



Ofcom's approach to Impact Assessments

ntl Consultation Response



Introduction

Ofcom should always choose its actions according to the expected consequences of intervention. In this sense impact assessments should form the basis of all Ofcom's decisions. Put another way, the evidence which underpins 'evidence based regulation' must relate to the consequences of Ofcom's actions, not just to the actions *per se*.

ntl welcomes Ofcom's decision to discuss the method and format of impact assessments. The procedure set out in the consultation document provides a solid foundation for assessment. However, we believe that adoption of the following proposals would improve the process:

- First, the process itself should be made more prescriptive. A suitably defined process would act as an effective discipline on Ofcom's thinking, forcing consideration of issues that might otherwise be ignored. Publication of the analysis required by this fixed process would add to the transparency of impact assessments, and thereby enable more effective consultation with stakeholders. As a result, one would hope that the likelihood of mistakes in the ultimate decisions would be reduced.
- As part of a more prescriptive process, Ofcom should be required to publish the reasons why certain issues are considered in the analysis, *and also* the reasons why some other reasonable alternatives are excluded. Again, this acts as a good discipline to force explicit publication of otherwise implicit assumptions.
- Finally, in addition to the *ex ante* analysis discussed in the consultation document, we recommend that the impact of Ofcom's actions also be assessed continuously *ex post*. This is perhaps something that Ofcom will do as a matter of course to determine the success of the adopted policy.

However, we believe that the results of such analysis should also be used to inform future *ex ante* impact assessments.

The remainder of this response considers the application of the first two principles in a little more detail. First, in the justification of some implicit assumptions; and secondly, in the choice of stakeholders for whom a cost benefit assessment is conducted.

Justifying assumptions

One of the most important characteristics of a predefined impact assessment procedure is that it must create transparency. As noted in the consultation document, any assumptions required by the analysis should be readily identified to make it easier for stakeholders to understand Ofcom's thinking, and therefore to stimulate more effective feedback. Clearly, transparency is a vital part of any effective consultation process.

Proportionality necessarily requires assumptions. One must first establish the expected consequence of an action in very general terms before a decision can be made about the proportionate level of detail for the resulting investigation. Our comment is simply that Ofcom should be transparent about this initial stage of the assessment procedure. This requires Ofcom to justify their choice for the inclusion of particular issues, stakeholders, policy objectives in the analysis.

We also believe that Ofcom should provide reasons why other issues and stakeholders have been excluded from the analysis. Not only does this add considerably to the transparency of the exercise, but it also acts to discipline Ofcom's thinking. Being forced to publish an explicit rationale for the exclusion of a particular issue ensures that it has received due consideration.

Similar issues arise in specifying the relevant policy objective. Great care should be taken to explain causation: why is a particular policy relevant and others are not? Of course, answers may fall out of the subsequent analysis. However, there will often be a temptation to simply state that a policy is relevant because this appears to be obvious. This is really an assumption, and therefore Ofcom should ensure that a positive explanation is given for the chosen policy; and, as with proportionality, further arguments should be given to explain why other policies are not deemed to be relevant.

One further comment on policy objectives is that they implicitly suggest that a separate impact assessment has already taken place. An objective is chosen because its achievement is expected to result in a beneficial outcome. Some form of impact assessment must have taken place to reach this conclusion. We believe this has two implications for Ofcom's approach to impact assessments.

First, policy objectives may imply a trade-off of costs and benefits between certain stakeholders. The most obvious example would be a policy of redistribution; but, more complicated trade-offs can occur between different objectives, such as the promotion of competition and redistribution. As a minimum, a thorough and transparent impact assessment should establish the nature of these trade-offs. This does not imply a need to question the policy objective itself, but merely that Ofcom needs to understand the dynamics of the impact with respect to all stakeholders and all relevant policy objectives. A simple rule to help achieve this requirement would be to ensure that the assessment makes explicit reference to the stakeholders who are expected to lose out. So, although the net impact is positive, and the policy objective implies that some stakeholders will lose out, it is still important to make this fact clear rather than hiding behind the policy objective.

Secondly, the impact assessment should include a reference to the source of the impact assessment which was conducted to establish the underlying policy objective. In this way the impact assessment can remain thorough and fully transparent without duplicating the analysis of the original policy development.

Methods and presentation of analysis

We believe that a more prescriptive methodology would make the assessments more effective. This can be achieved without fettering Ofcom's discretion. All that is required is a more clearly defined framework upon which assessments are made. In this regard, we believe that actions should always be assessed against the expected impact on *a predefined set of stakeholders*. These are likely to be sector specific, since, for example, there is no need to assess the impact on broadcasters of a change in telephone numbering policy.

By way of example, we suggest the following categories for stakeholders in the telecommunications industry.

On the industry side:

- BT
- Other fixed access network providers (e.g. cable)
- Other infrastructure based fixed network providers
- Mobile operators
- Service providers (i.e. those without significant network infrastructure)
- Wireless operators
- Other electronic communications providers

On the demand side:

- Residential consumers
- Small business consumers
- Large corporate consumers

It will be necessary to consider sub-groups within these categories in many cases. For example, on the demand side, as noted in the consultation document, it may be appropriate to consider various special interest groups such as the elderly or low incomes residential consumers; or, perhaps draw a distinction between rural

and urban consumers. In this sense, the listing above represents the least granular categorisation which Ofcom should consider in every case.

The reason for adopting this framework is that it forces Ofcom to publish their thinking behind the impact assessment more explicitly. This is an excellent discipline for Ofcom, in addition to improving the transparency of the assessment. Being forced to think in this manner will help to draw out unintended consequences of the proposed actions. Furthermore, it should not add to the burden of analysis on the impact assessment. If Ofcom believes that a particular stakeholder is unaffected, then it should not be difficult to present a brief argument to this effect.

As one final comment, we also suggest that Ofcom should consider the costs and benefits of enacting their chosen option. The consultation document recognises that Ofcom will incur costs in carrying out a particular action. Although these costs may be relatively small, one should also consider the necessary costs imposed on industry associated with participation in the regulatory process.