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Dear Alistair

Ofcom's Approach to Impact Assessments

We welcome the opportunity to provide comments on Ofcom's consultation on the above subject.

SSE is primarily an energy company but has subsidiary businesses which are involved in the telecoms market: two as code operators who provide infrastructure and services to business customers; and one as a telephony service provider. It is also a large customer of communications services across the group. We are therefore aware that Ofcom's decisions can affect our business interests in a variety of ways and welcome this consultation, which highlights the importance of impact assessments as part of the policy-making process.

General Comments

We are very supportive of the approach that Ofcom puts forward and welcome the following points in particular:

- The bias against regulatory intervention;
- The intention always to actively consider the "do nothing"/remove regulation option and non-regulatory alternatives when considering policy on an issue;
- The fact that impact assessment are to be an integral part of policy making, right from the outset; and
- The emphasis on a "proportionate" approach i.e. more effort to be directed at impact assessments for more significant developments and on the more significant costs and benefits when carrying out an assessment.

We also welcome Ofcom's intention to carry out and publish impact assessments on the "great majority" of its policy decisions and not to restrict this to the "important" (in the statutory sense) proposals, which is a somewhat subjective criteria. We agree that there are some circumstances where an impact assessment would not be required, such as those set out by Ofcom in the document. It appears to us that the scope of these latter circumstances is relatively narrow and that, as suggested, the majority of

Ofcom's policy decisions would therefore be subject to the impact assessment process.

A further part of Ofcom's approach that we fully support is the intention to evaluate the impact of a chosen policy option after the event and to set out how this will be done as part of the impact assessment. In our view, it would also be useful for the proposed criteria for assessing the outcome and impact of a particular policy decision to be included in the actual consultation process so that stakeholders can also provide comments on this aspect of the policy. We consider that it is a very welcome development in regulatory policy in this country for regulatory authorities to carry out the following steps (as Ofcom has outlined) in evaluating the effects of their policy decisions:

1. agreeing how the actual impact of their decisions will be assessed (paragraph 6.2);
2. allowing a period of stability while earlier policy decisions take effect (paragraph 5.25) before considering further intervention; and
3. retrospectively analysing the actual impact of their earlier policy decisions so that lessons learned can be fed into future work (paragraphs 3.8 and 6.2).

We look forward to seeing the implementation of this aspect of Ofcom's proposed policy in due course.

We have two further comments on how the proposals could be built upon further.

Assessing Impact

Paragraphs 5.14 and 5.15 of the document consider how potential impacts on stakeholders will be assessed. In our view it would be helpful to the smaller business stakeholders whom Ofcom's decisions affect for more regular updates on Ofcom's thinking on policy developments to be formally provided on the website. Not all service providers, for example those providing relatively small numbers of customers with telephony services through CPS or WLR processes, have the resources to attend all the industry meetings where policy developments are discussed. Such service providers could lose out on the opportunity to apprise Ofcom of potential impacts on their businesses as policy is developed towards a specific outcome.

Choosing the Best Option

We understand that, given the complexity of the issues in relation to which Ofcom will sometimes have to determine policy, different considerations and duties will be relevant in different cases. We particularly agree that distributional effects may be important and that the overall "highest net benefit" approach may not be the most appropriate. We would expect Ofcom to be clear, in developing policy in a particular case, on what considerations are relevant to choosing the best option and to be transparent on how different considerations have been treated in finalising the impact assessments.

I hope these comments are helpful.

Yours sincerely

Rob McDonald
Director of Regulation