

---

## **The Office for Communications (Ofcom) appeals Department for Culture, Media and Sport**

### **RPC rating: fit for purpose**

#### **Description of proposal**

Any business affected by a decision of Ofcom to which the appeals provisions apply has a right to appeal for review by the Competition Appeals Tribunal (CAT).

The proposal would amend the standard for appeals to enable the CAT to base its decisions on the principles a court would use on an application for judicial review in place of its current 'on the merits' principles.

#### **Impacts of proposal**

Under the proposed system, it is possible that decisions on some appeals against Ofcom price controls could result in the CAT reaching a different decision than they would have under the current system. Although this would affect the distribution of income among firms in the market, the impact on the industry as a whole is expected to net out to zero. Based on analysis of past cases, the IA indicates that these transfers among businesses could amount to £10-40 million over the ten-year appraisal period.

The impact assessment (IA) explains that the proposal could reduce the number of appeals. This would generate savings for Ofcom, the CAT and businesses from reduced litigation expenses. The IA explains that the Department has identified and attempted to illustrate these savings, but cannot make a reasonable central assumption because the number (and nature) of appeals after implementation of the proposal is highly uncertain.

#### **Quality of submission**

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of zero. This will be a qualifying regulatory provision under the business impact target.

The IA explains that the transitional costs of familiarisation to the new standard of review for appeals would be limited as judicial review is already a well-tested standard of appeal that exists in other regulated sectors. Although this may well be the case, the IA would benefit from giving an indication of how large these costs to

business could be. In addition, the IA assumes that the effect of fewer reviews is simply a transfer of income among firms; it would benefit from some analysis of the extent to which restricted appeals would affect the overall efficiency of the relevant markets.

#### Small and micro business assessment

The IA explains that none of the previous four price control appeals involved small and micro businesses; therefore the Department does not expect these firms to be directly affected by this measure. The IA also explains that exempting any future cases that involve small and micro businesses from the proposal would result in different standards for appeals by small and large firms. This would be practically difficult to implement and might create perverse incentives. The IA would benefit from additional evidence or analysis to support this, given the possibility that such an exemption could in fact help to level the playing field for small and micro businesses whose particular market circumstances would mean that they would benefit more from the current 'on the merits' standard.

#### **Departmental assessment**

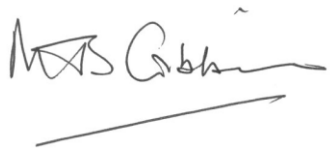
Classification	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	Zero
Business net present value	Zero
Societal net present value	Zero

#### **RPC assessment**

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

Opinion: final stage IA  
Origin: domestic  
RPC reference number: RPC-3409(1)-DCMS  
Date of implementation: not provided

---



**Michael Gibbons CBE**, Chairman