

The practice of consultation

In the nature of the work plans of the Office of Communications (OFCOM) is invariably a series of daunting challenges set for the year ahead in the form of consultations on any number of topics. In a typical year OFCOM solicits views on many thousands of pages of varying degrees of complexity, in one recent instance there were nearly 600 pages of draft legal instruments.

It is far from clear that these exercises are beneficial, influential or meaningful, since they appear to generate so few replies. This absence of reaction, sometimes even from the “usual suspects”, raises the question of whether consultations are being used or designed in ways that improve the regulatory process or are merely reflexive, even performativity. It may be that OFCOM has anticipated much of the potential feedback making it unnecessary.

It would appear long overdue for OFCOM to conduct a review of its practices on consultation in order to determine if they are effective and how they might be improved.

In the first instance it might publish statistics on the volume of material on which it consults and the number and volume of responses. An indication of the reading age and reading time for documents would be helpful.

World class

A cursory search of the Internet with your preferred engine will reveal all sorts of goods and services that are claimed to be world class, often with little in the way of substantiation. Many are beyond the reach of local trading standards officers and even the Advertising Standards Authority (ASA), which is called upon from time to time to adjudicate these sorts of claims when made by handset manufacturers and network operators.

In the case of telecommunications regulation it is difficult. World class appears to signify something less than world leading. The MIC in Japan aspires to deliver world leading results, for example it is seeking to improve performance with 6G over its, apparently, disappointing achievements with 5G.

It would be helpful if OFCOM defined what it meant by world class. Given this is not likely to be easy, it might point to instances of the performance of leading regulators, where either it has been copied or it seeks to emulate performance or practice. Given it operates only under statutory powers it would be helpful to indicate where it was unable to achieve the desired level because it lacked the legal powers or it was obliged to act otherwise.

Without some ability to assess its performance against criteria or aspirations it seems to be unhelpful to claim to be world class.

International relations

While many details of Brexit remain to be settled and create some degree of uncertainty, the connections with foreign governments and regulators are quite difficult to follow in the work plan. The mentions are scattered through the text and appear inconsistent and incomplete. There is brief mention of ITU but not of UPU, while the CEPT turns up but neither IRG nor CTU. ERGA is included despite it being an EU body (see C(2014) 462 final).

It would be helpful if OFCOM could set out the organisations in which it intends to participate and the types of relationship it envisages. In particular, it seems essential for it to make clear where it is acting not as an independent regulator but as an agent for HMG.

There is lobbying by operators associated with many of the international bodies and some presence there from operators, directly or through trade bodies. It would be helpful to know how OFCOM consults prior to international meetings, who has access to preparatory documents and who sees the resulting documents. For example, are best practice documents circulated to devolved administrations and local government?

It is not self-evident how a body that is independent can also act under ministerial direction.

Devolved administrations and local authorities

It is important to note that telecommunications and Internet access are, by statute, reserved to Westminster and Whitehall.

In its recent work the NIC pointed to the need to involve “metro mayors”, something which appears absent from the draft work plan. Indeed, the approach to the granularity of the UK telecommunications market appears peculiar and difficult to justify. OFCOM plans to engage with three devolved administrations, but not the metro mayors, while its interactions with local authorities are, at best, very vague and probably inconsistent.

Given there is a single or internal UK market, then the granularity should be consistent, if the answer is only units of 3 to 5 million people, then it needs to include that level in England. If it includes local authorities in Northern Ireland, then it ought to include all UK local authorities, the same issue arises for community and parish councils. Many of these bodies would require considerable support from OFCOM to participate effectively and might be better able to do so through collective bodies or a national forum.

This would appear to be the sort of matter on which UKRN might usefully be engaged.

The work plan appears to suggest there are differences in the issues for remote and rural areas in devolved nations from England, though without stating what these are.

One obvious risk for OFCOM is that the interventions by the devolved administrations will so alter conditions on the market that it will be obliged to define the devolved nations as geographic markets and conduct the relevant analyses. Interventions at lower levels of granularity might well result in a yet further fragmented geography. Ultimately the risk is that the only definable markets are individual properties.

It would help if OFCOM was to set out how it viewed and sought inputs from HMG and other levels of government and communities to demonstrate that it is consistent, transparent and accountable. It would also be helpful if it made clear which documents it proposed to make public (e.g., its technical advice to devolved administrations and mayoralities) and which remained confidential (e.g., tender documents).

Greenhouse gas emissions

While energy efficiency is nice to have it would be much more helpful to know the greenhouse gas emissions in terms of say 1 GB of streamed data or 1 minute of voice or £1 of spending on communications.

Consumers need to be able to see the GHG emissions and to make informed decisions, for example, how does streaming a movie compare to going to one by car or public transport. Obviously, this needs to include supply chain costs, such as concrete to support masts and the marine diesel to ship equipment from China, requiring use of the ISO 14000 series standards.

Questions

There are many places where the document is so vague that making comments is impossible. The following are just a few instances of where definitions were missing:

Who are the external partners on page 12?

In a post-binary world how can gender be balanced 50:50?

What is “good quality mobile coverage”?

What are “significant 5G roll-out” and “the experience consumers expect in the mid to long-term”?

What are:

- Widespread gigabit capable/full-fibre rollout
- Significant investment in gigabit capable and full-fibre networks
- Increased number of homes with more than one gigabit capable network available

What is “our wider stakeholder network in Scotland”?

What is the Local Full-fibre Investment Board?