



Commission for
Communications Regulation

Guidelines

Guidelines on ComReg's Approach to Regulatory Impact Assessment

Document No:	07/56a
Date:	10 August 07

Contents

1	Introduction	2
2	Steps Involved	4
	<i>Step 1 - Describe the policy issue & identify the objectives</i>	4
	<i>Step 2 - Identify and describe the regulatory options</i>	4
	<i>Step 3 - Determine the impacts on stakeholders</i>	5
	<i>Step 4 - Determine the impacts on competition</i>	5
	<i>Step 5 - Assess the impacts and choose the best option</i>	5

1 Introduction

- 1.1 In 2003, the Minister for Communications Marine and Natural Resources (“the Minister”) issued a policy direction to the Commission for Communications Regulation (“ComReg”), under Section 13 of the Communication Regulation Act, 2002 (“the Act”).¹ Section 6 of that policy direction requires that ComReg, before deciding to impose any regulatory obligation on an undertaking, must first conduct a Regulatory Impact Assessment (“RIA”) in accordance with European and international best practice and any measures that may be adopted under the Irish Government’s Better Regulation programme, such as the RIA Guidelines². The guidelines are not formally or legally binding upon ComReg, though, in conducting RIA ComReg will have regard to the RIA Guidelines.
- 1.2 It is incumbent on ComReg to consider the impact of proposed regulatory measures as they may impose a significant burden or cost on stakeholders. ComReg does not want such measures to be overly burdensome. Therefore ComReg will, where possible, identify opportunities to withdraw from or reduce regulatory intervention in relevant markets, by establishing all possible options and selecting that which is most appropriate. Proper use of RIA should ensure that the most effective approach to regulation is adopted, as it helps determine the impact of any proposed new regulatory measure or process, or any proposed changes to (including the withdrawal of) an existing measure or process, on all stakeholders. By identifying the full range of regulatory options which are available to deal with a particular issue and assessing the potential effect of each option, RIA should establish whether regulation is in fact necessary, and if it is, it should allow ComReg to identify and impose the most appropriate and least burdensome measure, while still allowing ComReg to achieve its objectives.
- 1.3 Although the Government’s RIA Guidelines are not legally binding on ComReg, in conducting any RIA, ComReg will take full account of those guidelines. However, the RIA Guidelines are intended to apply principally to regulation as it is carried out by the Government, i.e. by the enactment of primary or secondary legislation. ComReg’s regulatory remit differs in that it regulates by issuing decisions e.g. imposing obligations or specifying requirements, and promulgating secondary legislation. Therefore there may be occasions when the RIA Guidelines will have limited application to situations that ComReg is dealing with, having regard to ComReg’s statutory functions and objectives.
- 1.4 The purpose of a RIA is essentially threefold: first, it is to establish whether regulation is actually necessary; second, it is to identify any positive or negative effects which might result from a regulatory measure and establish whether there is a net benefit; and third, it is to identify and assess any alternative regulatory measures.
- 1.5 ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing regulatory obligation to a significant degree, or which may otherwise significantly impact on any

¹ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003.

² Published by Department of the Taoiseach, Oct 2005 - www.betterregulation.ie

relevant market or on any stakeholders or consumers. ComReg will conduct RIA on the majority of its policy decisions, in accordance with the policy direction.

- 1.6 However, in certain instances it may not be appropriate to conduct a RIA. In particular, a RIA is only considered mandatory, or necessary, in advance of a decision that could result in the imposition of an actual regulatory measure. ComReg should only conduct a RIA where it itself has determined to impose a regulatory obligation. Where ComReg is merely charged with implementing a statutory obligation, it will assess each case individually and determine whether a RIA is necessary and justified, having regard to its degree of discretion it may exercise, and the principles of reasonableness and proportionality.
- 1.7 Because RIA constitutes a central part of the decision-making process, it should be conducted on an *ex ante* basis, as close to the outset of that process as possible. This will allow ComReg to properly assess the respective impact of each of the possible regulatory measures, in light of comments received from interested parties. The RIA document, where appropriate, will be presented as an addendum to the main consultation document.
- 1.8 For ComReg to be able to evaluate its decisions, each RIA should clearly identify the results that ComReg expects to achieve from taking a particular regulatory measure, such as imposing or removing an obligation. The RIA should also state when, or if, a review of that decision will take place.
- 1.9 Situations may occur where ComReg will be required to take urgent regulatory measures, and where it may not be practical to conduct a RIA beforehand. In such situations, ComReg will weigh the importance of reaching its decision and taking action as soon as possible, against the likelihood of its actions placing any significant, long-term burden on any operator, but ComReg retains the discretionary right not to conduct a RIA where to do so would significantly delay the introduction of urgently required regulatory measures.
- 1.10 The scope of any RIA will remain open to revision during the course of the consultation process and where a lighter RIA was initially considered sufficient a more detailed RIA may be required as the project progresses, for example where further information becomes available, and vice versa.
- 1.11 These guidelines are without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. ComReg may update and revise these guidelines from time to time,

2 Steps Involved

- 2.1 In conducting RIA, ComReg will take into account the six principles of Better Regulation, set out in the Government White Paper *Regulating Better* (2004), which are necessity, effectiveness, proportionality, transparency, accountability and consistency. ComReg's values of integrity, professionalism, impartiality, effectiveness and transparency³ will also be forefront when conducting RIA.
- 2.2 Because different regulatory measures will vary in their degrees of impact, a common sense and proportionate approach will be taken towards RIA. The scope and depth of a RIA will reflect the likely effects of the measure to which it relates. If ComReg determines early on that a potential decision is likely to have relatively low costs, then it would expect to carry out a relatively light RIA; but where it is clear that a potential decision would lead to the imposition of substantial burdens, a more detailed RIA will be conducted.
- 2.3 ComReg's starting point for any RIA is to identify the issue to be addressed and define the policy objective. ComReg will then identify the available options to address that issue, having regard to section 5 of the Minister's policy direction, and will also identify all stakeholders who may be affected. The list of options is likely to be refined and revisited during the policy-making process. ComReg will impose obligations only where they are necessary and justified and will also consider whether to forbear from imposing regulations and instead rely on market forces to achieve its objectives.
- 2.4 ComReg will consider the potential impact of any regulatory measure on all relevant stakeholders, which includes operators and consumers (including vulnerable users where appropriate). ComReg will also set out what the possible effect of each option on competition in the relevant market might be.
- 2.5 ComReg's 5-step approach is described below:

Step 1- Describe the policy issue & identify the objectives

- 2.6 The pertinent policy issues and the background to those issues will be described. The objectives to be achieved through any proposed regulatory action will also be identified and will be assessed having regard to ComReg's statutory obligations, set out in Section 12 of the Act.

Step 2 - Identify and describe the regulatory options

- 2.7 The range of options that would achieve the objectives identified through step 1 will first be determined and ComReg will then select the option that would best achieve those objectives. The first option will always be to make no change to the current regulatory policy, and other possible options will then be added. The

³ ComReg Strategy Statement ComReg (Doc 05/77).

option of making no policy change will not always be practical but its inclusion serves as a benchmark against which other options can be compared.

- 2.8 Alternative options may include self-regulation and co-regulation. Removal of an existing regulation will also be considered where appropriate, as will the reduction or increase of the scope of existing regulations. A “wait and see” approach may also be considered, under which intervention is not made immediately and the situation is monitored and reviewed at a later date. Each option will be clearly described and explained.

Step 3 - Determine the impacts on stakeholders

- 2.9 Having identified the objectives, and the available options to achieve those objectives, the next step is to identify the costs, benefits and impacts of each option, in order to determine the impact of each option on all stakeholders, including consumers. Some costs of regulation are obvious but others may be hidden or unintended. A number of techniques can be used to determine the impacts of different regulatory options, including cost-effectiveness analysis, multi-criteria analysis and cost-benefit analysis. Often the choice will depend on whether it is possible to place a monetary value on the costs and benefits of a regulatory measure. Some regulatory decisions will impact not only on the operator on which the obligation is imposed, but also on other operators in the market. Therefore, in order to consider the wider impact of any proposed obligations, ComReg will consult with all stakeholders from an early stage.

Step 4 - Determine the impacts on competition

- 2.10 ComReg will determine the impact each regulatory option might have on competition in any market. If an option would have possible negative effects on competition in a market, ComReg would only proceed with that option if the benefits outweighed the negative effects.

Step 5 - Assess the impacts and choose the best option

- 2.11 Section 6 of the Minister's policy direction requires that ComReg impose regulatory obligations only where justified. Therefore, ComReg will choose the regulatory option that best achieves the identified objectives, provided always that the benefits of that option exceed the costs. The costs and benefits of any option will be quantified as accurately as possible, taking into account the likely impact of that measure on stakeholders and on competition. Costs and benefits may be difficult to measure accurately, particularly since stakeholders subject to regulation could have an incentive to exaggerate the costs of particular obligations. A comprehensive cost-benefit analysis will be conducted only when it is deemed necessary, or where it would be reasonable and proportional to do so. However, ComReg will always try to implicitly consider costs and benefits before making a decision.

- 2.12 Other methods for determining the optimal measure, such as multi-criteria analysis, may also be applied. Further, ComReg will consider the promotion of competition, the development of the internal market, the promotion of the interests of users within the community and the competitive impact when deciding which option is best. Stakeholders will be consulted from an early stage and any salient information provided will be used in assessing the impact of regulation.
- 2.13 ComReg notes, however, that the quantification of costs is often easier than that of benefits. This is because the benefits of regulation, such as innovation and improved products and services, are spread across the economy as a whole and may be difficult to quantify.

Consultation with Stakeholders

- 2.14 Where a comprehensive RIA is necessary, stakeholders will be consulted in regard to any cost-benefit analysis. Impact analysis can be vital in determining the most appropriate form of regulation, and ComReg will consult with stakeholders from an early stage as they may possess information that would be useful or essential to carrying out the RIA in a comprehensive and timely manner. When such information is requested, ComReg will stipulate the time period in which it must be provided. If the information is not provided in that period and cannot be obtained elsewhere, then ComReg may have to make its decision in the absence of that information. Alternatively, ComReg may decide to exercise its information gathering powers under the Act in order to obtain the information.
- 2.15 All RIA will be demonstrably independent and not solely dependent on information submitted by, or obtained from, any one sector or body. The particular interests and incentives of stakeholders will be taken into consideration, where it is considered appropriate to do so, and costs will be verified where possible.

Monitoring and Compliance

- 2.16 For regulation to be effective, ComReg must ensure that compliance with its obligations can be monitored and, where necessary, enforced. Hence any RIA will set out how the proposed measure should be complied with, the means by which compliance may be monitored, and the range of enforcement measures and sanctions for non-compliance. In selecting the best regulatory option, ComReg's ability to monitor compliance and take enforcement measures and the review mechanism will be taken into account.