



National Audit Office

**REPORT BY THE
COMPTROLLER AND
AUDITOR GENERAL**

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Ofcom

The effectiveness of converged regulation

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The effectiveness of converged regulation

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Amyas Morse
Comptroller and
Auditor General

National Audit Office

5 November 2010

Ofcom's principal duty under the Communications Act 2003 is to further the interests of: citizens in relation to communications matters; and consumers in relevant markets, where appropriate by promoting competition.

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This report can be found on the
National Audit Office website at
www.nao.org.uk/ofcom-2010

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Summary

1 The Office of Communications (Ofcom) is the independent regulator and competition authority for the United Kingdom communications sector, which was worth over £50 billion in 2009 and encompasses broadcasting, telecommunications and wireless communications. Ofcom's principal duty under the Communications Act 2003 is to further the interests of: citizens in relation to communications matters; and consumers in relevant markets, where appropriate by promoting competition.

2 Ofcom was created in 2003 as the result of the merger of five regulators. It raises funds from broadcast licence fees and charges, and receives grant-in-aid from two government departments: the Department for Business, Innovation and Skills (£75.7 million in 2009-10, primarily for spectrum management); and the Department for Culture, Media and Sport (£0.6 million in 2009-10, for media literacy work).

3 In 2006 we reported on the merger process. We estimated the costs of the merger to be up to £80 million, whilst observing it was too early to assess the outcomes of Ofcom's work. We recommended that Ofcom should continue to deliver efficiency savings and seek to measure longer-term outcomes and benefits. The purpose of this report is to review Ofcom's performance in the two areas where we previously made recommendations, and the outcomes it has achieved in the seven years since its creation.

4 We constructed a framework to help us form a view of Ofcom's overall performance. We selected indicators of performance under four headings: Ofcom's use of resources; the outcomes for citizens and consumers; market indicators; and the views of stakeholders.

Key findings

Ofcom is making annual efficiency savings

5 **Since 2004, Ofcom's five largest efficiency initiatives have saved some £23 million.** As forecast by policymakers when considering the merger, most of these savings came from the rationalisation of the estate and staffing levels. These savings have averaged 3 per cent per year since 2004-05, which is a similar level to the savings target the Government set for departments in the Comprehensive Spending Review 2007 process (although, with the benefit of merger efficiencies, Ofcom would be expected to fare better).

6 Ofcom is doing more with less. Excluding additional responsibilities, Ofcom's annual expenditure (£122 million in 2009-10) is now some 27 per cent lower, in real terms, than that of its predecessor bodies.

Ofcom does not report clearly how its use of resources delivers outcomes

7 Since our 2006 report, Ofcom has developed a comprehensive management information system. This system supports both Ofcom's statutory financial and performance reporting to Parliament, and its management of cash resources and programme activity to allow it to live within the annual financial cap agreed with HM Treasury. Ofcom manages its expenditure within the cap. However, in our view, Ofcom does not consistently make clear the linkage between its outputs and market outcomes, or articulate publicly how it will measure whether it has achieved its intended outcomes through its work: it does not describe what success will look like, and therefore it is not possible for us to assess whether it is meeting its objectives.

8 The radio spectrum is a national resource that Ofcom manages, generating income of some £200 million per year for the Exchequer. Ofcom spends over £70 million annually managing the spectrum. We have seen evidence of how it considers value for money on a case-by-case basis for projects it undertakes in this area, but it has made less progress in bringing together management information into higher-level performance metrics for this aspect of its business than for activities such as promoting competition in telecommunications markets. Without such use of management and cost information, Ofcom is not well equipped to demonstrate to its stakeholders, including the Departments that provide the grant-in-aid that funds this work, how it will drive through efficiencies in a strategic and structured way, based on an understanding of what the different aspects of spectrum management should cost.

Outcomes for citizens, consumers and the market appear positive

9 Our analysis suggests that there are many positive outcomes in the market. Competition in communications markets appears healthy, with increasing numbers of television and radio broadcasters, and a range of providers of fixed and mobile telephone and broadband services now in the marketplace. The growth in fixed-line and broadband competition has been enabled by regulatory action requiring BT to allow other companies to access its infrastructure.

10 Ofcom's consumer research shows that levels of customer satisfaction are generally high. For consumers of communications products and services, outcomes – such as availability and choice, falling prices and good quality products and services – have been largely positive. For example, since 2004 a representative basket of mobile phone services has fallen in price from £36 per month to £15 per month in 2009.

11 There is still scope for improvement in some areas. Two of the top ten areas in which complaints were made to the consumer helpline Consumer Direct in 2009 were in the communications market. Ofcom's data demonstrates some specific areas where improvements are needed, for example:

- a** Switching: In a well-functioning market it is important for consumers to be able to exercise choice, for example by switching providers. The communications market has relatively low switching rates and it is important for Ofcom to understand whether this is through consumers' choice or whether they face barriers. Twenty-eight per cent of consumers feel it is difficult to switch. Ofcom is seeking to tackle barriers to switching as a priority for 2010-11.
- b** Broadband speed: Ofcom's research in May 2010 found that average speeds in the UK were some 45 per cent slower than advertised. Ofcom introduced a voluntary code of practice in 2008, and strengthened it in July 2010, to address this discrepancy between advertised and actual speeds. UK consumers experience broadband speeds that are lower than in many other countries.
- c** Silent calls: There are persistent issues where automatic dialling equipment in call centres fails to connect operators properly, which can cause nuisance or anxiety to the person called. Ofcom has imposed a number of fines, but despite an initial fall in complaints there has been more fluctuation since summer 2009. Parliament and the Government recently increased the maximum fine available to Ofcom after it called for stronger powers in this area.

12 The majority of stakeholders we engaged with felt Ofcom conducts its consultations well, but 44 per cent of those we surveyed felt that Ofcom does not go on to act in a timely manner on the relevant issues. Ofcom told us that its speed of action is hampered by the incentives on regulated bodies to appeal its decisions. Ofcom considers evidence submitted by regulated companies several months after the formal close of a consultation, as it feels not to do so could itself be grounds for appeal. The frequency of appeals is increasing and has cost Ofcom over £1 million per year since 2007-08. The Department for Business, Innovation and Skills began consulting on a proposal to change the appeals regime in September 2010.

Conclusion on value for money

13 Good value for money is the optimal use of resources to deliver the intended outcomes. Ofcom's assessment of its performance in delivering value for money, however, is driven by delivering its work programme within the annual financial cap agreed with HM Treasury, while taking on additional areas of responsibility for no further cost to the public purse. Ofcom has reduced its overall expenditure each year since its creation; we have seen many positive indicators in the communications marketplace; and most stakeholders speak positively of Ofcom. We have also seen that Ofcom is taking action to address some of the issues we have identified – for example, its 2010-11 Annual Plan has a greater focus on outcomes than in previous years, and it is implementing some very encouraging changes to its internal performance management processes – although a number of these developments have only taken place since we began work on this study. We have

seen evidence from some individual projects that Ofcom considers value for money in its decision making, rather than purely seeking to minimise costs. However, in the absence of a clear articulation of its intended outcomes, or the linkages between its inputs and outputs and those outcomes, there is still a gap between the way Ofcom assesses its own performance and our assessment of value for money. It is, therefore, not possible for us to conclude on the extent to which Ofcom has delivered value for money. This will remain the case until Ofcom develops a consistent capacity to link costs and activities to outcomes in a way that can help stakeholders assess its performance.

Recommendations

14 There are three areas of Ofcom's business in which we would expect to see improvements. These are: articulating success criteria; spectrum management accounting; and reporting of efficiencies.

- a** **Ofcom has developed an internal performance measurement framework, but it does not communicate clearly the linkage between outputs and outcomes.** For greater accountability and demonstration of value, Ofcom should communicate more clearly how it defines success in terms of the outcomes that it is striving to achieve and how its outputs contribute to delivering these. It should also develop, in consultation with the relevant Government Departments, the industries it regulates, and the citizens and consumers on behalf of whom it acts, a more integrated performance measurement system. This should include a framework for external reporting of performance against the outcomes it has set itself to deliver, in pursuit of its statutory duties.
- b** **Ofcom receives over £70 million grant-in-aid to manage the radio spectrum, but performance information in this area is relatively sparse, so that the extent to which value for money is being obtained from this expenditure is unclear.** Ofcom should undertake work to identify the key drivers of expenditure in managing the spectrum and use this information to ensure efficiency and value for money are maximised.
- c** **Ofcom does not routinely report efficiency savings to the Government Departments that agree and authorise its grant-in-aid funding.** The relevant Departments should, as a matter of routine, assess Ofcom's efficiency savings: we suggest annual meetings. Ofcom should also, as far as is practical, outline the key drivers of costs in-year for the benefit of its stakeholders, for example the consumers who ultimately pay for services.

On Ofcom's speed of action and the legislative environment:

- d** **The Communications Act sets a higher 'hurdle' for Ofcom in dealing with appeals against its regulatory decisions than is the case for other economic regulators.** The Department for Business, Innovation and Skills, should take into account Ofcom's evidence concerning the impact of the current regime as part of its review of the legislative framework for appeals.

Part One

Ofcom's role, responsibilities and resources

1.1 This Part looks at Ofcom's statutory duties, how it allocates resources to deliver these duties, and how this has changed over time. We also assess its progress against the recommendation in our 2006 report: **Ofcom should continue to deliver efficiencies as the organisation consolidates and ensure that these savings are clearly communicated to stakeholders. Ofcom could also consider benchmarking its cost of regulation to other overseas communications or UK regulators.**

The role of Ofcom

1.2 The United Kingdom communications sector, which encompasses broadcasting, telecommunications and wireless communications, has grown significantly in value during the last decade, from around £35 billion in 2000 to more than £50 billion in 2009. The Office of Communications (Ofcom) is the independent regulator and competition authority for this sector.

1.3 Ofcom was established by the Office of Communications Act 2002 and formally took over its powers under the Communications Act 2003 on 29 December 2003. It consolidated the functions of five previous regulators covering the telecommunications, television broadcasting, radio and spectrum industries, as well as taking on new powers.¹ We reported on the creation of Ofcom in 2006, calculating the cost of the merger to be up to £80 million.²

1.4 Ofcom's *statutory duties* fall into two parts: its *principal duty*, below, and a further six *specific duties* (**Figure 1**). Ofcom's principal duty, under the Communications Act, is to further the interests of:

- a** citizens in relation to communications matters; and
- b** consumers in relevant markets, where appropriate by promoting competition.

Under the Act, Ofcom must also have regard to the principles of best regulatory practice and to a further 14 factors, such as encouraging investment and innovation, and the different needs of people in rural and urban areas. It must also act in accordance with six EU requirements set out in the Act.

¹ The five previous regulators were: the Broadcasting Standards Commission, the Independent Television Commission, the Office of Telecommunications (Ofcom), the Radiocommunications Agency and the Radio Authority.
² *The creation of Ofcom: wider lessons for public sector mergers of regulatory agencies*, Session 2005-06, HC 1175, NAO, July 2006.

Figure 1

Ofcom's specific duties under the Communications Act 2003

Ofcom is required to secure, in the carrying out of its functions:

- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
- the availability throughout the United Kingdom of a wide range of electronic communications services;
- the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
- the maintenance of a sufficient plurality of providers of different television and radio services;
- the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
- the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both –
 - unfair treatment in programmes included in such services; and
 - unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

Source: Communications Act 2003

1.5 A number of other Acts also confer duties on Ofcom. Its regulatory powers derive primarily from the Communications Act, the Enterprise Act, the Broadcasting Act, the Competition Act, the Wireless Telegraphy Act and the Digital Economy Act.

1.6 There is a clear distinction in the Communications Act between the citizen and the consumer, and it is one that Ofcom recognises. Ofcom's duties, therefore, entail the usual regulatory requirement to protect consumers, by ensuring they can make informed choices from a range of good quality services at a reasonable price whilst being protected from physical, psychological or financial harm. Ofcom considers its role in furthering the interests of citizens involves ensuring that people have access to the services, content and skills needed to participate in society, and that they are protected appropriately.

1.7 Ofcom's Board provides strategic direction for the organisation and comprises a non-executive Chair, the Chief Executive, and non-executive and executive Directors. The executive team runs the organisation through a number of committees and sub-boards: chief among these are the Executive Committee and the Policy Executive, comprising Ofcom's senior executives. Since Ofcom's creation the breadth of its responsibilities has increased as the sector has developed and government policies have changed. Recent new duties include, for example, online copyright enforcement and enhancing digital participation.

Resources

1.8 In 2009-10 Ofcom's expenditure was some £122 million. This is funded by income from regulated companies through broadcast licence fees, administrative and other charges (£56.5 million) and through grant-in-aid from the Department for Business, Innovation and Skills (£75.7 million), and the Department for Culture, Media, and Sport (£0.6 million). This grant-in-aid is primarily for managing the radio spectrum (the airwaves used by everyone from taxi firms and boat owners to mobile phone companies and broadcasters): income is shown at **Figure 2** and expenditure is outlined at Figure 3 and Figure 4 (page 12).

Figure 2
Grant-in-aid income

	2008-09 (£000)	2009-10 (£000)
Department for Business, Innovation and Skills		
Spectrum management	71,268	70,622
Spectrum awards	2,437	3,161
Competition law enforcement	752	1,041
Digital participation	–	429
Integration of postal services regulation	633	305
Local media assessment	–	95
Peer-to-peer illegal file sharing	179	31
Enterprise Act supercomplaint	142	–
Spectrum clearance scheme	746	–
Public interest test	–	–
Department for Culture, Media and Sport¹		
Media literacy	559	559
Total	76,734	76,243

NOTE

1 For 2010-11, the Department for Culture, Media and Sport is providing Ofcom with an additional £500,000 to support community radio.

Source: Ofcom Annual Report 2009-10

1.9 The resources that Ofcom has available to spend are subject to a financial cap, agreed on a cash basis with HM Treasury. Since the organisation was established, the level of this cap has been reduced year-on-year and Ofcom has accordingly been required to deliver its work programme, including delivering additional duties, for a lower total expenditure each year.

1.10 The licence fee income that Ofcom collects is paid, along with penalties administered during the year, into the Consolidated Fund and is reported to Parliament in the annual *Section 400 Licence Fees and Penalties Account*.

1.11 Ofcom's annual reports include total expenditure broken down by sector (**Figure 3**), and by cost element (**Figure 4** overleaf). These figures differ because expenditure reported by sector is adjusted to include cash spent on capital items and pension contributions to the schemes Ofcom inherited from its predecessor bodies, and excludes non-cash items such as depreciation. Ofcom does this so that it can report the basis of its annual charges to its stakeholders, but does not produce the analysis of expenditure on a directly comparable basis. The primary driver of the difference between the amounts for 2009-10 in the figures is an adjustment in respect of pension scheme costs incurred during the year (£12.6 million) mentioned at paragraph 1.20. We have made comparisons over time based on the accounting convention used in Figure 4 as this gives a more accurate picture of the underlying business. Where only cash accounting figures are available, for example on expenditure by objective and efficiency savings, we have used those.

Figure 3
Expenditure by sector

	2004-05 (£000)	2005-06 (£000)	2006-07 (£000)	2007-08 (£000)	2008-09 (£000)	2009-10 (£000)
Spectrum	72,816	77,129	81,618	80,358	76,351	75,260
Networks and services	21,334	27,984	23,515	25,512	28,027	31,747
Broadcasting	26,495	28,101	30,450	28,280	25,763	23,773
Other	2,292	5,780	4,939	4,461	4,034	4,354
Total	122,937	138,994	140,522	138,611	134,175	135,134

Source: Ofcom Annual Reports and Accounts

Figure 4
Expenditure by cost element

	2004-05 (£000)	2005-06 (£000)	2006-07 (£000)	2007-08 (£000)	2008-09 (£000)	2009-10 (£000)
Staff costs	53,900	49,841	55,784	60,781	58,281	62,276
Professional services	7,350	11,299	8,712	15,816	11,556	10,882
Outsourced services	5,258	4,405	11,243	10,249	8,886	8,847
Administrative and office costs	9,658	10,175	11,619	9,017	8,641	8,276
Premises	8,785	8,494	7,608	10,825	11,211	7,814
Amortisation	859	0	1,356	2,462	4,322	5,109
Temporary staff and contractors	2,670	3,087	4,628	5,190	3,600	3,337
Depreciation	6,106	7,171	5,746	3,888	3,478	2,911
Information technology	14,961	14,283	4,396	2,623	3,873	2,777
Travel and subsistence	1,645	1,710	1,741	1,711	1,764	1,408
Other costs	11,730	18,521	16,588	11,380	9,701	7,957
Total	122,922	128,986	129,421	133,942	125,313	121,594

Source: Ofcom Annual Reports and Accounts

1.12 The radio spectrum is a strategic national resource, which Ofcom manages: this responsibility formed the majority of its 2009-10 expenditure (£75 million, 55 per cent). Ofcom's work in this area includes, for example: ensuring the efficient allocation of spectrum; managing users of the spectrum through licensing and enforcement; and preparing for the London 2012 Olympic and Paralympic Games.

1.13 Spectrum licensing, enforcement and additional payments generate income for the Exchequer of around £200 million each year. Ofcom is responsible for collecting this income under section 400 of the Communications Act 2003 and must prepare a separate account on these funds. Sixty-one per cent (£119 million) of spectrum income in 2009-10 came from Wireless Telegraphy Act licence fees. Under that Act, Ofcom can and does prescribe licence fees that are greater than those required to cover costs in connection with any functions related to wireless telegraphy.

1.14 Ofcom was granted, by its founding legislation, significant freedom to spend the resources allocated to the delivery of its objectives as the Board sees fit, within the funding cap set by HM Treasury. We examined Ofcom's financial controls and review processes and found that these were appropriately designed and executed to manage the risk of exceeding the cap. Ofcom also has initiatives in place to reduce expenditure, and hence meet ongoing reductions on the cap, for example by moving to leased rather than owned vehicles for spectrum engineering and enforcement staff.

1.15 HM Treasury has required Ofcom to spend less each year managing the spectrum, and Ofcom has consistently met this requirement. However, reducing operating costs is not, in itself, sufficient to ensure that good value for money – the optimal use of resources to deliver intended outcomes – is achieved. Delivering value for money in spectrum management requires focusing on what outcomes will be assessed and measured; what it should cost to deliver them efficiently; and how optimal efficiency can be achieved through strategic reductions in the cost base.

1.16 We have seen documentation relating to the spectrum plan for the London 2012 Olympic and Paralympic Games that demonstrates Ofcom's identification of the cost drivers and its consideration of value for money. However, it has made less progress in bringing together management information into higher-level performance metrics for this aspect of its business than for activities such as promoting competition in telecommunications markets. In December 2009 Ofcom commissioned work to better understand the use of its resources in delivering its core priorities in spectrum management.

1.17 Figure 4 outlines Ofcom's total expenditure by cost element. It demonstrates that the three largest drivers of cost are staff (51 per cent); professional services such as consultants, legal advice and consumer research (9 per cent); and outsourced services (7 per cent). In line with Ofcom's stated strategy to have a smaller, more highly-skilled workforce than its predecessors, total staff numbers reduced from 1,062 in 2002-03 to 865 in 2009-10. During this period, however, staff costs have risen from £46.5 million to £62.3 million, driven by a steady increase in staff numbers from 2005-06 (when 772 staff were employed) and an increase in average salaries.

1.18 Since Ofcom's inception three significant items have affected costs: an expansion of its remit that requires it to take on additional responsibilities; the need to fund a shortfall in its inherited defined-benefit pension schemes; and a drive to realise efficiencies forecast by policymakers when merging the legacy regulators.

New responsibilities and the pension deficit repair

1.19 Since its creation, Parliament and Government have given Ofcom a series of additional responsibilities. These include requirements to: plan and manage the spectrum for the London 2012 Olympic and Paralympic Games (**Figure 5** overleaf); prepare for the possible integration of the postal services regulator, Postcomm; increase digital participation; reduce the scale of illegal peer-to-peer file sharing; and take forward a mobile spectrum modernisation programme. In 2009-10 these activities cost £5.5 million (**Figure 6** overleaf). Ofcom forecasts expenditure of £10.6 million on new responsibilities in 2010-11, which will increase its total budget to £142.5 million.

1.20 When created, Ofcom was required to meet the pension liabilities of its legacy regulators and offer existing members a continuation of their defined-benefit pension schemes. Ofcom operates two such pension schemes which are now closed to new members. The last actuarial calculations made in 2007 (for the former Independent Television Commission Pension Plan) and in 2009 (for the Ofcom Defined Benefit Pension Plan) highlighted a combined funding deficit of £27 million.

1.21 Ofcom has sought to address this deficit as promptly as possible. During 2009-10 it paid £14 million into trust; of this, £7 million came from unused contingency funds. Ofcom forecasts that it will need to make a further contribution of £7 million in 2010-11, which will be funded, primarily, by an increase in licence fees.

Figure 5 Spectrum planning for the London 2012 Olympic and Paralympic Games

As part of London's bid for the 2012 Olympic and Paralympic Games, the then Secretary of State for Trade and Industry gave a guarantee to the International Olympic Committee that the UK Government would provide the frequencies required for the organisation of the Games. A guarantee was also given that the UK Government would waive any fees payable for these allocated frequencies. Ofcom was therefore given the responsibility from the outset to organise a full spectrum plan for the London Games and to arrange all the spectrum licences ahead of time to support the plan.

Planning started six years before the event. Ofcom's plans include putting in place a new computer system for technically assigning and administratively managing the many thousands of spectrum licences that will be issued for the Games; and testing spectrum provision at a number of special events prior to the Games – Ofcom is working with the Games' organisers to ensure the appropriate testing is done. Despite the fact that there will be more spectrum demand and more complexity than at any previous Olympic event, the comprehensive planning and testing show that Ofcom has learned where possible from previous events and is well positioned for the challenges of 2012.

Source: RAND Europe research for the National Audit Office

Figure 6 Costs of additional responsibilities and pension deficit repair

	2004-05 (£m)	2005-06 (£m)	2006-07 (£m)	2007-08 (£m)	2008-09 (£m)	2009-10 (£m)
Cost of extra responsibilities						
Spectrum	–	–	–	2.5	2.6	2.1
Olympics	–	–	–	–	0.6	3.1
Postcomm	–	–	–	–	0.2	0.1
Digital participation	–	–	–	–	–	0.1
Online copyright infringement	–	–	–	–	0.0 ¹	–
Total	–	–	–	2.5	3.4	5.5
Pension deficit repair payments	0.9	1.7	1.1	3.2	2.5	14.0

NOTE

¹ Online copyright infringement duties cost £3,000 in 2008-09.

Source: National Audit Office analysis of Ofcom data

Efficiency savings

1.22 Ofcom discusses in-year efficiency savings in its annual report and annual plan, but gives little further public detail of how these arise. We asked Ofcom for a breakdown of these savings, and **Figure 7** sets out where Ofcom achieved its five largest efficiencies since 2004-05. Ofcom calculates total savings to be in excess of £50 million, half of which were achieved in 2009-10. Efficiency savings do not always lead to a cash benefit; Ofcom's operating costs have fallen by £1.3 million since 2004-05 indicating that its savings were largely redeployed within the business and the money spent elsewhere.

1.23 In calculating its savings Ofcom has taken a cumulative approach, which means many savings are not releasing cash into the business, but represent costs that have otherwise been avoided. An example of this is the rationalisation of both central and field staff, where Ofcom calculates the monetary benefit of no longer employing an individual based on forecast 2010-11 average salaries. In 2005-06 it had 134 staff engaged in central operations, falling to 92 the following year, resulting in a saving of £2.9 million. Ofcom continues to include this amount each year in its calculation up to 2009, even though staff numbers rose between 2006 and 2008, yielding an estimated saving of £11.1 million. Comparing 2009-10 to 2005-06, however, total staff costs are only £2.9 million lower.

Figure 7

Ofcom's efficiency savings, 2004-05 to 2009-10

Five largest areas of savings	Estimate based on	
	Ofcom methodology (£000)	NAO methodology (£000)
Disposal of surplus properties	19,039	9,806
Central operations rationalisation	11,056	2,288
Field force rationalisation	8,363	709
Reorganising and sub-letting London headquarters	6,897	6,897
Pay freeze	2,810	2,810
Total	48,166	22,510

NOTE

1 Ofcom's figures are net of £1.7 million restructuring costs.

Source: National Audit Office analysis of Ofcom data

1.24 We recalculated Ofcom's five largest savings using a different methodology to assess whether the savings represent improvements compared with the position in 2004-05. Outside these five areas, there are projects which required upfront investment and have longer payback horizons. An example is the rationalisation of information technology systems costing some £33 million to 2009-10. Ofcom has already seen benefits from this investment, lowering ongoing systems costs by some £6 million in 2009-10, but it will be some time before the investment pays back.

1.25 Our calculation simply looks at expenditure in the base year and compares it to that in 2009-10 based on costs incurred in actual prices, and does not take into account expenditure avoided. This is in line with Comprehensive Spending Review 2007 guidance which states savings should be: new to the period, cash-releasing, and scored only once.³ Figure 7 demonstrates that, using this method, savings for the period from the five largest initiatives are £22.5 million.

1.26 This total represents savings of some 3 per cent per year on an annualised basis since 2004-05. This magnitude of saving is broadly similar to the target the Government set for departments through the Comprehensive Spending Review 2007 process, which some departments are unlikely to meet. Ofcom, however, would be expected to fare better due to the gains achievable from merger efficiencies.

Summary on resources

1.27 The five regulators Ofcom replaced had total expenditure of £118.3 million in 2002-03, the last full year of accounts, which is equivalent to £140.9 million in current prices. Ofcom's £121.6 million running costs are, in cash terms, £3.3 million more than its predecessors'. However, when this is adjusted for inflation Ofcom's running costs in 2009-10 are 14 per cent less than the bodies that it replaced. If we strip out expenditure on additional responsibilities⁴, and adjust for VAT payments⁵, expenditure is 27 per cent lower, in real terms, than the predecessor bodies'. These figures do not reflect Ofcom's decision to make a pension deficit repair payment of £14 million in 2009-10 (see paragraph 1.20), which would lower the real-terms comparison to 19 per cent.

1.28 Ofcom was created during 2003-04, taking on its powers in December 2003. It agreed with HM Treasury a baseline expenditure figure of £125 million, which forecasts what the predecessor bodies' expenditure would have been had they remained in existence for the full financial year: Ofcom uses this baseline in reporting expenditure reductions over time. Against this baseline, Ofcom's 2009-10 running costs are 28.6 per cent lower than those of the bodies it replaced.

³ For more information on the CSR calculations, see *HM Treasury: progress with VFM savings and lessons for cost reduction programmes*, Session 2010-11, HC 291, NAO, July 2010.

⁴ £11.6 million in current prices by March 2010.

⁵ Three of the five legacy regulators were not liable for VAT on core expenditure, unlike Ofcom, which estimates this as saving the legacy regulators some £8 million.

Part Two

Measuring Ofcom's performance

2.1 This Part considers how Ofcom measures its performance, the challenges it faces in doing so, and its delivery against its statutory duties. We also assess Ofcom's progress against the recommendation in our 2006 report: **As part of its overall contribution to regulatory accountability, Ofcom should identify and measure longer-term outcomes and benefits, using an approach like the NAO's measurement framework. This could include analysis and explanation of the benefits delivered for consumers, such as price, choice, innovation and satisfaction, as well as benefits to markets.**

Performance measurement

2.2 Performance information is central to good organisational management, enabling assessment of performance against stated objectives, as well as effective accountability to Parliament, the taxpayer and other stakeholders. Guidance published by the NAO and others⁶ recommends that to develop measures in support of high-level objectives, or statutory duties, it is necessary first to establish clear links between core objectives, activities, and potential indicators. Furthermore, rather than just attempt to measure outcomes, it is useful to break down activity into inputs, outputs and outcomes and understand the links between them to assess how performance can be improved.

2.3 Ofcom's statutory duties are primarily discharged through influencing the companies it regulates. Its success depends on companies' behaviour in relation to other participants in the market (particularly consumers), and on companies' performance in achieving outcomes consistent with Ofcom's objectives. It has a range of tools which it can use, from relatively informal action such as guidance, to more formal action such as fines.

2.4 In common with all other regulatory bodies, Ofcom is presented with a number of challenges in measuring the performance it achieves, including:

- determining indicators of outcomes reflecting the statutory duties set for it by Parliament;
- appropriately recognising the fact that outcomes are usually influenced by other factors as well as its own actions; and
- determining thresholds for 'good' performance, given this problem of attribution.

⁶ *Choosing the right FABRIC: a framework for performance information*, HM Treasury, NAO et al., 2001.

2.5 In line with good practice, Ofcom sets out the direction of the organisation in a rolling three-year *Strategic Framework*. It uses this framework to set objectives, published in the *Annual Plan*, which derive broadly, although not always explicitly, from its statutory duties. The plan includes priorities – often described as outcomes – associated with each objective and a discussion of why they are important, how they fit within the strategic framework, and what is necessary to achieve them.

2.6 Ofcom produces detailed and high-quality management information comprising input and output indicators (such as the number of consultations closed each month, and the time taken to process them), and outcomes (such as measures of broadband speed). This is reviewed in detail each month by the Executive Committee, and provided to all Board members. We conducted surveys of senior Ofcom staff and interviewed all of the Board members and eight other senior staff. These individuals found the management information comprehensive, timely and useful, allowing them to allocate resources, measure performance against strategic objectives and manage risks.

2.7 Although the Annual Plan sets out what activities Ofcom expects will contribute to its desired outcomes, it does not describe how Ofcom will measure whether it has achieved these outcomes: it does not state what success will look like. Since we presented our preliminary findings to Ofcom, it has introduced a description of what ‘good’ looks like into its internal performance reporting on its major work areas: we encourage it to develop this kind of presentation for an external audience.

2.8 Without a clear idea of when success is achieved, it is difficult for stakeholders, such as the Government Departments that provide Ofcom’s grant-in-aid, the companies on which it levies fees, and the consumers and citizens on behalf of whom it acts, to assess the organisation’s success in meeting its objectives. The lack of external communication of what good looks like is compounded by the differing frameworks that Ofcom uses to state its objectives and measure its performance.

2.9 Measuring performance is a challenging task for a regulator, but we have identified some examples of good practice that Ofcom may wish to consider:

- The Environment Agency’s corporate strategy sets out a “We will know we are succeeding when...” statement for each of the organisation’s aims, and it has developed a corporate scorecard to demonstrate whether it is on track to achieve these aims.
- The Australian Communications and Media Authority’s Annual Report contains an appendix which outlines its two outcome objectives, the associated outputs to deliver these, and a series of key performance indicators to assess delivery of the outputs.

Outcomes in the communications sector

2.10 Since Ofcom does not articulate how it defines success in terms of the outcomes that it is striving to achieve, we constructed a framework to demonstrate a possible approach to arriving at a holistic assessment of its performance. We chose a set of indicators which, in our opinion, represent some of the key outcomes that we might expect Ofcom to be addressing. We grouped these indicators under four headings – benefits to citizens and consumers; market indicators; stakeholder views; and operational and cost efficiencies – which together comprise a performance scorecard.

2.11 In this section we look at some of the key outcomes that have been realised in the communications sector, selected from our performance scorecard. These are high-level indicators and most are supported by a wealth of detail such as population or geographic breakdowns, or market segmentation. Our aim in this report is to present a high-level overview, and only to discuss a few of the indicators in any detail: Ofcom itself sets out a much more detailed analysis in its regular publications such as the *Communications Market Report* and *The Consumer Experience*. In Part 3 we explain how these indicators could be brought together to form a holistic assessment of Ofcom's performance.

Benefits to citizens and consumers

2.12 Outcomes for consumers of communications products and services, such as falling prices and increased choice and quality, have been very largely positive. One aspect that is important not only to individual consumers but also on a wider societal basis (that is, to citizens) is service availability; most communications services are available to almost the entire population and increasing numbers of people are making use of them:

- In 2009, 89 per cent of adults reported personally using a mobile phone. Since 2005 there have been more mobile phone connections than people in the UK, and this number is still rising.
- Also in 2009, 76 per cent of adults lived in a house with a computer. Some 73 per cent of households were connected to the internet, 96 per cent of these using broadband.
- As the digital switchover process moves towards completion in 2012, 90 per cent of households now receive digital television.
- In 2009, 48 per cent of adults surveyed by Ofcom said they had a DAB digital radio set: digital radio can also be accessed via digital television and the internet.

2.13 The only services within Ofcom's remit that are experiencing declining levels of take-up are fixed-line telephony and analogue television, as they are gradually replaced by mobile phones in the first case, and more rapidly by digital television in the second.

2.14 One of the key considerations for consumers in any market is pricing. In markets where the regulator does not directly control prices it can nevertheless influence the nature of the market, for example by creating the conditions for innovation and competition to thrive. These and other factors impact on prices paid by the end user. Although price outcomes cannot be directly attributed to the regulator they are a reflection of the environment it regulates and were prices inexplicably to rise one might expect a regulator to assess whether action is required.

2.15 As **Figure 8** demonstrates, prices of both fixed-line and mobile telephone services have fallen steadily since Ofcom's creation. This fall has been more marked in the mobile phone market than for fixed lines; this is to be expected given the relative maturity of the two markets and, for example, Ofcom's interventions on mobile termination rates.

2.16 An illustration of the converging nature of the communications market is the increasing prevalence of bundled services – for example fixed-line calls, broadband and pay-TV purchased together for a single price. Broadband is frequently purchased as part of a bundle, and so it is hard to identify the price of broadband on its own. There does not appear to have been much change in the price of bundled broadband services over the last three years although it is likely that consumers are in fact getting more, such as faster speeds, for the same price.

2.17 OECD data for 2009 shows the range of broadband subscription prices across 30 countries; the UK is at the top of this list, with the lower limit of the range of prices below that of the other countries. However, looking at average price per megabit-per-second, the UK falls to 15th out of 30 countries. This indicates that although UK prices are low compared with other countries, average broadband speeds are also relatively low.

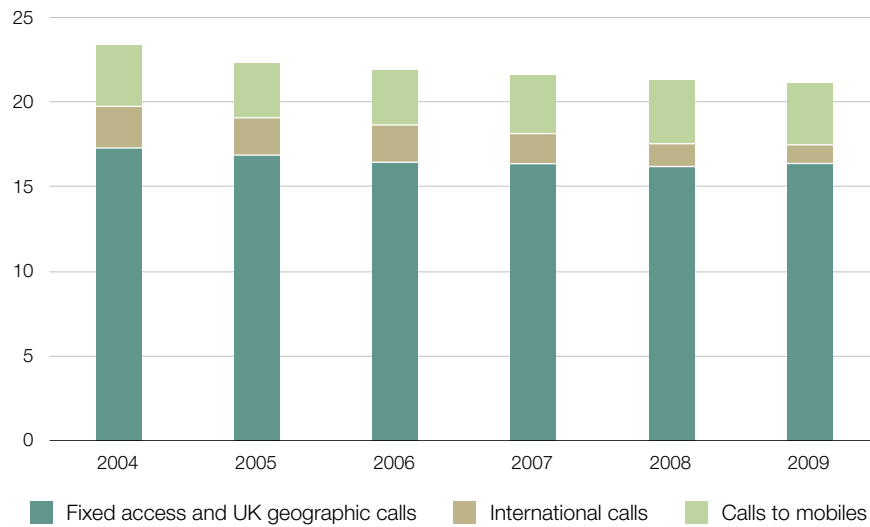
2.18 Ofcom surveys consumers to assess the consumer experience and has found that the vast majority of consumers are either 'very' or 'fairly' satisfied with the levels of service, and value for money, offered in the communications market. Ofcom also monitors levels of complaints to the firms it regulates, as well as to its own contact centre; this shows most complaints metrics are in decline. **Figure 9** on page 22 provides an example of Ofcom acting to reduce complaints about mis-selling of mobile phone services.

Figure 8

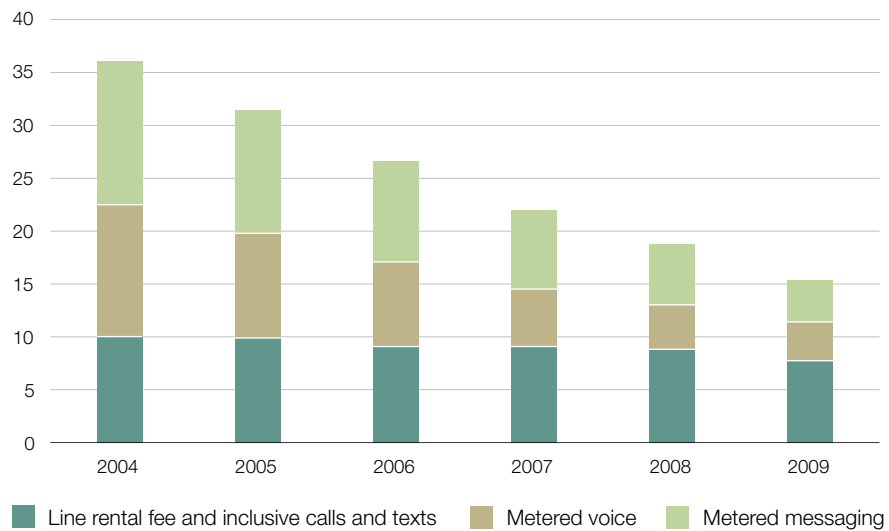
Cost of telephone services 2004–09

Cost of a basket of residential fixed line services

£ per month (2009 prices)

**Cost of a basket of mobile services**

£ per month (2009 prices)

**NOTE**

1 Prices have been adjusted for inflation and include VAT; they exclude non-geographic voice calls.

Source: Ofcom

Figure 9

Mobile mis-selling

Mobile mis-selling can take a number of forms, for example: general mis-selling, where the consumer is given false information; 'slamming', where there is a significant change to the contract or service provider without informed consent from the consumer; or cashback scams, where the customer is promised funds after purchase that are impossible to obtain.

In the UK, in response to rising complaints, the industry agreed a self-regulatory code aimed at stamping out misleading sales and marketing practices. Shortly after this, in 2007, Ofcom consulted on a new General Condition which was confirmed 18 months later. This allowed it to investigate formally any rule breaches and impose sanctions. Ofcom has seen a reduction in the number of complaints about these problems, as can be seen in Figure 10.

There are few other countries where such issues have been tackled by a regulator. In Israel, mobile mis-selling is dealt with by a government ministry. The sector is governed by legislation or through administrative orders. There has been only a gradual decrease in these cases. In Australia, mobile mis-selling is dealt with by consumer affairs organisations. Problems are escalated to the Telecommunications Industry Ombudsman, with the regulators acting as stakeholders; mobile mis-selling is increasing.

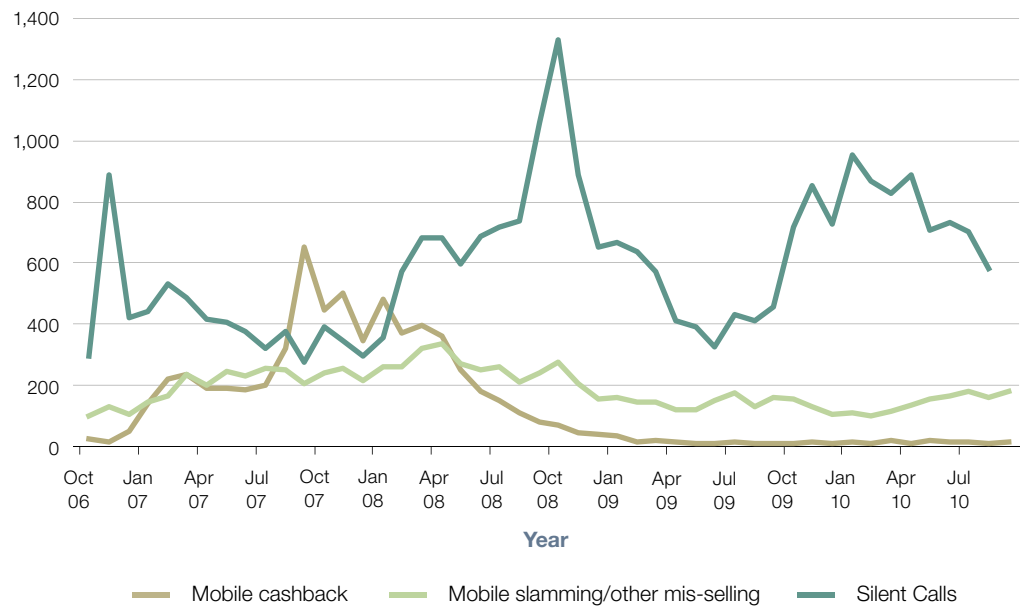
Source: RAND Europe research for the National Audit Office

2.19 One exception to the declining level of complaints is so-called 'silent calls' (**Figure 10**). These occur when call centres use automatic dialling equipment designed to detect whether a call is answered by a person or a machine. If it is a person, a call centre operator should then take over the call, but if there are no operators available the person who has answered the call will just hear silence. This can cause nuisance or anxiety as the person called may think it is a malicious call. Ofcom has increased its efforts to enforce existing guidance, and imposed a number of fines but, despite an initial fall in complaints from October 2008 to June 2009, they rose again up to January 2010. Since then there has been more of a downward trend. Ofcom asked the Department for Business, Innovation and Skills to increase the maximum fine it was able to impose in such cases; following a consultation, the Department decided to increase the maximum fine from £50,000 to £2 million. Whilst this should increase the deterrent effect of such fines, it – and Ofcom's revised statement of policy – only came into force at the end of September 2010 following Parliamentary approval, so will not yet have had an effect.

Figure 10

Consumer complaints – selected issues

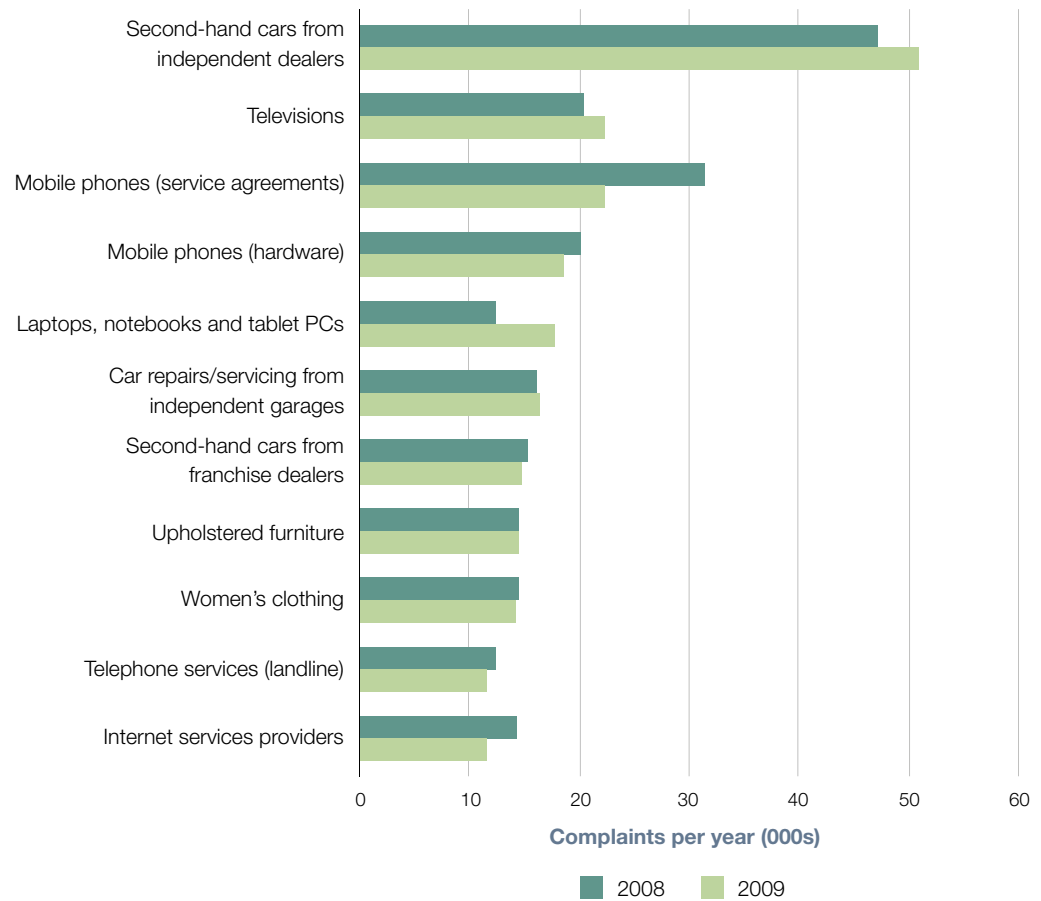
Complaints per month



Source: Ofcom

2.20 Consumers will also complain to consumer bodies such as the Office of Fair Trading via Consumer Direct, its consumer helpline. Consumer Direct's data covering 2009 (**Figure 11** overleaf) shows that three of the most complained-about goods and services are communications products (mobile phone service agreements, telephone landlines and internet service providers).

Figure 11
Top categories of complaints to Consumer Direct



NOTES

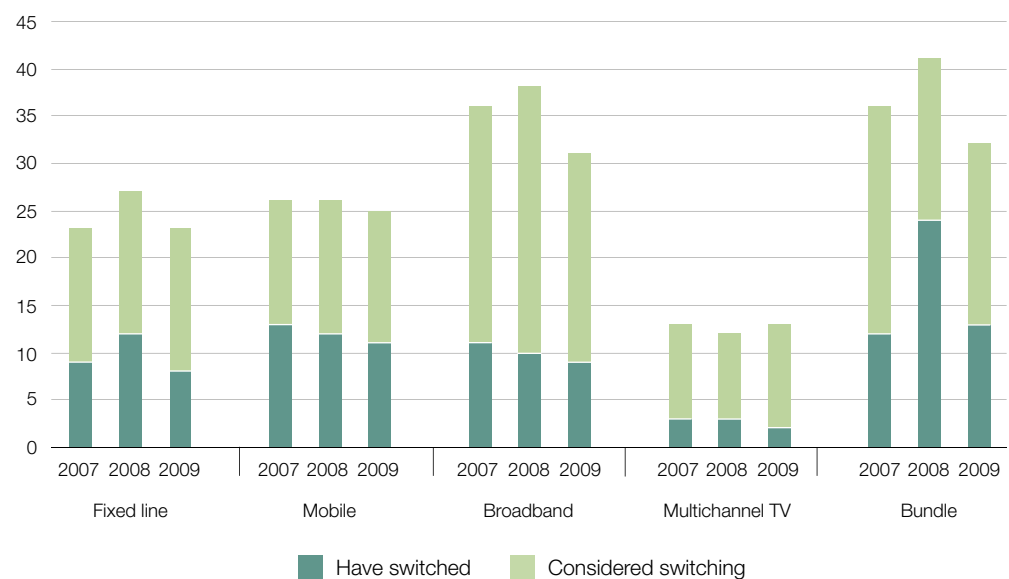
- 1 Categories shown are the top 11 for 2009.
- 2 Consumer Direct offers no opinion, or verification of the facts, when gathering this information.

Source: Consumer Direct

2.21 An indicator of the ease with which consumers can engage with a market is the rate at which they 'switch' service providers: high switching levels can be indicative of a competitive market, although low switching levels do not necessarily indicate a lack of competition. It is therefore important that a regulator understands the drivers behind observed switching rates. **Figure 12** shows that there has been little change in levels of switching in the communications markets, and **Figure 13** overleaf illustrates switching levels compared to the energy and car insurance sectors. Ofcom's research shows that increasing numbers of consumers think it is difficult to switch broadband supplier (up from 24 per cent in 2008 to 28 per cent in 2009). Ofcom has identified tackling barriers to switching as a priority in its 2010-11 Annual Plan. In the past it has undertaken a number of projects looking at switching in different markets but, in view of the ongoing challenge presented by changing technology and the increased prevalence of bundling, in September 2010 it launched a strategic review, covering fixed and mobile telecommunications, broadband and pay-TV.

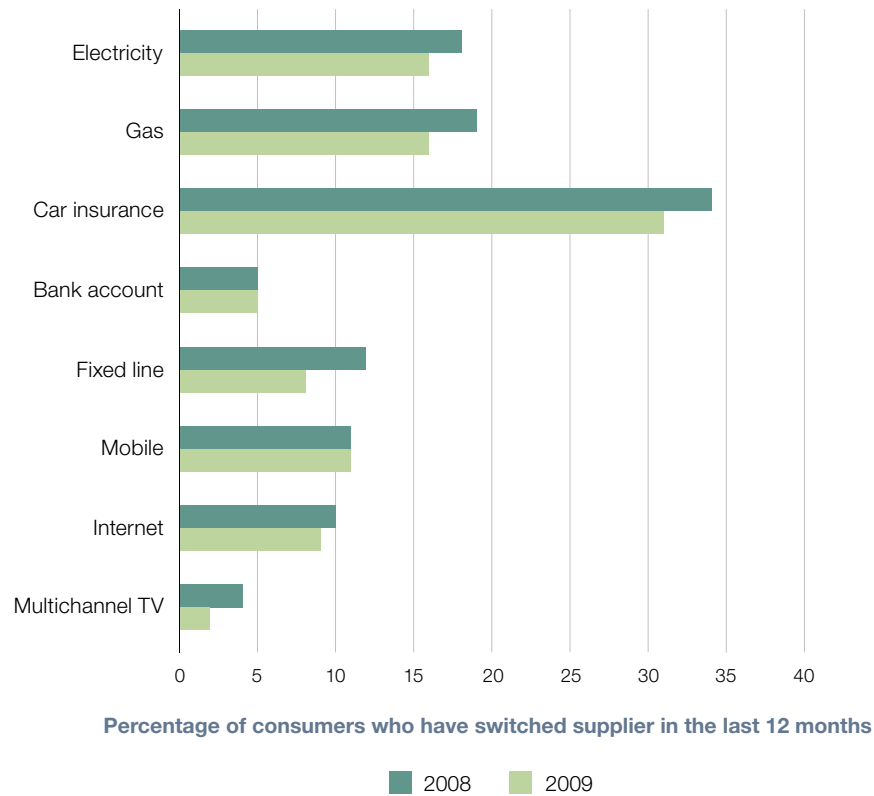
Figure 12
Switching in communications markets

Percentage of consumers switching in the last 12 months



Source: Ofcom

Figure 13
Switching in other markets



Source: Ofcom

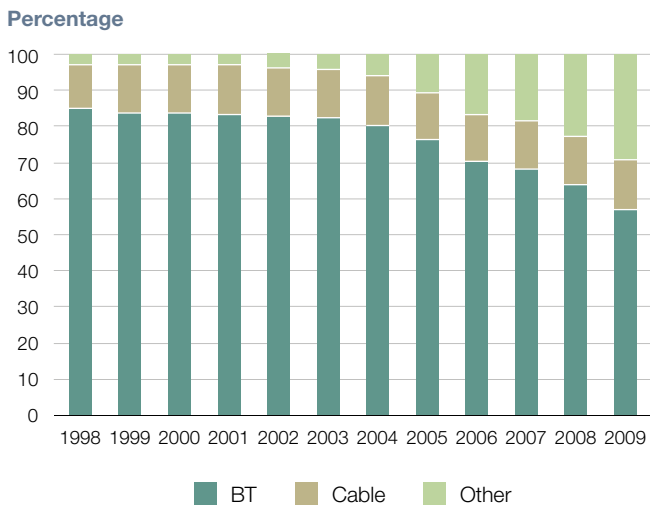
Market indicators

2.22 One of the key indicators of a well-functioning market is the level of competition as measured by the market share of the various players. Competition has increased in all of the markets overseen by Ofcom, most notably in broadband, as illustrated in **Figure 14**.

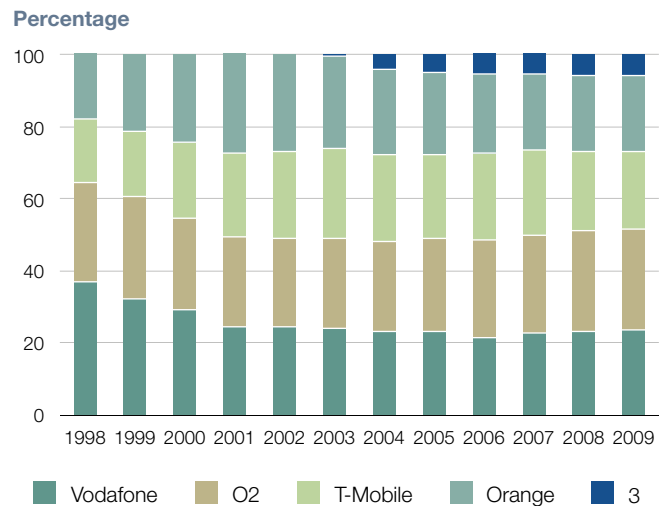
2.23 The growth in fixed-line and broadband competition has been enabled by regulatory action requiring BT to allow other companies to access its infrastructure, as described in **Figure 15** on page 28.

Figure 14
Market share

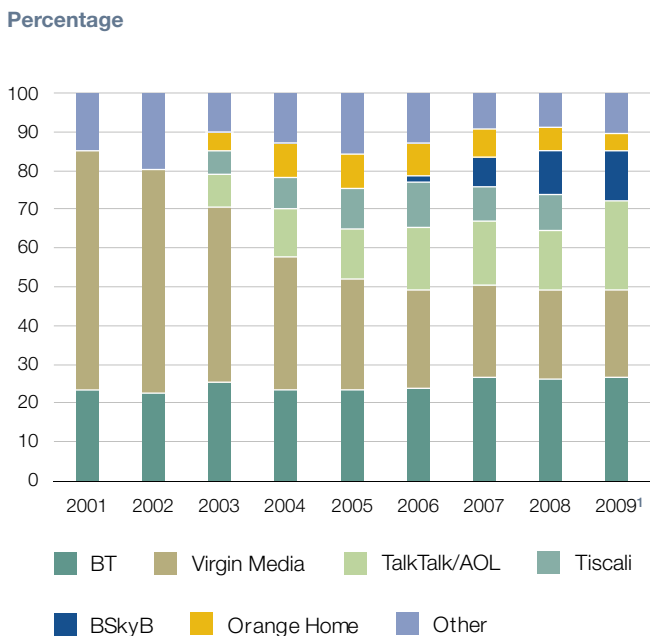
Market share – fixed-line telephones



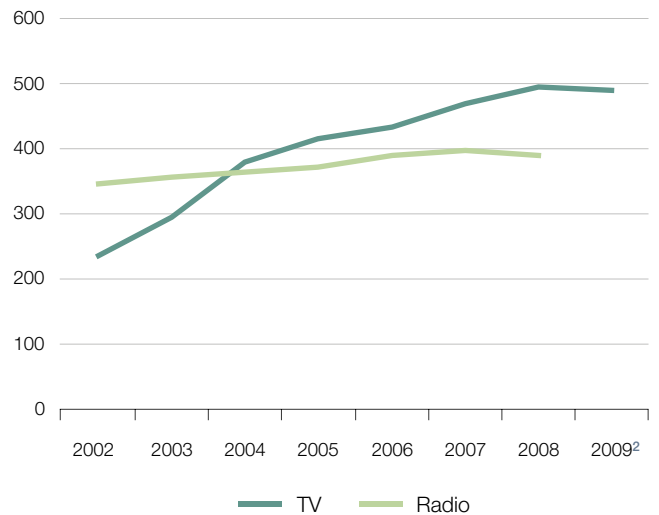
Market share – mobile telephone subscriptions



Market share – broadband retail connections



Number of TV channels and radio stations broadcasting in the UK



NOTES

- 1 Tiscali now merged with TalkTalk/AOL.
- 2 Ofcom has changed its methodology for counting radio stations, so there is no comparable figure for 2009.

Source: Ofcom

Figure 15

Broadband competition and local loop unbundling – an international perspective

The 'local loop' refers to the set of wires going into houses and other premises, enabling the use of communications technologies. In the past the local loop was controlled by one incumbent provider; in the UK this was BT. Local loop unbundling (LLU) provides access for alternative providers to provide communications technology services directly to the consumer, thereby introducing competition in the market.

Germany was one of the first countries to adopt LLU, in 1996, since when the cost of basic broadband has fallen and speeds have risen: from €60 per month for 0.7 Mbps to €20 per month for 1–2 Mbps, with a total of 11 providers having taken up the local loop. France introduced LLU in 2001, and a total of nine providers have taken up the local loop, whilst in Australia, ten providers have taken this up after it was introduced in 2006.

In the UK, Ofcom's predecessor Oftel first implemented LLU in 2000. Early accessing of the local loop by competitors was slow but sped up during 2002. It was not until Ofcom used the Enterprise Act in 2004 to negotiate functional separation, following its Strategic Review of Telecommunications, that things began to really take off. Openreach was established as a separate entity within the BT Group in 2005, to provide equivalent services to all operators with access to the local loop. With over 20 providers, more have taken advantage of LLU in the UK than in the other countries reviewed. This has meant that broadband penetration is marginally higher in the UK, and prices are below average when comparing internationally. Prices of up to 8 Mbps have fallen from £30 to £10 per month. LLU has worked well in terms of increasing competition, which has had a positive impact on access and price for consumers.

Source: RAND Europe research for the National Audit Office

Broadband speeds

2.24 As noted above, basic broadband is virtually universally available in the UK and prices are low compared to other countries. Quality of service is a further indicator of the effectiveness of the market; in the case of broadband the most obvious measure of quality is speed. The most commonly-quoted figure is download speed – advertised rates such as '16 megabits per second (Mbps)', indicating the speed at which information can be accessed from the internet onto the user's computer. Other measures include upload speed – relevant, for example, for sharing photos online; and latency, packet-loss and jitter – more technical factors affecting the consumer's broadband experience.

2.25 Broadband speeds are one area where the UK lags behind many other countries. There are a number of difficulties in measuring average speeds and a number of reasons, such as population density, why speeds will vary between different geographic locations, and caution should be exercised in linking outcomes directly with regulatory action or lack of action.

2.26 The available sources, however, do point to relatively slow speeds in the UK. In addition to the OECD data described at paragraph 2.17, other examples are: Saïd Business School / Cisco⁷ research in 2009 which found the UK average download speed to be 4.8 Mbps, 31st of the 66 countries covered by the research; and Akamai⁸ research in 2009 which found the UK average download speed to be 3.7 Mbps, 13th of 19 European countries, 19th of 45 overall. Ofcom's own research into actual speeds found that in May 2010 the average download speed was 5.2 Mbps, up from 4.1 Mbps in 2009. Average upload speed in 2009, according to Ofcom, was only 0.43 Mbps; the Saïd Business School / Cisco research found the average upload speed to be 0.5 Mbps, placing the UK 39th of 65 countries.

2.27 Ofcom research in 2008 found that broadband speed was the most common reason for consumers being dissatisfied with their internet service provider. Ofcom introduced a voluntary *Code of Practice on Broadband Speeds* that came into force in December 2008. Its 2010 research highlighted the fact that the average actual download speed is equivalent to only 45 per cent of the average advertised speed. Because of the ongoing problems in this area Ofcom strengthened the Code in July 2010, and intends to monitor compliance.

2.28 Ofcom considers it likely that average speeds will increase in the next few years, particularly as a result of the fibre networks being rolled out by providers such as Virgin Media and BT, and it is taking steps to ensure that competitors will have access to BT's infrastructure for 'superfast' broadband. Decisions on the provision of public funding to improve broadband networks are for the government rather than the regulator.

Stakeholders' views

2.29 An important aspect of the performance of any organisation is the views of its stakeholders; this is particularly the case for an organisation which needs to influence others. Ofcom has undertaken surveys of its stakeholders in 2005, 2007 and 2010.

2.30 We undertook a survey of people who had responded to an Ofcom consultation, asking their views on the consultation process. The results were generally favourable, for example when we asked about the last consultation to which people had responded, 78 per cent of respondents thought the time given to respond was about right and 76 per cent thought Ofcom's response was given in a timely manner. However, when we asked for more general views about Ofcom's speed of action following consultations, more people had negative views than positive, as shown in the last chart in **Figure 16** overleaf. We looked at responses broken down by the number of consultations people had responded to but there was no particular pattern to explain this apparent contradiction; it has been observed in other areas, however, that people's general views are often at odds with their specific experiences.⁹

⁷ *Broadband quality score: a global study of broadband quality*, Saïd Business School, University of Oxford; University of Oviedo; sponsored by Cisco, September 2009.

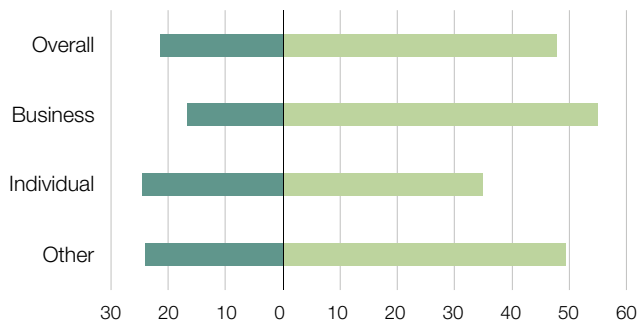
⁸ *The state of the internet: 4th quarter 2009*, Volume 2, Number 4, Akamai Technologies Inc, April 2010.

⁹ For example: Ipsos MORI, *The reputation of local government: literature review to support the 'my council' campaign*, Local Government Association, October 2008.

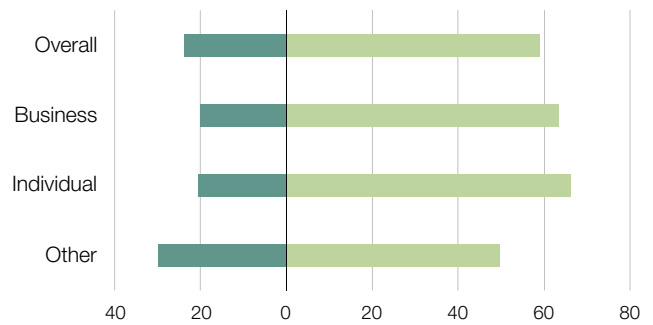
Figure 16
Stakeholder views on Ofcom’s consultation process

Percentage of respondents agreeing or disagreeing with each statement

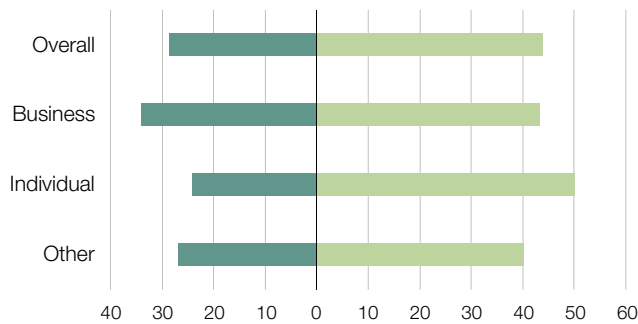
The number of Ofcom consultations in the sector(s) relevant to me, or my organisation, is appropriate



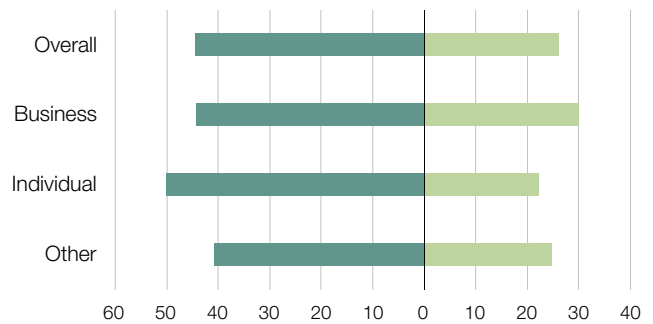
Ofcom consultations are clear in their purpose



Ofcom consults on issues arising in the sector(s) relevant to me, or my organisation, in a timely manner



After consulting, Ofcom acts upon the issues relevant to me, in a timely manner



Percentage agree Percentage disagree

Source: National Audit Office survey of Ofcom stakeholders

2.31 Stakeholders’ views on speed of decision making are supported by other metrics; consultation performance indicators show that of the 46 decisions in the 12 months to March 2010, four took more than 31 weeks between the consultation closing and the decision being published. Taking action requires: recognising that there is a problem; identifying the available options; consulting; and implementing the chosen solution. Ofcom believes that any significant delays occur in the transition from consultation to implementation. Any delay in reaching a decision could lead to a continuation of consumer harm. Ofcom put forward a reason for, and a consequence of, the delay between consultation and implementation, described below.

2.32 All of Ofcom’s decisions can be appealed. An appeals process is an essential part of ensuring a regulatory regime is proportionate and accountable. Parliamentary Acts establishing economic regulators contain explicit rights of appeal for regulated companies, enabling appellants to take their case to the High Court for judicial review. The Court will not review the merits of the decision itself: it reviews the manner in which the decision was made. The Communications Act, however, in implementing a European Directive, includes provision for a merits-based appeal.

2.33 A European Directive was adopted in 2002 to create a common regulatory framework for electronic communications networks and services. This required a right of appeal to an independent body against decisions taken by national regulatory authorities, stating “Member States shall ensure that the merits of the case are duly taken into account”. In the United Kingdom, Parliament enacted this provision through sections 192–197 of the Communications Act 2003 using the Competition Appeal Tribunal: the Act states that “The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of the appeal”.

2.34 Unlike a judicial review the Tribunal can challenge the merits of the decision, looking at all parts of the decision-making process; if it upholds an appeal, it can supplant Ofcom’s decision. This style of appeal is similar to those made under the Competition Act, which we examined in a previous report¹⁰, but differs markedly from the other economic regulators which, outside their competition decisions, in most respects can only be appealed on the process of the decision making.

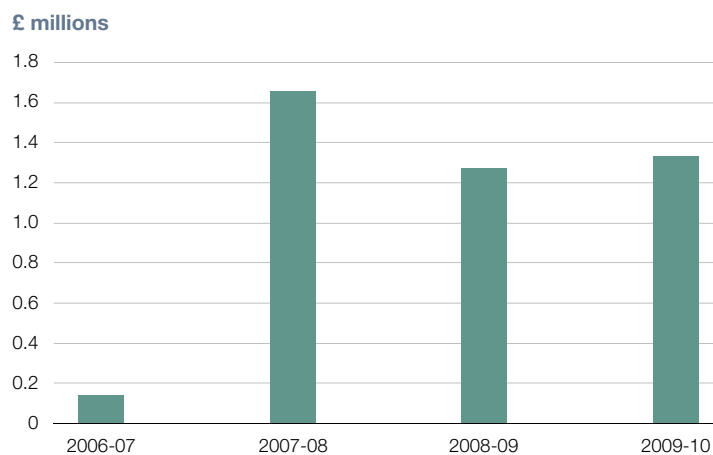
2.35 One consequence of this situation is that Ofcom will take into account evidence received after the deadline for submissions to consultations, as it judges not to do so could itself be grounds for appeal. An example is in the pay-TV judgement: Ofcom started an investigation into the pay-TV market in March 2007 which included three consultations, the last of which began on 26 June 2009 with a closing date of 18 September 2009. Despite this closing date Ofcom received consultation responses up to the end of February 2010. Ofcom considered these responses, publishing its final decision in March 2010, which was appealed. Ofcom considers this to be a shortcoming in its legislative environment which it cannot control. In September 2010 the Department for Business, Innovation and Skills launched a consultation to review the appeals process to ensure that it correctly reflects the intention of the European Directive.¹¹

¹⁰ *Review of the UK’s competition landscape*, NAO, March 2010.

¹¹ *Implementing the Revised EU Electronic Communications Framework – overall approach and consultation on specific issues*, Department for Business, Innovation and Skills, September 2010.

2.36 Ofcom has been appealed 35 times under section 192 of the Communications Act since 2003. Some of these appeals were heard together as they covered similar issues, leading to 25 Tribunal proceedings. Of these Ofcom won six, lost four, achieved a split decision in two, and five cases were withdrawn: eight cases are ongoing. In one case Ofcom lost, the Tribunal's decision was subsequently overturned by the Court of Appeal. **Figure 17** outlines Ofcom's costs associated with Communication Act appeals, including legal costs and staff time. The level of staff time required to defend an appeal varies considerably, but in one year, on one appeal, over 7,000 staff hours (almost four staff years) were recorded. The frequency of appeals is rising and has cost Ofcom over £1 million per year since 2007-08.

Figure 17
Ofcom's appeals costs



Source: Ofcom

Part Three

A holistic assessment of Ofcom's performance

3.1 Ofcom does not have a consistent framework against which to assess the outcomes and benefits to citizens and consumers of what it does. To bring together the performance measures discussed in the preceding section, and to try and address the measurement and reporting challenges outlined at paragraph 2.4, we developed a 'sphere-of-influence' model which recognises that Ofcom has more direct control over some areas (for example, its own management and use of resources) than others (such as complaints from consumers). We assigned each of the indicators in our scorecard to one of the following categories:

1 = indicators more influenced by Ofcom's actions than by other factors

2 = indicators about equally influenced by Ofcom and by other factors

3 = indicators more influenced by other factors than by Ofcom's actions.

3.2 To synthesise these aspects of performance into a holistic view, we applied the principle that a high-performing regulator would be achieving 'good' results on all of the indicators over which it has most control (category 1), it would achieve good results on a majority of the indicators in category 2, and good results on some of the indicators in category 3.

3.3 As discussed in paragraph 2.7, Ofcom does not generally set out what success looks like – it does not set itself explicit targets. In the absence of existing targets, and recognising that it would be inappropriate to apply targets retrospectively, we have formed a broad judgement about Ofcom's performance on each of the indicators in our scorecard. **Figure 18** overleaf shows the scorecard indicators and influence categories combined with our judgement of performance.

3.4 This model is very much a starting point and an indication of what a framework might look like. Ofcom should work with consumer and industry representatives, as well as government and other stakeholders, to develop its own assessment framework.

3.5 A holistic assessment of performance clearly relies on judgements at several levels (in this case, regarding the criteria for selection of indicators; assessment of degrees of influence; and views on what counts as a 'good' result on each indicator – for example, a target level or a specific year-on-year trend). We have applied our own judgements in

this illustrative framework. When applied by a regulator, this type of approach has the advantage of being transparent to stakeholders about the need for making judgements of these kinds. It allows the regulator to engage with its stakeholders in making such judgements and setting thresholds for what will count as good performance when developing its work programme, and then to be held accountable against these standards.

Figure 18
Performance scorecard

	Influence category 1 (high degree of influence by Ofcom)		Influence category 2 (medium degree of influence by Ofcom)		Influence category 3 (low degree of influence by Ofcom)	
	Indicator	Assessment	Indicator	Assessment	Indicator	Assessment
Benefits to citizens and consumers			Retail prices	B		
			Switching rates	C		
			Take-up	A		
			Choice and availability	A		
			Quality of service	B		
Market indicators			Market shares	A	Business revenues	A
			Broadband quality	C	Viewing/listening hours	B
			Value of spectrum to the economy	A		
Stakeholder views	Consultation processes	A	Interview results	B	Complaints indicators	B
Operational and cost efficiencies	Operating costs	A				
	Quality of cost information	B				
	Staff numbers and costs	B				
	Licence processing speed	A				
	Call centre performance	A				

NOTES

A = Good performance

B = Some room for improvement

C = Attention needed

Source: National Audit Office

Appendix One

Methodology

The main elements of our fieldwork, which took place between January and May 2010, were:

Method	Purpose
<p>1 Performance scorecard</p> <p>To produce a holistic view of Ofcom's effectiveness, we collected and analysed a range of relevant metrics, over which Ofcom has varying degrees of control. The data are divided into four areas: market indicators; benefits to citizens and consumers; stakeholders' views; and cost and operational efficiencies.</p>	<p>To assess the trends in indicators that are linked to Ofcom's performance, and give a broad picture of the outcomes achieved by Ofcom, including the cost efficiencies achieved by Ofcom over its predecessors.</p>
<p>2 Semi-structured interviews with stakeholders</p> <p>We conducted 11 interviews with Ofcom's stakeholders from a range of sectors, including:</p> <ul style="list-style-type: none"> ● Consumer protection/advice ● Business representatives ● Fixed-line and mobile telecoms ● Broadcasting ● Broadband providers 	<p>To allow stakeholders to feed back on Ofcom's performance in their sectors, specifically on issues around Ofcom's strategic direction, its communication with stakeholders, its delivery of strategy and how it reviews its performance.</p>
<p>3 Survey of respondents to Ofcom consultations</p> <p>We performed an online survey of people who had responded to Ofcom consultations in the calendar year 2009. We received 232 replies from a possible 1,198. Some had responded to multiple consultations, so this sample accounted for one-third of responses to Ofcom's consultations.</p>	<p>To assess stakeholders views on:</p> <ul style="list-style-type: none"> ● the number of Ofcom consultations; ● the pace at which Ofcom responds to issues before and after consultation; and ● whether Ofcom's consultation process is clear.
<p>4 Case studies/international comparisons</p> <p>We commissioned RAND Europe to produce five case studies examining Ofcom's performance in specific situations covering the breadth of its remit, using relevant international comparisons as benchmarks.</p>	<p>The case studies assessed Ofcom's performance on a number of issues it has faced against comparable international regulators.</p>

Method	Purpose
<p>5 Survey of Ofcom's leadership team</p> <p>We conducted surveys of senior Ofcom staff, receiving responses from:</p> <ul style="list-style-type: none"> ● All 10 members of the Executive Committee ● 30 out of 40 members of Ofcom's senior management group 	<p>To assess:</p> <ul style="list-style-type: none"> ● Ofcom's use of management information ● Senior management views on the quality of management information
<p>6 Semi-structured interviews with Ofcom Board members and senior staff</p> <p>We interviewed all members of Ofcom's Board, and eight other senior staff members.</p>	<p>To obtain the views of Board members about Ofcom's performance management and to supplement our survey of Ofcom staff. The interviews gave staff a chance to expand on their survey responses and provided a greater insight into the utility of Ofcom's performance framework.</p>
<p>7 Document review</p> <p>We reviewed:</p> <ul style="list-style-type: none"> ● a sample of minutes from meetings of Ofcom's Board; ● a sample of minutes from meetings of Ofcom's executive committee; ● a sample of the performance management material provided to Ofcom's Board members and discussed by the Executive Committee; and ● other relevant documents such as Ofcom's Annual Reports and Annual Plans. 	<p>To assess:</p> <ul style="list-style-type: none"> ● the alignment of organisational objectives and reporting; ● the level of discussion and decision making; and ● the use of management and performance information.
<p>8 Observation of management meetings</p> <p>We observed meetings of Ofcom's Board and Executive Committee.</p>	<p>To assess:</p> <ul style="list-style-type: none"> ● the level of discussion and decision making; and ● the use of management and performance information.



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