



# A citizens' evaluation of National Regulatory Authorities

Citizens Advice



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## Executive summary

Political pressure in the UK grew in the 1980s and 1990s to deregulate many of the general interest functions, especially in those sectors which are the subject of this report (gas, electricity, postal services, telecommunications and aviation) so the need for consumer protection arose to curb the company giants from using their positions to manipulate the industry to their advantage without consideration towards the consumer. This project seeks to evaluate the efficacy of those regulatory bodies in the matter of consumer protection.

**In the UK the consumer protection function of the National Regulatory Authority (NRA) is at the strategic level and relates to the business practices of the companies but not at the level of individual consumer complaints. Individuals' complaints are dealt with by the appropriate consumer organisation or watchdog. (e.g. Ofgem is the NRA for the fuel industry while Energywatch, is the entirely separate consumer's organisation for the same industry)**

NRA performance can be measured from the information contained in their annual reports. Not surprisingly these tend to have a 'rose-tinted' hue from the glasses through which their annual reports are written. A starker reality is found by perusing reports of the House of Commons. For instance Ofgem came in for criticism in the House of Commons (Hansard 23.May 2007): '*... It was also felt that Ofgem either does not have teeth or chooses not to act in the face of that (social tariffs for vulnerable consumers) disgraceful behaviour...*'

(Tom Clarke (Lab))

The fact that the Secretary of State for Energy was in agreement with the speaker and said that it was possible the Government might have to consider legislation to ensure that further action was taken to establish social tariffs for vulnerable consumers again indicates that the effectiveness of Ofgem, in some matters of consumer protection is insufficient.

There is something of a gap between the effectiveness of the NRA as judged by their own standards and those of the independent consumer panels whose job it is to represent independent consumer opinion. In the UK there is no doubt that the mechanism exists for dialogue between consumer panels and the appropriate NRAs. Whether the NRA itself is responsive and effective as a means of making the industry modify its practices in response to consumer pressure is one that will continue to need independent scrutiny. Our findings lead us to propose that all the NRAs being considered should be active in their use of their full range of powers to ensure consumer rights which is the primary reason for their existence.

# Consumer Organizations and General Interest Functions:

*For a public evaluation of national regulatory authorities (14 June 2004)*

## UK Report

### **Preamble**

This report has been prepared by Rutland Citizens Advice Bureau, the UK partner to Fondaca as part of one of the specific projects called for in connection with Article 7(4) of Decision No. 20/2204/EC of the European Parliament and of the Council of 8 December 2003. It seeks to address the relationship between the national regulatory authorities and the individual consumer as part of the evaluation process of the authorities' functions.

Political pressure in the UK grew in the 1980s and 1990s to deregulate many of the general interest functions, especially in those sectors which are the subject of this report (gas, electricity, postal services, telecommunications and aviation) so the need for consumer protection arose to curb the company giants from using their positions to manipulate the industry to their advantage without consideration towards the consumer. This project seeks to evaluate the efficacy of those regulatory bodies in the matter of consumer protection.

The UK partner organisation that has been part of this project has been the Rutland Citizens Advice Bureau. The Citizens Advice service helps people resolve their legal, money and other problems by providing information and advice, and by influencing policymakers. One in seven people use a Citizens Advice Bureau every year and 6.5 million problems are dealt with every year. Last year the service dealt with 1.5 million debt and wider consumer problems and there are around 2000 bureaux and outlets in the UK.

# Sector Analysis

## Aviation

### **Market Context and Framework**

The aviation industry is largely deregulated in the UK and across EU Members States. Profitability in aviation post 9/11 has been difficult for the larger full cost airlines, although that situation is now improving. There has been a considerable increase in the number of low cost flights taken each year. The liberalisation of the market in Europe has created a climate where low cost airlines such as Ryanair and Easyjet can thrive. British Airways has had a more difficult time with problems with industrial action (now quite rare in UK), pension funds and general profitability but continues to hold a strong position in the UK market.

The regulatory authority for civil aviation is the Civil Aviation Authority (CAA), which was given under section 4(1) (b) of the Civil Aviation Act 1982 a general duty to 'further the reasonable interests of users of air transport services'.

The main statutory functions of the CAA are regulating civil aviation safety; advising the Secretary of State on civil aviation matters; determining policy for the use of UK airspace; economic regulation of the designated airports and of air traffic services; licensing and financial fitness of airlines; and licensing of air travel organisers.

The CAA is divided into four groups that take on responsibility for safety, economic regulation policy, airspace policy and consumer protection.

### **Specific Description of NRA**

**Name:** Civil Aviation Authority ([www.caa.co.uk](http://www.caa.co.uk))

**Composition:** The CAA is overseen by its Board, and has an Executive Member and a Policy Committee for each of its main statutory functions. The Board is responsible for all aspects of the CAA's organisation and performance.

**Nomination:** Members of the Board are appointed by the Government, generally following open competition and in consultation with the Chairman of the CAA. One Member is appointed as Deputy Chairman.

**Structure:**

The CAA is divided into 4 groups:

1. Safety Regulation Group
2. Economic Regulation Group
3. Directorate of Airspace Policy
4. Consumer Protection Group

The CAA also has a specialist Environmental Research & Consultancy Department which is part of the Directorate of Airspace Policy.

The CAA's 1,000 staff are accommodated at two main locations in central London and at Gatwick. CAA House in London is the CAA's headquarters and houses the Board, some Corporate Centre staff and the airspace policy, economic regulation and consumer protection functions. Most of the Safety Regulation Group's 560 staff are based at Aviation House, Gatwick along with the majority of the CAA's Corporate Centre staff. A number of Safety Regulation Group aviation specialists are based at several regional offices in the UK.

**Mandate:** The CAA's principal functions and duties are set out in the Civil Aviation Act 1982, the Airports Act 1986, the Transport Act 2000 and the directions given under section 66 of the Transport Act 2000. The Civil Aviation Act 1982 gives the CAA power to enforce its regulation using legal requirements, codes of practice and financial penalties for the protection of airline customers and UK airspace.

**Activities:** The CAA has established and funds the Air Transport Users Council (AUC), which concentrates on matters that directly affect the interface between airlines/airports and air passengers including complaint handling. The AUC

refers on to the CAA matters for enforcement when it has become clear that a systematic abuse against the reasonable interests of air passengers has taken place.

More recently the topic of the effect of air transport on the environment has become highly debated and the CAA has begun research to aid future policies and regulation aimed at reducing the effects of air travel and maintaining the low cost of air fares to the customers.

**Method of Work:** The CAA works closely with independent consumer panels e.g. Air Transport Users Council (AUC) specifically set up to represent independent consumer opinion. These organisations strive to work together in a constructive manner to better the industry for the consumer.

**Instruments/Powers:** These are in line with other regulatory bodies in that they have the ability to issue, monitor and revoke licences, change operating practices, and pricing structures of the operating companies it regulates. These powers are derived from its statutory powers (above).

The decisions of the CAA can be and have been tested in the courts (in 2005 ABTA took action in the High Court against a CAA guidance note on package travel).

**Main Results:** These relate to two main areas of their operation: safety and Europe. Safety has always been an overriding concern, but the impact of Europe has increased since the European Aviation Safety Agency (EASA) was established in 2003. EASA is now responsible for aircraft certification and maintenance regulation across Europe. The number of near miss incidents has progressively fallen over the past two years despite a continuing rise in traffic. The CAA is working closely with EASA to continue to maintain the UK's good safety record. (<http://www.easa.eu.int/home/>).

#### **Complaints:**

➤ *Data Collection Result:* Although one of the largest consumer organisations in UK, Citizens Advice only dealt with 68 problems nationally in the reporting period relating to

quality of service in aviation. This in relation to the total number of problems dealt with (4192607) is such a tiny number that it indicates that it is not a significant problem in UK. The AUC receives about 6000 written complaints each year (as detailed below) and 260000 hits on its advice website each year also mainly on cancellations, delays, overbooking and baggage.

<b>Type of Complaint</b>	<b>Position</b>
Cancellations	1
Delays	2
Mishandled Baggage	3
Reservation Problems	4
Overbooking	5
Refunds	6
Diverted Flights	7
Seating	8
Ground Services	9
Excess Baggage	10

The package holiday industry, having no statutory regulation, but for which the consumer protection function is overseen by the CAA our data collection results can be appended to this section:

<b>Type of Complaint</b>	<b>UK Problems 2007</b>
Overbooked	16
Delays	59
Claims Management	939

## Indicators of Evaluation

**1. Independence from Government and Parliament:** Being accountable to Parliament through the Secretary of State who sets the policy framework and agrees overall policies and objectives with the CAA, is seen in UK as an effective policing system and not as a conflict of interest.

➤ *Nomination:* The CAA's Board comprises five executive directors with specialist aviation, economic regulation and consumer protection expertise and five non executive directors with a range of applicable expertise.

➤ *Incompatibility:*

➤ **2. Efficiency:** No power over the deregulation process. They do have the power to change sector policies and practices in the interests of the consumer.

### 3. Effectiveness:

➤ *Timing of NRA's actions:* Any action takes place usually after an extended period of evidence gathering and consultation between the CAA and the industry in an effort to avoid enforcement action.

➤ *Problem Solving:* The CAA has influenced the practices of the industry which are changing constantly to meet changing needs; it is difficult to ascertain objectively whether these improved practices have been out weighed by increased passenger demand.

➤ *Protection of Rights:* Since the increased threat of terrorist attacks, the CAA has dedicated time and resources to enhance security and so ensuring passenger safety – a basic Human Right. Access rights for the disabled were recently upheld through action by

the CAA against a low cost airline and from July 2008, the CAA will be the enforcement body for the EC Regulation on Disabled Persons and Persons of Reduced Mobility.

#### **4. Improvement of quality services:**

- *Education activities:* the CAA's website contains news information details of the leaflets they produce, of which there are many and links to related sites such as 'The Air Travel Organisers' Licensing' (ATOL) ([www.caa.co.uk/atol](http://www.caa.co.uk/atol)) and The Association of British Travel Agents (ABTA) ([www.abta.co.uk](http://www.abta.co.uk)).
- *Guidelines:* The CAA in reviewing practices and procedures will issue Guidance Notes. These can be and have been challenged through the courts system (see above).
- *Monitoring service quality:* a continuing role of the CAA and one of its main functions: effected through their policies or reviewing licence conditions e.g. ABTA and the small business operators licences which became the subject of court processes.

#### **5. Relationship with consumers:**

- *Communications:* website/help lines/press releases.
- *Information:* website/leaflets/press releases.
- *Active participation:* The normal method of consumer complaint is through the appropriate consumer council (AUC) who may then take up these issues with the CAA but not at an individual level.

#### **6. Relationship with the consumer's organisations:**

- *Communication:* With sector specific consumer organisations by means of formal and informal meetings and at Board level. With general consumer organisations, through websites and press releases.
- *Information:* Website, Annual Reports.
- *Active participation:* Works closely with the AUC but there is little evidence of a wider remit.

#### **7. NRA's involvement is legislative/regulatory process:**

The CAA is inevitably involved by nature of its structure and remit in the regulation of the aviation sector. As an advisory body the CAA is in a unique position to advise Parliament on any legislation regarding the aviation industry. The CAA can take a number of enforcement actions against breaches of consumer protection legislation in the aviation sector such as those relating to denied boarding compensation. However, they are limited to an advisory, not an executive role in the legislative process.

**8. Relationship with other organisations at the European level:** There is close co-operation with and confidence in EASA; the CAA has hosted a conference on aviation regulation in Europe, which was attended by delegates from the NRAs, the aviation industry, governments and the European Commission. It has appointed a Director of European and International Strategy and it also recognises that the future of the aviation industry is inextricably linked with Europe.

## **Conclusion**

It is relevant to point out that in the level of complaints investigated by our organisation there were very few problems identified in the aviation sector. This may indicate that the Civil Aviation Authority operates to a high level of effectiveness, as it would have you believe from its website: '*The Civil Aviation Authority is the UK's specialist aviation regulator. Through its skills and expertise it is recognised as a world leader in its field*' (\* CAA website). On the other hand it can be pointed out that in contrast to the other sectors being investigated in this project the aviation sector covers a smaller user group than the other sectors whose activities affect all citizens. The results however indicate that, whatever the reason, we found that there is no major problem in the UK with either the operation or regulation of this sector.

## **Proposals**

The CAA does not and should not become involved with individuals complaints. Their effectiveness lies in their regulatory oversight of the aviation industry and through their changing practices as a result of close communication and responsiveness to the appropriate consumer organisation.

An indication of their responsiveness to consumer issues is the recent legislation effective on 26 July 2007 which makes it illegal for an airline, travel agent or tour operator to refuse a booking on the grounds of disability or to refuse to embark a disabled person who has a valid ticket and reservation. This resulted from CAA activity following the disclosure that a low cost airline was refusing to carry wheelchair users despite being made aware of their needs at time of booking. From July 2008, the CAA will be responsible for enforcing the Regulation on Disabled Persons and Persons of Reduced Mobility which places obligations on airports and airlines in the service and facilities provided to PRMs. Perhaps the most pressing area they now need to address is that of carbon footprint of the aviation industry in the light of current environmental concerns. This is likely to be a long and difficult issue to develop and resolve.

## **Electricity and Gas**

### **Market Context and the framework**

The deregulation of the UK electricity started in 1990 and began with retail consumers and concluded with the innovation of a competitive market within residential consumer industry in 1999. Prior to the deregulation the Central Electric Generating Board had an effective monopoly owned and operating the UK national high voltage system. In 1990 this split into four companies and divided energy supply into fossil fuels and nuclear with different companies managing each. The transmission and distribution remains regulated monopolies.

There is a similar picture in Gas services in UK with complete deregulation and many providers. Until now natural gas found in the North Sea has played an important role in the UK energy supply. Between 1989 and 1994 coal production in UK had fallen by half while natural gas production increased by 56%. Since the decline of coal use 30% of gas consumption is used to generate electricity. Consumption patterns for both fuels have largely paralleled demand.

UK started privatisation of its natural gas industry in 1986 shortly after passage of the Natural Gas act in 1986 which resulted in the sell off of British Gas by the UK government. The privatisation of British Gas did not result in immediate free competition; rates remained controlled by a natural gas regulatory body. The amended Gas Act of 1995 introduced competition into residential gas market in 3 stages. Transco remains a monopoly transporters owning and operating the UK pipeline system.

After privatisation the UK industrial gas price fell by 43% and the average domestic price was reduced by 23%, however with the reduction in stocks of North Sea gas and demand for supply growing, the market is now open to full European competition. Demand has recently (2006) put the price of gas to consumers up by 22% with further price rises possible and industry has been warned to cut consumption.

### **Specific description**

**Name:** The regulator for UK's electricity and gas supply is the Office for Gas and Electricity markets, (Ofgem) ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).

**Composition:** Ofgem is governed by an Authority, consisting of non-executive and executive members and a non-executive chair. Non-executive members bring experience and expertise, from a range of areas including industry, social policy, environmental work, finance and Europe.

The Executive members of the Authority are Ofgem's Chief Executive and three Managing Directors.

**Nomination:** The Board is appointed by Government and Ofgem members are from the energy industries and appointed for a 5 year renewable term.

**Structure:** Ofgem recovers its costs from the licensed companies it regulates. Licensees are obliged to pay an annual licence fee which is set to cover Ofgem's costs. Ofgem is independent of the companies it regulates.

Ofgem operates under a five-year cost control regime that runs 2004-2009. It pegs Ofgem's expenditure growth at 3 percentage points below the retail price index. This will reduce the operating costs by more than £5 million.

**Mandate:** The Energy Act 2004, the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

**Activities:** The main activities include the provision of information to consumers such as price comparisons of different providers and to encourage use of sustainable energy. It also provides advice and support to solve consumer problems and has powers to impose large financial penalties to companies who breach terms of licence, act anti-competitively or breach consumer protection law. It also has the power to enforce industry good practice by issuing (and removal) of licences. It can be accessed by website, email, telephone and disseminates information via leaflets, newsletters, speeches and campaigns.

**Methodology of work:** Promoting retail competition in a number of ways including encouraging customers to take advantage of the savings through switching supplier. Ofgem considers that it has also accelerated change in energy retail through an overhaul of the supply licences to remove red tape which will improve customer protection and create opportunities for innovation and new entry.

Ofgem works closely with the consumer organisation Energywatch which represents the views of the consumer and handles individual consumer complaints. All Energywatch activities are overseen by the National Consumer Council.

**Instruments/Powers:** Authority from the Energy Act 2004, the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000 give Ofgem the power to impose large financial penalties to companies who breach terms of licence, act anti-competitively or breach consumer protection

law. It also has the power to enforce industry good practice by issuing (and removal) of licences.

It has also developed an incentive scheme – the discretionary award scheme which rewards distribution network operators for measures they take beyond their obligations to customers.

**Main Results:** An acceleration of change in energy retail through an overhaul of the supply of licences to remove red tape which will improve customer protection and create opportunities for innovation and new entry.

**Complaints:** Since the introduction of a competitive market the overall number of complaints to Energy Watch rose considerably. The number of complaints rose by nearly 400% over the first year of retail competition from 6000 complaints for the year prior to February 1999 to 22000 the following year. Between 2002 and 2003 Energy Watch reported 92600 complaints, another 400% increase. This trend has continued for the last few years.

The complaints analysed by Citizens Advice in this sector were some of the most significant in this study. By far the largest single entry for the whole project at 14083 were problems regarding meter reading for both gas and electricity. Although not being looked at specifically by this project the next highest category related to methods of payment. Problems with contracts and high prices were also high with a total of 943. Problems relating to the switching of supplier amounted to 3119 and although not being looked at in this project they will have influenced a high proportion of the 5504 complaints and redress entries.

## **Indicators of Evaluation**

### **1. Real Independence from Government and Parliament:**

Being nominated by and accountable to Parliament through the Secretary of State and being scrutinized by the Public Accounts committee is seen in the UK as an effective policing system and not as a conflict of interest.

➤ *Nomination:* Ofgem is governed by an Authority, consisting of non-executive and executive members and a non-executive chair. Non-executive members bring experience and expertise, from a range of areas including industry, social policy environmental work, finance and Europe. The Executive members of the Authority are Ofgem's Chief Executive and three Managing Directors.

➤ *Incompatibility*: Due to the diverse backgrounds of the board members it is felt that overall incompatibility is not a great issue. To combat any allegations of this Ofgem endeavours to keep its operations transparent. Examples of practices that demonstrate this include:

- Publishing the minutes of its Authority meetings.
- An annual open meeting of the Authority.
- Full and thorough consultation in developing decisions (including the development of its corporate strategy).

➤ *Financial Resources*: Ofgem recovers its costs from the licensed companies it regulates. Licensees are obliged to pay an annual licence fee which is set to cover Ofgem's costs. Ofgem is independent of the companies it regulates. Ofgem operates under a five-year cost control regime that runs 2004-2009. It pegs Ofgem's expenditure growth at 3 percentage points below the retail price index. This will reduce its costs by more than £5 million in real terms by 2010.

## **2. Efficiency:**

➤ *Power/lack of intervention in the market*:

*"Better regulation means only regulating where necessary while designing rules that support competition and protect the customer. It is now integral to all our major policy decisions."*

(Ofgem website).

Ofgem has the power to issue and revoke licenses and impose financial penalties for breaches of licence conditions. In the year 2006/7 breaches were found in connection with licence conditions with three operating companies. No financial sanctions were imposed.

➤ *Power/lack of intervention in the consumer's policies (especially service accessibility)*:

It recently developed a scheme called 'Energy Smart' which was designed to give consumers more confidence to make decisions in a competitive and often confusing retail market. It has also investigated the main reasons behind high gas wholesale prices in an attempt to lower prices for consumer following dramatic rises in 2006.

Ofgem has considerable legislative powers to issue enforcement orders against companies who have breached specific areas of consumer protection law, where that breach is found to have harmed the interests of consumers. However the reality of their lack of activity is often called into question by the consumers groups and in some cases Parliament (see Proposals below).

## **3. Effectiveness:**

➤ *Timing of NRAs action*: Ofgem has continued to reduce its costs in the second year of its self imposed cost control regime.

- *Problem solving:* In relation to their market responsibilities investigations made in 2006 were all completed. In some cases there were infringements on matters of compliance but the only penalties imposed were modifications to licences (Annual Report 2006/7 p.54).
- *Protection of Rights:* improved protection for vulnerable customers through the Supply Licence Review Social Action Strategy group sent a targeted mailer to nearly 100,000 pensioners encouraging them to take up energy efficiency measures, benefit checks and tariff advice. This has fed in to the latest Energy White Paper.

#### **4. Improvement of Services:**

- *Activity of search/education:* The Ofgem website has publications, press releases, live consultations, an e-public register and a whole section of their website devoted to “media”. Most of the information however relates to the markets, networks, licences, environmental research rather than being consumer-based.
- *Guidelines:* These are difficult to find, but there is a fact sheet on household energy bills explained.
- *Monitoring the quality services:* This is done through impact assessments and through setting targets and delivery dates for achieving them and then assessing whether the target date has been met.

#### **5. Relationships with Consumers:**

- *Communications:* web-site, fact sheet, links to other consumer watchdog groups.
- *Information:* as above.
- *Active participation:* Ofgem cannot deal directly with consumer complaints or enquiries as this is handled by the watchdog Energywatch. They are required by the Utilities Act 2000 to refer all consumer contacts to Energywatch.

#### **6. Relationships with the Consumers Organisations:**

- *Communication:* contact details for Energywatch are located on the Ofgem website.
- *Information:* Available on the website
- *Active participation:* Energywatch ([www.energywatch.org.uk](http://www.energywatch.org.uk)) is the independent gas and electricity watchdog set up in November 2000 through the Utility Act to protect and promote the interests of all gas and electricity consumers. Energywatch works closely with the regulator, Ofgem, to ensure that company performance issues are monitored and where appropriate, the evidence is provided to trigger investigations and/or enforcement action.

#### **7. Involvement in legislative/regulatory process:**

A great deal of Ofgem’s work is fed into the legislative process but in an advisory capacity.

## **8. Relationships with other organizations (European Network):**

The UK's exposure to the global energy market has increased. As a result Ofgem works with the European Commission. Ofgem's contribution has been strengthened by the Chairman's presidency of the Council of Europe's Energy Regulators and of the advisory body the European Regulator's Group for Electricity and Gas and membership of the Commission's High Level Group on competitiveness, energy and the environment. The European Commission has placed energy at the centre of the European Union's objectives with its Strategic Energy Review and Ofgem is currently involved in the following key areas:

- The Gas and Electricity Regional Initiatives
- Developing a single European energy market: EU legislation
- CEER and ERGEG meetings
- European Commission Energy 'Sector Inquiry' and EU Competition Issues
- The Florence and Madrid Fora

## **Conclusion**

In the UK, deregulation of the fuel industries began in the mid to late 1980s. As the competitive market has increased so have the number of consumer complaints. Ofgem the NRA for the combined fuel industries can be applauded as having been instrumental in the decrease in fuel costs from the early days of de-regulation until recently. However, with the declining North Sea gas stocks and increasing demand for supply the UK gas industry has been opened up to full European competition. Both gas and electricity prices have now increased dramatically and it is unlikely that the NRA will be able to alter trends in fuel costs despite any level of consumer complaints, since ultimately market forces drive the fuel industries.

The above gives an indication of some of the inherent constraints of the NRA's. In the jargon of to-day they have 'no teeth'. Their main role is as an advisory body to their sectors. While they have the power to fine industries it is a power they use rarely, if at all, and it is in this region that they are most open to criticism. They may have the power to take legal action against a company and impose enforcement orders but it can be that taking an alternative solution such as agreeing with the company an undertaking to address crucial issues may be a more productive way forward. It may be better to work collaboratively with the companies but the counter argument is that by not imposing fines which are within their powers they may be sending out signals to the sector industries that it will not readily use the sanctions which are available to it. The disadvantage of this as a method of regulation is evident.

Accountability to Parliament provides a measure of performance monitoring and Ofgem came in for criticism in the House of Commons (Hansard 23.May 2007) '*.... It was also felt that Ofgem either does not have teeth or chooses not to act in the face of that (social tariffs for vulnerable consumers) disgraceful behaviour..*' (Tom Clarke (Lab)) The fact that the Secretary of State for Energy was in agreement with the speaker and said that it was possible the Government might have to consider legislation to ensure that further action to establish social tariffs for vulnerable consumers again indicates that there are problems with the effectiveness of the NRA for that sector.

### **Proposal**

Ofgem is one of the largest NRAs and as such it is easy to get the feeling that it has become somewhat self-serving. The smaller NRAs seem to have used their powers to impose sanctions more proactively which has resulted in changes to business practices to the benefit of the consumer. Ofgem should consider using its sanctions in an appropriate and proportionate way to protect the consumers, because those companies in other sectors which have received heavy fines have altered their practices to consumer benefit.

## **Telecommunications**

### **Market context and framework**

Until 1981 telecom in the UK was the responsibility of the Post Office, a state owned monopoly. In 1981 the Telecom Act separated the telecom and postal services and established British Telecom (BT) – a government agency. Following the 1984 Telecommunication Act BT's monopoly was terminated and a licensed network permitted. However, to prevent BT from abusing its dominant position its prices were regulated. By 1997 BT's international call prices had been cut by more than 50% in real terms since privatisation. By 1997 the UK telecom sector had one of the most open telecom markets with more than 200 licences to 150 different competitors.

### **The Specific description**

**Name:** The office of communications (Ofcom) is the regulator for the UK communications industry which includes the telecommunications industry. The remit of Ofcom is therefore wider than just the telecommunications industry which is the subject of this report.

**Composition:** Parliament is responsible for appointing up to 6 members to the board and the chief executive. The members usually have senior positions within the industry. Under the Communications Act 2003 an independent advisory committee has been set up to provide independent advice on the consumer interest in the markets it regulates. The main panel is the Consumer Advisory Panel which operates at arms length, setting its own agenda and making its views known publicly. Board members have a wide range of professional experience and skills and, although they will usually have experience of the communications sector in a broad sense, they will not necessarily have held a position with a company that Ofcom regulates. And Board members do not continue to hold such positions after joining Ofcom.

**Nomination:** The Communications Act 2003.

**Structure:** At 31 March 2007, Ofcom had 800 employees. During the year Ofcom recruited additional staff for its consumer policy, competition and consumer enforcement teams.

Ofcom's actual operating costs were £129.4m: £0.1m lower than budget.

There are offices in London, Glasgow, Wales and Belfast. Additionally there are two field operation offices in Merseyside and Caterham.

**Mandate:** Ofcom has responsibilities across television, radio communication and wireless communication services. Its principle protection of consumers is the provision of information, guidelines of the industry and control of its behaviour and content.

The Communications Act 2003 states that Ofcom should further the interests of citizens in relation to communication matters and further the interests of consumers in relevant markets, where appropriate promoting competition. Of com itself categorises its consumer interest functions in the following way:

- promoting competition to give consumers greater choice, improved quality and lower prices;
- protecting consumers by enforcing the rules that prevent, for example, mis-selling and silent calls; and
- empowering consumers by ensuring that they are able to switch providers quickly and easily, and accrediting price comparison websites so that consumers can make informed choices.

**Activities:** Ofcom has a broad range of activities encompassing the optimal use of electromagnetic spectrum, ensuring a wide range of electronic communication services are available throughout the UK and that there is a wide range of television and radio services of high quality and wide appeal. Audiences are protected against offensive or harmful material and unfairness or the infringement of privacy.

Consumers are provided with information including price guides and methods of transferring between companies and the industry is given guidelines of acceptable standard and to regulate procedures such as changing broadband provider. Broadcasting content is regulated to minimise harm, offence, political bias, incitement of crime and to maintain fairness at all times. To help enforce these regulations the Ofcom has the power to impose statutory sanctions on broadcasting companies who repeatedly breach codes of conduct.

**Methodology of work:** Under the Communications Act 2003 services of independent advisory committees have been set up to provide independent advice on the consumer interest in the markets it regulates. The main panel is the Consumer Advisory Panel and operates at arms length, setting its own agenda and making its views known publicly. The consumer panel has the responsibility to understand consumer issues and concerns relating to the communication sector and to use these to help inform Ofcom's decision making by raising specific issues of

consumer interest. These include issues affecting rural consumer, older people, people with disabilities and those on low incomes.

The consumer point of view is gained via public consultations, workshops, consumer forums, seminars, speeches, newsletters and complaints by telephone and emails. All activities are overseen by the National Consumer Council.

**Instruments/Powers:** To help enforce these regulations the Ofcom has the power to impose statutory sanctions on broadcasting companies who repeatedly breach codes of conduct.

**Main Results:** Ofcom has twin statutory responsibilities – to the consumer, but also to the citizen interest. The latter was furthered during the year both through research; for instance the digital inclusion project which examines how all citizens, including minority groups, can benefit from new services; and through practical action such as the development of the third tier of radio – not-for-profit community radio – run by and for local communities. The second round of licensing, undertaken last year, brings the number to over a hundred such new radio stations up and down the country.

**Complaints:** Immediately following privatisation there was dissatisfaction with BT's quality of service although this has largely been regained. The main problems are the lack of ability to compare mobile phone service prices, 'slamming' the unauthorised switching of telephone service providers, 'Bluetooth' technology scams.

Although for landline telephones this project was looking at alterations to contracts (583 problems) and claims management (1439 problems) by far the largest area of complaints in UK relate to costs and billing with 2008 problems recorded.

For mobile phones problems with charges (1244) and contracts (1154) fed into the 1537 problems relating to claims.

Internet problems relating to service providers were low at 558 considering the high take up of domestic internet use. (25 million connections relating to 57% of households).

## Indicators of Evaluation

### 1. Real Independence from Government and Parliament:

- *Nomination*: Ofcom is accountable to Parliament through various Parliamentary Committees and the National Audit Office.
- *Incompatibility*: The Board is a unitary Board with a mix of executive (including the Chief Executive) and part-time members (including the Chairman, David Currie); it has been deliberately established since Parliament decided that a mixture of executive and non-executive Board members would ensure a wide range of perspectives and produce robust decisions. The Communications Act provides that Ofcom is subject to inspection by the National Audit Office, and Ofcom is accountable to the Public Accounts Committee for propriety and value for money.
- *Financial Resources* (see Structure above): Ofcom is funded mainly by the companies that we regulate, although we do receive some public funding in relation to our spectrum management role.. During 2007 Ofcom agreed its funding settlement with HM Treasury covering the years 2007/8 to 2010/11. The discussions with HM Treasury led to agreement on the amount that it would be necessary for Ofcom to spend over the next four years in order to fulfil its role efficiently and effectively.

### 2. Efficiency:

- *Power/lack of intervention in the market*: A key development of emphasis has been the insight that, while effective competition is a necessary part of a well-functioning market, it also needs informed, empowered and protected consumers to take full advantage of the market. It is the customer for whose benefit the market exists. New technologies and new services can bring great benefits to most consumers; but they can also lead to scams, fraud and nuisance for a minority of consumers.

In the consumer's policies over the past year, Ofcom has substantially increased the pace of its consumer protection and investigations activity. New fining powers against the nuisance of silent calls have been used to the full. Robust investigations of slamming and miss-selling of telecommunications services have been undertaken. Some of the worst offenders have been driven out of the market place. But the problem persists and they state that they will continue to bear down on it. As their Annual Report (2006/7) went to print a number of high-profile investigations into alleged misconduct in Call Quiz TV and other premium rate phone services over broadcast TV were still under way. Subsequently after their investigations were made public, television companies have been subjected to heavy financial penalties and Board members have resigned or been dismissed.

Much of the recent consumer concern has been focused on standards on television. Ofcom received almost 45,000 complaints about Channel 4's broadcast of Celebrity Big Brother alleging – among other things – racist abuse and bullying. They take such allegations extremely seriously and announced, while the series was on air, that they would launch an investigation into the programme. In May 2007 Ofcom published its adjudication on Channel 4's broadcast of Celebrity Big Brother and found that Channel 4 had made serious editorial misjudgements, compounded by a serious failure of its compliance process. This put it in breach of the Broadcasting Code and Ofcom imposed a statutory sanction on Channel 4 requiring it to broadcast a summary of Ofcom's finding on three separate occasions.

### **3. Effectiveness:**

- *Timing of NRAs action:* appropriate (see above) but investigations may take some time.
- *Problem solving:* at the level at which they operate it is effective (see above).
- *Protection of Rights:* effective (see above).

### **4. Improvement of Quality Service:**

- *Activity of search/education:* the website has a comprehensive advice for consumers section which covers all the areas of its activities and gives further contact details if the consumers query is not answered on the web-site. This section is separate from the one in which to lodge a complaint.
- *Guidelines:* Advice for consumers is found on the web-site advice pages identified above. In terms of the market place Ofcom advertises competition and regulation bulletins and identifies its rolling programme of investigations.
- *Monitoring the quality services:* This is done through annual reports which focus on trends and developments in the UK's communications market, with the aim of providing a context for decision-making by Ofcom, as well as by commercial and public sector organisations. The latest is The Communications Market 2007 (August).

### **1. Relationship with Consumers:**

- *Communications:* website, leaflets, telephone and fax contact details.
- *Information:* advice relating to consumer problems with links to other sites.
- *Active participation:* complaints may be made on-line or by telephone, fax or text phone. All contact details are on the website or contained in leaflets.

## **6. Relationships with Consumers Organisations:**

- *Communication:* There is some liaison between Ofcom and the Office of Fair Trading ([www.oft.gov.uk](http://www.oft.gov.uk)). In a letter from OFT in 2003, '*I am writing to set out our understanding of how the OFT and Ofcom will work together when Ofcom gains its full competition powers under the Communications Act 2003 ('CA03'). It is hoped that by setting out the arrangements for liaison in future we can ensure a productive working relationship, to the benefit of consumers and other stakeholders*'. This letter is seen to provide transparency for stakeholders about how the exercise of concurrent powers by the OFT and Ofcom will work in practice.. The membership of its consumer panel and advisory committee on Older and Disabled people is such that there is a level of expertise on the needs of these consumer groups.
- *Information:* Consumer organisations are involved in initiatives and information can be obtained by them through minutes of meetings and generally through use of the website.
- *Active Participation:* This is generally through meetings of the consumer advisory panel.

## **7. Involvement in legislative/regulatory process:**

Ofcom provides an advisory role to parliament in the legislative process, but does not have its own executive authority.

## **8. Relationships with other Organisations (European network):**

Ofcom's activities, and those of the companies it regulates, are increasingly influenced by the international agenda. Ofcom continued its negotiations on the European Commission's proposed Audio-Visual Media Services Directive; it also contributed to the Commission's review of the EU communications regulatory framework that underpins Ofcom's approach to the economic regulation of the telecoms markets. They also contributed to the Commission's review of the EU communications regulatory framework that underpins Ofcom's approach to the economic regulation of the telecoms markets.

## **Conclusions**

Telecoms was the first of the UK utility sectors to be privatised. The Telecommunications Act 1984 led to the establishment of Oftel, the Office of Telecommunications. Oftel was then one of five regulators to be merged into Ofcom. NRA for the whole sector was set up by the Communications Act 2003. The exponential increase in the telecommunications technology and market, and the amount of competition and market obfuscation that has occurred, particularly in the mobile phone and internet provider markets, has brought consumer protection to the forefront in order to curb the rampant consumerism currently associated with that particular

market sector. The development of the NRA's other sectors of concern, for instance the television and radio communications sector, while this has also expanded and developed in line with changing technology it is less of an area where there is the same direct consumer interest as there is in the internet and mobile phone sectors.

## **Proposals**

Ofcom has proved effective in its regulatory role, but with the ever-changing technologies which are integral to the telecommunications industry new problems are constantly arising. It is essential that Ofcom retains a very active and responsive role in the sector. There are, however longstanding issues that still remain to be addressed. For instance it is impossible to make a meaningful price comparison between telephone tariffs amongst mobile phone providers (Telecommunications and Internet in the EU: Company offerings and consumer rights Dec 2004). Consumers should be able to make a true cost comparison between different providers. A high priority proposal is that Ofcom should address this issue.

Ofcom are also seeking to improve the transparency of additional charges imposed by providers, such as connection charges or charges for customers who do not pay by direct debit. Improving the transparency of such charges will enable consumers to make more informed choices.

## **Postal Services**

### **Market context and framework**

The Postal Services Directive 97/67/EC requires all member states to secure the universal postal service and to gradually liberalise their postal markets in the interests of consumers. In the UK this gradual process was begun in January 2003 when a third of the postal market was opened. In January 2006, the whole of the UK postal market was opened to competition and Royal Mail now shares the letters market with 17 competing companies, all licensed by the regulator, Postcomm. However, although the UK market has been fully opened for almost two years, Royal Mail is still by far the dominant operator with the other operators only delivering less than 1% of letters. This is because of Royal Mail's advantages in terms of economies of scale and because it is exempt from charging VAT on prices for its postal services, whereas alternative mail companies have to apply the full rate of 17.5% to their prices. (The European Commission believes that the UK – along with Germany and Sweden – has not properly implemented the VAT Directive on Postal Services and has begun infringement proceedings against these countries. These proceedings are ongoing.)

In 2006/07 the UK addressed mail market was worth around £6.6 billion with mail volumes of 21.9 billion items. Royal Mail delivers to over 27 millions addresses across the UK. Volumes of letter mail are starting to fall – but in some areas such as direct mail for building societies, charity, and health there is growth. The parcels market is not regulated and this is where the greatest areas of growth are at the moment because of on-line shopping.

### **Specific description**

**Name:** The independent regulator for postal services in the UK is the Postal Services Commission (Postcomm) ([www.psc.gov.uk](http://www.psc.gov.uk)).

**Composition:** It consists of a board of 7 independent commissioners from all walks of life and between them have experience of competition, business, consumer issues, regional matters, mail operations, trade unions and government regulations.

**Nomination:** Postcomm was established under the Postal Services Act 2000.

**Structure:** The main office is in London and Postcomm employs 63 people (Chief Executive and Directors: 7, other employees: 56). The budget for 2006/7 was £10.16m.

**Mandate:** Postcomm's primary duty is to secure the universal postal service. Parliament also requires Postcomm to promote effective competition between postal operators in the interest of customers. This is because Parliament took the view that this was the best way to encourage Royal Mail and other operators to raise their game and offer affordable and good quality services to customers

**Activities:** Postcomm issues licenses which if breached it has the power to impose financial penalties or revoke. Postcomm is not equipped to provide a customer helpline although in practice we do take calls and enquiries from customers. Postwatch with its regional structure and call centre was established to take on this front line role. It uses focus groups to find out what mail users want from their postal providers. Postcomm constantly monitors the mail market, and each year publishes two reports: the *Competitive Market Review* and a *Customer Survey*. One charts the state of the market, the other records the views of people who are using the postal market.

**Methodology of work:** Postcomm as the NRA has a close connection to Postwatch which is the independent consumer council for postal services. Postwatch is an independent body neither part of Royal Mail nor the government. It acts as the voice of the consumers in all postal matters ensuring that customers get the best possible service at realistic prices. If postal operators such as Royal Mail do not provide a satisfactory response to a complaint it can be referred to Postwatch which may take it up with the organisation on the consumer's behalf. The National Consumer Council oversees all Postwatch's activities.

**Instruments/ Powers:** Postcomm issues licenses which if breached it has the power to impose financial penalties or revoke.

**Main Results:** In the year 2006/7 a key issue that Postcomm has been covering in the Strategy review the purpose of which was to be sure that the regulatory framework was proportionate and not delivering perverse results. However in their regulatory function they issued 17 operating licences and imposed penalties on Royal Mail of £9.62m (for failure to protect mail) and £1m (zone access investigations). The penalty for the mail integrity fine is currently being appealed through the courts system. There was a further penalty imposed on Royal Mail of £217,000 following the company's contravention of its

licence conditions in 2004/5 for poor delivery performance in the London SE, E and WC postcode areas. Postcomm comments that: “This year’s *Customer Survey* which was published in October, shows that Royal Mail and its competitors are facing a far bigger challenge than pure mail-on-mail competition. Mail is being replaced by an expanding number of media alternatives and mail revenues are being lost to email, text messaging, facsimile and other digital media.”

**Complaints:** The national number of postal service problems brought to this organisation was 584 which is not significant. However, there are now 11million items of mail reported missing each year and this is just one indicator in the apparent loss of quality and confidence in the service over the last few years.

## **Indicators of Evaluation**

### **1. Real Independence from Government and Parliament:**

- *Nomination:* The Chief Executive Sarah Chambers, was at Department of Trade and Industry (DTI) before Postcomm and has previously worked at Oftel. Commissioners are appointed by the Secretary of State for trade and industry do have some postal experience – in particular Simone Bos (former Commissioner) her replacement (Ulf Dalsten) and Wanda Goldwag.
- *Incompatibility:* The Chief executive is a permanent civil servant having been at Ofgem before joining Postcomm. The Commissioners come from a wide background of business interests, but not directly from the postal business sector.
- *Financial resources:* funded mainly by the licence fees paid by Royal Mail and meet their operating costs.

### **2. Efficiency:**

- *Power/lack of intervention*

(In the market): active in imposing fines (see above Re. licences issued and penalties imposed on Royal mail).

(In the consumer’s policies): since consumers have little effective choice Postcomm will ensure that customers benefit from an affordable universal service. It also aims to ensure that government decisions on the future of the post office network and informed by Postcomm’s research information and advice.

### **3. Effectiveness:**

- *Timing of NRAs action:* action has arisen after periods on investigation to ensure that any action taken is part of a considered strategy.
- *Problem solving:* for individual consumers this is not a function of Postcomm. The appropriate consumer's organisation is Postwatch ([www.postwatch.co.uk](http://www.postwatch.co.uk)).
- *Protection of Rights:* since individual consumers have little effective choice Postcomm seeks to ensure that customers benefit from an affordable universal service.

### **4. Improvement of quality services:**

- *Activity of search/education:* website, leaflets, consultation reports.
- *Guidelines:* found in an interesting series of fact sheets and also set out in full in the licence agreements – downloadable from the website.
- *Monitoring the quality services:* through research, surveys and reviews which are then made public through the web-site. The Royal Mail now has to publish information about its performance

### **5. Relationship with Consumers:**

- *Communication:* via the website.
- *Information:* extensive information is found on the website, but this is in relation to the functions of Postcomm rather than the problems that consumer's experience. Information about this is found on the Postwatch site (the consumer's organisation for postal services).
- *Active participation:* only by means of public consultations as part of their market research function. The organisation that deals with consumer complaints directly is the consumer's organisation Postwatch. However, Postcomm has an extensive stakeholder visit programme where we visit individual customers and organisations, as well as regional roadshows where we meet individual customers and organisations. We also meet Postwatch-led customer groups such as the Counters Advisory Group and Trade Association Forum on a regular basis.

### **6. Relationship with the Consumer's Organisations:**

- *Communication:* very little active participation, but information about Postwatch is available on the web-site.
- *Information* – as above.
- *Active participation:* None discovered but further research through direct contact with Postcomm showed that Postcomm has an extensive stakeholder visit programme where we visit individual customers and organisations, as well as regional roadshows where we

meet individual customers and organisations. We also meet Postwatch-led customer groups such as the Counters Advisory Group and Trade Association Forum on a regular basis.

#### **7. Involvement in legislative/regulatory process:**

Offers advice to government on legislative matters.

#### **8. Relationship with other organizations (European network):**

Using the web-site as a source of information it was hard to find information about any European work since it appeared that the remit of Postcomm was restricted to the UK market and there appeared to be little consultation with providers outside the UK borders. However discussion with Postcomm. revealed that it is active in Europe, both in terms of discussions about the next Postal Directive and meeting postal regulators, operators and customers in other countries to learn about best practice.

### **Conclusions**

We found comparatively few complaints regarding postal services. The de-regulation of this sector has proceeded at a slower rate than the other sectors which are part of this project; but postal services are now undergoing massive changes. With the de-regulation of letter post from 1 January 2006 and the financial difficulties of the Royal Mail as it attempts to maintain market share we can anticipate a greater number of consumer complaints regarding service delivery and certainly anecdotally the standard of the service has fallen over recent years. Currently Royal Mail still has such a large market share that the chill winds of competition and the requirement for modernization that go with that are only just starting to impact on that organization. Nonetheless the Chairman's report 2006/7 demonstrates the still dominant position of Royal Mail: *'It is proving very hard for new operators to compete against Royal Mail's scale economies and its unique privilege of VAT exemption.'*

With this lack of effective competition Postcomm has been arguably less able to pressurize the industry in matters of price, access choice and affordability due to a scarcity of viable alternative suppliers. It has however seen fit to flex its muscles by using its statutory powers to impose heavy fines for breaches of their licence conditions.

Postcomm sets Royal Mail's prices for some products but does not set the prices of competitors since these are agreed on a commercial basis with large mailers. In setting Royal Mail's prices Postcomm always take affordability into account (this is a clear statutory duty from Parliament). On access choice, in 2006/07 total access volumes

handled by alternative operators were 2.4 billion items, around 12 per cent of Royal Mail's total mail volume.

## **Proposals**

It was difficult to find much liaison between Postcomm and Postwatch, the consumer's organisation. We propose that citizen's interests would be better served by a more structured relationship between these two organisations at the highest level. Direct consumer representation on the Board should be considered. During this period of market volatility it is essential that Postcomm continues to ensure that the consumers benefit not only from an affordable universal service but also an efficient one.

## **Package Holiday Industry**

This is one area which we were asked to investigate that doesn't have its own regulatory authority. Consumer protection and regulation in this area is established mainly through Air Travel Organiser's Licence (ATOL) and the Association of British Travel Agents (ABTA). ATOL is a consumer protection scheme for flights and air holidays, managed by the Civil Aviation Authority (CAA – the independent specialist aviation regulator and provider of air traffic services, but see Sector Analysis above.).

Businesses selling package travel in the UK must comply with the Package Travel Regulations 1992 which provides financial protection to those taking overseas flight inclusive package holidays. It ensures that in the event of travel failure, consumers already abroad can complete their holidays and be repatriated to the UK and those who have paid for their holidays but have not yet departed will receive a full refund. It is operated by the CAA through the Air Travel Organisers Licensing Regulations. Firms that sell package holidays containing a flight component are required to hold an ATOL. The CAA is currently simplifying the current system of ATOL financial protection in line with better regulation principles including reducing regulatory costs to those companies that currently require an ATOL bond and to help improve consumers' awareness of whether their holiday is ATOL protected. The Office of Fair Trading has responsibility for wider consumer protection matters including unfair terms in package holiday contracts. The Association of British Travel Agents is the main trade association in the travel industry. ABTA's main aims are to maintain the high standards of service amongst Members, and to create as favourable a business climate as possible for its Members. Since it is a member organisation it is differentiated from the statutory regulatory body which regulate the other general interest functions that this project seeks to investigate.

### **Proposal**

The package holiday industry in the UK is in decline. There is a growing tendency for individual consumers to build their own package from services available from the internet some of which may not be protected by the ATOL Regulations. This can create confusion for consumers as to whether the package they are purchasing is financially protected. The European Commission is considering reviewing the Package Travel Directive in order to ensure that the sale of package travel via the internet is financially covered it is timely to review the Package Travel Directive to ensure that consumers buying packages over the internet are financially covered in the event of travel failure. Now is the time to extend consumer protection to this type of holiday.

Citizens Advice



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Thanks to  for the collaboration