

Why Ofcom?

By Andrew Stirling

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In an era of technological and market developments which are rapidly dissolving the boundaries between broadcasting and telecommunications, the UK Government recognized the need for a new regulatory approach. Thus Ofcom was born.

This article gives an overview of its structure and terms of reference, from mainly a broadcasting viewpoint.

Ofcom and its origins

Ofcom – the Office of Communications – is the UK’s new communications regulator for television, radio, telecommunications and spectrum management. It assumed its responsibilities at the end of 2003.

A statutory body that is independent of government, Ofcom replaced the UK’s five former communications regulators – the Broadcasting Standards Commission, the Independent Television Commission, Oftel, the Radio Authority, and the Radiocommunications Agency.

Ofcom is a converged regulator reflecting the increasingly integrated world of communications. It was the changing face of both content and distribution networks in the media and communications sectors that was the main driver behind the creation of the UK’s Communications Act 2003 – which provides Ofcom with its duties and powers. The intention behind the new legislation was to enable UK citizens and consumers to derive the maximum benefits from the new communications.

Ofcom’s specific duties fall into the following areas, with broadcasting forming one part of its wide communications remit:

- ensuring the optimal use of electromagnetic spectrum;
- ensuring that a wide range of electronic communications services – including high-speed data services – is available throughout the UK;
- specifically, in relation to broadcasting:
 - ensuring a wide range of television and radio services of high quality and wide appeal;
 - maintaining plurality in the provision of broadcasting;
 - applying adequate protection for audiences against offensive or harmful material;
 - applying adequate protection for audiences against unfairness or the infringement of privacy.

In line with these duties, the policy foci for Ofcom include:

- promoting competition across the communications sectors;

- facilitating broadband rollout;
- promoting digital switchover;
- regulating content in a pluralist world;
- ensuring fair access to networks;
- sustaining public service broadcasting;
- introducing a more market-based approach to spectrum management.

Building Ofcom

Ofcom was designed from scratch to be a smaller more efficient organization than could have been achieved from a simple combination of its five predecessor regulators. Its structure is inherently convergent in that its internal divisions are functionally-based (strategy, licensing etc.) rather than sector-based. Although Ofcom's structure is brand new and many of the senior management came from outside, it benefits from the key talent, skills and industry experience of those who transferred from the former regulators, as well as the addition of new talent from outside.

When Ofcom took over from the five former regulators, its headcount was around 800, compared to a total of around 1200 in its predecessors. Ofcom costs around 5% less to operate – excluding the exceptional restructuring costs to deliver its 135 new duties and functions that have been laid on Ofcom by Parliament.

Although Ofcom's headquarters are in London it has a responsibility to look after the interests of consumers and citizens across the UK and needs to maintain links with the devolved political institutions as well as the UK Parliament. To ensure its close contact with the UK regions, Ofcom also has offices in Belfast (Northern Ireland), Cardiff (Wales) and Glasgow (Scotland), as well as a presence in the English regions – reflecting the UK's cultural diversity in a devolved political landscape.

Ofcom's governance has been structured in line with the communication industries it regulates – with a unitary Board, a Chairman, [David (Lord) Currie] and a Chief Executive [Stephen Carter]. The Board takes collective responsibility for delivering Ofcom's remit under the Communications Act.

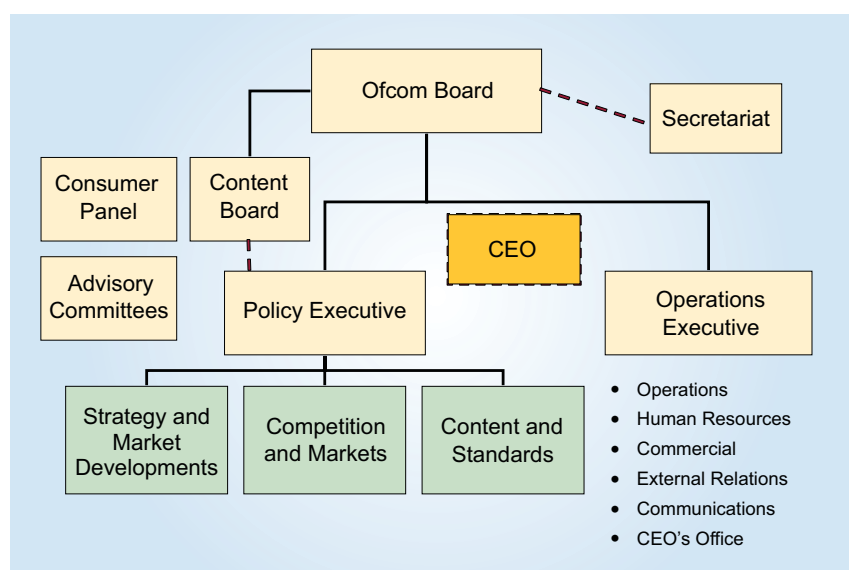


Figure 1
Simple organigram of Ofcom

The Ofcom Content Board is a sub-committee of the main Board, responsible for championing the interests of audiences. Ofcom also has advisory bodies such as the Consumer Panel, the Advisory Committee on Older and Disabled People, the Spectrum Advisory Board as well as separate advisory committees for the English Regions, Scotland, Wales and Northern Ireland.

Ofcom's values

So what kind of regulator is Ofcom?

Firstly, it represents the interests of the **citizen-consumer** – the viewer, listener and consumer of broadcast and telecom services.

Secondly, Ofcom wishes to see a broadcasting and telecommunications industry that flourishes – both economically and creatively – to provide audiences and consumers with what they want, when they want it, and in a form which suits their device and location. By using the full range of digital distribution platforms, the citizen-consumer can expect more channels (radio, television and on-demand services), more innovation, more interactive services, greater choice and improved value.

Based on those values, Ofcom has set out its approach to the regulation of these important and dynamic industries in our “Regulatory Principles”. These include:

- To regulate with a clearly articulated and publicly reviewed annual plan, with stated policy objectives;
- To intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve;
- To operate with a bias against intervention, but with a willingness to do so where required;
- To strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- To always seek the least intrusive regulatory mechanisms to achieve our policy objectives;
- To research markets constantly and to aim to remain at the forefront of technological understanding;
- To consult widely with all relevant stakeholders and to assess the impact of regulatory action before imposing regulation upon a market;

Regulation of Broadcasting

The UK enjoys a tradition of public service broadcasting which is respected around the world. This includes several commercial public service television broadcasters (ITV1, Channel 4, S4C, Channel Five) as well as the BBC. In addition, there are hundreds of purely commercial radio and television broadcasters.

Ofcom’s regulation of broadcasting encompasses the following aspects:

- **Content** – ensuring high programme standards, diversity etc.;
- **Competition** – promoting choice of viewing and listening;
- **Media ownership** – guarding plurality;
- **Media Literacy** – empowering consumers in accessing services;
- **Spectrum management** – ensuring efficient use of spectrum.

Content

Ofcom regulates content on both television and radio in the UK and its scope is defined within three “tiers”:

- **Tier 1**: concerns negative content regulation across all radio and television broadcasters in the UK, including the BBC in some areas. It covers harm and offence, accuracy and impartiality, fairness and privacy. It also covers positive obligations such as the provision of subtitling, signing and audio description for people with hearing and / or visual impairments.
- **Tier 2**: (which also embraces the BBC) relates to quantitative matters such as quotas for independent television production, regional production and original EU / UK production.

- **Tier 3:** covers the public service broadcasting remits of Channel 3 (ITV etc.), Channel 4 and Channel Five. This also includes format regulation for radio. Ofcom does not regulate the BBC's Tier 3 obligations which are the responsibility of the BBC Governors.

Licensing the broadcasters

Providers of Commercial television and radio services all require licences from Ofcom. Licensing is a key tool in ensuring the range, diversity and quality of broadcast services available. Ofcom is responsible for issuing broadcasting licences for all UK commercial television services, including terrestrial (except for S4C in Wales), satellite, and cable – whether broadcast by analogue or digital means. Each licence is subject to certain conditions and penalties including, as a last resort, revocation.

The price paid by commercial public service TV broadcasters – ITV, Channel 4 and “five” – for broadcast rights reflects both the cost of scarce terrestrial spectrum and the public service obligations they are required to meet. These include quality programming of range and diversity; specific programming such as regional and children's; and, in ITV's case, obligations around a regional presence and regional news. The public service broadcasters also have access to digital spectrum, again as a *quid pro quo*, in that case for helping to enable the transition to digital switchover. The BBC has an agreement with the Government that commits it to similar obligations in return for the licence fee.

The commercial radio broadcasters are also given access to a scarce public resource. As a result, local analogue broadcasters and digital multiplex operators are required to compete for radio licences in an open competition and licences are awarded to the applicant who best meets the statutory criteria set out in the Broadcasting Acts 1990 and 1996. The three national analogue licences are awarded through a cash-bid process.

Ofcom has recently restarted the development of the commercial radio sector with the advertisement of new FM local licences and a new sector of radio – Community Radio – has also been created: Ofcom will be publicising the availability of these licences in the autumn.

Approving broadcast media ownership changes

In recent years, the broadcast industry has seen considerable moves to consolidate in order to reduce costs and increase resources for production and rights acquisitions. The Communications Act relaxes some of the earlier restrictions on ownership to give the industry more freedom in securing its future and encouraging new investment into the sector: both from within the UK and from without.

When a change of control of a television or radio broadcaster arises, for example because the licence holder is purchased by another company, Ofcom is responsible for assessing whether the licence can still be held by the new entity and whether any new conditions should be inserted into the licence.

In evaluating such a change of control, Ofcom will look at:

- Whether any change of control has actually occurred;
- Whether there could be an adverse impact on the service's ability to fulfil the broadcaster's licence conditions, causing deviation from any licence conditions e.g. on public service obligations and “localness”;
- Whether the new arrangement for the holding of the licence would be compatible with the statutory ownership rules, protecting plurality for example.

In addition, if there is a change of control of a Channel 3 (ITV etc.) or Channel Five television licence, or a local analogue radio licence, Ofcom must carry out a review of the likely effect of the change of

control on specific matters set out in the Communications Act. This could lead to new licence conditions to preserve aspects of the service that might be prejudiced by the change of control.

Promoting media literacy

The corollary of increasing choice in the communications market is that consumers have more power and need to take a greater responsibility for the choices they make. To ensure that they derive the greatest benefit from this expansion of choice, consumers should be well informed on what the choices are and the benefits, risks and charges which may be associated with particular options.

Ofcom is required to ensure that consumers are sufficiently informed about the services and content on offer, and that they understand the means available for protecting their children against potentially harmful content.

Many stakeholders have an important role in achieving this, including content producers, broadcasters, platform and network providers, educators, Government departments, parents, children's charities and other organizations. Ofcom's role will be to provide leadership and leverage.

In furthering these aims, Ofcom has recently published a consultation on this, and one proposal is to explore the possibility of a common content-labelling scheme, applicable to all electronic audiovisual content. Such a scheme could help parents to choose what their children can watch, in an age of exploding choice.

In a broader sense, media literacy can be taken to include the facilitation of access to services, by all citizen-consumers. Ofcom has some specific duties in this area:

- encouraging ease of use;
- supporting those with impaired senses;
- encouraging availability of equipment which is easy to use.

New communications bring significant benefits to consumers and industry, and the UK recognizes the need to extend the benefits of these to the whole of society.

However, up to this point, each manufacturer had its own design approach, and users had to learn afresh when using a different make of receiver. The Communications Act requires Ofcom to encourage the availability of consumer communications and broadcast receiver equipment that is easy to use. Consequently, Ofcom has been participating with the receiver industry in the development of guidelines for the layout of remote controls for digital terrestrial broadcast receivers.



Progress with digital broadcasting

Digital broadcasting in the UK

Digital broadcasting is an important UK policy goal, both in terms of increasing the efficiency of spectrum use and in increasing choice and value in broadcast media.

Digital TV

The UK has seen a rapid uptake of digital television due to the extension of viewing choice it offers, driven in the early years primarily by pay-television operators. More recently a revival in digital terrestrial television has extended the benefits of choice to those who are attracted by a free-to-air proposition. On the basis of digital TV's success, and the potential value of the spectrum that could be released, preparations are underway for a "digital switchover".

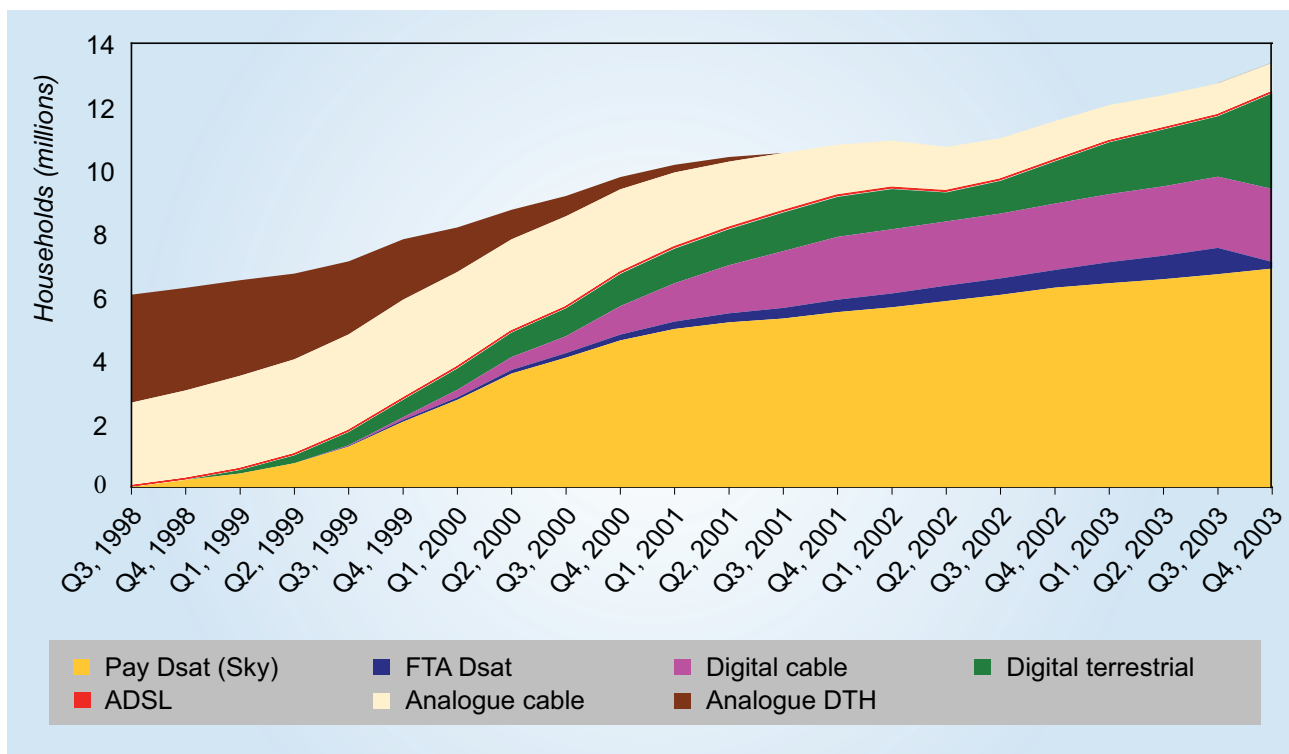


Figure 3
Take-up of digital TV in the UK

- Switchover planning is now at a very advanced stage, with detailed plans for the digital services to be available to all those who currently enjoy analogue TV coverage (around 99% of all UK households).
- A regional switchover approach is the most practical approach and the transmission network operators are preparing plans along these lines.
- Ofcom recently issued a report to Government and is also making preparations for new digital licences.

Digital Radio

Source: Pure Digital Ltd



Digital radio's progress has been much slower than that of digital television, but we have seen an encouraging acceleration in the UK over the last two years. This has been driven by a combination of new digital-only stations and marketing by broadcasters with affordable receivers: the first digital radio to be available for under £100 was the Pure Digital EVOKE-1 (pictured).

Ofcom is currently conducting a review of the prospects for digital radio at the request of the UK Government, with a view to supporting its development in the future. We are due to deliver the results of this work in the autumn of this year and plan to publish a report on our web site.

Around 85% of UK households are covered by digital radio broadcasting.

Over 500,000 digital radio receivers (DAB) have now been sold in the UK and there is a growing range of radios at different function and price levels. There is considerable optimism in the industry today, with many of the larger receiver manufacturers now bringing digital radio models to the UK market.

Whilst there has been somewhat slower take-up of digital radio in other parts of Europe, success in the UK may inspire others to make renewed efforts.

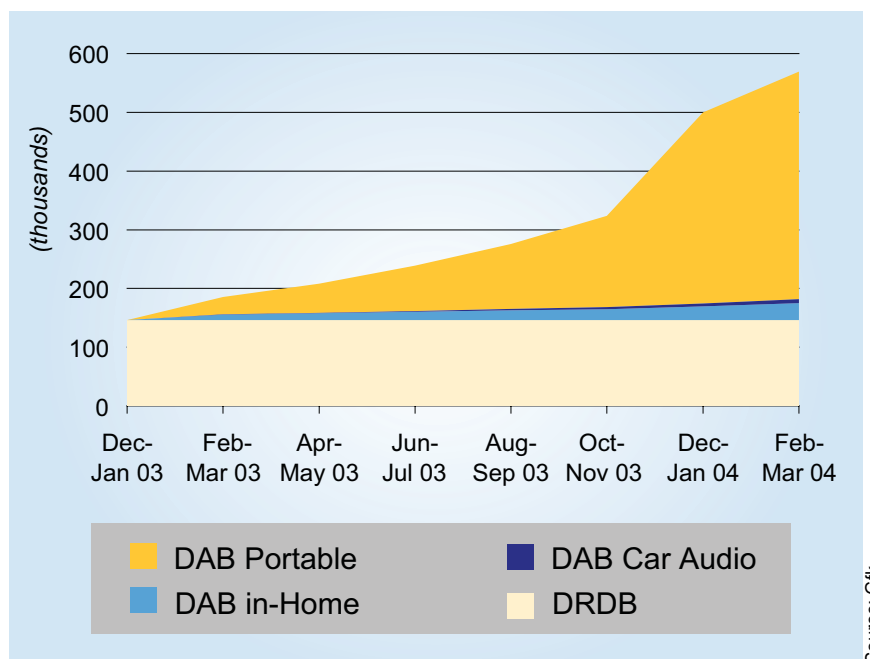


Figure 2
Cumulative digital radio sales in the UK

The UK currently does not have plans for switching off analogue radio broadcasts. Indeed, there is a programme in place to award new FM licences stretching out over the next few years.

Furthering broadband

In order to promote increased consumer choice, it is important to look beyond broadcast network distribution and consider the benefits of broadband as a growing platform for distributing a wide range of interactive services, including streamed radio and TV services.

The incumbent operator (BT) has already announced some very significant initiatives. These include:

- The roll-out of broadband to UK telephone exchanges covering over 95% of the UK population by mid 2005;
- Substantial reductions in the costs of local loop unbundling (LLU), which will enable other broadband operators to create competitive services. These features include the provision of broadcast TV and video-on-demand services.

Managing spectrum

Ofcom manages the UK's electromagnetic spectrum, except for military applications, on behalf of the UK Government. Ofcom has a duty under the Communications Act to ensure that spectrum is used effectively and optimally, and to promote innovation and competition in the provision of networks and services. Its objective is to secure the maximum benefit for citizen-consumers, industry and the wider economy.

In addition to broadcasters, Ofcom licenses spectrum to fixed wireless and public / private mobile telecommunication providers, transport and emergency services on a long-term basis and to a range of users on a temporary basis; for example, to facilitate links from an outside broadcast unit back to its studio.

Broadcast applications of the spectrum require careful planning and need to be co-ordinated with other spectrum users (including other broadcasters) both within the UK and overseas. Associated

with broadcast licensing, a large part of Ofcom's work involves planning and co-ordinating spectrum use for TV and radio broadcasters (both terrestrial and satellite frequencies) including forward planning for new licensing opportunities. In addition to the licences issued to the broadcasters, Ofcom issues corresponding licences under the Wireless Telegraphy Act 1949 which are normally held by the companies that operate transmitter networks on the broadcasters' behalf. These latter licences also apply to the BBC's spectrum usage.

Harnessing market forces to optimize the use of spectrum

The Communications Act now introduces the possibility of spectrum trading into the "toolset" for promoting spectrum efficiency and Ofcom will be making further announcements about how all of these measures may be applied more widely.

In working for the most efficient use of spectrum, we need to gain agreement with the UK's international neighbours to prevent harmful interference and to work with them and particularly with the European Union on the harmonised use of spectrum. Ofcom represents the UK Government in international negotiations on spectrum on a bi-lateral basis with the UK's near neighbours and at regional and global conference levels, within the CEPT and ITU.

The main broadcasting focus of Ofcom's current international work is to prepare for digital switch-over and to provide a framework for spectrum trading and liberalisation that will enable the maximum benefits to be derived from the move to digital. This should create opportunities for businesses to introduce innovative communication services – such as the mobile-broadcast convergent services undergoing trials in Berlin and Helsinki.

Spectrum for new applications

Ofcom is constantly reviewing opportunities for spectrum to be released for new applications. For example, it is currently examining potential applications for frequency blocks to be released within Band III and in L-Band, for possible use by digital radio broadcasting (DAB). Ofcom takes a technology-neutral and evidence-based approach to licensing released spectrum and will carefully examine the route which appears to give best value for the UK.

Summary

As this article demonstrates, Ofcom has a wide scope and a large number of duties, but its inherently convergent and open approach aims to enable the UK to take full advantage of the rapid evolution of communications technology.

Its first step has been to embark on a set of landmark reviews, building an evidence base for reform of regulation across the communication sectors. Part of this has focussed on how the UK's public service broadcasting tradition can be strengthened for the future. Ofcom has also contributed to driving digital switchover and broadband availability across the UK.

Finally, Ofcom's approach to liberalising the use of, and trading of, spectrum is still under development. Ofcom is working to facilitate the broadening of choice and innovation in UK communications.



Andrew Stirling is a Strategy Manager in the Strategy & Market Development Group at Ofcom and has been closely involved with recent digital broadcasting reviews. In one of Ofcom's predecessors, the Independent Television Commission (ITC), he was Senior Technical Advisor – leading a report on progress towards digital switchover and also a review of the pre-Ofcom regulatory landscape in UK communications.

After obtaining a first-class honours degree in Physics from Imperial College in London, Mr Stirling started his career at the BBC's R&D centre, where he carried out research into advanced programme editing and audio encoding technologies. Later, at a technology start-up company, he played a leading role in the integration of multimedia networking technology into a production car. And then, before joining the ITC, he was a manager at Arthur D. Little, where he was responsible for business development and project delivery in the media and telecom industries, leading its global device expert circle.

Further Reading

- [1] UK Communications Market Overview:
http://www.ofcom.org.uk/research/industry_market_research/m_i_index/cm/?a=87101
 - [2] Public Service Broadcasting Review:
http://www.ofcom.org.uk/codes_guidelines/broadcasting/tv/psb_review/?a=87101
 - [3] Telecom Strategic Review:
http://www.ofcom.org.uk/codes_guidelines/telecoms/strategic_review_telecoms/?a=87101
 - [4] Spectrum Trading and Liberalisation:
http://www.ofcom.org.uk/consultations/past/spec_trad/statement/?a=87101
 - [5] Driving Digital Switchover (Report):
http://www.ofcom.org.uk/research/dso_report/?a=87101
 - [6] About Ofcom: http://www.ofcom.org.uk/about_ofcom/?a=87101
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