

**Persistent misuse; Code of Practice on changes to existing transmission and reception arrangements; license exemptions; extension of scope of mobile trading regulations; revisions to penalty guidelines; extension of recognised spectrum access for receive-only earth stations.**

**Ofcom**

**RPC rating: validated**

This Opinion covers six small measures; for each, a brief description of the change, its impacts (as set out in the IA) and the quality of the submission is given in the table below. All seven have an Equivalent Annual Net Direct Cost to Business (EANDCB) which rounds to zero.

| Measure                                    | Description  | Impact  | Quality of submission   |
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| Persistent misuse (implemented March 2017) | Ofcom has made revisions to its statement of enforcement policy on persistent misuse of electronic communications networks and services. In particular, it has clarified that the 3% abandoned call rate set | 5840 call centres are in scope of the policy; of these Ofcom estimates that around 21% specialise in outbound calls and may therefore be affected by the change. The regulator argues | The assessment is somewhat unclear as to the detail of the earlier statement and of the changes. However, the regulator's argument that its statement of enforcement policy |

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|   | <p>out in the previous statement as a prioritisation criterion for enforcement is not a limit below which abandoned calls are permissible.</p>  | <p>that the previous statement did not present an acceptability limit, and so any costs incurred in actually reducing abandoned call rates will only be incurred by non-compliant businesses. Familiarisation costs will be incurred by the entire industry.</p>   | <p>applies only to non-compliant businesses seems reasonable. Its assessment of familiarisation costs is based on a series of assumptions which are in general appropriately justified. It uses a 5-year appraisal period on the basis that the next revision to the statement is expected in 5 years' time; this seems reasonable.</p>   |
| <p>Code of practice on changes to existing transmission and reception arrangements (March 2016)</p> | <p>Ofcom issues a code of practice to Digital Terrestrial Television (DTT) multiplex operators (who transmit multiple channels via a single frequency range). The Code sets out how operators must act when Ofcom makes changes to service broadcasting frequencies, in order to minimise the impact on their viewers. The measure under consideration updates the list of changes to which the Code applies, removing some outdated elements from its scope and bringing the clearance of the 700 MHz band clearly into scope. The impacts of the clearance of the 700MHz band</p> | <p>Six organisations are affected. Ofcom argues that the impact of the change in scope is negligible, as the required activities are those which operators are incentivised to undertake in any case (to minimise disruption to their customers) and have already put in place for the clearance of the 800 MHz band. It supports this argument by reference to consultation responses, which are supportive of the change and of the idea that coordinated action to minimise disruption is</p> | <p>The assessment is extremely concise; it would have benefited from a clearer description of the proposal and its wider impacts in lay terms and from a clearer exposition of the reasoning underpinning the regulator's judgement that the required activities would be undertaken in any case. It could also have drawn on the experience of the 800 MHz band clearance to support this argument more effectively. Nevertheless, given the feedback from industry and the small number of businesses</p> |

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|  | itself are not covered in this IA.  | necessary. It further argues that familiarisation costs will round to zero, given the very small number of organisations affected; this seems likely.  | affected, the RPC is able to validate the assessment of zero impact.   |
| Licence exemptions (Dec 2015 – Nov 2016) | <p>The assessment covers a series of exemptions which allow the use of particular types of equipment without a licence in particular frequency bands. The specific exemptions are for:</p> <ul style="list-style-type: none"> <li>• The use of mobile user terminals (such as mobile handsets and wifi dongles) in the 2.3 GHz bands;</li> <li>• The use of MSS user terminals such as satellite phones in the 2 MHz band;</li> <li>• White space devices; and</li> <li>• Mobile gateways.</li> </ul> | Ofcom argues that the measure is permissive, and that few businesses will choose to make use of the measure in practice, so that it is not proportionate to try to gather more detailed data on take-up rates or unit costs. It bases this argument on the fact that white space devices and mobile gateways are experimental devices with no mass market at this stage, and that very limited numbers of consultation responses suggest that there will be limited take-up for mobile user terminals in the 2.3 GHz band or MSS user terminals in the 2 MHz band. | The assessment itself is concise, though Ofcom has also supplied a much longer set of consultation documents covering the individual changes. The assessment could have been improved by setting out the measures more clearly and with less jargon. A clearer exposition of the link between the limited response to the consultation and the assumption of limited take-up would also have been helpful. |
| Extension of scope of mobile trading     | The mobile trading regulations require operators to seek Ofcom's consent  | Ofcom notes that there are currently two businesses which  | The assessment is brief, but clear. Given the very small   |

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| <p>regulations (June 2015)</p>         | <p>before trading licences in spectrum bands which are used for mobile telephony. Ofcom may withhold its consent or seek further information if it believes that the trade may reduce competition in the mobile market. The measure extends the regulations to cover three additional spectrum bands.</p> | <p>hold spectrum in the affected bands, and that it has received only two applications to trade in total over the first four years of the regulations' existence across a much wider range of bands. It also notes that the burden of carrying out competition analysis falls on Ofcom rather than on the applicant. For these reasons, it argues that the expected overall cost of the measure is small. It explains that should an applicant be asked for further information to support a competition assessment, that form would incur more significant costs, but it has not sought to monetise these. It has sought further information to test these assumptions at consultation, but has received little relevant information.</p> | <p>number of businesses and trades likely to be affected, it is also proportionate. Some discussion of the wider impacts of the measure and of the rationale for seeking to regulate trades in the newly-added bands would have been helpful.</p> |
| <p>Revisions to penalty guidelines</p> | <p>Ofcom is required to set out guidelines explaining how it will calculate penalties to be imposed where there is</p>  | <p>Several thousand businesses are affected by the revisions in principle; Ofcom notes correctly</p>   | <p>The assessment is clear, concise and proportionate. The argument that familiarisation</p>  |

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| <p>(December 2015)</p>   | <p>a breach of regulations. It has recently updated these guidelines to:</p> <ul style="list-style-type: none"> <li>• Clarify that earlier precedents may not set an upper limit for penalties;</li> <li>• Clarify that the harm caused or benefit gained as a result of a breach does not set an upper limit for penalties;</li> <li>• Link penalties to their deterrent effect, based on the turnover of the offender;</li> <li>• Clarify that the seriousness of a breach, as well as its duration, may affect the scale of the penalty.</li> </ul> | <p>that only non-compliant businesses will be affected in practice by the actual changes. It estimates that familiarisation costs will round to zero, given that the guidelines are likely to be read only by compliance officers within affected firms and are relatively brief (12 pages). It also argues – incorrectly – that in any case these costs should not strictly be incurred by compliant businesses. It also notes that the measure may improve regulatory certainty. It does not attempt to assess the wider behavioural effects of the changes or their impacts on compliance; given the wide range of possible breaches in scope this seems reasonable.</p> | <p>costs are not in scope of the BIT is not appropriate, but the regulator provides sufficient evidence to support its contention that they will round to zero.</p>                             |
| <p>Extension of recognised spectrum access for receive-only earth stations (July 2015)</p> | <p>Receive-only earth stations (ROES) are installations which can receive, but not send, radio signals, and are therefore incapable of causing interference for other users. However, other users can cause interference for</p>   | <p>Ofcom notes that the measure is permissive; ROES operators need not apply to use the new bands, and if they do so it assumes that the benefit will exceed the cost for them of</p>   | <p>The IA is brief and clear; it could be improved by offering an estimate of the number of businesses affected in principle, to support Ofcom’s contention that estimating the benefits of</p> |

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|  | <p>them, and for some users – such as businesses which rely on satellite data for mapping or forecasting applications – Ofcom may grant “recognised spectrum access” which offers bands within which they will be free from interference. The measure extends this access to two new bands.</p> | <p>acquiring a licence – estimated at a few tens of thousands of pounds. It does not attempt to estimate the number of businesses affected or the familiarisation costs, though given that the measure extends existing access to two new bands without any additional change it seems reasonable that familiarisation costs will be minimal.</p> | <p>the measure or its wider impacts would be disproportionate.</p> |
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### Departmental assessment

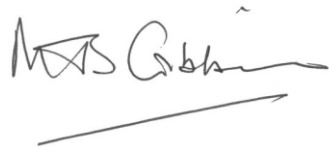
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| Classification                                 | All Qualifying regulatory provisions |
| Equivalent annual net cost to business (EANCB) | All £0.0 million                     |
| Business net present value                     | All £0.0 million                     |

### RPC assessment

Opinion: EANDCB validation  
Origin: domestic  
RPC reference number: 3906-3912  
Date of implementation: see table

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|---|--------------------------------------|
| Classification                                  | All Qualifying Regulatory Provisions |
| EANCB – RPC validated <sup>1</sup>              | All £0.0 million                     |
| Business Impact Target (BIT) Score <sup>1</sup> | All £0.0 million                     |



**Michael Gibbons CBE, Chairman**

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<sup>1</sup> For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.