Regulatory Policy Committee

Electronic Communications Code

Department for Culture, Media and Sports

RPC rating: fit for purpose

Description of proposal

The Electronic Communications Code regulates the legal relationships between landowners and network operators. Mobile operators cite high infrastructure rental costs as the largest barrier to long term mobile phone technology investment. The proposal is to reform the code in order to strike a balance between the contrasting interests of operators, landowners and the public who require access to a rapidly evolving communications service. The changes fall into two broad categories:

- Modifying the system for valuing telecommunications wayleaves from market value to compulsory purchase principles (wayleaves being the agreements whereby a landowner grants a licence to a communications operator to install, access and maintain cables or other equipment on private land).

- Changes to clarify the code and improve the dispute resolution process.

Impacts of proposal

Monetised impacts

The vast majority of telecommunications wayleaves are negotiated voluntarily between network providers and landowners. If an agreement cannot be reached, the courts decide. Under the proposed regime, courts are expected to impose a far lower wayleave settlement. This strengthens the negotiating position of network providers and enables them to obtain lower rental fees, resulting in a reduction in the overall cost of rolling out infrastructure. In principle, both mobile and fixed line operators would benefit from lower wayleave valuations, but the IA explains that in practice most of the benefit is likely to accrue to mobile network operators.

According to estimates by *Analysys Mason* (a telecommunications specialist consultancy), mobile network operators (MNOs) and wholesale infrastructure providers (WIPs) pay landowners annual rent totalling £133 million and £54 million respectively. In addition, business rates paid by MNOs and WIPs to local authorities total £82 million per annum.

Based on independent research commissioned by *Nordicity* (another telecommunications specialist consultancy), the Department estimates that wayleave values would be 40% lower under the proposed regime compared to the current one. This would result in a decrease in expenditure, not just through a fall in the rents paid to landowners by MNOs and WIPs, but also through a fall in the associated business rates paid to local authorities.

The impact assessment (IA) explains that the proposed change in wayleave valuation will not apply retrospectively. Therefore, under existing contracts, MNOs and WIPs will continue to pay the current agreed value until the contracts expire. The IA estimates that the average lease is ten years for MNOs and twenty years for WIPs. Assuming that renewal dates and rental values for each lease are evenly distributed across each of the average lease lengths, and profiling the impacts in a way such that cost savings are relatively small in year 1 and steadily increase until year 20, the IA estimates the total net present value benefit to MNOs and WIPs is £1.02 billion. This comprises of a £709 million reduction in rent and a £307 million reduction in business rates.

The benefit to network providers from lower rental payments would result in an equivalent cost to landowners.

Non-monetised impacts

The IA explains that the impacts of the change in wayleave valuation on fixed network providers have not been quantified. As fixed network wayleaves tend to have longer contracts, with many granted in perpetuity, it will take longer for the impacts to be realised, if at all in some circumstances.

The IA expects the change in wayleave valuation to deliver long-term benefits to consumers, assuming the market remains competitive, either in the form of lower prices or an improvement in the product offered as a result of increased investment.

The IA assesses qualitatively the impacts of several other changes to the code. These include: proposing to shift all dispute resolutions to the upper chamber of the Lands Tribunal and further clarification on the section of the code relating to moving and removing apparatus. The IA expects this to reduce legal costs for landowners and network operators.

EANDCB

The IA scores the impacts of the proposal on a pre-tax basis and, therefore, excludes the reduction in business rates from the EANDCB calculation. This is in line with the better regulation framework manual. As the benefit of lower rental payments would result in an equivalent cost to landowners, the IA estimates the EANDCB to be zero.

Quality of submission

The RPC previously assessed a final stage impact assessment on the Electronic Communications Code in October 2014. Since then, the Department has carried out further public and stakeholder consultation and made some reforms to the proposals to reflect this. The most significant change is in relation to the valuation of wayleaves so that it provides greater benefits to network providers.

The IA provides sufficient analysis for the RPC to validate the EANDCB of zero. The IA explains that the quantitative analysis largely focuses on the most significant change to the code in relation to the effects on landowners and operators of the change in the method of wayleave valuation. Considering that there are data constraints and that the other changes are much smaller in nature, the IA explains that it would be disproportionate to commission separate research and, therefore, provides a detailed qualitative assessment. This is reasonable.

The IA explains that there are a very small proportion of landowners who are households or public sector organisations. In these cases, a reduction in rent paid by operators to landowners would constitute an overall benefit to business. The IA explains that, given there is no centrally held information to identify this, it has estimated that all £709 million of the benefit to MNOs would result in corresponding cost to other businesses, resulting in an EANDCB of zero.

The IA would benefit from discussion of the possible impact of familiarisation costs on businesses. However, the RPC accepts that it is likely the non-monetised benefits will outweigh any familiarisation costs of the proposals.

Small and micro business assessment

The assessment is sufficient. The IA explains that there will be some small farming enterprises and shop fronts that will be affected by the proposed change in land valuation. Information on the identity or size of organisations in receipt of wayleave payments is not publically available. For this reason, the Department cannot estimate how many small and medium sized businesses will be affected or the proportion of total costs that would fall on these businesses. In addition, the IA explains that if small and micro businesses were excluded, it would undermine the policy aim of facilitating the growth of a universal telecommunications network For the network to be universal, all land has to be subject to the Government's proposal so that rental costs and a lack of clarity in the code are not barriers to the building of infrastructure.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Zero
Business net present value	Zero
Societal net present value	Zero

RPC assessment

Classification	Qualifying regulatory provision
EANDCB – RPC validated	Zero
Business impact target score	Zero
Small and micro business assessment	Sufficient

Michael Gibbons CBE, Chairman