



HM Government

Impact Assessment: Streamlining Regulatory and Competition Appeals

Consultation on Options for Reform

19 June 2013



Department
for Business
Innovation & Skills

Impact Assessment: Streamlining Regulatory and Competition
Appeals
Consultation on Options for Reform

Issued: 19 June 2013
Respond by: 11 September 2013
Enquiries to:
Regulatory and Competition Appeals Consultation
Consumer and Competition Policy Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 0207 215 6982
Email: regulatory.appeals@bis.gsi.gov.uk

This consultation is relevant to: Businesses of all size, economic regulatory bodies, consumer organizations, legal bodies and academics.

This information is also available on the GOV.UK website:
<https://www.gov.uk/government/consultations/regulatory-and-competition-appeals-options-for-reform>

Title: Streamlining Competition and Regulatory Appeals: Consultation on options for reform IA No: BIS 0410 Lead department or agency: Department for Business Innovation and Skills (BIS) Other departments or agencies:	Impact Assessment (IA)		
	Date: 19/06/2013		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: James Ravenscroft james.ravenscroft@bis.gsi.gov.uk 0207 215 2171			

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£99.97m	£60.19	-£6.99m	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

There are concerns that the regulatory and competition appeals framework is causing unnecessary delay and holding back effective, timely decision-making in some sectors. There are strong incentives for parties to appeal regulatory decisions where these have a significant commercial impact. However, certain features of the appeals regimes in some sectors appear to exacerbate these incentives, increasing the number, length and cost of appeals. Government intervention is necessary to ensure the framework operates in the most efficient and effective manner, protecting firms' right to challenge regulatory decisions, while enabling regulators to make pro-growth and pro-competition decisions in a timely way.

What are the policy objectives and the intended effects?

The Government's policy objectives are that any changes to the appeal regime should:

- Support independent, robust decision-making, minimising uncertainty
- Provide proportionate regulatory accountability
- Minimise the end-to-end length and cost of regulatory decision-making, including the appeals stage.
- Ensure access to justice to all firms and affected parties
- Provide consistency, as far as possible, between appeal routes in different sectors

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do Nothing: This option would leave the current appeals frameworks unchanged

Option 2 - Reduce the standard of review for some appeals: Some appeals currently involve a review of the merits of the decision. We are consulting on a range of options for modifying the standard of review, including moving to a general judicial review standard and/or specifying more defined grounds for appeal.

Option 3 - Streamline the Regulatory Appeals Process: This option consists of a package of measures aimed at improving consistency across sectors and making the appeal process more efficient; and reducing incentives for appellants to game the system.

Option 4: Option 2 and 3 are not mutually exclusive and doing both is the preferred option.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

We have estimated the baseline cost of the current appeals system as £21.79m. The breakdown of our estimated costs to the various affected parties are £11.61m for appellants, £3.43m for regulators, £1.50m for courts/tribunals and £5.25m for interveners. These costs form the baseline for all the options.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Change the Standard of Review for some regulatory appeals

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.86	High: 510.24	Best Estimate: 65.26
2012	2012	10 yrs			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

N/A

Other key non-monetised costs by 'main affected groups'

Reducing the extent to which appeal bodies can reconsider the merits of a decision may be viewed as a cost by firms who wish to challenge regulatory decisions. There may also be transition to costs to firms of understanding the new regime, although we do not consider that these costs are likely to be high. More significantly, there is a risk that changing the standard of review could prompt a short-term increase in the number of appeals as firms test the new jurisdiction.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	1.7	0.9
High	0.0	60.2	510.2
Best Estimate	0.0	7.7	65.3

Description and scale of key monetised benefits by 'main affected groups'

Shorter appeals, as a result of reducing the intensity of review, are estimated to produce savings per year for appellants of £2.59m, for regulators of £0.80m, for courts/tribunals of £0.35m and for interveners of £1.30m. The savings to appellants and interveners are savings to businesses, resulting in a net benefit to business of £3.90m.

In addition, consumers are estimated to benefit by £1.96 per year from receiving the benefits of regulation, through lower prices, sooner as a result of quicker appeals.

Other key non-monetised benefits by 'main affected groups'

Faster appeals and more efficient economic regulation, as a result of fewer resources, including management time, spent on appeals, would improve the regulatory environment in the UK. This would benefit consumers and investors and have a positive impact on economic growth.

Key assumptions/sensitivities/risks

Discount rate (%) 3.50

The impact will depend on precisely which appeal standards are changed, and in what way. The evidence base sets out the range of sub-options we are consulting on. The summary analysis above includes all proposed changes (i.e. it is a cumulative estimate). Key assumptions in estimating the impact are i) how far a less intense standard of review will reduce the length and cost of appeals; and ii) whether a change in the standard will affect the volume of appeals. We intend to use the consultation to test these assumptions.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 4.2	Net: 4.2	Yes	OUT

Summary: Analysis & Evidence

Policy Option 3

Description: Streamline the Regulatory Appeals Process

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10 yrs	Net Benefit (Present Value (PV)) (£m)		
			Low: -6.33	High: 353.60	Best Estimate: 45.66

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	1.1	9.3
Best Estimate	0.0	0.6	4.7

Description and scale of key monetised costs by 'main affected groups'

The regulators could incur extra costs as a result of the measures to improve the original decision making process. We estimate this cost to be £0.5m.

Other key non-monetised costs by 'main affected groups'

Streamlining the appeals process may mean that appeal hearing bodies decisions are less robust as a result of trying to meet shorter timescales. This could encourage further appeals from their decisions. There may also be some transition costs to regulated businesses in understanding the new appeal processes, although we consider that these are unlikely to be significant.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.4	3.0
High	0.0	41.7	353.6
Best Estimate	0.0	5.9	50.3

Description and scale of key monetised benefits by 'main affected groups'

Shorter appeals, as a result of streamlining and fewer appeals as a result of improvements in the original decision making process, mean savings per year for appellants of £2.32m, for regulators of £0.45m, for courts/tribunals of £0.08m and for interveners of £0.99m. The savings to appellants and interveners are savings to businesses resulting in a net benefit to business of £3.31m.

In addition, consumers benefit by £1.55m per year from receiving the benefits of regulation, through lower prices sooner, as a result of quicker appeals.

Other key non-monetised benefits by 'main affected groups'

Faster appeals and improved economic regulation as a result of fewer resources, including management time, spent on appeals would improve the regulatory environment in the UK. This would benefit consumers and investors and have a positive impact on economic growth.

Key assumptions/sensitivities/risks

Discount rate (%)

3.50

The impact will depend on precisely which measures are implemented to streamline the appeals framework. The evidence base sets out the range of sub-options we are consulting on. The summary analysis above includes all proposed changes (i.e. it is a cumulative estimate). Key assumptions in estimating the impact are i) how far streamlining will reduce the length and cost of appeals; and ii) whether there will be an impact on the volume of appeals. We intend to use the consultation to test these assumptions.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:				In scope of OIOO?	Measure qualifies as		
Costs:	0.0	Benefits:	3.6	Net:	3.6	Yes	OUT

Summary: Analysis & Evidence

Policy Option 4

Description: Do options 2 and 3

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: -5.49	High: 696.83	Best Estimate: 99.97
2012	2012	10 yrs			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	1.1	9.3
Best Estimate	0.0	0.6	4.7

Description and scale of key monetised costs by 'main affected groups'

The regulators will incur extra costs as a result of the measures to improve the original decision making process. We estimate this cost to be £0.5m.

Other key non-monetised costs by 'main affected groups'

From option 2 there is a reduction in the level of scrutiny that regulatory decisions are subject to and an increased likelihood of an incorrect regulatory decision not being overturned. The streamlining of the appeals process from option 3 may mean that appeal hearing bodies decisions are less robust as a result of trying to meet shorter timescales. There is a risk of a short-term increase in the volume of appeals following a change in standard of review.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.5	3.8
High	0.0	82.3	696.8
Best Estimate	0.0	12.4	104.6

Description and scale of key monetised benefits by 'main affected groups'

The combined benefits of reducing the standard of review and streamlining the appeals process are less than the sum of benefits in option 2 and 3 because both involve a percentage reduction in the current costs. The combined benefits are £4.41m for appellants, £1.16m for regulators, £0.42m for courts/tribunals and £2.05m for interveners. The savings to appellants and interveners are savings to business resulting in a net benefit to business of £6.46m.

In addition, consumers benefit by £3.20m per year from receiving the benefits of regulation, through lower prices, sooner as a result of quicker appeals.

Other key non-monetised benefits by 'main affected groups'

Faster appeals and more efficient economic regulation as a result of fewer resources, including management time, spent on appeals would improve the regulatory environment in the UK. This would benefit consumers and investors and have a positive impact on economic growth.

Key assumptions/sensitivities/risks

Discount rate (%) 3.50

The impact will depend on precisely which measures are implemented. The evidence base sets out the range of sub-options we are consulting on. The summary analysis above includes all proposed changes (i.e. it is a cumulative estimate). Key assumptions in estimating impact are i) how far the reforms will reduce the length and cost of appeals; and ii) whether there will be an impact on the volume of appeals. We intend to use the consultation to test these assumptions.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:				In scope of OIOO?	Measure qualifies as		
Costs:	0.0	Benefits:	7.0	Net:	7.0	Yes	OUT

Background

1. The purpose of the appeals system is to enable firms to challenge regulatory decisions which affect them and hold regulators to account by correcting any errors in regulatory decision-making in a speedy and efficient manner. Economic regulators take decisions that have a significant bearing on large parts of the economy and investment in key national infrastructure. As such, these decisions need to be robust and efficient, to minimise regulatory uncertainty so that pro-growth and pro-competition measures can be implemented effectively.
2. Economic regulators and competition authorities have considerable power because they combine the roles of investigator, prosecutor and adjudicator. To balance this it is essential that an effective appeals mechanism is available for firms and consumers that are materially affected by a regulatory decision. However, such a process should not hinder regulators' ability to fulfil their principal duty to further the interests of consumers.
3. As a result of stakeholder concerns about the length and costs of appeals there is work underway to make changes to parts of the system already. For example DCMS have consulted on possible changes to telecoms appeals.¹ This impact assessment, and the parallel consultation, build on the existing work.
4. The scope of this IA is purposefully very wide, supporting consultation on options for change across the range of regulatory and competition appeals systems. As set out in more detail in the consultation, the timing of such changes may vary between sectors.

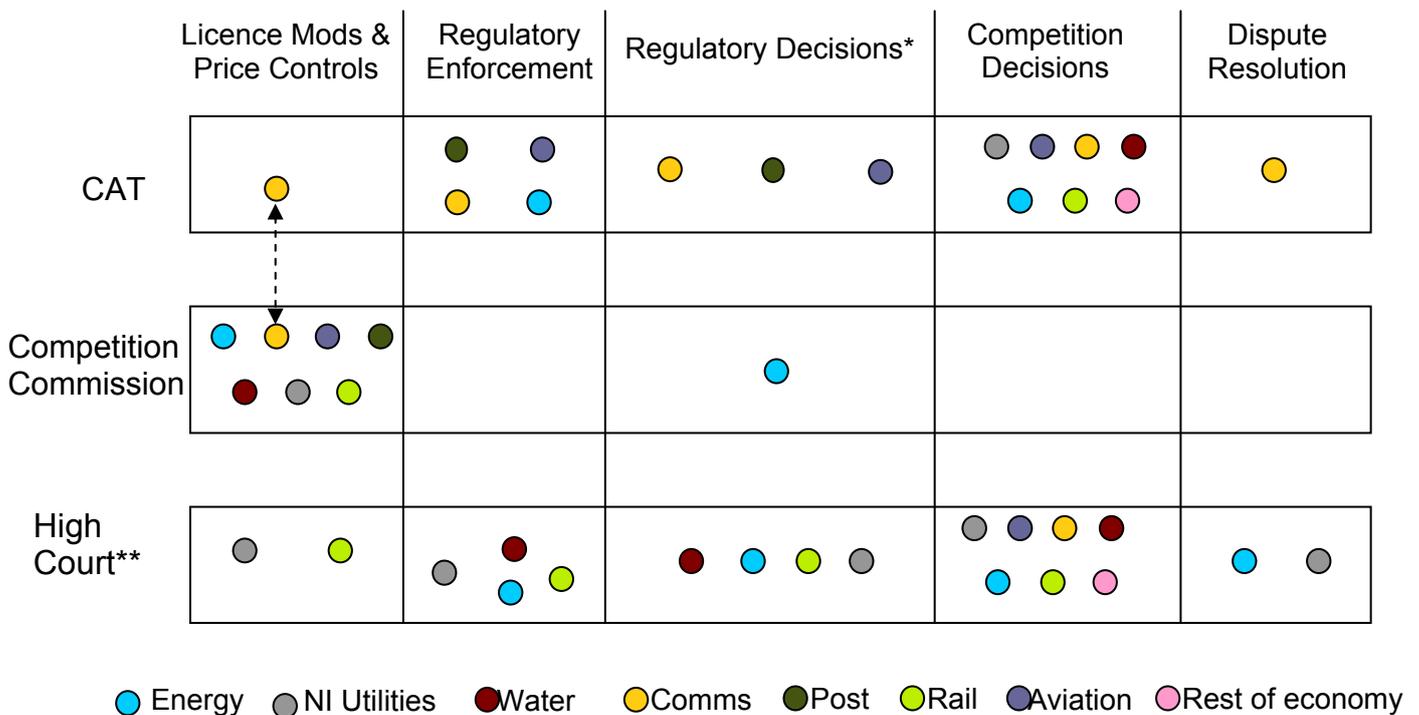
Scope

5. The scope of this consultation and impact assessment is all appeals of decisions made by economic regulators and competition authorities. For the purposes of the consultation, the main economic regulators in scope are: Ofcom (communications and post), Ofgem (energy), Ofwat (water), CAA (aviation), ORR (rail) and NIAUR (energy and water in Northern Ireland). Appeals of decisions by these regulators which are non-economic in nature, e.g. decisions taken on safety matters by ORR or the CAA, are out of scope. Other bodies whose decisions may in future be heard by the CC (or the CMA) and the CAT are also likely to be affected by the proposals.
6. The main competition authorities are the OFT and the Competition Commission (CC). (These two authorities will be merged into the new Competition and Markets Authority in April 2014). Appeals of regulatory and competition decisions are heard variously by the Competition Appeals Tribunal (CAT) the CC or the High Court, as explained in more detail below.
7. Appeals of regulatory decisions by non-economic regulators, such as the Environment Agency and Health and Safety Executive, are out of scope of the consultation.
8. Small and Micro-businesses are in scope, but are unlikely to be materially affected as they have a minor record of appealing regulatory decisions².
9. The current system of regulatory and competition appeals is summarised in the table below, showing the appeal routes for different types of decisions for the different economic regulators.

¹ Department of Culture, Media & Sport, Reforming the Appeals regimes for the Electronic Communications Sector IA, (2011), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72915/Electronic_Communications_Sector_June_2011_-_Appeals_IA.pdf

² See Small and Micro-Business Assessment below.

Figure 1: Summary of main routes of appeal



*Including ex ante and ex-post regulatory decisions & market review

**High Court of England and Wales, Court of Session, or High Court of Northern Ireland

10. As shown in Figure 1, there are a number of different types of regulatory and competition appeal. While decisions and appeal routes vary across sectors, we can distinguish between the following broad categories of decisions:

- Licence modification decisions, including price control decisions – much of core sectoral regulation operates through licences on regulated companies. Regulators can control market outcomes by imposing different requirements on licensees. A particular variety of licence modification is the price control decision, which sets out the prices which can be charged (or revenue earned) over a given future period by the regulated company. But there are also other licence conditions which can be modified by the regulator – for example setting out required supply or quality standards.
- Ex post enforcement of licence conditions and other regulations – regulators have powers to ensure firms hold to licence conditions and other ex ante regulation. If breaches occur, regulators can take enforcement action – for example in some cases they might impose fines (e.g. for train companies missing punctuality targets).
- Other ex ante regulation – in some sectors regulators can impose requirements on firms outside of the licensing framework. An important example is the communications sector, where Ofcom has the role under the relevant European Directive of conducting market reviews. Where it finds significant market power, it is able to impose regulatory obligations on firms.
- Dispute resolution – some regulators have a specific role of arbitrating in commercial disputes between market participants.
- Competition decisions - the sectoral regulators and competition authorities have concurrent powers to enforce competition law, including imposing fines for breaches. This includes dealing with agreements between firms which harm competition and abuse of a dominant position by a firm that restricts competition. The OFT and CC

also look at markets where competition may not be working effectively and investigate mergers that may significantly lessen competition.

11. Each regulatory sector has specific legislation setting out the regulatory decisions which can be taken, and the appeal routes for firms who wish to challenge a regulator's decision. The detail of these existing appeal routes is very important in determining how general principles for appeals regimes that we are consulting on might apply in different sectors. The different types of regulatory and competition decisions may also merit different types of appeals. (For example, there may be a case for treating competition decisions where significant fines can be imposed differently from ex ante regulatory decisions relating to the future firm structure or conduct in a sector). The existing baseline is considered in more detail in the analysis of costs and benefits of Option 1 (the 'do nothing' option) below.

Problem under Consideration

12. The overarching issue we are addressing through the consultation is: how can we minimise the burden of the appeals process and allow regulators to make timely decisions which further their statutory objectives and contribute to growth, while providing regulated firms with a robust right of appeal?
13. In assessing different options, we want to achieve an appeals regime which:
 - Supports robust, predictable decision-making, minimising uncertainty
 - Provides proportionate regulatory accountability – the appeals framework needs to be able to correct mistakes made by a regulator and provide justice to parties, but allow the regulator to set a clear direction over time.
 - Minimises the end-to-end length and cost of regulatory decision-making – partly through making the appeal process itself as streamlined and efficient as possible, but also by encouraging timely decision-making by the regulator or competition authority.
 - Ensures access to justice is available to all firms and affected parties – not just to the largest regulated firms with the greatest resource and expertise.
 - Provides consistency, as far as possible, between appeal routes in different sectors – while acknowledging that the specific characteristics of each sector could affect the preferred approach.
14. The preliminary evidence we have gathered from regulators and appeals bodies suggests some areas where these objectives are not currently being met. This case is set out in more detail in the consultation document. The following paragraphs summarise some of the key points.
15. First, there is a wide variation between sectors in the proportion of significant decisions that are appealed. A high proportion of telecoms decisions are appealed – for example, there have been six telecoms price control appeals in the last five years.³ In contrast, there have been relatively few recent appeals in the energy and water sectors. In these sectors the lack of appeals makes it difficult to judge whether the system is supporting robust decision-making. Annex B summarises the evidence on recent appeals. It is important to note that most decisions are upheld on appeal, although in some cases appeals have acted as a valuable check on the regulator.

³ This counts appeals as they are heard by the CAT - where multiple cases are heard together they are counted as one appeal

16. Second, appeals can take a long time and impose significant costs. First stage appeals have taken an average of just over 9 months over the last five years, but with significant variation around this average (some cases have taken as much as 24 months, while other cases have been completed in less than a month). When there are further appeals to the Court of Appeal and/or Supreme Court, this adds an average of a year to the time taken. This lengthens the end-to-end decision-making process and imposes significant costs on firms, regulators, appeal bodies and consumer welfare as described in more detail in the costs and benefits section below.
17. Third, there is a concern that the standard of review in some sectors (particularly communications) gives parties a wide scope to challenge decisions, and significant discretion for the appeal body to re-examine elements of the regulatory decision. The degree to which decisions can be reopened may affect both companies' propensity to appeal and the length of appeals. The more intense the review and the more widely the appeal body is able to challenge a regulator's decision, the more incentive parties are likely to have to bring an appeal.
18. Fourth, features of the appeals processes in some sectors may act to increase firms' incentive to appeal. Firms can rightly be expected to have a strong incentive to appeal where a regulator's decision has a material effect on them, and where they believe that the regulator's reasoning is flawed or they have insufficient evidence on which to base their decision. However, there are concerns that:
 - Some decisions which are overturned are on the basis of new evidence provided at appeal, or through witness evidence which is heard during an appeal, which was therefore not part of the regulator's original evidence.
 - Some appeals appear to have limited 'downside risk' for the appellant – there is concern that the appeal might be a one-way bet, with the possibility of a more beneficial outcome if the appeal is successful, but little possibility of a worse outcome if the appeal is lost.
19. Fifth, there are concerns that the cumulative effect of regulatory appeals can be to make regulators overly risk-averse, and delay important regulatory decisions. While the appeals processes is only one element in a complex set of factors affecting regulatory behaviour, some regulators have strongly argued that the appeals regime has a significant effect. DCMS' consultation⁴ also suggests Ofcom is spending increasing amounts of time addressing appeals, time that could otherwise be used on potential improvements to consumer welfare.
20. Appeals can also result in regulators becoming unwilling to devote resources to new decisions until they have clarity on appeals against earlier decisions. Whilst regulatory decisions usually remain binding until the CAT has made its ruling, in many cases regulators must wait for an appeal to conclude before it can take action on other matters that may be related or unrelated to the case (due to the need for legal certainty and a more general need to make effective use of its internal resources). Such delays can also lead to consumer benefits being deferred as was the case in the 2.6Ghz spectrum auction. In this case the series of appeals against Ofcom decisions about the proper way to make spectrum available for 2.6 GHz mobile broadband served to delay the auction. This led to delay in the launch of services and hence to delivering benefits to consumers.

⁴ <https://www.gov.uk/government/consultations/consultation-on-implementing-the-revised-eu-electronic-communications-framework-appeals>

Auction of Spectrum Case

On 16th May 2008, O2 and T-Mobile appealed Ofcom's decision to proceed with an auction of spectrum at 2.6GHz. O2 and T-Mobile objected to an immediate auction because they were anticipating a further decision from Ofcom on 'refarming' which could have led them to being able to use some or all of the spectrum already licensed to them for more efficient technologies which would affect their decision on how much additional spectrum they might want to acquire through a subsequent licence award.; they argued that it was unfair to make them bid for more licences when they would not know what they would need until the refarming decision had been made.

On 10th July 2008, the Tribunal handed down its judgment and found that it does not have jurisdiction to hear this appeal. T-Mobile also commenced proceedings in the High Court on a precautionary basis at the same time. On 3rd September 2008, the Tribunal refused O2's and T-Mobile's requests for permission to appeal against its judgement. The Tribunal decided that the most appropriate course would be for the parties to seek permission from the Court of Appeal. However, the Court of Appeal and later the House of Lords dismissed these appeals at the end of 2008 and beginning of 2009 respectively.

OFCOM announced in December 2006 its award plans for the 2010 MHz and 2.6GHz bands. The estimated date for the completion of the auction was the end of 2007 (OFCOM 2006, p. 11). Following further consultation stages, OFCOM received substantial opposition to their award plans from the major telecoms providers and announced a new timetable for September 2008 for the auction (OFCOM 2008, p.191, p.3). Due to this litigation, the auction was delayed. However, the 2.6GHz spectrum was finally auctioned in 2013 together with the 800MHz spectrum which had then be made available through digital TV switchover.

21. Delays in regulatory decision making adversely affect growth through the potential impact on prices and investment in key economic sectors. Consumers can benefit from lower prices (if incumbents aim to drive out competitors) but are likely to incur costs in the form of higher prices and worse service because regulatory decisions can be delayed or held up as a result of a re-allocation of resources away from policy and enforcement work. Companies are less able to plan their investments in these key sectors because of the regulatory uncertainty caused by excessively length appeals and reduced speed of regulatory decisions. This is because the future structure of the market remains subject to change until an appeal is decided.

Rationale for Intervention

22. Appeal routes already exist for all significant regulatory and competition decisions made by economic regulators and competition authorities. Therefore, the proposed intervention covered by this impact assessment involves streamlining the existing appeals framework, rather than introducing new appeals rights or removing existing rights.
23. There is a clear policy rationale for firms having a right to challenge regulatory and competition decisions. Appeals are central to ensuring proper accountability of independent regulators and competition authorities. Particularly where decisions have been delegated to independent experts outside of direct ministerial control, firms need to have a mechanism for challenging regulatory decisions, in order to correct regulatory mistakes and ensure regulators are operating

in a reasonable and consistent way. Appeals are not the only form of accountability – for example consultation during decision-making plays an important role – but they are nevertheless a key element.⁵

24. The rationale for revisiting the current arrangements is that appeal rights need to be designed carefully to maximise regulatory certainty for firms while allowing regulators to reach proportionate, timely decisions. As noted above, the evidence suggests that the current regime in some sectors may not strike the most appropriate balance, and more broadly that there is scope to streamline the system overall to ensure that appeals are conducted as efficiently as possible to support swift end-to-end regulatory decision-making.
25. There is also a specific rationale for change in the communications sector, that the current appeals regime is arguably gold-plating the requirements of the EU Framework Directive for telecoms.

Policy Objective

26. The Government's policy objectives are that any changes to the appeal regime should:
 - Support robust, predictable decision-making, minimising uncertainty
 - Provide proportionate regulatory accountability – the appeals framework needs to be able to correct mistakes made by a regulator and provide justice to parties, but allow the regulator to set a clear direction over time.
 - Minimise the end-to-end length and cost of regulatory decision-making – partly through making the appeal process itself as streamlined and efficient as possible, but also by encouraging timely decision-making by the regulator or competition authority.
 - Ensure access to justice is available to all firms and affected parties – not just to the largest regulated firms with the greatest resource and expertise.
 - Provide consistency, as far as possible, between appeal routes in different sectors – while acknowledging that the specific characteristics of each sector could affect the preferred approach.
27. Consistent with the preliminary evidence we have gathered, the Government believes that the current appeals framework could be streamlined so that:
 - It is more focused on identifying material errors rather than carrying out a fuller review of the regulator's decision;
 - appeal bodies' expertise is applied in the most appropriate way and appeal routes are more consistent across sectors, to provide greater certainty and better use of resources;
 - it is more accessible to all affected parties;
 - incentives in the system are aligned with Government's objectives for the appeals regime;
 - appeals processes are as efficient and cost effective as possible.

Summary of consultation options

28. The Government intends to consult on a package of reforms to address these aims. There are three main proposed areas for reform:

⁵ See House of Lords Select Committee on the Constitution 6th Report of Session 2003-04, 'The Regulatory State: Ensuring its Accountability'

- reforming the standard of review and grounds of appeal for some types of regulatory decisions;
- reforming the appeals processes and governance; and
- ensuring that resources and expertise of appeal bodies are used in the most appropriate and cost-effective way.

Therefore, we have grouped the analysis of potential costs and benefits into four options (with some sub-options to capture alternative possible approaches)

- Option 1: Do nothing/Baseline
- Option 2: Specifying the standard of review for some regulatory and competition decisions – Government intends to consult on alternative approaches for the precise scope and detail of these changes, as set out below.
- Option 3a: Reforms to the appeals processes and governance –as with option 2, there are a range of sub-options covering different proposals in the consultation.
- Option 3b: Ensuring that resources and expertise of appeal bodies is used in the most appropriate and cost-effective way.
- Option 4: Captures the impact of option 2 and option 3a and 3b.

Option 1: Do Nothing/Baseline

29. This option would leave the current system of regulatory and competition appeals unchanged.
30. This option includes the changes planned to the way private actions in competition law are heard (which are being taken forward separately). These changes are relevant for this IA as private action cases are being moved to the CAT and as such are likely to increase the CAT's workload.
31. The cost of this option forms the basis for the costs and benefits of the other options. Details on how the cost of this option has been estimated and the assumptions used are below.
32. One non-monetised benefit of the current regime is that it has been well tested by incumbents and is arguably embedded in regulatory procedure. This creates a degree of certainty as incumbents and competition authorities can make reference to past appeals when making decisions. In addition, the substantial case management costs and time required to file an appeal arguably deters frivolous/unmeritorious appeals.

Estimating the cost of regulatory and competition appeals

33. The cost of the current system is a function of the number of appeals and the cost per appeal. As a simplification we have grouped some appeals together where they are of a similar type and they follow a similar appeal route. A summary of the cost model is in Annex A.
34. We have estimated the number of appeals based on the average number of appeals over the last five years (the full list of cases with type and length is at Annex B). Where there have been no appeals in the last five years we have assumed one case per sector every ten years.
35. We have estimated the cost per appeal to the appellant, regulator, court and interveners. Our estimates of these costs are based on work in other recent Impact Assessments relating to changes in appeals frameworks, with additional assumptions where necessary to fill the gaps. Details of these assumptions are in Annex C.
36. The resultant estimate of the cost of the current appeal system is £21.79m per annum. The costs and benefits of the other options are estimated against this baseline.

Option 2: Change the Standard of Review for some regulatory appeals

37. Under this option, some appeals would be heard on a revised standard of review which could involve more defined grounds of appeal. The standard of review determines the scope of the review and the way that the appeal body will conduct its investigation. In broad terms, they can be considered as determining the 'intensity' of scrutiny applied by the appeal body to the regulator's decision.
38. There are four main areas where we are intending to consult on possible changes. These are:
- Ex ante communications (Ofcom) decisions
 - Price control decisions across all the regulated sectors¹
 - Competition decisions made by the OFT and by regulators exercising their concurrent competition powers (ex post competition decisions)
 - Other regulatory appeals that are currently heard on a standard of review which exceeds judicial review.
39. Most communications appeals, ex post competition decisions and regulatory price control cases are currently heard 'on the merits'. This can involve a detailed review of economic and modelling assumptions, causing the appeals process to become more time-consuming and costly compared with a less intensive standard. We intend to consult on shifting to a less intensive standard of review, allowing for a flexible judicial review rather than requiring full merits review, and specifying more precisely the grounds on which an appeal can be brought and permitted by the appeal body
40. The pros and cons of making these changes, and the legal constraints involved, vary between the four groups of decisions set out above. The consultation document sets out these arguments. Where the Government decides, following consultation, that change is justified, there would be a further question about the timing of making changes across different sectors. To simplify the analysis for this IA, the costs and benefits set out below are estimated on the basis that all the possible changes are made at the same time. In this sense the impact assessment set out here represents an upper bound on the likely final impact, depending on the outcome of the consultation.

Benefits (Option 2)

41. We assume that reducing the standard of review (from merits to JR or more defined grounds) reduces the time cases take by 25% and thus also the cost by 25%. This assumption is a conservative version of the assumption made by DCMS in the Reforming the Appeals Regimes for the Electronic Communications Sector Impact Assessment for communications appeals.² There is some evidence that our estimate is too conservative - for example cases currently taken by the CAT on a judicial review basis take an average of 4 months compared to an overall average of 9.07 months of all CAT cases between 2008 and 2012 (although this is comparing different types of case as well as different standards of review). We will use the consultation to test this assumption.
42. The resultant cost savings of this 25% reduction in cost per case to each of the four affected groups (appellants, courts, regulators and interveners) are shown in the table below. The more detailed calculations of these costs are set out in Annex A. Part of these cost savings are

¹ Arrangements for economic regulation of the water sector only apply to England and Wales. The consultation is not proposing any change to the regulation of water industry in Scotland. The Northern Ireland Executive will consider separately following this consultation, if it wishes to make revision to its current arrangements for the economic regulation of the water industry in Northern Ireland.

² Department for Culture, Media & Sport, Reforming the Appeals regimes for the Electronic Communications Sector IA, (2011), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72915/Electronic_Communications_Sector_June2011_-_Appeals_IA.pdf

accrued by business as appellants and interveners. This is due to the appeals body not being required to examine facts and analysis as extensively as it does under the current system. This means that cases take less time and are less costly for both the regulator and stakeholders.

Option 2: Summary of Total Benefit and Total Savings

Type of Cases	Total Benefit p.a. (£m)	Total Savings to Business p.a. (£m)
Communications (excluding price control) cases	£3.14	£1.93
Competition cases	£1.54	£0.98
Price Control cases	£1.07	£0.18
All other cases not currently at JR standard (ex-ante reg., ex-post reg., licence mod.)	£1.27	£0.80

43. In addition, consumers would benefit from faster appeals as they will be able to receive the benefits of regulation sooner. Ofcom estimates of the cost of delay of regulation to UK consumers suggest a benefit of faster appeals of £0.8m per case per month of delay avoided.³ We treat this number with caution as we are looking at a wider range of sectors and case types. We assume a benefit of £0.1m per case per month of delay avoided with a high of £0.8m and a low of £0.05m. The resultant consumer benefits are shown in the table above.
44. Faster resolution of appeals could also reduce regulatory uncertainty, improving the investment environment for firms. We have not attempted to monetise this benefit.
45. This option would improve economic regulation more generally as fewer resources, including management time, would be spent on appeals and more on enforcement and original decisions. We have not monetised this benefit.

Costs (Option 2)

46. The main ongoing cost of this option is to firms who would want a more detailed appeal in order to challenge regulatory decisions which they disagree with. We are clear that the new appeals standard should still allow for decisions to be appealed and for the factual and legal basis of the regulators' decisions to be scrutinised effectively. However, there may be a risk that reducing the level of scrutiny that regulatory decisions are subject to may increase the likelihood of an incorrect regulatory decision not being overturned by an appeal body. We have not attempted to monetise this cost, but intend to use the consultation to test views on the extent to which there is a material risk, and to consider the potential costs for different types of regulatory and competition decisions.
47. In addition, there may be two forms of transition cost:

³ Department for Culture, Media & Sport, Reforming the Appeals regimes for the Electronic Communications Sector IA, (2011, p.12), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72915/Electronic_Communications_Sector_June2011_-_Appeals_IA.pdf

- First, the transition cost to market participants of understanding the new regime. We believe that these costs are likely to be low, since the changes to the standard of review are relatively easy to understand, and most of the affected firms are those in regulated sectors who have experienced legal and regulatory teams.
- Second, there may be a short term increase in the number of appeals as firms test how courts will interpret the new standard of review. For this period there is a risk that there will be a higher level of litigation as the legal boundaries of the new regime are tested

48. We intend to use the consultation particularly to gain evidence on the risk of an increase in the number of appeals.

Risks (Option 2)

49. Whilst the reforms should help to ensure that only meritorious appeals are lodged, we have assumed that there will not be a change in the number of cases as a result of specifying the standard of review. There is a risk that there will be an increase in the number of appeals due to a fall in the cost of appeals. This is likely to particularly benefit those with fewer resources such as SMEs and new entrants. On the other hand, a less intensive appeal standard might also discourage appeals, where firms consider that they are unlikely to be successful on the new appeal standard. We will use the consultation to seek views on the likely impact of changes on the volume of appeals.

Option 3: Streamlining the Regulatory Appeals Process

50. In our review of the appeals process, several issues have been identified that could reduce the cost and length of appeals. These measures are not mutually exclusive and the final measures will depend on the consultation.
51. This option can be split into two broad sub options -
- Option 3a: Reforms to the appeals processes and governance
 - Option 3b: Ensuring that resources and expertise of appeal bodies is used in the most appropriate and cost-effective way.
- These are considered together because their impacts, in terms of reduced time and cost of appeals, are similar.
52. The measures in option 3a potentially include:
- Making it easier for appeal bodies and/or regulators to strike out unmeritorious appeals;
 - Making clearer rules on the admissibility of new evidence in an appeal, and awarding costs against new evidence which could have been brought earlier;
 - Increased use of confidentiality rings by regulators and/or greater transparency and more effective consultation;
 - Encouraging regulators to claim their full costs and clarifying that courts will only award costs against a regulator where they have acted in 'bad faith';
 - Introducing (and where they exist reducing) target case time limits.
53. The evidence at this stage suggests that these measures would streamline the system by:
- i) Improving regulators' original decision making process;
 - ii) Focusing more on identifying material errors;
 - iii) Making it more accessible to all affected parties;
 - iv) Aligning incentives in the system with Government's objectives;
 - v) Making the appeals processes as efficient and cost effective as possible.
54. The measures in option 3b potentially include:
- Communications price control appeals to go straight to the CC;
 - All ex ante regulation cases go to the CAT;
 - All ex post enforcement cases go to the High Court or CAT;
 - Ofcom dispute cases go to the High Court;
 - Energy reviews and codes go to the CAT.

Option 3a Part (i): Improvements to the original decision making process

55. Getting the right answer first time would reduce costs of the system as a result of a reduction in the number of appeals (although it would be too costly to remove all risk of error). While the majority of regulatory and competition authority decisions are upheld on appeal, there have been instances where the regulator has been shown to have made an error on matters of fact or law.
56. If parties affected by regulators' decisions had better awareness of regulators' intentions and understood the analysis on which these were based they could raise their objections before the regulator makes their decision. This would reduce the total number of regulatory decisions that are appealed.
57. As such, we intend to consult on measures including:
- Regulators making greater use of confidentiality rings where appropriate. Confidentiality rings may help parties better understand the regulator's analysis at an earlier stage of the process.

- There may be scope for greater transparency and consultation in decision-making at the early stages of regulatory process would make stakeholders better aware of regulatory policy.

Option 3a Part (ii): Getting the incentives right

58. While firms should have a right to an appeal where there is a genuine concern that the regulator has made an error in its decision, the system should not incentivise appealing to delay a decision or to game the system (e.g. to appeal in order to set the terms of the appeal).
59. Measures being consulted on include:
- Measures to ensure that unmeritorious or ill-defined appeals are struck out or better focused at the start of the process. For example having better defined grounds of appeal, encouraging regulators to seek to strike out appeals and by making it easier for appeal bodies to do so more regularly.
 - Making clearer rules on the admissibility of new evidence to reduce the risk of gaming of the system (by holding back evidence) and to ensure that appeals are as swift as possible and are not unnecessarily lengthy. The presumption should be that evidence should, wherever possible, be made available at the decision-making stage. This would go hand in hand with any changes to the standard of review, as judicial reviews do not ordinarily consider new evidence.
 - Encouraging regulators to claim full costs and exploring whether the court might only recover costs from a regulator where it has acted unreasonably (but emphasising discretionary exceptions should exist for small business and consumer groups).

Option 3a Part (iii): More efficient processes

60. While the CAT is swifter than the High Court and performs well relative to other international specialised competition courts, there is scope to make the system quicker, more efficient and more predictable. Options to do this include limiting the amount of evidence and expert witnesses produced by each side (two experts each), and resolving straightforward matters on the papers more often.
61. Existing target case time-limits will be reduced from 9 to 6 months for straight forward cases, and applying target time-limits more widely. In addition, case-specific timescales which are set at the outside should include the period up to the judgement and should be reviewed after the oral hearing.

Option 3b: Ensuring appeal bodies' expertise is applied in the most appropriate way by making appeal routes more consistent across sectors

62. Improving consistency across sectors would ensure that resources and expertise of appeal bodies are used in the most appropriate and cost-effective way. Inconsistent appeal routes mean that expertise is spread across multiple areas rather than in just one. It is also more complex for those who wish to invest across a range of sectors. Therefore, there is a strong argument for having greater consistency of where certain types of appeals (across sectors) are heard.
63. To make best use of resources appeals which involve similar type of consideration should be heard in the same appeal body. For appeals or reviews where detailed economic analysis is required (e.g. price control reviews) the CC is best placed to undertake this analysis. The CC hears licence modification appeals and reviews across all sectors. In some sectors an 'investigative' system is used e.g. water, rail; while in others an adversarial model

is followed e.g. communications. The CC should take a consistent approach across all sectors to provide greater consistency across the regulated economy.

64. The CAT has specialist competition law expertise and is expected to be quicker at completing complex regulatory and competition appeals. Appeals in the CAT are adversarial in nature, rather than investigative.
65. The High Court (Administrative Court) has expertise in hearing public law judicial reviews. Government policy is that any specialist appeals should generally be heard in a specialist tribunal rather than the High Court, although it will continue to hear general judicial review cases.
66. One way to improve consistency is by removing an anomaly in the way price control and licence modification appeals are handled in the communications sector so that they are primarily dealt with by one appeal body rather than two. Currently, the CAT hears all licence modification appeals in the communications sector and refers any price control matters to the CC. The Government proposes to simplify this process so that licence modification appeals go directly to the CC.
67. Other options to be explored in the consultation will be:
 - moving all ex ante regulation cases (excluding price controls and licence modifications) to the CAT rather than the current mix of CAT, High Court and CC. This could include energy code modifications. These cases would then benefit from the CAT's specialist competition law expertise and help further develop it;
 - moving all ex-post regulatory enforcement decisions, (non-competition decisions levied against firms the regulators deemed to have broken the law) to the High Court, as these should be straightforward judicial review cases;
 - moving all dispute cases to a single appeal body rather than the current mix of CAT and High Court.

Costs & Benefits (Option 3)

68. As mentioned above, these options are not mutually exclusive though we consider that the effects of these policies are likely to be similar. Therefore, they are treated together when analysing the costs and benefits below.

Benefits (Option 3)

69. We have assumed that these streamlining measures will reduce costs to regulators, regulated firms and the courts/tribunals by 25%. We have assumed that the number of cases will reduce by a best estimate of 5% due to the mechanisms described above (in particular the measures to make decision-making more transparent at the regulatory stage, which should reduce the need for firms to appeal). We will use the consultation to test these assumptions. This results in a saving of £5.40m. This is a result of the mechanisms outlined above. The detailed cost and benefit calculations are shown at Annex A.
70. Part of this cost saving is accrued by business as appellants and interveners. These savings are estimated to lead to a benefit to business of £3.31m.
71. In addition, consumers would benefit from faster appeals as they will be able to receive the benefits of regulation sooner. OFCOM estimates of the cost of delay of regulation to UK consumers suggest a benefit of faster appeals of £0.8m per case per month of delay

avoided.⁴ We treat this number with caution as we are looking at a wider range of sectors and case types. We assume a benefit of £0.1m per case per month of delay avoided with a high of £0.8m and a low of £0.05m. The resultant consumer benefits are shown in the table above. We assume that the same cost savings can apply to the other regulated sectors. This results in a consumer benefit of £1.55m.

72. Faster resolution of appeals would also reduce regulatory uncertainty improving the investment environment for firms. We have not monetised this benefit.
73. This option would improve economic regulation more generally as fewer resources, including management time, would be spent on appeals and more on enforcement and original decisions. We have not monetised this benefit.

Costs (Option 3)

74. The cost of streamlining the appeals process is that appeal hearing bodies may make more mistakes as a result of trying to meet shorter timescales. We have not monetised this cost.
75. The regulators will incur extra costs as a result of the measures to improve original decision making described in paragraphs 53-55. Our best estimate of this cost is £0.5m with a high of £1m and a low of £0m. We will use the consultation to test this estimate.

Risks (option 3)

76. We have assumed that there will be a 5% reduction in the number of cases as a result of streamlining original decision making process. However, there is a risk that there will be increase in the number of appeals due to a fall in the cost of appeals. This is likely to particularly benefit those with fewer resources such as SMEs and new entrants.
77. Changing the way the current system works may create uncertainty in the short-term. For this period there is a risk that there will be a higher level of litigation as the legal boundaries of the new regime are tested. This could result in additional costs.

Option 4 (preferred option)

78. This option combines the changes from option 2 and option 3 and is the preferred option.
79. The benefits of options 2 and 3 are both estimated as a percentage reduction in costs. As such the benefit of doing both options is less than the sum of doing each. The table below sets out the benefits of doing each option.

⁴ Department for Culture, Media & Sport, Reforming the Appeals regimes for the Electronic Communications Sector IA, 2011, p.12, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72915/Electronic_Communications_Sector_June2011_-_Appeals_IA.pdf

Summary of Costs and Benefits of all Options

Option	Consumer Benefits p.a. (£m)	Cost savings to . . . (£m)			Old Cost p.a. (£m)	New cost p.a. (£m)	Total benefit p.a. (£m)
		(Main Appellant + Intervener) Business p.a. (£m)	Regulator p.a. (£m)	Court p.a. (£m)			
1	£0.00	£0.00	£0.00	£0.00	£21.79	£21.59	£0.00
2	£1.96	£3.90	£0.80	£0.35	£21.79	£16.75	£7.00
3	£1.55	£3.31	£0.45	£0.08	£21.79	£17.95	£5.40
4	£3.20	£6.46	£1.16	£0.42	£21.79	£13.76	£8.03

Small and Micro-business Assessment

80. Small and Micro-businesses are in scope of the proposed changes, but are very unlikely to be affected as they have a minor record of appealing regulatory decisions⁵.
81. Moreover, Option 4 is intended to improve the initial regulatory decision making process and reduce the length of appeals, resulting in a cost saving to all businesses. Since small and micro-businesses are in scope, if they were to appeal regulatory and competition decisions, they would benefit from these cost savings.

⁵ There have been few appeals from small and micro-businesses. One example is case 11191/6/1/12, Association of Convenience Stores and (2) National Federation of Retail Newsagents v Office of Fair Trading, <http://www.catribunal.org.uk/237-7599/1191-6-1-12-1-Association-of-Convenience-Stores-and-2-National-Federation-of-Retail-Newsagents.html>

Annex A – Option 4: Cost Model and Explanation¹

Appeal against	Sector	Type of case	Current Court	Estimated number of cases under current regime	Current time (months)	Estimated baseline cost to . . .				New Court	Change standard of Review	Streamline effect	New number of cases	New time (months)	Consumer Benefits	New cost to . . .				Total Old Cost p.a.	Total New Cost p.a.	Cost Savings p.a.
						Main Appellant p.a.	Regulator p.a.	Court p.a.	Intervener p.a.							Main Appellant p.a.	Regulator p.a.	Court p.a.	Intervener p.a.			
OFCOM	Telecoms	Dispute resolution	CAT	1.4	11.2	£1.75	£0.34	£0.05	£0.87	High Court	yes	no	1.40	8.38	£0.39	£1.31	£0.25	£0.03	£0.65	£4.20	£3.15	£1.05
OFCOM	Telecoms	Ex ante regulation	CAT	1.50	10.23	£1.60	£0.32	£0.05	£0.80	CAT	yes	yes	1.43	5.75	£0.71	£0.90	£0.18	£0.03	£0.45	£4.15	£2.22	£1.93
OFCOM, CAA, ORR, OFGEM	Broadcasting, Post, Aviation, Rail, Energy	Ex ante regulation	CAT (OFCOM, CAA) & CC (ORR, OFGEM)	0.20	10.23	£1.60	£0.32	£0.05	£0.80	CAT	yes	yes	0.19	5.75	£0.10	£0.90	£0.18	£0.03	£0.45	£0.55	£0.30	£0.26
UREGNI	All sectors	Ex ante regulation	High Court	0.00	10.23	£1.20	£0.24	£0.06	£0.60	CAT	no	yes	0.00	7.67	£0.00	£0.90	£0.18	£0.05	£0.45	£0.00	£0.00	£0.00
OFWAT	Water	Ex ante regulation	High Court	0.60	17.00	£2.66	£0.51	£0.08	£1.33	CAT	yes	yes	0.57	9.56	£0.47	£1.49	£0.29	£0.05	£0.75	£2.75	£1.47	£1.28
OFCOM, OFWAT, URGNI, CAA, ORR, OFGEM, CC, OFT	Comms, Post, Water, Northern Ireland Sectors, Aviation, Rail, Energy	Ex post competition	CAT	1.20	13.91	£2.17	£0.42	£0.05	£1.09	CAT	yes	yes	1.14	7.83	£0.78	£1.22	£0.24	£0.03	£0.61	£4.47	£2.39	£2.08
OFCOM, CAA	Comms, Post, Aviation, Rail, Energy	Ex post regulation	CAT	0.20	3.98	£0.62	£0.12	£0.05	£0.31	High Court	yes	no	0.20	2.99	£0.02	£0.47	£0.09	£0.03	£0.23	£0.22	£0.16	£0.05
ORR, OFGEM	Rail, Energy	Ex post regulation	High Court	0.20	3.98	£0.62	£0.12	£0.05	£0.31	High Court	yes	no	0.20	2.99	£0.02	£0.47	£0.09	£0.03	£0.23	£0.22	£0.16	£0.05
URGNI, OFWAT	Northern Ireland Sectors, Water	Ex post regulation	High Court	0.20	3.98	£0.47	£0.09	£0.03	£0.23	High Court	no	no	0.20	3.98	£0.00	£0.47	£0.09	£0.03	£0.23	£0.16	£0.16	£0.00
OFCOM, OFWAT, URGNI, CAA, ORR, OFGEM	Comms, Post, Water, Northern Ireland Sectors, Aviation, Rail, Energy	Licence modification	CAT (Post) & CC (Others)	0.40	3.98	£0.54	£0.54	£0.54	£0.54	CC	yes	no	0.40	2.99	£0.04	£0.40	£0.40	£0.40	£0.40	£0.86	£0.64	£0.21
OFWAT, URGNI, CAA, ORR, OFGEM, OFCOM	Water, Northern Ireland Sectors, Aviation, Rail, Energy, Post, Comms	Price control	CC	1.70	9.08	£0.32	£0.64	£0.54	£0.11	CC	yes	no	1.70	6.81	£0.39	£0.24	£0.48	£0.40	£0.08	£2.74	£2.05	£0.68
CC, OFT	All sectors	mergers & markets JR	CAT	2.40	4.04	£0.47	£0.09	£0.05	£0.00	CAT	no	yes	2.28	3.03	£0.28	£0.36	£0.07	£0.03	£0.00	£1.47	£1.04	£0.42
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W

¹ Number of cases per year and average time per case are rounded to the nearest 2 decimal place. Currency values are also rounded to the nearest 2 decimal places.

Column	Derivation
A, B, C, D	See IA and Annex B for summary
E	See Types of Appeal in Annex C
F	Historical Data, see Annex B
G, H, I, J	See Benchmark Costs Annex C
K	See Option 3
L	See Option 2
M	Streamline effect applies if the new court is CAT (see Option 3)
N	E reduced by 5% if there is a streamline effect
O	F reduced by 25% if change in standard of appeal and further reduced by 25% if streamline effect
P	$\text{£}0.1 \times (\text{sum of } (\mathbf{E} \times \mathbf{F}) - \text{sum of } (\mathbf{N} \times \mathbf{O}))$: Consumer benefit earned from reduction in one month of delay (£0.1m) multiplied by the difference between the sum of the current number of cases multiplied by the current time and the sum of the new number of cases multiplied by the new time
Q	G reduced by 25% if change in standard of appeal and further reduced by 25% if streamline effect
R	H reduced by 25% if change in standard of appeal and further reduced by 25% if streamline effect
S	I reduced by 25% if change in standard of appeal and further reduced by 25% if streamline effect
T	J reduced by 25% if change in standard of appeal and further reduced by 25% if streamline effect
U	$\mathbf{E} \times (\mathbf{G} + \mathbf{H} + \mathbf{I} + \mathbf{J})$ - the sum of this column. £21.79m, is the current cost of the appeals system
V	$\mathbf{N} \times (\mathbf{Q} + \mathbf{R} + \mathbf{S} + \mathbf{T})$ - the sum of this column, £13.76m, is the estimated cost of the system post reform
W	The difference between U and V - the sum of this column, £8.03m, is the estimated saving

Annex B – Summary of main regulatory appeals heard over the last five years¹

Appeal against	Body hearing appeal	Appellant(s)/Claimant(s)	Time in months from registration to	Nature of Decision Appealed	Year
BIS SoS	CAT	Merger Action Group	0.4	mergers & markets JR	2008
CAA	CC	Before setting the new price control for Stansted Airport Ltd (STAL), the CAA was required to refer the matter to the CC to investigate and report on.	5.90	Price control	2008
CAA	High Court	EasyJet	13.33	Price control	2008
CC	CAT	British Sky Broadcasting Group plc and Virgin Media Inc	7.33	mergers & markets JR	2008
OFCOM	High Court	Government of Bermuda	3.50	Licence modification	2008
OFCOM	CAT	Telefonica O2 UK Limited	1.23	Ex ante regulation	2008
OFCOM	CAT	The Number (UK) Limited and Conduit Enterprises Limited	6.70	Dispute resolution	2008
OFCOM	High Court	T-Mobile (UK) Limited	n/a	Ex ante regulation	2008
OFCOM	CAT	Vodafone Limited	7.77	Ex ante regulation	2008
OFGEM	CAT	National Grid plc v Gas and Electricity Markets Authority and others 2010 (Court of Appeal) - [2010] EWCA Civ 114	12.43	Ex post competition	2008
OFGEM	High Court	R (on the application of Excelerate Energy Limited Partnership & Seal Sands Gas Transportation Limited) v Gas and Electricity Markets Authority	n/a	Other JRs	2008
OFGEM	High Court	R (on the application of Teesside Power Ltd and others) v Gas and Electricity Markets Authority [2008] EWHC 1415 (Admin)	9.50	Other JRs	2008
OFT	High Court	(1) Crest Nicholson PLC v Office of Fair Trading	14.00	Other JRs	2008
UREGNI	High Court	AES Kilroot	6.00	Other JRs	2008
CC	CAT	BAA Limited (with Ryanair Limited intervening)	9.43	mergers & markets JR	2009
CC	CAT	Barclays Bank plc (with Lloyds Banking Group plc and Shop Direct Group Financial Services Ltd intervening in support of Barclays and the FSA intervening in support of the CC)	6.67	mergers & markets JR	2009
CC	CAT	Sports Direct International plc (with the Office of Fair Trading and JJB Stores intervening in support of the CC)	0.83	mergers & markets JR	2009

¹ A number of Ofcom's and OFT cases in fact comprise two or more appeals by different parties, each with distinct appeals/grounds of appeal which Ofcom and OFT had to address separately, but which are counted as one appeal for the purposes of these statistics since the appeals were heard together by the CAT and were disposed of by a single CAT judgment.

CC	CAT	Tesco plc (with Asda Stores Limited, Marks and Spencer PLC, Waitrose Limited and The Association of Convenience Stores intervening in support of the CC)	8.17	mergers & markets JR	2009
CC	CAT	Wm Morrison Supermarkets plc	0.07	mergers & markets JR	2009
OFCOM	CAT	British Telecommunications Plc (PPC)	15.43	Dispute resolution	2009
OFCOM	CAT	Cable & Wireless UK & Others	10.50	Dispute resolution	2009
OFCOM	CAT	Cable & Wireless UK (Leased Lines)	12.77	price control / Ex ante regulation	2009
OFCOM	CAT	The Carphone Warehouse Group Plc (LLU)	14.70	price control / Ex ante regulation	2009
OFCOM	CAT	The Carphone Warehouse Group Plc (WLR)	9.70	price control / Ex ante regulation	2009
OFT	CAT	(1) Eden Brown Limited v Office of Fair Trading (2) (1) CDI Anders Elite Limited (2) CDI Corp v Office of Fair Trading (3) (1) Hays PLC (2) Hays Specialist Recruitment Limited (3) Hays Specialist Recruitment (Holdings) Limited v Office of Fair Trading	16.23	Ex post competition	2009
OFT	CAT	(1) Kier Group plc (2) Kier Regional Limited v Office of Fair Trading (2) Corringway Conclusions PLC (in liquidation) v Office of Fair Trading (3) Ballast Nedam N.V. v Office of Fair Trading (4) (1) John Sisk & Son Limited (2) Sicon Limited v Office of Fa	16.20	Ex post competition	2009
OFWAT	CC	Sutton & East Surrey Water	6.00	Price control	2009
OFWAT	High Court	Welsh Water	13.00	Ex ante regulation	2009
CC	CAT	CTS Eventim AG (with Live Nation intervening in support of the CC)	0.77	mergers & markets JR	2010
CC	CAT	Stagecoach Group plc	5.47	mergers & markets JR	2010
OFCOM	CAT	British Telecommunications Plc (080)	16.07	Dispute resolution	2010
OFCOM	CAT	British Telecommunications plc (Ethernet)	5.63	Dispute resolution	2010
OFCOM	CAT	Everything Everywhere Limited (Stour Marine)	12.17	Dispute resolution	2010
OFCOM	CAT	Telefónica O2 UK Limited (900MHz)	4.47	Licence modification	2010
OFT	CAT	(1) (1) Imperial Tobacco Group plc (2) Imperial Tobacco Limited v Office of Fair Trading (2) Co-operative Group Limited v	18.17	Ex post competition	2010

		Office of Fair Trading (3)Wm Morrison Supermarkets PLC v Office of Fair Trading (4) (1) Safeway Stores Limited (2) Safeway Limited v			
OFWAT	CC	Bristol Water	6.00	Price control	2010
OFGEM	Court of Appeal (on appeal from the Admin Court)	R (on the application of Infnis plc and Infnis (Re-gen) Limited) v Gas and Electricity Markets Authority CO/7013/2010; [2011] EWHC 1873 (Admin)	15.17	Other JRs	2010
OFCOM	CAT	British Sky Broadcasting Limited (Conditional access modules)	24.80	Ex ante regulation	2011
OFCOM	CAT	British Telecommunications plc (WBA)	8.87	price control / Ex ante regulation	2011
OFCOM	CAT	Talk Talk (WBA)	3.77	Ex ante regulation	2011
OFCOM	CAT	Telefonica 02 UK Limited (Flip Flop)	11.70	Dispute resolution	2011
OFCOM	CAT	Vodafone Limited (MCT)	11.77	price control / Ex ante regulation	2011
OFT	CAT	(1) (1) Tesco Stores Ltd (2) Tesco Holdings Ltd (3) Tesco Plc v Office of Fair Trading	14.57	Ex post competition	2011
OFT	CAT	(1) Ryanair Holdings plc v Office of Fair Trading	6.73	mergers & markets JR	2011
OFWAT	High Court	Thames Water	21.00	Ex ante regulation	2011
CC	CAT	BAA Limited (with Ryanair Limited intervening)	4.60	mergers & markets JR	2012
CC	CAT	Ryanair	0.87	mergers & markets JR	2012
CC	CAT	SRCL Limited	1.20	mergers & markets JR	2012
OFCOM	CAT	British Sky Broadcasting Limited /TalkTalk (LLU)	n/a	price control / Ex ante regulation	2012
OFCOM	CAT	British Telecommunications plc (LLU)	n/a	price control / Ex ante regulation	2012
OFT	CAT	(1) (1)Association of Convenience Stores and (2) National Federation of Retail Newsagents v Office of Fair Trading	5.87	Ex post competition	2012
OFWAT	high Court	Albion Water (Shotton case)	n/a	Ex ante regulation	2012
UREGNI	CC	Phoenix Natural Gas Ltd	8	Price control	2012

Annex C – Assumptions for Cost Model

Type of Appeal	Length and Frequency of Appeals			Source
Dispute Resolution	Average length of appeal 11.17 Months, 1.4 cases heard a year.			Historical Data (see Annex A)
Ex-ante Regulation	Average length of appeal 10.23 Months heard at the CAT. 1.7 cases heard a year at the CAT. Average length of appeal 17 months heard at the High Court (i.e. just Ofwat). 0.6 cases heard a year at the High Court.			Historical Data (see Annex A) and Private Action in Competition Law IA, BIS (2013, p.17)
Ex-post Competition	Average length of appeal 13.91 Months, 1.2 cases heard a year.			Historical Data (see Annex A)
Ex-post Regulation	Average length of appeal 3.98 Months, 0.6 cases heard a year. No historical cases available so we assumed ex-post regulation to be similar in length to Licence Modification and made the assumption that 1 case will be heard every ten years per regulator.			Historical Data & Assumption (see Annex A)
Licence Modification	Average length of appeal 3.98 Months, 0.4 cases heard a year.			Historical Data (see Annex A)
Price Control	Average length of appeal 9.08 Months, 1.7 cases heard a year.			Historical Data (see Annex A)
Market & Merger	Average length of appeal 4.04 Months, 2.4 cases heard a year.			Historical Data (see Annex A)
Benchmark Costs	Data	Cost (per appeal)	Description	Source
All cases	All costs	n/a	Costs incurred for cases heard under Judicial Review are assumed to cost 25% less than cases heard on the Merits	Assumption
Dispute Resolution, Ex-post Competition, Ex-ante Regulation & Ex-post Regulation	Cost to Main Appellant	£0.16 million per month	£0.16 million average cost per appeal per month in 2012 prices (DCMS estimate a range of £0.1m to £3m of costs incurred to appellant. We derive a best estimate of £1.5m [2009 prices] per case). Our high is £0.24 million and low is £0.03 million. We will assume that these costs apply across all regulators therefore use this as our base for estimating costs for the other sectors.	Reforming the Appeals regimes for the Electronic Communications Sector IA, DCMS (2011, p.18)
	Cost to Regulators	£0.03million per month	£0.03 million average cost per appeal per month in 2012 prices. Our low estimate is £0.027million and our high estimate is £0.05 million (own assumptions).	Ofcom

	Cost to CAT/CC	£0.05 million	CAT incurs £0.05 million in costs per appeal in 2012 prices. Our high estimate is £0.075million and our low estimate is £0.025million.	Competition Law IA, BIS (2013, p.17)
	Cost of High Court	1.82 (i.e. 1/0.55) times the cost of the CAT	Cases heard at the CAT cost 55% as much as High Court cases. For ex-post regulation we have treated costs incurred as a result of being heard at the High Court to be the same as costs incurred from being heard at the CAT because these cases are similar to other cases the High Court hears.	Ibid, p.18 [% difference between CAT and High Court Costs Table 3]
	Cost to Interveners	50% of the costs incurred by main appellant	Best estimate is 50% of the costs incurred by the main appellant. Our high estimate is 75% and our low estimate is 25%.	Assumption
Licence Modification	Cost of Licence Modifications	£0.54million incurred by Regulators, Regulated firms and the Courts.	Licence modification cases cost £0.54 million for regulators, businesses and courts in 2012 prices (£0.5million in 2010 prices). Our high estimate is £0.81 million and our low estimate is £0.27 million.	Reforming the Framework for the Economic Regulation of Airports IA, DFT (2013, p.85) and Assumption
Price Controls	Cost of Price Control to Main Appellant	£0.32million	The cost to business is £0.32 million per appeal (£0.3mill in 2010 prices). Our high estimate is £0.80 million and our low estimate is £0.169 million.	Proposal for Implementation of Licence modification Appeals under the EU Third Package IA, DECC(2011, p.11)
	Cost of Price Control to the Regulator	£0.64million	DECC found that appeals cost Ofgem an average of £0.64 million in 2012 prices (£0.6mill in 2010 prices). Since price controls appeal process tends to be similar across all regulated sectors, we can assume that other regulators will incur the same costs as Ofgem. Our high estimate is £0.91 million and our low estimate is £0.37 million.	Proposal for Implementation of Licence modification Appeals under the EU Third Package IA, DECC (2011, p.11)
	Cost of Price Control to the CAT & CC	£0.54million	CC incurs £0.54 million in 2012 prices (£0.5mill in 2010 prices) per appeal for hearing price controls. Our high estimate is £0.81 million and our low estimate is £0.26 million.	Proposal for Implementation of Licence modification Appeals under the EU Third Package DECC IA, (2011, p.10)
	Cost of Price Control to Intervener	£0.11 million	Intervener incurs £0.11 million in 2012 prices (£0.1mill in 2010 prices) per appeal. Our high estimate is £0.25 million and our low estimate is 0.09 million.	Proposal for Implementation of Licence modification Appeals under the EU Third Package IA, DECC (2011, p.12)
Merger and Markets	Cost to Main Appellant	£0.16 million per month	For merger and markets appeals we assume that the costs incurred by regulators, businesses and courts is the same as the average cost of Dispute Resolution, Ex-post Competition, Ex-ante Regulation and Ex-post Regulation appeals per month multiplied by the average length of time take to complete an	Assumption

	Cost to Regulator	£0.03million per month	average merger and markets appeal.	
	Cost to CAT/CC	£0.05 million		
	Cost to interveners	£0	Since merger and markets JRs tend not involve interveners, there are assumed to be no intervener costs.	Assumption

Option 2

Change the Standard of Review	Area Affected	Assumption	Source
	Time & Cost	Our best estimate is a 25% reduction in the average length and cost of an appeal. Our high estimate is 50% and low estimate is 10% reduction. There is some evidence that our estimate is too conservative, for example cases currently taken by the CAT on a judicial review basis take an average of 4 months compared to an overall average of 9.07 months (although this comparing different types of case as well as different standards of review).	Assumption
	Consumer Benefits	OFCOM estimates of the cost of delay of regulation to UK consumers suggest a benefit of faster appeals of £0.8m per case per month of delay avoided. We treat this number with caution as we are looking at a wider range of sectors and case types. We assume a benefit of £0.1m per case per month of delay avoided with a high of £0.8m and a low of £0.05m.	Ofcom and assumption
	Number of Appeals	No effect	Assumption

Option 3

Streamline	Area Affected	Assumption	Source
	Time & Cost	Our best estimate is a 25% reduction in the average length and cost of an appeal. Our high estimate is 50% and low estimate is 10% reduction. There is some evidence that our estimate is too conservative, for example cases currently taken by the CAT on a judicial review basis take an average of 4 months compared to an overall average of 9.07 months (although this comparing different types of case as well as different standards of review).	Assumption
	Consumer Benefits	OFCOM estimates of the cost of delay of regulation to UK consumers suggest a benefit of faster appeals of £0.8m per case per month of delay avoided. We treat this number with caution as we are looking at a wider range of sectors and case types. We assume a benefit of £0.1m per case per month of delay avoided with a high of £0.8m and a low of £0.05m.	Ofcom and assumption
	Number of Appeals	5% reduction in number of appeals.	Private Action in Competition Law IA, BIS (2012)