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# Ofcom's approach to impact assessment

BT's response to Ofcom consultation  
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**BT Group**

## Summary

BT Group welcomes the opportunity to comment on Ofcom's review of its 2005 guidance on carrying out impact assessments.

We broadly agree with the approach Ofcom is proposing for: (i) carrying out impact assessments across the sectors it regulates; (ii) developing policy options and how they are evaluated pre- and post-implementation; and (iii) how impact assessments are generally presented to stakeholders. However, the success of Ofcom's approach will depend significantly on how it is applied and works in practice. We would urge Ofcom to prioritise the impact assessment in future projects, as it is important to ensure a more transparent policy making process that allows all involved to better understand the broader impact of interventions.

There are, however, three areas we think are important for Ofcom to consider including in its final guidance:

- *Development of the impact assessment.* We think there are benefits to establishing upfront, i.e. already at what Ofcom terms the 'scoping stage', the relevant counterfactual or "status quo" before considering what the potential impacts are from "doing nothing" versus concrete policy proposals. This ensures that policy introductions and/or changes are truly evaluated with reference to a bias against intervention.
- *Approach to assessing impacts.* As highlighted in the CMA's 2020 review<sup>1</sup>, regulation affects the future development of competition and innovation, both of which could bring about significant consumer benefits in the longer term. Ofcom should as a matter of course consider longer-term impacts on competition, investment and innovation when assessing its policy proposals<sup>2</sup>. In addition, where quantification of impacts is not feasible, we support the use of qualitative appraisals, but would recommend early engagement with stakeholders.
- *Presentation of impact assessments – cumulative effects and providing a summary of options.* We encourage Ofcom to consider the cumulative effects of existing regulation when assessing impacts and recommend a more affirmative approach to providing a summary of the reasoning behind Ofcom assessing specific policy options, prior to the detailed assessment of the preferred policy options.

## Development of the impact assessment: establishing the counterfactual with early engagement with stakeholders

Ofcom's proposed guidance<sup>3</sup> outlines four key elements of a flexible and iterative process in developing its thinking around the project in question, and the likely impacts of proposed options. These are:

- *Understanding more about the situation and scope of the project*
- *Exploring possibilities and formalising our thinking*
- *Assessing a proposal; and*
- *Presenting our reasoning and evidence<sup>4</sup>*

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<sup>1</sup> Competition & Markets Authority, "Regulation and Competition, A review of the evidence", Section 4. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/857024/Regulation\\_and\\_Competition\\_report\\_-\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf)

<sup>2</sup> This reflects Ofcom's own commitment, see [Conclusions paper: Ofcom's future approach to mobile markets and spectrum](#), para 5.29.

<sup>3</sup> Ofcom's impact assessment guidance, 17 March 2023. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/255560/Impact-Assessment-Guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/255560/Impact-Assessment-Guidance.pdf)

<sup>4</sup> Ofcom's impact assessment guidance, 17 March 2023, Section 4.4.

Ofcom describes each of these stages as being able to influence the other throughout a project, so that it can “*where appropriate, revise [its] impact assessment as [its] thinking progresses*”. We think this flexible and iterative approach is the right way forward, particularly as Ofcom’s remit now includes fast-moving and/or far-reaching markets which may be more complicated to assess and require input from stakeholders across different stages.

In the first stage of projects Ofcom seeks to understand the situation, why it would intervene, the legal and regulatory levers to do so, the stakeholders affected, and the information required. We think this initial stage also lends itself better to establishing the counterfactual, or the ‘status quo’, rather than at a later stage when Ofcom assesses its proposals<sup>5</sup>. Ofcom should also, at the initial phases, consider scaling the harm that has been identified, as important context to the policy being considered.

Earlier identification of the counterfactual would help establish a clearer baseline for potential policy responses to the problem(s) identified and would allow a more transparent approach to understanding what policy changes, if any, would allow Ofcom to better achieve its intended policy objectives. This would then also become the reference point for assessing the potential impacts ex post (including possible learnings regarding potential further adjustments).

Having Ofcom consider the counterfactual upfront, as part of early engagement with stakeholders, is important for gauging whether the impact of “doing nothing” would be relatively more material than introducing new policy proposals. This also goes to the heart of Ofcom’s objective of maintaining its bias against intervention and its duty to apply the most proportionate solution to a problem. Where intervention is needed, it also ensures that it is done in the least intrusive way that avoids adverse consequences where possible. We consider that, when formulating solutions to complex and interconnected problems, it is crucial to have input from different perspectives.

In Ofcom’s 2013 Consultation on BT’s Regulatory Financial Reporting<sup>6</sup>, Ofcom described the consultation document in its entirety as an impact assessment. This broad approach was unhelpful and insufficient. In particular, as BT responded at the time<sup>7</sup>, there was no explicit consideration of the impact of maintaining the existing framework on BT, the market, and eventually on consumers and citizens. Contrary to Ofcom’s 2005 guidelines of impact assessments, there was no analysis (quantitative or qualitative) of the incremental impact of the proposed changes, particularly when compared against the status quo, or whether, if at all, different policy options had been considered that culminated in Ofcom’s proposals as presented. In its final Statement<sup>8</sup>, Ofcom provided additional reasoning for its approach when responding to stakeholder comments. However, this was at a late stage of the process with limited opportunity for change. We note that Royal Mail also made similar remarks in its response<sup>9</sup> to Ofcom’s 2022 Consultation on its Regulatory Reporting Requirements<sup>10</sup>.

The CMA noted in its 2020 review that ex post evaluations are important “*particularly in fast-moving markets – there is a need to monitor and review to ensure they remain effective and do not distort competition*” and allows “*policymakers and/or regulators to understand whether any negative impacts*

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<sup>5</sup> Ofcom’s impact assessment guidance, 17 March 2023, Section 4.20, 4.23-4.26.

<sup>6</sup> Ofcom, Consultation on “Regulatory Financial Reporting, A review”, 20 December 2013. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/41067/btrfs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/41067/btrfs.pdf)

<sup>7</sup> BT response “Regulatory Financial Reporting: A review”, 14 February 2014. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/38073/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/38073/bt.pdf)

<sup>8</sup> Ofcom, “Regulatory Financial Reporting. Final Statement”, 20 May 2014. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/78460/financial-reporting-statement-may14.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78460/financial-reporting-statement-may14.pdf)

<sup>9</sup> Royal Mail, “Response to Ofcom’s Consultation on changes to Royal Mail’s reporting requirements”, 1 November 2022. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/248927/Royal-Mail.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/248927/Royal-Mail.pdf)

<sup>10</sup> Ofcom consultation on “Changes to Royal Mail’s regulatory reporting requirements. Part of our 2022 review of postal regulation”. 20 September 2022. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/244130/consultation-royal-mail-regulatory-reporting-requirements.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/244130/consultation-royal-mail-regulatory-reporting-requirements.pdf)

on competition are outweighed by other benefits of the regulation, or to consider whether the same objectives could be achieved through another means, and with less impact on competition in a specific market”<sup>11</sup>. Again, setting out the counterfactual upfront and outlining the expected impact is an important part of the framework for carrying out such analysis.

On numerous occasions Ofcom has issued Calls for Input at the start of its consultation process. We think this has been an effective way to engage stakeholders early. Getting input at this stage on the counterfactual would fit well in the four-element framework that Ofcom is proposing. Inputs from market participants, including consumers, are critical in understanding the project in question. It can help generate ideas around the impacts of “doing nothing” and alternative options, the changes required and the benefits they can bring, potential unintended consequence, data sources and quantitative methods available for evaluation. All of these would allow for a more transparent and robust consultation.

## Approach to assessing impacts: inclusion of competition and innovation impacts and qualitative considerations

We think consideration of the longer-term impact on competition and innovation should be one of the ‘key principles’ of Ofcom’s impact assessment, as we have previously set out<sup>12</sup>. This would align Ofcom with the CMA’s recommendation following its review of competition and regulation in the UK. That is, impact assessments should include a specific ‘Competition and Innovation’ section because “*more recently, there has been a greater recognition that as well as having an impact on competition between existing firms in the market... regulation can have an important impact on dynamic competition and innovation... [which] can have significant long-term consequences*”<sup>13</sup>. As part of this assessment, Ofcom should also consider the impact of its proposals on investment, which is a key driver of longer-term innovation and competition.

Including longer term impacts would reflect Ofcom’s own diagnosis elsewhere that it would “*be more explicit about what we expect to happen as a result of any intervention (and by when), including the impact we expect to see on the functioning of the market and, as part of this, on investment*”<sup>14</sup>. As previously noted by BT, this is very important as “[i]n an increasingly challenging investment environment, care must be taken when considering interventions and how they drive operator costs”<sup>15</sup> and negatively impact investment.

Ofcom’s Net Neutrality consultation, for example, assumed that since there had been innovation and investment in telecoms while net neutrality rules had been in place, that these rules were a positive causal factor. However, this approach did not explicitly consider the fact that innovation and investment may have been higher absent net neutrality rules, such as restrictions on telecoms operators charging content providers in competitive telecoms markets.

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<sup>11</sup> Competition & Markets Authority, “Regulation and Competition, A review of the evidence”. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/857024/Regulation\\_and\\_Competition\\_report\\_-\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf)

<sup>12</sup> BT, “Emerging technologies and their potential impacts on the communications industry. BT Response. 5 January 2021. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0008/211031/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0008/211031/bt.pdf). Also see Ofcom’s impact assessment guidance, 17 March 2023, Section 4.27.

<sup>13</sup> Competition & Markets Authority, “Regulation and Competition, A review of the evidence”. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/857024/Regulation\\_and\\_Competition\\_report\\_-\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf)

<sup>14</sup> Ofcom, “Ofcom’s future approach to mobile markets and spectrum. Conclusions paper”, 6 December 2022. [Conclusions paper: Ofcom's future approach to mobile markets and spectrum](#)

<sup>15</sup> BT, “Ofcom’s future approach to mobile markets. BT response to Ofcom’s discussion paper”, 26 April 2022, Page 28. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/237504/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/237504/bt.pdf)

We recognise that trying to quantify certain impacts, such as those arising from competition and innovation, may be difficult and we support Ofcom’s proposal to give “*greater emphasis in [its] guidance on qualitative assessment being as important as quantitative assessments*” while giving “*appropriate weight to all impacts.... Even the ones where it would be inappropriate to quantify the impact*”<sup>16</sup>. This compares against Ofcom’s 2005 guidance which only made one reference to a qualitative consideration when assessing impacts. However, this also needs to be approached with caution. Where Ofcom uses its discretion and judgement to strike a balance between different qualitative impacts, it is even more important for stakeholders to be given the opportunity to provide views around these impacts. It is also important that Ofcom avoids broad statements with no evidential basis or underlying thinking, and that Ofcom backs up qualitative assessments with evidence<sup>17</sup>.

In cases where Ofcom tries to quantify impacts, for example using “*behavioural insights techniques or other tools to consider how consumer or stakeholder behaviour may affect the impact of a policy*”<sup>18</sup>, we think there must be sufficient scope for stakeholder engagement (e.g. through Call for Inputs). Similarly, where Ofcom uses survey evidence, given its potential limitations, we also recommend Ofcom ask for input from those closest to those surveyed so the data is interpreted and extrapolated for its intended purpose.

## **Presentation of impact assessments: ensuring proportionality by taking into account cumulative effects of regulation**

Ofcom notes that when carrying out its analysis it will take into account certain “*key principles*” including “*focus on the most significant costs and benefits*” and “*quantify impacts where it is possible and proportionate to do so, while recognising that non-financial and unquantifiable impacts may hold great weight in policy decisions*”<sup>19</sup>. When Ofcom is seeking to implement new policy, its estimated benefits across a wide market may outweigh the estimated costs to businesses for implementing the policy. However, a recent report by the Regulatory Policy Committee (RPC) estimated that “*regulatory measures introduced by Government over the last year increased net direct costs to business by £9.9 billion*”<sup>20</sup>.

When assessing a proposal, it is important that Ofcom recognises these costs can be tangible and significant to individual businesses, who sometimes have limited time to implement changes while carrying on with business-as-usual activities. For example, the significant time needed to implement proposed changes in relation to Ofcom’s switching reforms has been underestimated by Ofcom, given the unprecedented nature of this change and the need for cross-industry co-ordination.

In addition, when assessing proposals, as previously noted by BT, “*Ofcom should commit to reviewing the cumulative burden of regulation regularly and consider the impact this has on the industry’s investment capacity in aggregate, rather than the incremental benefit and cost of each regulatory proposal on its*

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<sup>16</sup> Ofcom’s impact assessment guidance, 17 March 2023.

<sup>17</sup> See for example Ofcom’s recent broadband terminology consultation at section 3.51, where a statement on costs to industry was made with no supporting evidence.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0037/254989/broadband-info-condoc.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0037/254989/broadband-info-condoc.pdf)

<sup>18</sup> Ofcom impact assessment guidance, 17 March 2023, Section 4.28.

<sup>19</sup> Ofcom’s impact assessment guidance, 17 March 2023, Section 4.27.

<sup>20</sup> Regulatory Policy Committee, 24 February 2023. <https://rpc.blog.gov.uk/2023/02/24/government-increases-the-cost-of-regulation-to-business-by-9-9bn/>

own”<sup>21</sup>. Ofcom must try and avoid incoherence of overall policies because each incremental change is considered in isolation at the time it is proposed<sup>22</sup>.

Related to the above, Ofcom must also ensure that it accounts for costs and benefits appropriately. Ofcom’s guidance proposes taking “*into account costs and benefits that would be reasonably incurred because of a policy being implemented (as opposed to costs and benefits that would be incurred anyway)*”<sup>23</sup>. As part of this assessment, Ofcom should also consider “*a broader view of the cumulative impact of regulation... to reduce unnecessary regulatory burdens on business*”<sup>24</sup>. This will also avoid inconsistent comparisons of costs against benefits, i.e. it must take care not to claim total consumer benefits (incurred through cumulative policies and past proposals) versus incremental, marginal costs of implementing a specific proposal.

Another aspect of proportionality is around data requests. For example, Ofcom proposes “*using large data sets to make predictions*” in ex post evaluations of policies it has implemented<sup>25</sup>. New data techniques and data availability have opened the doors for greater insight into consumer behaviour. However, as set out in the RPC review<sup>26</sup> of its experience of independently scrutinising the Government’s regulatory policies, “*more data and use of big data analytics does not necessarily mean better analysis*”. We think that Ofcom’s 2005 impact assessment guidance on data requests for analysis and monitoring is even more relevant now, i.e. “*ensure that the depth of the analysis is proportionate to the potential impact of the options under consideration*”<sup>27</sup>. Laying the grounds for early input from stakeholders can provide useful insight into the scope and feasibility of proposed evaluations.

## Presentation of impact assessments: summary of evaluation of options

Finally, Ofcom is also proposing a more flexible approach to presenting its impact assessments to stakeholders. In recent years Ofcom has stated that the entirety of certain of its consultations were an impact assessment. Often the evaluation of different options, compared to the status quo, will be a different analysis to an evaluation of a preferred suite of policy proposals. The latter is what is typically presented in Ofcom’s consultations (for example, see our comments above in relation to Ofcom’s consultation on BT and Royal Mail’s Financial Reporting requirements).

We agree that sometimes there may be circumstances when there is only one feasible option, and in that case a detailed evaluation of its impact might be sufficient. In such cases, this should be made explicit. However, in most cases we’d expect degrees of intervention available, particularly in some complex cases such as market reviews or the introduction of new policies that may have different cost and benefit impacts across each variation/combination.

To achieve Ofcom’s objective of ensuring that its “*decision-making process is transparent*”<sup>28</sup> we would propose a more affirmative approach to presenting viable policy options in its documents. For example,

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<sup>21</sup> BT response to Ofcom’s future approach to mobile markets. Page 28.

<sup>22</sup> BT called out the cumulative impact of sector regulation and policy on investment in the mobile market in its response to Ofcom’s discussion paper on its strategic approach to mobile markets, Section 4.5.

<sup>23</sup> Ofcom’s impact assessment guidance, 17 March 2023, Section 4.7(g).

<sup>24</sup> Regulatory Policy Committee, “Response to the consultation on the Framework for Better Regulation”, 5 October 2021. <https://rpc.blog.gov.uk/2021/10/05/rpc-response-to-the-consultation-on-the-framework-for-better-regulation/>

<sup>25</sup> Ofcom impact assessment guidance, Consultation on Ofcom’s approach to impact assessment, 17 March 2023. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/255561/consultation-impact-assessment-guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/255561/consultation-impact-assessment-guidance.pdf)

<sup>26</sup> Regulatory Policy Committee, “Impact Assessments: Room for Improvement?”, August 2020.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/906260/RPC\\_Impact\\_Assessments\\_Room\\_for\\_Improvement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906260/RPC_Impact_Assessments_Room_for_Improvement.pdf)

<sup>27</sup> Ofcom impact assessment guidance, 17 March 2023.

<sup>28</sup> Ofcom impact assessment guidance, 17 March 2023, Section 2.7.

setting out the reasoning behind what Ofcom had considered to be the status quo versus other available but inferior options to the one proposed, especially if they had been put forward by stakeholders. Again, an early call for evidence is a good way of achieving this and allows stakeholders to be brought into the iterative process of policy development as put forward in this consultation. Clarity around the proposals is important both for stakeholder input and engagement as well as for creating a basis for ex post evaluation of the policy interventions.



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