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Ofcom: the effectiveness of converged regulation

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Summary

This report provides some indications of the performance of Ofcom compared to other national communications regulators

This report sets out the findings of research commissioned by the National Audit Office (NAO) and undertaken by RAND Europe between February and July 2010.

The main focus of this research was to provide an assessment of the success with which Ofcom has delivered regulatory outcomes by comparing them with other national communications regulators in other countries. The purpose of the research was to put the performance of Ofcom in an international context and to see whether Ofcom can draw any lessons from the approaches taken and operational capacities developed by other regulators.

The findings of the report are based on a series of specific case studies reflecting particular policy areas. These were jointly selected by the NAO, the study team and Ofcom; as a result they do not represent either a comprehensive or a random sample of the areas in which Ofcom is active. The case studies are instead indicative of Ofcom's performance, and consist of the following:

- Next generation access networks (NGAN)

- Access in the context of local loop unbundling (LLU)

- Access to emergency services over voice-over internet protocol (VOIP)

- Spectrum planning for the London 2012 Olympics

- Management of mobile mis-selling,

National regulators play varied roles reflecting different remits and responsibilities

Ofcom was formed as a single converged regulator, overseeing the broader communications market, including access, distribution, content and price and co-ordination of all the relevant regulatory activity.

Many jurisdictions have adopted various different converged forms of regulation that adapt to the challenges posed by convergence through different mechanisms (varying by issue and country). These typically involve merging telecommunications and content regulation (e.g. in Australia, Canada, Finland, Iceland, Italy, Japan, Luxemburg, the United Kingdom

and the United States). Increasingly, there is a trend to include other regulatory areas as well, especially as regulatory concerns arising in one sector spill over into others. There is a variety of models, including the following:

- Converged regulators – regulatory entities that oversee a range of services which include telecommunications and information and communications technologies, including broadcasting.

- Multi-sector regulatory authorities – these regulate various industry sectors that are considered public utilities, such as telecommunications, water, electricity and transportation.

- Use of general regulatory powers (e.g. competition) to provide the primary regulatory oversight over the telecommunications and related sectors.

The strategies chosen by Ofcom often reflect its distinct remit and the particularities of the UK market and European regulatory environments

Relatively few regulators cover the same range of sectors and issues as Ofcom; therefore direct comparisons must be placed in context. In particular, Ofcom evolved as a converged regulator simultaneously with the convergence of the sector(s) involved, the successive refinement and reform of the overall EU Telecommunications Regulatory Framework and the development of alternative forms of regulatory convergence in European Member States.

Ofcom's performance and influence on UK/EU markets can thus be seen in the structure as well as the conduct and performance of UK telecommunications and in the broader European regulatory and market environment. This external influence addresses Ofcom's statutory duties by altering the Europe-wide sector context within which are both UK-based firms and firms based elsewhere in Europe but operating or offering services in the UK.

Case study findings

Next generation access networks
NGAN is the network through which we access communication technology; NGANs refer broadly to the development of new network technologies, and to access infrastructures and even services – but narrowly to a specific network architecture (and related equipment) that uses a common internet protocol (IP) core network for all (past, present and future) access networks.

In terms of strategic planning for NGANs, Sweden and France are pursuing explicit planned strategies, while the UK and The Netherlands are allowing the market to lead the direction. This may produce at least short-term variation in the mix of technologies (and capabilities) used. Ofcom is consulting broadly on the issues involved. There is no geographical coverage plan in place in the UK. While the UK does not have a specific planned direction for NGANs, at present it is not unduly disadvantaged by this. However, there are fears of a digital divide growing between rural and urban communities.

Local loop unbundling

LLU refers to a variety of methods intended to facilitate competition. It may take various forms, ranging from full unbundling to IP-based (bitstream) access. There are various measures of the extent to which LLU has been achieved (in terms of, e.g., number and percentage of lines 'unbundled' in the full, shared-line or bitstream senses, proportions of traffic) and relatively few data showing the subsequent impact in terms of competition, price reductions and/or quality improvements.

Germany and France were ahead in the adoption of LLU, having introduced LLU prior to EU enforcement. Despite this, more providers have taken advantage of LLU in the UK than in other countries. In terms of opening access via LLU, the UK lagged well behind its European Commission (EC) competitors in LLU (if bitstream is excluded), though it was well in the lead throughout this period if bitstream is included. Overall, Ofcom had the advantage of observing the decisions taken by other national regulatory authorities (NRAs). The infrastructural investment implications of this have yet to be determined.

VOIP access to emergency services

VOIP refers in general to the carriage of voice telephony over IP networks. Because our focus here is on emergency service access, we primarily consider VOIP providers offering connections to the public switched telephone network (PSTN). VOIP emergency service access forms a part of the more general issue of regulating VOIP services.

The USA has led the way in imposing emergency call access and location information requirements, despite treating VOIP as an information service. Many of the other countries considered have treated VOIP as a telephone service, but have adopted a light-touch regulatory regime. France was one of the pioneers in developing VOIP policy, but this did not translate into leadership in relation to emergency access. Ofcom stood out not only in explicitly considering emergency service access, but also in developing an interim forbearance policy that encouraged entrants to provide emergency service access and only later added location information requirements.

The current EC regulatory framework follows the UK lead in the sense that it emphasises a light regulatory touch, taking into account the emerging nature of the technology, whilst preserving consumer interests – especially in relation to emergency service access. Ofcom has therefore played a leadership role here to some extent.

Spectrum planning for Olympics

In each of the four Olympic Games included in this analysis (London 2012, Vancouver 2010, Beijing 2008 and Athens 2004) spectrum provision plans were put in place ahead of time.

We can see that as the Olympics progress, the planning, organisation and management of spectrum-related issues is becoming more elaborate and more comprehensive. Increasingly, collaboration is needed across groups of stakeholders and the NRAs are becoming more critical in the role that they play.

Ofcom is dealing with more spectrum demand and more complexity for London 2012 than has been required for any previous Olympic Games. The planning and extent of the testing show that Ofcom has learned where possible from previous events and is well positioned for the challenges ahead.

Mobile mis-selling

For the purposes of this study, mobile mis-selling is defined (based on a UK definition) as having three main elements. These are, first, general mis-selling in which, for example, a customer is given false information; secondly, 'slamming', which relates to a substantial contract or provider change without informed consent; and, thirdly, cashback offers, in which the customer is promised refunds after the purchase that are impossible to get.

Looking at the extent of these mis-selling problems, in the UK we can see that there has been a dramatic reduction in the number of instances between 2007 and 2009.

From the perspective of the consumer, in the UK mobile mis-selling is a reducing problem and therefore the public is less exposed to these specific issues. In Australia problems remain for consumers although there is awareness of them on the part of the Telecommunications Industry Ombudsman (TIO) and the regulators. In Israel the consumer protection approach seems to be working by keeping track of complaints and suggesting specific changes to the processes, as needed.

Cross-cutting findings

The case studies broadly indicate that Ofcom performs well compared to other national regulators, though a few areas of concern remain.

Despite these limitations, the case studies yielded the following cross-cutting findings:

- Ofcom is one of the thought leaders internationally in mobile mis-selling and emergency access to VOIP areas;

- Ofcom stands out in its ability to engage with stakeholders and draw lessons from previous Olympics as it plans spectrum allocation for London 2012;

- Ofcom's decisions in LLU and NGAN to follow the market initially rather than have a planned strategy to drive these in a particular direction have up to this point not disadvantaged the UK, though the implications for long-term investment in infrastructure and provision of services to remote areas remain unclear.