

# Better Policy Making

## Ofcom's approach to Impact Assessments<sup>1</sup>

@ Intellect  
20 Red Lion Street  
London WC1R 4QN

Tel: 020 7395 6731  
Fax: 020 7404 4119

The BSG welcomes Ofcom's opening statement, in paragraph 1.1 of the document, that its decisions *"can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation"*.

Since the early stages of the Communications Bill, the BSG has called for Ofcom to be required to undertake impact assessments in respect of the majority of its policy and regulatory proposals. This is because it believes that the growing complexity of the converged services value chain means that there is a real need to ensure that a decision in one part of the chain does not lead to significant unintended consequences on other parts of the chain.

Therefore, the BSG agrees that Ofcom should undertake assessments in most cases, at least in the earlier stages of its operation and welcomes Ofcom's commitment, in paragraph 1.5, that it expects to carry out Impact Assessments *"in relation to the great majority of our policy decisions"* as well as the decision, referred to in paragraph 1.9, to apply assessments potentially to the broad scope of policy proposals, not just regulatory proposals.

In summary, the BSG believes that the approach outlined in the consultation document is broadly sound, particularly as Ofcom wants to ensure that different approaches are not overlooked inadvertently. It welcomes the fact that Ofcom intends, at the outset, to draw up a list of the different groups of stakeholders likely to be affected by any of the options identified and to list the likely benefits and costs of each option.

The BSG agrees with the five stages of the production of an impact assessment although it is particularly interested in understanding how Ofcom will assess the risks relating to different options, how the principle of proportionality will be applied and how Ofcom will judge the extent of any policy's likely impact, particularly the balance between the imposition of *"substantial costs on stakeholders"* and the benefits to the widest range of stakeholders as outlined in paragraph 1.6.

Effective assessment of proportionality can only evolve with time and it is very important to ensure that stakeholders engage – to avoid Ofcom having to produce its own estimates that then become the subject of challenge later in the process. Ofcom should not overlook the potential impacts on some groups purely because the impacted parties have not engaged effectively.

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<sup>1</sup> Please note: this response has been produced by the BSG Secretariat on behalf of a wide range of stakeholders in response to the points raised in the Consultation Document. It does not represent the views of any particular stakeholder or groups of stakeholders but aims to identify some key areas for consideration in the development of Ofcom's approach.

The BSG recognises the information needed to quantify costs and benefits will often be in the possession of stakeholders, which makes mutual engagement very important so that options are tested thoroughly before any option is chosen. The BSG would be willing to assist in this process as far as possible, e.g. to provide a platform for Ofcom to stress the importance of engagement or to bring together groups of stakeholders potentially impacted by different policy proposals.

We note the intent to publish guidelines in June, to become effective from 1 July 2005 and, in line with paragraph 7 above, we would encourage dialogue with industry and other key stakeholders in the interim to ensure that the final guidelines are as comprehensive as possible. The reasons for this proposition are illustrated by some of the points that the BSG made in its response to Phase 2 of the Strategic Review of Telecommunications. The following are extracts from that submission that the BSG believes worth reiterating:

- The BSG advised that different stakeholders have interpreted Ofcom's policy intent in different ways and, when considered against the related consultation programme, i.e. next generation access and interconnection, the valuation of BT's copper access network, the cost of capital and spectrum liberalisation, mixed messages were being sent at a critical time for the industry.
- Although the BSG recognises the differing needs and objectives of stakeholders, it urged Ofcom to focus on the medium to long term and ensure that it does not succumb to any form of regulatory capture by any part of the value chain. This is an important point in gathering the necessary information from stakeholders as part of Impact Assessments.
- Whilst the BSG agreed with Ofcom that resolving the issue of 'access' is fundamental to the successful operation of the value chain, it pointed to the fact that the impact of local access on the entire value chain is multi-faceted. On the one hand, lack of competition at the local access level may have a knock on effect on innovation in the upper layers of the value chain. On the other hand, lack of investment in local access, and the consequent under-capacity, may have an equally detrimental impact on the value chain.
- The BSG expressed its concern that local access capacity will not keep pace with either consumer or content supplier demand since it is aware of many parties that argue for much wider availability of multi-megabit services. Therefore, the 'access' issue cannot be considered in isolation. The challenge is to ensure that content and services are matched with consumer electronics capabilities so that consumers are not frustrated by insufficient capacity at different points in the chain or by problems of interoperability, etc.
- In summary, the BSG suggested that more needs to be done to understand what is required at each part of the value chain to deliver 'next generation services' and to assess the potential impact of access network regulation on the rest of the value chain.
- The BSG agreed with Ofcom's objective to review enduring bottlenecks, not just in networks but also in other parts of the value chain but it questioned whether Ofcom's 'convergence thinking' is sufficiently developed. Although the Phase 2 consultation document (particularly Annex J) considered the future of the telecoms sector in the broader context of convergence, the BSG has since noted that the focus of Ofcom's current work is tilted significantly towards equality of access and continues to be concerned that the telecoms sector's issues could be considered in a vacuum.

- Thus, whilst Ofcom has acknowledged that it is important, in determining the appropriate regulation for physical network businesses, that it has regard for the consequences that this regulation could have on the evolution of the wider value chain, we are not convinced that this is currently happening. The output from this consultation should ensure that the necessary impact assessments of policy proposals take a wide value chain perspective, however difficult that might appear.
- Notably, the BSG sees the need for a better understanding of the content sector's needs for bandwidth and how consumers will interact with content providers. This requires Ofcom to develop a better understanding of the economics of the content market, with its different types of content provider (including the PSBs, independent producers, film studios, games developers, newspapers, etc) and intermediaries (such as ISPs, DRM providers, search engines, content aggregators, etc.). The BSG has offered to work further with Ofcom on these issues.

As a final comment, the BSG notes that, in the 'Connecting the UK: the Digital Strategy' document published on 1 April, the Government is expecting Ofcom to play a key part in delivering this strategy, e.g. *"to take account of the prospects for home broadband take up, with a particular focus on uptake amongst the more disadvantaged. We will also ask Ofcom to monitor take up across social groupings and age bands to give a clear picture of the development of the market and the prospects for widening access to broadband technologies"*. Ofcom will clearly need to balance the social policy implications of this strategy with its underlying objective of a bias against intervention. Again, the BSG is willing to work with Ofcom in this area going forward.

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