

Communications Regulation in the UK: The Ofcom and its Key Success Factors

Von Tim Suter

If I had to sum up Ofcom's approach to decision making, I would say that all of our decisions try to pivot around the essence of a regulator's role in a market that is changing increasingly quickly. We have sought to achieve Balance and Competition. Balance between players, balance between sectors, balance between incumbents and innovators, balance between legitimate consumer and social policy concerns.

Since Ofcom was vested with its powers in December 2003, our regulatory experience since then, has largely focused around convergence and its economic and cultural consequences on, consolidation, content, access, rights, competition and what all this means for some of the historical conventions of broadcasting.

Change has also been rapid in the UK communications sector since Ofcom's creation in 2003. To give you a snapshot: the UK now has upwards of 70% digital TV penetration – the highest in the world, and now has the fastest broadband growth rates in Europe with 250,000 homes a month. 15,000 lines a week are now being unbundled, a rate that is about to rise exponentially and more importantly the combination of compression techniques and the higher bandwidth that unbundling offers, means that videoenabled services will soon be a wide spread consumer offering.

This article is in three parts. First I will try and answer the question – how would you know if a regulator like Ofcom was successful. I will then go on to set out what have been, in my view, the key success factors for Ofcom. These may or may not be relevant to other countries like Germany but will hopefully be of interest, and finally I will conclude with identifying the challenges and problems that lie ahead.

What does success look like for a regulator such as Ofcom?

There are a number of ways of measuring a regulator's success. The vast majority of Ofcom's stakeholders including the UK Government itself have stated that they think Ofcom has got off to a good start and indeed our own continuous research indicates our approach to regulation is to date generally well received. But those are subjective judgments – let me try out a few more quantifiable assessments.

Price reductions

From a consumer point of view (we are statutorily required to further the interests of citizens and consumers) we can point to significant price reductions for example in mobile call termination and access to broadband. As already mentioned, broadband penetration is accelerating rapidly, driven by lower prices and increased competition.

Public service broadcasting

From a citizen point of view, our major report on public service television broadcasting published in 2005 strongly endorsed the importance of state-funded public service

broadcasting in the digital age, especially after full digital switchover, set for 2012 in the UK. There was a view among some people when Ofcom was created that it would just be an economic regulator and that citizen's interests "beyond the market" would be neglected – something which Ofcom has proved to be unfounded.

Investment and innovation

The conclusion of our Telecoms Strategic Review in 2005 has led to greater investment confidence in BT, the incumbent and in both types of BT competitors – infrastructure competitors like Cable & Wireless, and service competitors like Carphone Warehouse – a win, win, win situation.

In broadcasting, City investment has picked up substantially in independent television production companies as a result of a new code of practice introduced by Ofcom which shares the spoils from primary and secondary/tertiary rights more evenly between commissioning broadcasters and commissioned production companies.

We hope to have encouraged not just investment but also innovation. Innovation was a keynote of our Public Service Broadcasting review, with our recommendation for a Public Service Publisher to increase competition in public service broadcasting – competition for quality. And innovation is at the heart of our philosophical approach to spectrum allocation, which moves away from the traditional command and control (governments and regulators decide who has what spectrum for what uses) towards a trading approach (where the market decides who uses what spectrum for what at what price).

Rolling back regulation

Another criterion for success stems from one of our key regulatory principles – bias against intervention. We have taken this very seriously and some real rolling back of regulation has happened. For example we have moved the regulation of broadcast advertising from Ofcom to the Advertising Standards Authority under a co-regulatory arrangement. We have also pioneered new ways of policing specific industry concerns, for example BT's conduct and performance in local loop unbundling, by appointing independent adjudicators. Bias against intervention should not be misunderstood however as a bias against enforcement. We can be light touch in our approach to market interventions but very heavy touch when it comes to enforcement.

Cutting costs

There is a very quantifiable way of measuring regulatory roll-back – the costs of regulators. One of the drivers of convergent regulation is reducing costs and for Ofcom's first three years of operation we have consistently cut costs year on year. Ofcom today has 32% fewer "staff" than the five previous regulators, and running costs are some 10% below the previous system on a like for like basis, and still going down. We envisage further savings of some £10m per annum on IT in the current financial year. We quite specifically made a decision to have a smaller number of better paid colleagues rather than a larger number of less well paid colleagues and we believe that has turned out to be the right decision for us.

Content regulation issues not swamping the Ofcom agenda

Some years ago when Ofcom was in the planning stage, many people said that Ofcom as a converged regulator would be swamped by content issues. In response to this fear, the main Board of Ofcom sensibly delegated what we call Tier One content regulation (accuracy & impartiality, harm & offence, fairness & privacy) to a separate Content Board, a committee of the main Board. This, allied to the professional way that the work has been done by a strong team of executive colleagues, has ensured that to date the Ofcom agenda has not become swamped. The recently introduced Ofcom Broadcasting Code is a significant improvement on the previous codes of the three broadcast regulators – much shorter, much clearer and more principles-based and less rulesbased.

Success factors

Let me identify what I believe to be the key success factors in the creation of a fully convergent regulator for the UK communications industries with particular responsibilities for competition policy, for telecommunications, broadcasting and wireless frequencies/spectrum.

Taking convergence seriously

Ofcom has taken convergence seriously. First of all, at the heart of our work is a recognition of the growing importance, despite some false starts during the dotcom boom, of network, device and corporate convergence stemming from the convergent nature of digital technology. The modern IP network carries everything from voice to moving pictures. Spectrum is the glue of a convergent communications industry. TCP/IP is the language.

The second dimension of convergence is rather different. It is the one that has been especially interesting. Ofcom's statutory duties focus on the interests of both consumers and of citizens as I have already mentioned. Thus Ofcom is a convergent regulator in the sense that it brings together in one place both economic regulation (the encouragement of competitive markets that benefit consumers alongside sensible concern for the financial health of the industry) with cultural regulation (the interests of citizens "beyond the market", the interests of society as a whole in communications matters).

Start-up not a merger

Ofcom moved into a new building on the south bank of the Thames, rather than occupy an existing building of one of the previous regulators. As a result, culturally, we like to think of ourselves being involved in a start-up not a merger. I believe that has been one of the key factors central to its success. 25% of the Ofcom senior management team came from the staff of the five previous regulators and 75% from other worlds. Only three out of the nine members of the Ofcom Board formed in late 2002 came from the previous regulators (Ofcom and the Radio Authority).

This start-up mentality connects to the principle embedded in Ofcom of "constructive disruption", where positive change from the past ways of doing things is possible and is actively sought after. The internal culture of Ofcom encourages challenging and open debate.

Few conventional wisdoms are allowed to go unchallenged for long.

The new building reminds visitors more of a professional services firm than a government department. It is open and airy and transparent and modern. All of which helps to attract talent in a competitive labour market like London. And we have one single main building, with all our headquarters and quite a lot of operations people all in one place. For us, an effective model but for federal countries like Germany, this might not be appropriate of course.

Evidence-based regulation

Ofcom has allocated much resource to researching the topics thoroughly that we are required to rule on. The evidence gathering around the complex issue of food advertising to children in relation to obesity, for example, has been of a consistently high quality and has played a major role in our decisions and the Government's. In our creation of the new Ofcom Broadcasting Code (replacing the codes of the previous regulators), we relied on a combination of research and the views of stakeholders – some 900 responses to our consultations. A huge amount of evidence.

Independence

One final success factor. When talking to regulators around the world, many are interested in the extent to which Ofcom operates independently of Government. Ofcom is statutorily a creature of the UK Parliament and not of the UK Government. A modern regulator, to be successful, must keep its independence from all stakeholders including the Government whilst fully consulting all of them. It must also concern itself with making what it feels to be the right decisions, which are not necessarily the popular decisions or the decisions which will play well in the media on the following day.

Some final thoughts on content regulation in the digital age

Finally, I would like to say a few words about the future of European content regulation in the context of the on-going review of the Television without Frontiers Directive. Ofcom welcomes the European Commission's intention to revise and modernise the existing rules that apply to broadcasting services, and in particular the liberalisation of the advertising rules.

However, we have serious concerns with the Commission's proposal to extend the scope of the Directive to cover all audiovisual media services, including webbased services. We are not convinced that applying broadcast regulations to other platforms is the best way to proceed. The current proposals could have unintended and highly undesirable results, namely, increasing legal certainty and threatening the development of a key sector, without delivering neither economic benefits nor effective protection of social policy goals. Our experience in the UK has demonstrated that self-regulation, supported by a strong focus on media literacy, is a much better way to regulate online and on-demand services, where consumer expectations are different.