each individual factor, the indicators were weighted on the basis of their individual importance for purposes of corporate transparency. In Opening, although measurement involves weighting of information delivered in a timely and prompt manner, some indicators have more weight than others. When referring to minimum information, indicators receive three points each and five points when information is of significant nature²⁶ as delivered to stakeholders. For the Dialogue with Customers factor, a 24 point score is awarded for the existence of a customer service system accompanied by personnel training in ethical and transparency matters and management of information, amongst other, and a 56 point score is awarded to the efficacy of the customer service system through the outcome of the evaluation, customer satisfaction and policies and measures for improvement adopted on the basis of said evaluations.

Finally, for purposes of the Clear Rules factor, both ethics and corporate governance are rated up to a 50 point score but in evaluation of ethics 20 of those 50 points do correspond to alignment with the value chain; all other indicators have a 10 point weight each. In terms of corporate governance, most indicators receive a 10 point weight with exception of evaluation of corporate governance policies engaged by company, which received a score of 15 over 50 points.

Companies participant in the Pilot Exercise

Although Transparencia por Colombia convoked a larger number of companies for participation in this initiative, several opted to decline participation and offered various arguments to avoid measurement.

Noteworthy is participation by ten public utility services companies that participated in the evaluation and that have reiterated their commitment to continue to pursue higher standards of transparency through application of this measurement.

²⁶ S Minimum information is defined as such that is produced by company to fulfill a legal rule or disposition or any basic information for purposes of principles of corporate transparency. Significant information is defined as that with a further scope, an additional effort made by the company.

Participant Companies

SECTOR	EVALUATED COMPANY
Energy and Gas	EEB
	Isagen
	Electricaribe –Union Fenosa–
	Promigas
Telecommunications	Telefonica Telecom
Water supply	Aguas de Manizales, Salas Group (Aguas de la Sabana)
Sanitation/waste disposal	Salas Group (EMAS Pasto, EMAS Manizales)

Number of companies in the public utility service sector in Colombia

SECTOR	COMPANIES IN THE SECTOR
ENERGY 99 companies	Generation 18
	Transmission 3
	Distribution 2
	Commercialization 32
	Commercialization and generation 24
	Commercialization and distribution 13
	Gas distribution companies 33
TELECOMMUNICATIONS 38 companies	24 private
	3 government owned
	9 mixed ownership
	1 EICE (a commercial and industrial company of the State)
	1 rural
WATER DISTRIBUTION 1,919 companies	698 municipalities engaged in direct supply (of which 923 report to SUI), 11,000 direct suppliers in rural zones (user associations, self-suppliers). (1,888 supplier report to SUI).
SANITATION 173 companies	

Source: SSPD and the Superintendence of Industry and Commerce – SIC. .

Findings of the Pilot Evaluation

Opening

Companies prepare documents over various aspects of their management activity; however, the evaluation found certain differences as to the publicity of such reports. After having defined twelve 812) Basic documents (please refer to the Annex, chart 1) for application of the indicators, the measurement process determined that some 50% of such documents are not disseminated or are published in an incomplete and untimely version, particularly those regarding audits and risk management.

Just as it is stated below, criteria for publication or no publication are discretionary in nature depending on the company and are not supported by clear policies known by their respective stakeholders.

The average score of this indicator is 56/100, meaning that companies are yet to make important efforts in terms of availability of information in order to reach higher standards, particularly regarding their suppliers, an area in which the result was 9/25 during this first evaluation, the most deviated from the standard or ideal opening score for each stakeholder category (25/25).

Shareholders and investors receive better information, more timely and complete, particularly when taking into account that this information is available at general shareholders assemblies by means of Management reports and the fact that it influences the financial or expansion policies of the corporations. Customers are positioned at this same level of Opening, particularly regarding subsidies and contribution to special funds, contracts

Chart 1

Number of companies participant in the Pilot Exercise that publish
or do not publish documents regarding management activity.

DOCUMENT ²⁷²⁷	COMPANIES THAT PUBLISH	COMPANIES THAT DO NOT PUBLISH
Management Report / Financial Information	6	4
RSE Report	7	3*
Risk and Risk Management Maps	1	9
Company By-Laws	5	5
Code of Ethics	8	2
Code of Corporate Governance	6	4
Evaluation of Corporate Governance	4	6
Invoicing/Additional efforts for understanding of tariff system	7	3
Contracts under uniform conditions	3	3**
Audit reports	1	9
Rules of the General Shareholders Assembly	3	5
Internal Rules of the Board of Directors	2	5

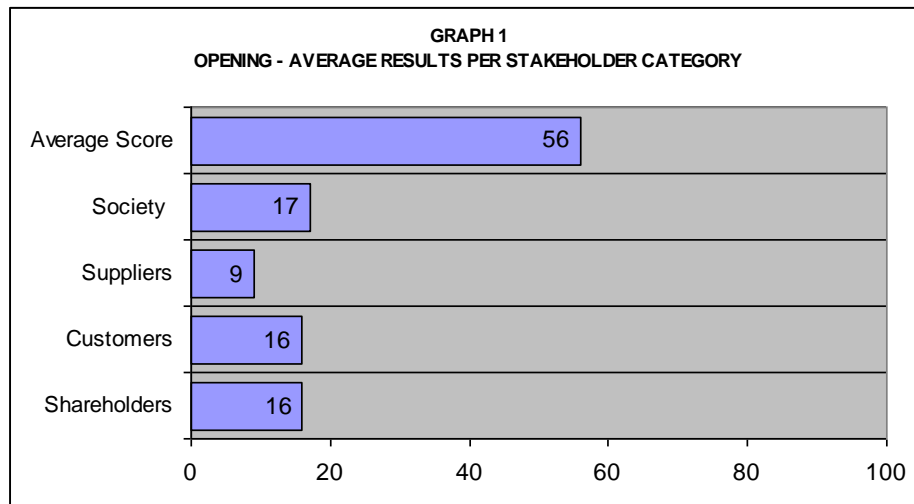
*These companies do not prepare social general balances but some of their financial statements include information on activities of corporate citizenship.

**Applicable to companies that do hold a direct relationship with users of public utility services.

under uniform conditions and invoices, given the fact that it is possible to verify this information through the Single Information System of the Superintendence of Public services.

From these results, it is surprisingly pleasant the level of opening towards society which achieves the highest score (17/25) as a consequence of efforts made by companies to document and inform society of the impact of their management activity, particularly regarding environmental matters and those related to resources transferred to the local governments.

²⁷ This chart summarizes what companies make of public knowledge particularly through their websites and the end result of complementary information requests submitted to SSPD, SIC, regulatory Commissions, Customer service Offices and directly to the companies.



The analysis of Opening information per stakeholder category yielded the following results:

Although companies have risk maps generated in compliance with internal control Systems mandated by law 142 and thus engage in risk management activities, it is noteworthy the fact that one of the issues lacking precise and detailed information distributed to shareholders, Partners and investors is related to the operational risk of the company and its Management, particularly that arising as a result of internal and external audit reports. No information whatsoever related with risk management was found in management reports distributed by companies for the 2007 exercise, which is in turn the result of discretionary criteria of the individual companies.

On the other hand, it is worthwhile mentioning that six of the companies evaluated distribute, to public opinion and overall society, information on the economic, social and environmental impact of their production and economic activity, which reports are prepared in accordance with guidelines issued by the Global Report Initiative - GRI²⁸.

²⁸ The Sustainability Memoire includes measurement, dissemination and accountability before internal and external stakeholder categories. It must deliver a balanced and reasonable image of performance in terms of sustainability and must also include positive and negative contributions. The GRI recommends engaging in an external verification of the Memoires.

Chart 2
Score of factor - Opening to partners, shareholders and investors

Opening Standard	25/25
Average Evaluation Score	16/25
Highest Score	22/25
Lowest Score	7/25
Number of companies above average score	4

Opening to Customers

In a similar manner, results reflect partial compliance with publicity and diffusion of contracts under uniform conditions. Some companies have received the Concept of Legality for such contracts from their respective Regulatory Commission and publish their contents at their websites but it is seldom possible to have access to them through the Complaint and Recourse Offices or through other communication media made available by the companies.

On the other hand, all companies engage in invoicing and fulfill most formal requirements in the matter. Nevertheless, the tariff issue and the interpretation of how it is determined and how consumption is priced continue to be one of the most critical aspects of the Opening factor. It is also evident from the evaluation that some companies do not make any additional effort to facilitate customer understanding of contractual clauses and invoices. Even though there are some virtual schemes for explanation of invoicing, there is little in terms of contents in the contracts under uniform conditions or Rights of the users, with exception of the telecommunications sector, in which the recent issuance of relevant regulations makes precise definition of such obligations. And even though measures are being taken in such direction, these new dispositions on transparency and customer or user information are not being duly fulfilled.

Evidence was found in the evaluation that documents delivered to customers on the efficient use of utility services such as water, energy and the risk present in telecommunications by mobile devices, most of all, are especially available at the websites of the companies. The above is particularly important for this stakeholder category to the extent that promotion is being made of sound practices in the use of

public utility services that support care of the environment and warn over certain risk conditions present in the rendering of some of the services, related to customer health and which make affect their decision regarding the product or service.

In this regard, only one of the ten participant companies reached the desired 25 point score and four of them managed to position over the 14 point average.

Chart 3
Score of factor - Opening to Customers.

Opening Standard	25/25
Average Evaluation Score	16/25
Highest Score	25/25
Lowest Score	9/25
Number of companies above average score	4

Opening to Suppliers

Suppliers are strategic Partners of the companies and as a result a good relationship with them enables achievement of long term fidelity and to benefit from their experience. A higher level of trust between company and suppliers generate higher process stability, for customers for citizens to become, in the long run, those who win from a better public utility service.

Opening practices seek this stakeholder category to enjoy prompt and timely information, indiscriminate and available as required. Useful information must be supplied regarding the purchases and acquisitions of the companies, on the criteria used by company for purposes of selection and evaluation of suppliers and contractors and about the efforts, in terms of policies and programs that company may implement for development of this stakeholder category.

It was found that five of the ten companies evaluated are delivering sufficient and timely information to its suppliers (score above 16/25). The remaining companies did not supply evidence of their delivery of information, particularly regarding those aspects

related to criteria for selection and evaluation and with plans and programs for acquisitions or about the design and implementation of plans and programs for development of suppliers.

The evaluation determined that, in general terms, minimum information is published about company's by-laws or about policies for contracting and rosters of proponents, with very little precise and detailed information on the opening of contractual processes, as well as on each and all stages that are to be covered; this, including government owned companies.

Chart 4
Score of factor – Opening to Suppliers

Opening Standard	25/25
Average Evaluation Score	9/25
Highest Score	19/25
Lowest Score	0
Number of companies above average score	4

Opening to Society

Even though these was one indicator that received better scores at 17/25, one of the warnings derived from the evaluation is that information is available but not always complete and is not disseminated in a timely manner, features that are deemed fundamental for purposes of the evaluation sine they enable exercise of social control and corporate accountability for their management activity.

Once more, 50% of companies evaluated reached scores above average. Only one of the ten companies had the highest score, thus fulfilling the Opening standard of the Evaluation Model given the fact that it provides complete and timely information to society about those aspects defined for purposes of evaluation of interest for this group.

These outcome, which stands above other, evidence that society does indeed receive information on contributions, subsidies and fund allocations from all companies by means of the Single Information System – SIU, of the Superintendence of Public Services, which is freely available; however, the technical limitations already mentioned

Could limit opportunity and reliability to such information. Also, companies present retail of these commitments in their management and RSE reports, and in external audit documents, particularly those referring to plans for Management of environmental impact and structural programs being implemented for service of the community in the scope of responsible corporate Management.

Chart 5.
Score of factor – Opening to Society

Opening Standard	25/25
Average Evaluation Score	17/25
Highest Score	25/25
Lowest Score	10/25
Number of companies above average score	5

Dialogue with Customers

The evaluation of mechanisms used by companies to tighten relationships with their customers is one strategic task of public utility service companies. As a result, the evaluation model, as applied, reviews the policies, programs and mechanisms that companies implement to ensure balance in this relationship.

For purpose of user or customer protection, domestic legislation has established a typically contractual regime which dispositions seek to prevent abuse by the dominant position. This regime includes the so-called “corporate instance”, a framework in which the company exerts public functions.

The evaluation verified the existence and functioning of customer service Systems such as websites, customer service offices, telephone lines, virtual offices, Electronic mail and service stands.

For the group of companies evaluated, this indicator of Dialogue with Customers reached an average score of 57/100, with only four companies reaching scores above this average; nevertheless, as in the case of previous indicators, it is worthwhile mentioning that one of the companies reached the standard of service attention and functioning of the system at 24/24 and also reached the highest score in terms of follow-up and evaluation of the system.

Although service offices are fully operational and companies have placed at customer's disposition various attention alternatives, the evaluation found little evidence that companies are implementing – specifically directed to employees in charge of customer service – training and education programs on issues such as customer service, management of information and, specially, ethics²⁹.

One of the practices or customs that more called the attention at the service offices is that of imposing that the customer submitting the petition, complaint or request must reiterate such action in writing, while the direct claim should generate an automatic official report of such instance³⁰.

As to follow-up and evaluation of the system, the average score reached by the group was 32/56, which reflects a plain 57% fulfillment of the standard.

Companies normally engage in evaluation of customer satisfaction with the service rendered³¹ either directly or through specialized companies. Sporadic publication takes place of those evaluations related to service offices and their results, in segregated and incomplete manner; single data which is not attached to the technical card of the Surrey; thus it is not known if there is true representation on the sample or of other elements that provide reliability to the measurement activity and that enable better analysis of both positive aspects and aspects to be improved.

Another variable evaluated is that of social control and citizen participation. On the basis of documents revised and a related survey, companies reached a 4/10 score since very few of them have any real or formal relationship with control speakers. Although they pay attention to their requests, the latter are not really considered to be valid speaker or counterparts before corporate instances and, as a result, as already mentioned, the control speakers are a form of representation that has lost legitimacy and has thus become a user communication channel with plenty of fissures. Some companies, however, engage in sporadic or eventual training efforts.

²⁹ In course of this exercise there was a first approach to the service offices of some of the companies evaluated which, although not highly representative, was constant for most offices: very low cordiality and disinformation regarding procedures.

³⁰ Energy generation and distribution companies do not incorporate to their structure –and as a result of their inner nature- the opening of customer service offices to handle petitions, claims and recourses; however, some have on-line offices for customer service purposes.

³¹ The Superintendence of Public Services has conducted a customer survey throughout the country Turing the past three years – Level of Customer Satisfaction (NSU as per its Spanish initials) that currently generates general data for future application by each company.

It is also noteworthy in evaluation of this indicator that companies are making efforts to dialogue with stakeholders in order to achieve a “more socially responsible” Management but yet keep their distance or remain aside from opening to citizen participation in terms of their qualification or that even openly admit that these issues are not of their competence, disregarding the fact that “corporate citizenship” implies for companies to commit with issues such as, for instance, the promotion of public policies of transparency.

Finally, this indicator reviewed performance of sanctions imposed to companies by the SSPD and the Superintendence of Industry and Commerce for the case of telecommunication companies. The score reached arise from the Lumber of sanctions imposed to a company during 2007 and a comparison of this performance versus that of the previous years, specially regarding petitions, complaints and recourse (together PQR as per its Spanish initials), recourses for reposition and appeal, and positive administrative silence. The average score was 4/10 and only five of the ten companies reached a score above average.

Chart 6
Score of factor – Dialogue with Customers

Indicator Score	Standard	Average	Highest Score	Lowest Score	Number of companies above average score
Customer Service System	24	17	24	12	3
Follow-up and Evaluation	56	33	47	19	4
Social Control / Citizen Participation	10	6	8	0	6
Sanctions	10	5	10	0	5
TOTAL	100	57	86	39	

Clear Rules

Corporate Ethics

The group of companies in process of incorporating, during the past few years, code and declarations of ethics with diverse degree of insightfulness, fundamentally referring to rules of behavior and practices in which values have a priority position, such as honesty, transparency, integrity and the commitment, hopefully willful, to be followed by company's management and personnel and, in some cases, stakeholders such as suppliers and contractors.

With an average score of 20/50, the evaluation found that companies do formalize their principles and ethical values through the codes, understood as a public declaration by the organization about the principles and ethical values that frame their relationship with the various stakeholder categories.

Ethics continues to be considered an abstract concept and it is not sufficient to document it; it must be permanently sensitized to stakeholders inside and outside the company. Ethics is not yet perceived as a management tool and progress must be made in this direction.

Out of the ten companies evaluated, nine stated to have codes of ethics and eight of them make those codes of public knowledge. However, after evaluation of their contents, it was determined that 60% do not include any provisos over the contents and instead are limited to a formalization of principles and values without incorporation of any mechanisms or tools for management of ethics, communication, sensitizing and alignment with stakeholders, and do not have mechanisms for follow-up or evaluation of such actions.

One of the most critical indicators was the one related to instances for reporting and consultation, which reached a 4/10 average score; these actions contribute to strengthen the ethical climate of the organization and fulfill a preventive role in circumstances of potential irregularity. Only two of the ten companies evaluated have implemented these mechanisms and although of recent creation they enjoy structure, accountability, mechanisms and procedures for awareness of situations or dilemmas considered by management and employees as well as control and sanction mechanisms.

Another indicator that demands a permanent improvement process is related to Communications with the community, the orientation and training about principles and ethical values, that reached a 4/10 average score. This indicates that companies must make efforts to promote permanent knowledge to interiorize such values and standards by employees, as well as the dissemination and promotion of standards adopted by the organization amongst the various stakeholder categories. These aspects favor the reputation and credibility of the organization as that of an entity that concerns about integrity and the prevention of corruption risks.

Only two of the companies evaluated delivered evidence in their reports of their having engaged in systemic and permanent dissemination and promotion of these issues, by means of internal magazines and bulletins, intranet and other channels, thus aiming to create a “culture of ethics”.

The evaluation established that three out of the ten companies are working on these issues, particularly those that participate in the securities market. These companies have informed their suppliers and contractors on the ethical policies of the company and have even defined, in their selection criteria, the conducts of these parties, to be fully compatible with the principles and values adopted by the company.

Chart 7
Score of Factor – Clear Rules
Corporate Ethics

Indicators / variables	Average	Standard Score	Number of companies above average score
Corporate Ethics	20	50	6
Documentation and content	7	10	6
Instances for reporting and consultation	4	10	5
In-rooting in organizational culture	4	10	6
Alignment to value chain	5	20	5
Average Score – Clear Rules	45	100	6

Topics such as monitoring systems for prevention of asset laundering begin to be demanded as a component of relationship with stakeholders. This process, however, is of permanent nature and demands adoption of commitments and decision making processes by company and its value chain, which evaluation must be refined to the extent that companies reach desired standards.

With no doubt, this is one aspect in which companies must make deeper efforts and to seek coherence and consistency between “what is said and what is done”³² to accomplish alignment of their value chains with this perspective.

Corporate Governance

In terms of corporate governance companies are beginning to follow behavioral rules and recommendations of country-wide level issued by entities such as the Conpes of Corporate Governance, the White Book of Confecamaras, CAF, or the guidelines of the Financial Superintendence –in the scope of self-regulation-. These commitments are publicly disclosed to all stakeholders and, in a few cases, companies are evaluating them, particularly when participant in the securities market.

Only six out of the ten companies have documented codes of corporate governance as a component of their management activity. Once more, as does happen with codes and declarations of ethics, their structure and contents are fairly similar but, this being a rather recent practice, only four of them are currently evaluating their corporate governance and making it public.

With an average 25/50 score, there is less than 50% compliance with sound practices of corporate governance. Most companies begin to evaluate their corporate government but, nevertheless, independent and more rigorous evaluations could display a reality that is closer to how compliance is being fulfilled of those principles formally accepted on this matter.

Noteworthy is the fact that dissemination of non-financial information is yet rather limited, as also is information on the procedures for selection and evaluation of members of the Board of Directors and senior Management of the companies.

³² Cortina, Adela. *La ética ù la empresa. Claves para una nueva cultura empresarial* (2003), Ed. Trotta, Madrid.

Chart 8
Factor Score – Clear Rules
Corporate Governance

Indicators / variables	Average	Standard Score	Number of companies above average score
Documentation	4	5	6
Shareholders Assembly	6	10	6
Board of Directors	5	10	6
Dissemination of Information	5	10	5
Evaluations	5	15	4
Average Score - Clear Rules	45	100	6

Control

This last factor is used for evaluation of the so-called self-imposed or additional controls; those that companies are implementing in a complementary manner to those already mandated by Colombian legislation (since those of mandatory compliance are covered in the Opening factor).

Companies engage in specialized audits and fiscal auditing although they are not mandated by law. Also, they have adhered to the Global Pact and have adopted International standards, particularly in matters of social corporate responsibility, and their management has been awarded with well deserved recognition, domestically and internationally. Proof of this occurrence is that five out of the ten companies have more than three additional controls, three companies have more than two and two of them after participating in this initiative are promoting the creation of an additional and self-imposed control mechanism.

It is to be noted, in terms of these self-imposed controls that, as mentioned in the indicator Dialogue with Customers, there is lack of promotion of social control tools such as the citizen overseers, that may be matter for improvement by companies, as well as further initial recommendations.

Chart 9
Factor Score - Control

Average Score	68/100
More than three self-imposed controls	5 companies 100/100
Between two and three	2 companies 50/100
One additional control	3 companies 25/100
With no additional or self-imposed controls	0/100

CONSOLIDATED RESULTS FROM THE
EXERCISE AND INITIAL
RECOMMENDATIONS

About accomplished results

After setting in motion the evaluation model with the group of companies that lead the project, it is possible to document some evidence of its application, to underline interesting exercises and sound practices and to issue warnings on areas, processes or Systems that may be a matter of improvement.

The overall average score from the evaluation of the group of companies was 57/100. This result indicates that there is yet a long path to be covered in terms of policies of transparency and the efficacy of mechanisms for corporate transparency.

Companies prepare important documents and reports regarding their management activity; they report to the surveillance and control entities in a periodic and systemized manner, and they provide information to their respective stakeholders, an effort that has required significant investment that is barely beginning to consolidate in some of the companies evaluated.

The 56/100 score of the Opening factor also indicates the undertaking of additional efforts to improve the quality and opportunity of information delivered to stakeholders.

Once again, it is a must to reiterate that further efforts are necessary for a more precise and detailed dissemination of information on investment plans and management of impact other than environmental, particularly in terms of the community.

Also, companies must pursue better strategies for delivery of precise and disaggregated information to local governments as well as complete and timely information about the impact of their management activity, which is normally related exclusively with environmental aspects and that is included in Management reports and social corporate responsibility reports.

Regarding Dialogue with Customers, the 57/100 score indicates that companies evaluated are making progress in terms of the implementation and consolidation of customer service Systems, integrated by customer service offices and other mechanisms that take advantage of information technologies. The reinforcement of these customer service mechanisms is a must, as it also is to inform in a more precise manner about the evaluation of these mechanisms and to disseminate the measures, plans and programs for improvement of the outcome of such evaluations.

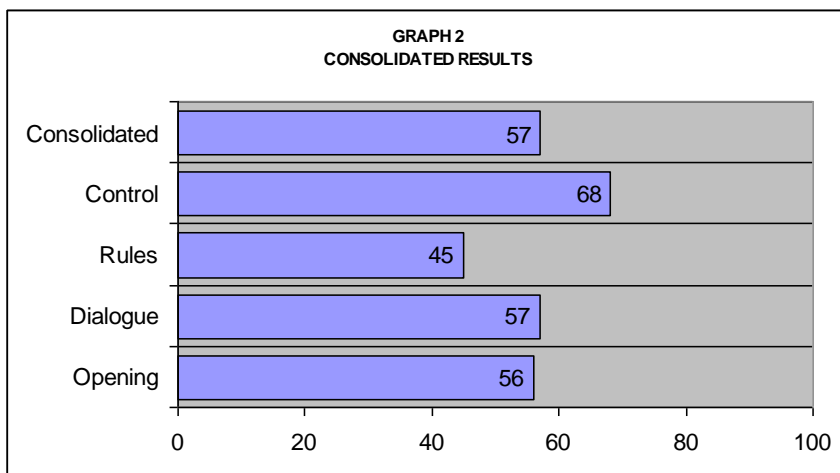
In the case of customer service offices it is suggested that in order to improve their performance, surveys are to be conducted about: (i) Accessibility: customers must have the possibility to easily enter in contact with the company; (ii) Response Capability: to be in capacity to provide an efficient service without dead time or unjustified delays; (iii) Courtesy during rendering of the service: personnel must be attentive, respectful and kind with the customers; (iv) Credibility: customer service personnel must display an image of veracity that eliminates any trace of doubt before the customers; (v) Reliability: to be in capacity to execute the service as promised, with no mistakes; (vi) Security: to furnish knowledge and training to employees for them to offer confidence and reliability; (vii) Professionalism: the service must be provided by duly trained and skilful personnel; (viii) Empathy: to deliver customized and careful service to the customers.

Despite incorporation of principles and ethical values to management activity, the results of the pilot exercise bring about enormous challenges, particularly in terms of performance, follow-up and evaluation of such corporate governance policies and also in terms of alignment of these policies and transparency mechanisms to the value chain in all those aspects related to corporate ethics and corporate governance. This factor of Clear Rules reached the lowest score at 45/100.

It is not enough to proscribe bribes or corrupt practices; companies must identify a

true. Clear and practical policy in which there is formalization of a zero tolerance commitment for any corrupt practice, accompanied by a program that impacts human resources and sensitizes stakeholders, and the application of internal mechanisms of audit and control.

It is also worrisome to see how, while head-offices and holding companies of some multinational corporations adopt higher principles and standards in the midst of an international context, at the local level they engage in a different agenda. In Colombia, the adoption of sound policies and practices is well behind. Affiliates seek coverage through tools and mechanisms that while applied elsewhere are not so applied in the country³³.



Conclusions and Initial recommendations

Finally, after analysis of information provide by the study, it is possible to establish some conclusions as well as recommendations that warrant improvement in the performance in aspects of transparency by public utility service companies. Such conclusions and recommendations refer to:

- a) Companies identify pertinent stakeholders and those issues of priority in their relationship.

³³ It is a constant for multinational companies that there are significant delays in terms of domestic information on Management reports and reports on social corporate responsibility. There is evidence of scarce information of corporate nature; for instance, the name of directors in Colombia, their resumes, evaluations of corporate governance, etc.

Most of the companies evaluated are conscious of the importance of the creation of mechanisms for dialogue and understanding with their respective stakeholders and in such sense they engage in formal and informal exercises for identification of matters of common interest and priorities. But so far those relationships have been given in the form of solutions to situations of conflict without any proactive, open and constant dialogue.

Such dialogue is just beginning to take place through utilization of sophisticated and systemic approaches for management of relationships with stakeholders. This is a process that demands significant resources and corporate efforts which are to be considered in the next evaluation.

b) There is an improved utilization of information and communications Technologies, TIC, for dissemination of corporate information.

It is necessary to acknowledge the important role placed by information and Communications Technologies in the sound practices of transparency. In particular, the websites have converted into an instrument for companies to deliver information to their stakeholders, especially that of financial and economic nature.

The websites of most companies are evident demonstration of efforts for delivery of information to customers, suppliers, shareholders and society in general. However, when in process of evaluation of the Opening of companies by means of the results, several differences are found.

Websites also open possibilities for other channels of communication such as chat-rooms, electronic mail, virtual offices, access to consultation of invoices and basic tools for monitoring of customer complaints. Also available thereat is specific information for suppliers, partners, shareholders and investors and even some aspects of corporate governance are nowadays available at corporate websites: codes, rules for the shareholders assembly, internal rules of the Board of Directors, curriculums of senior management and evaluations of corporate governance, amongst other³⁴.

c) There is lack of corporate policies regarding dissemination and communication of

³⁴ Companies are discretionary in their definition of information to be disclosed through their websites; the conditions and tenor of public availability of such information, event in the case of those companies that participate in the securities market.

information

Although companies facilitate information to public opinion, mainly concerning financial and economic aspects by means of Management reports or social corporate responsibility reports, there are no clear policies regarding dissemination and Communications of corporate management activity.

Such lack of definition of a reference framework to become aware of what to do, how to do it and how to measure it, or information on whether there is timely and complete information being delivered to stakeholders, translates to the interior of the companies into the classification of dissemination and communication or even the definition of what is reserved³⁵, privileged or confidential³⁶ to become a discretionary decision. Very few companies define such frontiers in their policies and place them at the disposition of stakeholders by means of codes of ethics or codes of corporate governance.

For instance, during the evaluation it was found that there is a constant for non-publication of the following information: (i) risk maps and risk management which for some companies is a matter of confidential nature or are simply not published; (ii) audit. And management reports³⁷; (iii) Audit reports issued by surveillance and control authorities³⁸ which are also not made public by the Superintendence of Public Service or other control entities.

On the other hand, information available in terms of evaluation of customer service and customer satisfaction is seldom complete or timely, which has a negative incidence on the activity of overseers and committees for social development and control.

d) It is necessary to continue to make progress in the minimizing of information asymmetries

It is evident in the study that, despite Government efforts and the new model for submission of more information and promotion of transparency, the sector incurs in

³⁵ Article 61 of the Commercial Code is applied to the actions and contracts ruled by private law at public utility service companies.

³⁶ Confidential information, understood as such that is prepared or transmitted under confidence and which is so classified by corporate managers and which may be related to corporate strategies, trade costumes, intellectual property or patents, amongst other.

³⁷ Audit, Management and outcome reports were initially requested to the SSPD who argued that such reports were not for release to the public duly revised and approved by technical directorships; reports were then requested to the individual companies but some of them chose not to submit them for evaluation.

³⁸ In some cases, this information as well as the findings of internal control or any material findings are exclusively placed at the disposition of partners or shareholders.

asymmetries of information mainly between suppliers and contractors and the public utility service companies, thus placing equity and transparency at risk during contractual processes. There are also asymmetries between users and public utility service companies. These asymmetries relate to issues concerning Rights and duties of the users, invoices and understanding of the tariff system, contracts under uniform conditions, results of the evaluations and surveys on customer service and customer satisfaction levels³⁹.

There is also asymmetry of information between users and regulation and control authorities. Although citizens have access to the SUI for consultation of financial information, subsidies and transfers of the companies, and PQR offices amongst other⁴⁰ and while the regulatory Commission provide openings for citizen participation, in practice the efficiency of such mechanisms is yet to be seen.

In the case of information about management and results audits, performance agreements, plans of impact and other documents related to corporate management, it is a common practice not to publish them, not even by the SSPD, unless requested through a Petition Right and with the aggravating circumstance that, when finally made available or published, any opportunity to question them will have been completely lost.

Asymmetries also exist between the regulators and the regulated, thus facilitating approval of favorable legislation by means of legal or corrupt methods⁴¹. All of them have informative advantages over users and society, because, amongst other causes, of arguments of technical nature.

e) Support must be provided concerning qualification of social control as a mechanism for expression by customers or users

³⁹ Visit was conducted of some customer service offices of four of the participant companies in the cities of Bogota, Medellin and Barranquilla and telephone calls were placed at the customer service offices or offices for submission of complaints and recourses of all participant companies and in none of them was it possible for attending personnel to permit review of contracts of uniform conditions; additionally, scarce information was offered for understanding of invoice contents.

⁴⁰ SUI permits consultation of information of public utility service companies when related to administrative, financial and technical-operational aspects. However, data concentration originates great access difficulties and sometimes information available registers mayor differences with that provide directly through reports prepared by the companies.

⁴¹ Costs reported by companies and asset appraisals are very important (excess advertisement expenses that increase demand and displace the sales curve, excess installed capacity versus lower management efforts or manipulation of accounting) because they enable regulators to set a higher price for the service at the expense of the consumer.

The new regulatory framework for public utility services, created upon regulation of the 1991 Political Constitution, seeks the institutional development of participative democracy and of instruments that encourage competition as a right of the users. Consequently, users may resort to petition right, popular actions, group or class actions, tutorship action, compliance actions and also participate in the fiscal supervision, management and control of these companies through the so-called Committees for development and Social Control by means of the control speakers and citizen overseers.

Nevertheless, the evaluation also determined that such role of the users is rather restricted and a proof of this situation is the increase in sanctions imposed by the Superintendence of Public Services by reason of positive administrative silence, which means that companies are not attending the petitions, complaints and recourses as established under standing laws. On the other hand, some companies have a rather restrictive interpretation of this control modality and understand that participation of control speakers is possible only at the boards of directors of the government owned public utility service companies of the municipal order, through the sporadic attention to the requests submitted by control speakers and, occasionally, in their formation and training.

Notwithstanding the above, this is a modality of control by users and affiliates, current and potential, of public utility service companies, independent from the legal nature of the companies⁴². And, even though the Committees have no participation whatsoever in these functions but only in those referring to the proponent character of user defense, it is evident that the modality of control speakers appears to be Peak and non-operative, with little capacity to assume the intended voice, a fact that some try to use to gain political advantages from the underlying social nature of the position. This is reflected in the relationship with the companies as well as in the relationship with the Superintendence of Public Services.

Along the same line, some of the companies evaluated have a limited interpretation of the exercise of social control and citizen overseers, which is indeed worrisome because it is clear that the constitutional interest and the interest of Law 142 of 1994 is to involve users and citizens in the improvement of their relationship with the companies through utilization

⁴² Atehortua Rios, Carlos Alberto. (2006), *Servicios publicos domiciliarios, proveedores y regimen de controles*. Universidad Externado de Colombia.

of these mechanisms and thus enable them to act propositionally in favor of their wellbeing and quality of life⁴³.

f) Sound practice of corporate governance must be evaluated systematically within the framework of the new market conditions

The public utility service companies have voluntarily commenced to implement sound practice of corporate governance, making them formal an documented through codes of corporate governance, with particular reference to instances such as the board of directors, the shareholders assembly, financial and non-financial information, while retaking the principles of the OCDE and amongst them the Rights and equitable treatment of shareholders, the responsibilities of government instances, Communications and corporate transparency.

Despite the above, very few companies are evaluation their practices of corporate governance with exception of those that, by reason of their acting in the securities market, are willingly completing the Survey on Country Code conducted by the Financial Superintendence.

For instance, there is no explicit definition of the procedures for selection and evaluation of the legal representatives of the public utility service companies, the members of the board of directors and other senior officers and there is no retail, in most cases, of the procedures to be followed in the handling of conflicts of interest. Another issue of most importance is that of preserving the existence of active committees on aspects such as Appointments and Compensation and the Audit Committee, amongst other, for support of decisions adopted by management and the board of directors. Some of these committees are already included in the codes for corporate governance, some more elaborated than others. It is expected that evaluation of these codes will be conducted in course of the subsequent application of the model.

⁴³ In the same direction, the Constitutional Court has sanctioned, through Sentence SC-292of 2003 that “the companies engaged in domiciliary public utility services have no reason to be excluded from this type of collective surveillance”.

Also there is no publication of resumes, labor and contractual related matters, the bonuses and benefits awarded to members of the boards of directors and senior management, aspects that are still handled with maximum reserve, this being one of the sound corporate governance practices related to disclosure of non-financial information.

The current world crisis imposes and demands greater commitment by companies with their stakeholders and particularly with the community. Given the fact that public utility service companies are a definite factor for determination of life quality of the citizens, the reinforcement of ethical and transparency standards is mandatory, with a perspective of generation of reliable Business environments and the creation of social and economic value, mandatory character that is even more determinant when regarding companies engaged in services that are essential and direct to the citizens.

Annexes

Chart 1

Transparency Contents in International principles and standards on sustainability

TRANSPARENCY CONTENTS IN INTERNATIONAL PRINCIPLES AND STANDARDS ON SUSTAINABILITY									
AXIS	1	2	3	4	5	6	7	8	9
	OCDE - Multinationals	OCDE - Corporate Governance	World Pact	Global Reporting Initiative	Corporate efforts to counteract bribery	Ethos	Bove spa	FTS E/	DO W JONES
Transparency		X							
Dissemination of Information	X	X		X		X	X	X	X
Corporate Governance (publicity-communication / verification)	X	X	X		X	X	X		
Cooperation and dialogue with stakeholders	X	X		X		X	X		
Ethical Policies						X			X
Standards applied to partners	X	X	X		X	X	X	X	X
Anti-corruption and bribery policies	X		X		X	X		X	

The following chart includes explanation of each of the above standards:

1	OCDE directives for multinational companies (2000)	Government recommendations addressed to this group of companies that enact principles and self-imposed rules for a responsible corporate performance, compatible with applicable legislations. Most relevant directives relate to: (a) publication of reports, employment and labor relations; (b) environment; (c) enforcement of corruption; (d) consumer stakes; € science and technology; (f) competition and (g) supervision.
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2	Principles of Corporate Governance (2004)	Oriented to the support of governments of OCDE member and non member countries in the task of evaluation and improvement of legal, regulatory and institutional frameworks, applicable to corporate governance in their respective countries and to provide guidance and suggestions to the stock exchanges, investors, companies and other participants in the development of a model for sound corporate governance. Principles make reference to: (i) ensure a base for an efficient framework of corporate governance ⁴⁵ ; (ii) shareholder rights and key functions in the scope of property; (iii) equitable shareholder treatment; (iv) stakeholders roles; (v) data dissemination and transparency; and (vi) responsibilities of the Council.
3	The World Pact (2004)	An initiative proponed by the United Nations which purpose is to fulfill a self-imposed commitment in terms of social responsibility through implementation of ten principles base don human Rights, labor rights, environmental Rights and enforcement of corruption. The tenth principle is the corporate commitment not only to prevent bribery, extortion and other sorts of corruption but also to develop concrete policies and programs that center on the corruption issue. The Pact poses the challenge for companies to unite to governments, UN agencies and civil society in pursue of a more transparent global economy.
4	Global Report Initiative - GRI (1997)	The GRI standard is oriented to warrant reliable measurement, dissemination and rendering of accounts on economic, social and environmental corporate performance before their stakeholders, internal and external. It was created by the Coalition of Environment Responsible Economies – CERES with participation of entrepreneurs, auditors, investors, researchers and Experts in environmental, human rights and labor rights. At the end of 2006 presentation took place of the last version of the revised guide – G3 with a total of 79 directives or principles that deal with the quality and contents of the memoires. GRI may be used as a generally accepted framework for information on sustainability oriented corporate management that originates in process of dialogue and consensus with stakeholders.
5	Corporate principles to counteract bribery (2002)	An initiative of International Transparency and Social Accountability International ⁴⁶ that provide companies with a practical guide for enforcement of bribery. Its objective is to provide a framework of sound corporate practices and risk management strategies for: (a) eradication of bribery; (b) evidences their commitment to enforce corruption; (c) perform a positive contribution to improve corporate standards for integrity, transparency and rendering of accounts wherever they conduct their operations.

⁴⁵ This Framework for corporate governance must promote transparency and market efficacy; must be coherent with standing legal regimes and articulate the modality of responsibility sharing between the various entities of supervision, regulation and execution.

⁴⁶ Se estableció un Comité Directivo conformado por empresas del sector privado, la academia, los sindicatos y otras organizaciones no gubernamentales.

6	Ethos Indicator of corporate social responsibility – Ethos Institute of Brazil ⁴⁷	A system of indicators promoted as a tool of corporate management seeking evaluation, awareness and learning by means of monitoring corporate social responsibility of Brazilian companies. Its 2007 version expands to corporate value chains looping to enable them to use Tools and strategies towards a socially responsible management. The Ethos system of indicators takes into account the importance of values, transparency and corporate governance; that is, the self-imposed regulation of corporate behavior and its relationship with stakeholders and society.
7	Bovespa Sustainability Index ⁴⁸	An Index that measures total return of a theoretical portfolio composed by, approximately, forty stocks of companies with a recognized commitment to social responsibility and corporate sustainability. Such stocks are selected amongst the most traded securities at Bovespa – in terms of liquidity – and are weighted according to market value of shares available for negotiation.
8	FTSE4GOOD (2001)	The stock market Index of the FTSE Group ((Financial Time Security Exchange) and the London Stock Exchange that offers investors a corporate stock portfolio of companies that fulfill social responsibility standards of worldwide recognition ⁴⁹ . The various Index were designed with the support of EIRIS ⁵⁰ for identification and measurement of the profitability of companies engaged in the achievement of environmental sustainability, the development of positive relationships with stakeholders and the protection and support of universal human rights. Currently includes companies that manufacture tobacco, companies that supply services or strategic components or manufacturers of complete nuclear weapon systems, manufacturers of complete weapon systems; owners and operators of nuclear energy centrals and miners or producers of uranium.
9	Dow Jones Sustainability Index	It is a global stock market index that follows the financial performance of companies traded on the basis of sustainability. The Dow Jones, in alliance with the SAM Group (Sustainability in Asset Management) engages in worldwide evaluation of 250 companies in three dimensions: economic, environmental and social and therefrom establishes a ranking of the best performing companies in each sector.

⁴⁷ The Ethos Institute for Social Corporate Responsibility is anon government organization created for mobilization, sensitizing and support of companies in the orientation of their businesses in a socially responsible manner through alliances for the construction of a fair and sustainable society.

⁴⁸ The Index of the Stock Exchange of Sao Paulo, Brazil

⁴⁹ Global Compact and the Universal declaration of Human Rights

⁵⁰ Ethical Investigation Research Service

Chart 2
Constitutional Competences related to Public Utility Services.

REGULATION	AUTHORITY	COMPETENCE
Art. 189 numeral 22	President of the Republic	To exercise inspection and surveillance of public utility services.
Art. 334	State intervention by virtue of Law	In public and private service seeking to ensure improvement in the life quality of the population, the equitable distribution of opportunities and benefits from development and the preservation of a healthy environment.
		Warrant availability of an efficient service to all individuals and to intervene in order for all citizens, particularly those in the lower income levels, to have effective access to basic utility services.
		Service may be provided by the State through direct or indirect participation, by organized communities or by private individuals.
		Regulation, control and surveillance are in all instances under the supervision of the State.
Arts. 365 and 366		Public utility services are inherent to the social function of the State and it is its duty to ensure their efficient availability to all citizens in the national territory.
Art. 367	The Law	Shall determine those competences and responsibilities related to the supply of domiciliary public utility services, their coverage, quality and financing; and the applicable tariff regime that shall take into account costs, solidarity and income distribution.
		The municipalities may engage in the direct supply of public utility services whenever the technical and economic features of the service and the general conveniences make it advisable and possible.
		Entities competent to set tariff regimes
Art. 370	President of the Republic	Establishment of general policies for the administration and control of efficiency of public utility services.
		Exercise, through the Superintendence of domiciliary Public utility Services, control, inspection and surveillance of entities engaged in the service.

Chart 3.
Regulatory referents of measurement factors

MEASUREMENT FACTORS / REGULATORY REFERENT	
Opening	<p>Users of public utility services have the right to:</p> <ul style="list-style-type: none"> • Request and receive complete, precise and timely information on all activities and operations, direct and indirect that are performed for the supply of public utility services (art. 9, numeral 9.4 of Law 142 of 1994). • Receive, through the companies or the Superintendence, information on situations that endanger the financial feasibility of the company, failures found regarding internal management and, in general, appraisal of evaluation regarding management of the company. This information is to be delivered at least once a year, including the external Audit Report on management and Corporate Results⁵¹ (Articles 51 and 53 of Law 142 of 1994). • Receive periodic and precise information on the use they made of allocated budget contributions (Article 53 of Law 142 of 1994). <p>The Superintendence of Public sectors is obligated to:</p> <ul style="list-style-type: none"> • Publish the evaluations on corporate performance; widely disseminate them amongst users by means of mass communication media (Article 53 of Law a42 of 1994) and to provide in a timely manner all information available to those parties interested in performing their own independent evaluations (Numeral 11 of Article 79 of Law 142 of 1994). <p>Companies are mandated to::</p> <ul style="list-style-type: none"> • Make available to affiliates or users the invoices for determination of the value of the goods and services provided in development of the public utility service contracts (Article 147 of Law 142 of 1994). • Report as widely as possible in the territory where the service is provided, about the uniform conditions of the service (CCU) they provide. • Always have available copies of the uniform conditions contracts (Article 131 of Law 142 of 1994). • Adopt measures that reasonably facilitate verification of execution and compliance with the uniform conditions contracts- CCU⁵²

⁵¹ Evaluations of corporate performance must be widely disseminated to users by means of mass communications media (article 53 of Law 142 of 1994).

⁵² Contracts must include agreement on the manner, form, place and means through which companies will make the invoice available to all users.

<p>Dialogue with Customers</p>	<p>Companies engaged in domiciliary public utility services must create an Office for processing of Petitions, Complaints and recourses including receipt, care, process and answer of petitions, complaints and recourse, written or verbal submitted by users, affiliates or potential affiliates regarding the service provided by the company. Said offices will carry a complete file on all petitions and recourses and of the processing and answers provided (article 152 of law 142 of 1994).</p> <p>Each and all entities under the supervision of the Superintendence of public Services that engages in domiciliary public utility services matter of this Law, has the obligation to resolve all petitions, complaints and recourses submitted by affiliates or users in due development of the services contract of public utility service within a period of fifteen (15) working days immediately following date of presentation.</p> <p>After such tenor and unless there is evidence that the affiliate or user propitiated the delay or that practicing of probes is necessary, it will be understood that that the petition, complaint or recourse has been resolved in favor of the claimant and, in consequence, after 72 hours following termination of such term the company will Grant to the petitioner all effects of positive administrative silence. If the companies do not act in this manner the Superintendence may impose penalties to those companies that do not answer petitioners in a prompt and adequate manner (Article 158 of Law 142 of 1994 as subrogated by Article 123 of decree 150 of 1995).</p>
<p>Clear Rules</p>	<p>Adoption is recommended of corporate governance practices that direct the actions of companies engaged in public utility services towards areas such as: shareholders, shareholders assemblies, members of the boards of directors, general management, internal control, external audit and other instances. The above in addition to tools such as management and access to information, administration and resolution of controversies, management of conflicts of interest and relations with stakeholders (CONPES document No. 3384 of 2005).</p> <p>It is also proposed to voluntarily adopt a Code for Sound Practices of Corporate Governance by those entities that issue securities, which code shall incorporate precise measures regarding issues such as: (i) the general Shareholders Assembly; (ii) the Board of Directors; (iii) disclosure of financial and non-financial information and (iv) resolution of controversies (External memorandum 028 of 2007)..</p>

MEASUREMENT FACTORS / REGULATORY REFERENT

Control

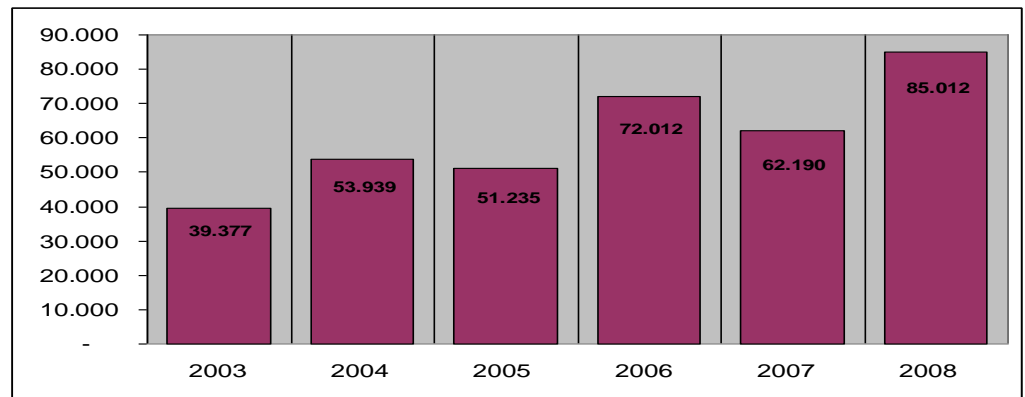
Control must ensure equilibrium through integration of instruments available in terms of surveillance and by means of the harmonization of participation by the various control instances. It is a duty of the regulatory commissions, on the basis of the level of development of the incumbent public utility service and resources available at each location, to promote and balance control mechanisms and the Superintendence of Public Services shall supervise the desired equilibrium (Article 45 of Law 142 of 1994).

Companies must incorporate and apply internal control mechanisms in compliance with criteria, evaluations, indicators and models defined by the regulatory Commissions (numeral 19 of Article 79 of Law 142 of 1994).

Companies must hire permanent external audit services with specialized private entities (article 51 of Law 142 of 1994 as amended by Article 6 of law 689 of 2001 / Resolution 20061300012295 issued by SSPD).

Graph 1

Number of Complaints submitted annually by users of public utility services (2003-2008).



A total of 363,765 complaints received during the period 2003 - 2008

Source: SSPD statistical Report on Complaint – General territorial Directorship.

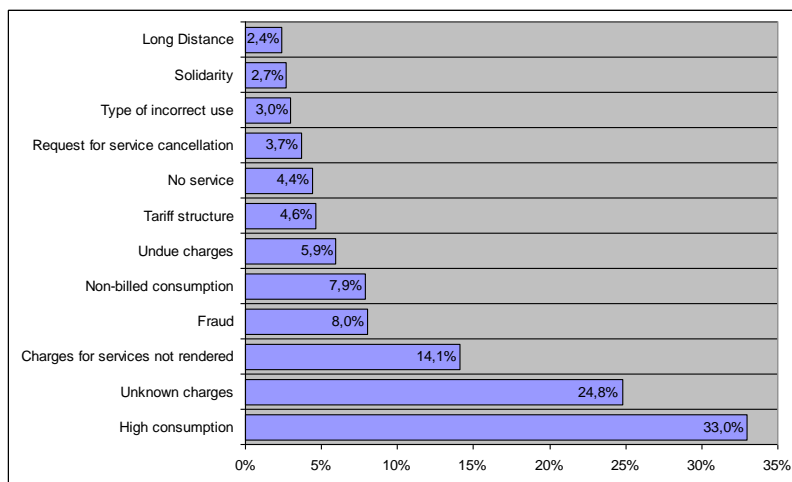
Chart 4
Level of User Satisfaction (NSU) in Public Utility Services.

SECTOR	2005 NSU	2006 NSU	2007 NSU
Water	65,8	65,8	65,03
Sewage	63,7	65,6	67,18
Energy	66,2	64,9	67,67
Sanitation	64,1	64,8	67,11
Natural Gas	77,5	76,8	78,76
Fixed Telephones	67,1	67,0	69,14
Cylinder gas - GLP	69,3	71,7	70,42

Source: NSU 2005-2006 and NSU 2007.

Presentation of results – SSPD website

Graph 2
Rationales for Complaint in Public Utility Services 2003-2008.



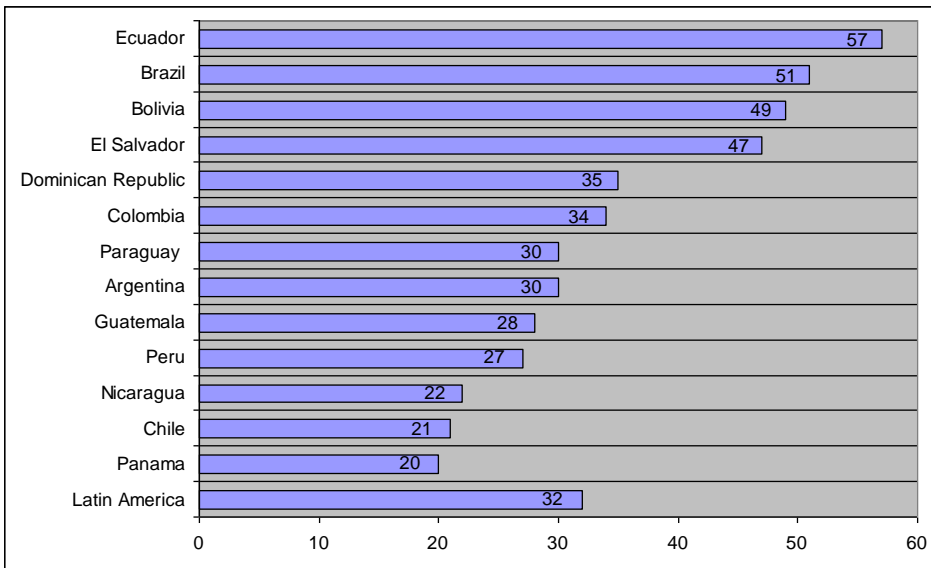
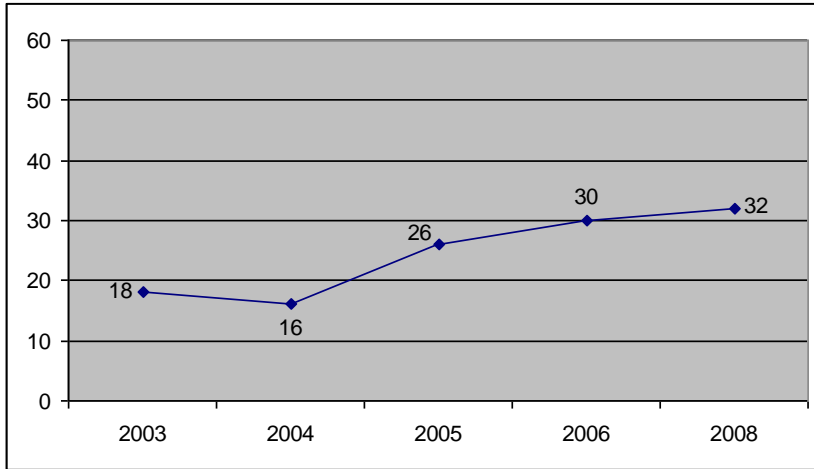
Source: SSPD statistical Report on Complaint – General territorial Directorship.

Chart 5
Consumer Satisfaction Index – Countrywide – By service 2006-2008

País	High Satisfaction			Medlum satisfaction			Low satisfaction		
	2006	2007	2008	2006	2007	2008	2006	2007	2008
Uruguay	48	41	44	30	30	27	22	29	29
Colombia	29	27	32	28	31	31	43	43	37
Ecuador	27	26	31	15	20	20	58	54	49
El Salvador	23	46	31	20	17	19	57	37	51
Chile	27	27	31	32	26	34	41	47	35
Costa Rica	25	22	30	29	31	21	46	47	49
Guatemala	30	23	29	24	19	25	46	58	46
Argentina	40	26	28	24	30	29	56	44	43
Brazil	26	21	28	28	29	26	45	51	46
Mexico	31	22	27	20	25	30	49	53	43
Dominican Republic	40	29	27	25	30	29	35	42	44
Honduras	24	26	26	23	27	27	54	48	48
Bolivia	22	22	23	25	24	25	53	54	52
Venezuela	25	26	22	18	20	22	57	54	56
Nicaragua	20	25	21	23	29	19	56	46	60
Peru	16	11	19	16	17	18	68	72	64
Panama	26	17	18	28	27	26	45	56	56
Paraguay	8	12	8	21	18	24	71	70	67
Latin America	27	25	26	24	25	25	49	50	48

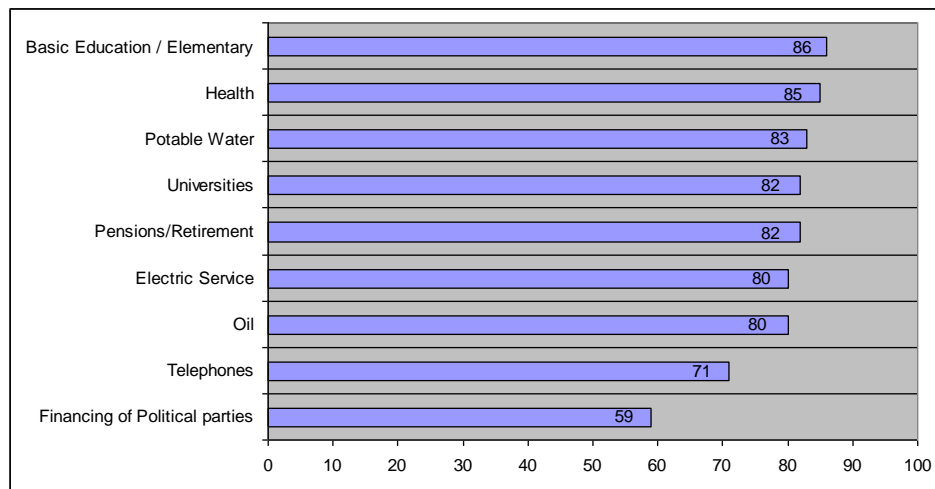
Source: Latinobarometro 2006-2008

Graph 3
Consumer Satisfaction Index on Privatized Public utility Services



Source: Latinobarometro 2003-2008

Graph 4
Public Services handled by the State



Source: Latinobarometro 2008