



BT Group plc
1 Braham Street,
London E1 8EE,
United Kingdom

bt.com

30 September 2024

Consultation: Ofcom's general policy on information gathering

Dear Ofcom,

Thank you for the opportunity to provide input to the consultation on Ofcom's general policy on information gathering. We set out our response to the two consultation questions below. This consultation comes at an opportune moment, given the Government's focus on growth. We consider there to be significant opportunity for Ofcom to support the growth agenda and by consulting more widely on its approach to and implementation of the Growth Duty.¹

Part 2 of the Growth Duty Statutory Guidance highlights that the approach to regulating ought to minimise burdens, because in doing so this facilitates a good regulatory environment creating conditions for business confidence and investment, sensible risk-taking and innovation.² Running quick processes with minimal inputs and compliance burdens for a business, frees up the business to better utilise time and money spent to more productive uses, resulting in lower operational costs, driving profit, investment, innovation and expansion.³ The Government's Growth Duty Performance framework highlights many areas of opportunity relevant to the telecoms sector. As examples:

- *Regulatory burdens* – there are multiple facets that drive increased burden on industry, one of which being the volume and frequency statutory information requests (SIRs). The performance framework specifically asks for steps to be taken to reduce the number of data requests as well as highlighting the importance of proportionality. Ofcom state that, when issuing an SIR, a person delegated from the board will conduct an impact assessment on proportionality with consideration given to the cost to the provider, yet there is no external visibility or communication of this. It would be beneficial to publish more detail on how these proportionality assessments are conducted, with the possibility of publishing metrics on the number of proposed SIRs versus the number of issued SIRs to give visibility to whether any requests are indeed declined on the basis of proportionality.
- More widely on burden, the Growth Duty states that removing unnecessary impediments to innovation and regulatory barriers to investments can drive faster economic growth.⁴ The performance framework expressly asks how many regulations have been removed or amended. Despite changes in the wider value chain, very little regulation has been removed in the telecoms space. We also urge that the impact of regulation be considered more holistically as opposed to in policy siloes, as for example, if costs are increased either

¹ Section 108 of the Deregulation Act 2015 establishes that those exercising specified regulatory functions must have regard to the desirability of promoting economic growth. In performing this duty, regulators must consider the importance of the promotion of economic growth, whilst ensuring any action taken is necessary and proportionate.

² Department for Business & Trade, *Growth Duty: Statutory Guidance – Refresh* (Department for Business & Trade, 21 May 2024), p. 10

³ *Ibid*, p. 28

⁴ *Ibid*, pp. 13-16

through market interventions or via compliance, investment can be impacted in other areas. At present, it is not clear that this global perspective is considered by Ofcom in implementation of new regulation.

- *Modernisation* – one of the key drivers of economic growth within the Growth Duty is “Efficiency and Productivity.” One example of where there can be greater regulatory support to encourage efficiency and productivity is via the switch-off of the legacy networks.
- *Guidance* – the Growth Duty Statutory Guidance states that one key behaviour underpinning growth is pro-innovation, with the guidance stating that key indicators of regulators acting in a pro-innovation manner include “publishing clear, robust compliance guidance in emerging areas.”⁵ This is further reinforced in the Growth Duty Statutory Guidance under “Driver 5: Efficiency and Productivity” in which it sets out that indicators a regulator sets regulatory policy supporting efficiency and productivity may include, amongst other things, “*compliance support through simple, clear and timely guidance and advice can provide businesses with clarity and certainty, minimising the cost to them of complying with regulatory requirements.*”⁶ In relation to the Telecoms Security Act, in the absence of Ofcom guidance, industry produced their own. However, Ofcom was clear that it should not be inferred from Ofcom’s observer membership of NICC that this document was in any way endorsed by or represents the view of Ofcom. Guidance produced and endorsed by Ofcom would provide greater certainty for industry and ultimately aid compliance. This could be further enhanced by ensuring that any consultation documents were published quickly and efficiently, allowing for more efficient and productive inputs to consultations and implementation of consultation outcomes.

For these reasons we believe that whilst consulting on Ofcom’s information gathering policy has its benefits, in order to achieve wider efficiency, transparency and investment whilst simultaneously reducing the burden on industry it would be useful to consult more widely on your approach to the Growth Duty, as a regulatory function, and to consider the information gathering policy in that wider perspective.

1. Do you have any comments on our proposed policy and approach to our information gathering powers under the legislation within the scope of the policy?

Paragraph 3.16 of the policy states that issuing draft notices can be disproportionate, causing delays and unnecessarily lengthening the information gathering process. Additionally, paragraph A1.32 indicates that a final notice may be issued without a draft when the same information has been requested formally or informally before, or if the information is considered basic. The provision of a draft notice is critical in almost all cases as, for example, there are situations in which there are changes of data providers or updated systems which could complicate obtaining the same information. Furthermore, with competing statutory information requests, draft notices provide the much-needed time to engage with key stakeholders early to assess their capacity and plan adequately for providing the required responses.

We acknowledge the multiple priorities within Ofcom’s various project teams, making Ofcom internal coordination challenging. However, the Information Registry’s purpose is to “*ensure efficiency and minimise the regulatory burden on stakeholders, setting*

⁵ Ibid, p. 24

⁶ Ibid, p. 19

reasonable deadlines for responses." When teams bypass the Information Registry, for example with the issuance of the "European Works: Provision of Specified Information" request, it undermines efficiency and increases the burden on stakeholders. Monthly meetings with the Information Registry are beneficial, providing advance notice of upcoming SIRs for better planning and resource allocation. When we receive unexpected information requests, this can cause planning and resource challenges, particularly when internal data providers are managing multiple requests simultaneously. We propose that in scenarios such as these, any information requests not issued via the information registry to be returned via the information registry, so as to allow all information requests to be managed centrally in line with the agreed governance the information registry are responsible for.

We also believe there could be greater amalgamation in requests within the same policy area. For example, for the Telecoms Access Review (TAR) 2026 we have already received seven information requests with considerable overlap between topic areas. It could therefore provide greater efficiency whilst minimising the regulatory burden to have amalgamation of request to facilitate having a single team internally to manage all required information and stakeholders.

This viewpoint is also reflected in the governmental position in the Growth Duty Performance Framework that reporting is proportionate and the view that regulators should not place undue burdens upon businesses via duplicative information requests.⁷

Under the proposals as to how Ofcom will use their powers, one consideration to be given is "*the feasibility and cost on the stakeholder involved in collating the information including for example, the size or capacity of that stakeholder and the resources required to provide the information.*" It would be beneficial if we could understand how this is assessed within Ofcom without having a detailed understanding of the stakeholder's organisation, resources and systems. We have concerns regarding how proportionality is assessed, as for example, the statutory information notice issued relating to the Telecoms Security Act required a significant amount of resource internally to manage the request, incurring a significant financial cost to the business. Whilst clearly the Telecoms Security Act is an important part of Ofcom's work it would nonetheless be helpful if there was greater clarity, or an objective set of criteria used when assessing the proportionality of requests. There is currently no published or well communicated process for how Ofcom assesses proportionality and therefore stakeholders are unable to meaningfully inform decisions. We also believe there should be a transparent governance path for industry to challenge proportionality of a request.

Finally, in respect to routine SIRs, we believe that there should be a commitment to provide regular reviews of active questions with a view to removing questions that are no longer relevant. We also believe that there should be commitment from Ofcom that questions within routine SIRs are not changed within the review period, so that we may look at introducing a more robust mechanism by which to answer these requests, for example via automation. Doing so would further enhance efficiency and proportionality

2. Do you have any comments on our assessment of the likely impact of our proposed update to our policy?

⁷ Department for Business & Trade, *The Growth Duty Performance Framework* (Department for Business & Trade, 16 May 2024)

Sections 3.20 and 3.21 state that Ofcom believes the proposed changes will *“improve transparency, efficiency and robustness.”*, *“not create significant new burdens”* and that *“any impact on stakeholders is likely to be low and positive.”*

However, for the reasons outlined above, we do not believe that the proposed changes will improve transparency or efficiency, nor that any impact on stakeholders is likely to be positive. The restatement is at best neutral. If the role of the Information Registry is to manage and reduce the burden on stakeholders by streamlining activities and ensuring better oversight and coordination, all information requests should be processed through the Information Registry. This approach would facilitate open communication and better resource planning.

In addition to this, Ofcom note the concerns of the burden with statutory information requests, however, as noted we believe more can be done to positively reduce that burden.

BT Group Regulatory Affairs