



The Mobile Broadband Group
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Response of the Mobile Broadband Group to Ofcom's consultation on 'Better Policy Making', Ofcom's approach to impact assessments.

The Mobile Broadband Group ("MBG", whose members are O2, Orange, T-Mobile, Vodafone and 3), welcomes the opportunity to respond to Ofcom's consultation on 'Better Policy Making'.

The members of the MBG have a considerable interest in ensuring that Ofcom pursues all possible avenues for optimising its regulatory policy and decision making processes. The MBG is therefore extremely supportive of the good intent that lies behind the document being considered in this consultation. We wholeheartedly agree with Ofcom's statement in paragraph 3.1 that 'an impact assessment is a key part of the policy making process'. We also commend Ofcom for setting out a clear strategy for improving impact assessments and establishing them as one of the cornerstones of policy making. There are certainly a few decisions made by regulators in recent years that would have benefited from a thorough impact assessment.

Ofcom has established itself quickly as the replacement for the five separate regulators and has set its stall out with a bias against intervention. Through this policy statement (and, of course, effective implementation of the policy), Ofcom can establish its credibility as a very different sort of regulator.

Ofcom, as an evidence based regulator, must resist the temptation to take the policy decision and then backfill the impact assessment with appropriate numbers. The MBG is therefore particularly keen to ensure that the quantification of costs and benefits properly inform the decision making process. These areas are examined in more detail below.

Quantification

The MBG believes that quantification is perhaps the single most important factor for Ofcom to consider when undertaking impact assessments. Within paragraph 2.1 of the consultation document, Ofcom states that an impact assessment should 'clearly identify, and where possible estimate, the costs and benefits of each option.' Whilst the MBG is supportive of this broad objective, we believe that it is insufficient to simply provide an 'estimate' of the possible costs of regulatory intervention.

The MBG believes that as a starting point in each impact assessment, Ofcom must seek to work out the level of consumer detriment that is occurring in the absence of regulatory intervention – setting out clear parameters detailing how this calculation has been made.

Given that no markets work perfectly, Ofcom should then seek to benchmark this level of consumer detriment against detriment arising in other sectors. This will ensure that any regulatory requirements which Ofcom seeks to mandate are appropriately targeted and focussed on areas where it can be objectively demonstrated that consumer detriment is disproportionately high. Such an approach can be contrasted for example with Oftel's decision to liberalise DQ. The cost benefit analysis showed that 'the case for liberalisation was highly dependent on assumptions about demand for new services which, although subject to some sensitivity analysis, were not tested rigorously.' Whilst the MBG does not

wish to labour on the decision to liberalise DQ, this is clearly a good example of how not to undertake impact assessments.

A non-exhaustive scan of some recent Ofcom impact assessments yielded the following:

- “The benefits derived from the changes to annual spectrum fees...are difficult to quantify.....It is believed that these changes will promote economic efficiency in the use of spectrum”¹
- “This option would reduce Ofcom’s operational costs”²
- “IASPs should benefit from this approach because BT will continue to provide access from payphones to their services”³

Again, none of the above make any attempt to quantify the costs and benefits that would flow from Ofcom’s decisions. Whilst the MBG does not expect Ofcom to be able to present an exact figure, it would be appropriate for Ofcom to detail the range that its analysis has shown and the assumptions that have been made to obtain this figure.

We acknowledge that quantification will often be very difficult and potentially contentious. For example, this may be particularly so when, as Ofcom states in paragraph 5.17, it may be necessary to ‘weight the interests of different stakeholders’. It may be that the impact assessment is as much a matter for discussion and dispute as the decision itself. However, if areas of Ofcom’s impact assessment are contentious, this should be picked up on during the consultation stage, thus providing Ofcom with a second opportunity to re-evaluate its cost benefit analysis in light of the comments received from stakeholders. The MBG believes that Ofcom must be transparent about its processes and key assumptions and be prepared to back them up or where appropriate, amend them in light of the representations it receives - otherwise there will be no substance behind its plans for ‘Better Policy Making’. Indeed, as Ofcom has stated at paragraph 2.4 of the consultation document, ‘impact assessments should enable stakeholders to see more clearly the costs and benefits associated with different policy options’ making it easier for stakeholders to ‘comment on or challenge Ofcom’s proposals more easily resulting in more effective consultations.’

The MBG strongly supports the comments made by the National Audit Office in its recent report on Directory Enquiries, in particular some of the points made in Appendix 6⁴ (Learning Points):

- *Collect and evaluate evidence from a wide range of sources*
- *Summarise evidence in a Regulatory Impact Assessment, which should include: a risk assessment; cost benefit analysis; small firm’s impact test; competition assessment; enforcement and sanction summary; and a full consultation*
- *Use the evidence to determine the appropriate regulatory action.*

While the NAO’s comments were particularly aimed at a methodology for market liberalisation, the principles are highly relevant for the assessment of all potential regulatory interventions. The NAO also states on page 13 that the cost benefit analysis should make use of sensitivity analysis and even multivariate analysis to ensure that any decision remains robust in the face of changes to some of the key variables.

¹ RIA – Wireless Telegraphy Act Regulations, p24 para. 4.13

² Reform of Ship Radio Licensing, p18

³ p14

⁴ [NAO Report “Directory Enquiries – From 192 to 118”. published March 2005](#)

If there is no attempt to quantify and analyse rigorously any relevant data, the MBG cannot see how Ofcom expects to fulfil one of its fundamental principles (as laid out in paragraph 1.1) that “the prospective benefits of regulation must exceed the costs”.

Review of impact assessments

In section 3.8 of the consultation document Ofcom states that “The impact of the chosen option should subsequently be evaluated. For example, we should consider whether the assumptions which we made proved to be correct and whether the policy objective was achieved”.

The MBG agrees that this will be very important but Ofcom gives no indication as to when a decision should be subsequently evaluated. We would suggest that it will not be possible to standardise a suitable review period, as each regulatory decision will have its own context.

As an alternative, the MBG suggests that final impact assessments (i.e post consultation) always indicate a time scale in which to carry out a subsequent evaluation. This would vary depending on how long it would take for the various assumptions to come to pass. As an outer limit, though, a maximum of three years would generally give enough time for most regulatory proposals to be tested against what actually occurs.

The evaluation should not just test the accuracy of the original assumptions but should also include an examination of the unforeseen and unintended consequences of a regulatory intervention.

Thorough, quantified impact assessments will also be invaluable reference documents when Ofcom comes to fulfil its obligations under section 6 of the Communications Act 2003 (to review regulatory burdens).

The option of not intervening

As has been stated by the Better Regulation Task Force, the MBG firmly believes that the option of not intervening should always be seriously considered by Ofcom during its impact assessments. We are pleased to note Ofcom’s stated intention always actively to consider this option in para 5.11.

Indeed, in order to meet its legal obligation to have regard to the principles of better regulation, Ofcom is obliged by the Communications Act to consider the option to do nothing.

Administrative point

It would be very useful if all final impact assessments could be easily accessible through Ofcom’s web site. It is a common failing within government that they are often hard to track down. It is often not straightforward to hunt through old consultation documents to find the impact assessment.

Implementation

As we have noted above, the MBG thoroughly commends Ofcom for taking this initiative. There some important upcoming consultations and we would like to see Ofcom take an early opportunity to demonstrate that impact assessments under this regime will dramatically improve.

Contact

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