

Regulatory Impact Assessment in Telecommunications.

A Report for TÜBİSAD

6 March 2015

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Executive Summary

Overview

Telecommunications sector has been evolving and changing with the advances in technology. Due to increased technology spending in recent years, telecommunications sector is not only important for consumers, but also for many other sectors. Therefore, while studying sector related regulations, recent changes in technology, convergence between technologies and digital integration should be considered and possible impacts of regulations should be analysed.

As part of their decision making process, regulators should be able measure the economic, social and environmental effects of regulations as much as possible and assess the needs of different stakeholders.

Today, the main driver behind many regulations is to enable competition, protect consumers and promote their welfare. Many regulations are designed and implemented with these goals in mind. However, sometimes unintended or unforeseen results may be encountered as a result of the regulatory decisions. In such cases, sustainability of the operators and ultimately consumer welfare are affected negatively. The unintended consequences mainly occur due to failures to evaluate potential impacts of regulatory decisions. In many countries, there are examples of cancelled or updated decisions due to these unpredictable consequences.

The cost benefit analysis of the resulting burden of the impact assessments, which needs to be completed before implementation of the regulations, and the risks which will be mitigated as a result of such analysis, has significant importance. In this context, the Regulatory Impact Assessment (RIA), is a useful tool as a bridge among consumers, operators, regulatory bodies, and other stakeholders.

What is an RIA?

An RIA is a forward-looking evaluation of alternative policy and regulatory options, designed to ensure that the best possible option is chosen. It involves weighing one or more options against “*the situation expected to occur in the absence of any further government action or decisions (the status quo)*”¹ and determining which, if any, best meets the needs of regulators, consumers and business. These assessments are part of a broader approach to better government decision making and governance.

Regulators undertake impact assessments in order to measure the potential economic, social and environmental effects of proposed regulation. This assessment allows them to weigh the advantages and disadvantages before implementation, reducing the risk of any unintended consequences arising from regulatory decisions. The assessment may also determine that no regulation is the best course of action.

¹ <http://www.oecd.org/gov/regulatory-policy/35258511.pdf>

The full RIA framework, as detailed by the OECD, the EU and other international organisations, covers the regulatory decision-making process from start to finish. It includes nine steps, beginning with the baseline in which the current situation is described and going through the decision-making process, finishing with an ex-post assessment of the impact.

What is the significance of introducing RIAs into the telecommunications market in Turkey?

A healthy and innovative telecommunications sector is important for the economy. Telecommunications is a capital intensive business; impacted by the decisions of the regulators.

The telecommunications industry is a key contributor to the Turkish economy, with a direct impact on consumers' daily interactions and how business gets done. It is estimated that one unit of ICT sector growth in Turkey leads to 1.8x growth in the overall economy through an economic multiplier effect².

Telecommunications sector invests about 16% of its revenues to continue innovating and introducing new products and services. However, average operator profitability, as measured by EBITDA margins, is lower than that of the many other developed and developing countries. Low margins negatively impact operators' ability to invest in growth, innovation and customer experience.

In order to sustain continued investments in the sector, operators will need to increase profitability levels and accelerate cash generation. Legal and regulatory requirements affecting the sector help grow the market by encouraging competition and healthy consumer participation but may also negatively impact the sustainability of the sector by resulting in unintended financial and operational burden on the stakeholders.

Operations and financials of the operators are impacted by the decisions of a wide range of regulators and government bodies

Although the Ministry of Transport, Maritime Affairs and Communications and BTK are the two main regulatory bodies defined in the Electronic Communications Law, there are many other authorities and organizations that directly or indirectly affect how the telecommunications market operates and evolves in Turkey. Such organizations include other ministries, municipalities, and regulators including, but not limited to, the Competition Authority (RK), Radio and Television Supreme Council (RTÜK), and Banking Regulation and Supervision Agency (BDDK), etc.

Telecom operators, ecosystem participants and consumers are often impacted by regulations imposed by this diverse group of regulators and organizations, a natural outcome of the sector being closely linked with rest of the economy.

² Deloitte analysis; Information and Communication Technologies on the Road to 2023, YASED 2012

For example, a change in the regulation of banking sector may have a direct impact on the collection strategies of the telecom operators, or a change in the legislation of environmental policies may have a significant impact on how operators can expand their network coverage and quality.

The draft “Subscriber Contract Regulation” prepared by the Ministry of Customs and Trade provides a good example for this issue. Regulations regarding consumers are prepared by both BTK and the Ministry of Customs and Trade, resulting in operators having to comply with regulations prepared by different perspectives and principles. This situation may cause operators to face legal problems, while complying with different and inconsistent provisions. In addition, the general regulations in the draft does not provide full compliance with implementations and services specific to the telecommunications sector. For example, necessary steps to activate a subscription for water, electricity and natural gas services are quite different those for the telecommunications services. Similarly, there are differences in many operational requirements including termination procedures.

Within such an interconnected economy, any seemingly distant regulatory change may have an impact on the telecom operators and consumers, emphasizing the importance of impact assessments and associated consultation process to be able to capture such dependencies in advance.

Lack of impact assessments and limited consultations are the primary drivers of inefficiencies and unintended costs of the regulatory process, both for operators and consumers

The Turkish legislative and regulatory framework for the electronic communications market is similar to that defined by the European Union and the Ministry and BTK’s regulatory objectives are aligned those of the European Digital Agenda.³ However, the main differences appear to be in the form of execution, specifically how the consultation processes are run and impact assessments are conducted.

In Turkey, there is a Prime Ministry by-law that requires all legislators to undertake a regulatory impact assessment for new regulations and amendments with impacts over TRY 10mn (except for those that deal with national security issues); however, this process is not always followed. In the telecommunications sector, there are two known cases of ex-post impact assessments that were successfully carried out by BTK, however, the number of such assessments needs to be increased, with a particular focus on ex-ante impact assessments, and shared with the public.

In addition to lack of impact assessments, there is no defined, consistently applied standard consultation process in place. Recent operator experience suggests that although there are many cases of the regulators proactively seeking public comments through meetings, workshops or online postings, there are other cases where there were no structured consultation run or prior

³ The EU framework and the Digital Agenda are discussed further in Appendix B

notification provided before a decision was reached. It is in the regulator's initiative to start the consultation process and to determine the time allowed for responses.

When a consultation process, including a structured impact assessment, is not formally carried out by soliciting inputs of other regulators, operators and industry groups, there is always the risk of overlooking the impacts of the decisions and ending up with unintended consequences. Most regulations are imposed mainly to foster competition and protect the customers; however, there are many examples where such regulations had unintended consequences or negatively impacted sustainability of the operators. Many seemingly unrelated regulations may have the potential to harm the industry or consumer benefit in the long run, and it would more difficult to properly detect them when all stakeholders are not involved in a structured consultation process.

There are many similar regulations passed designed to better protect consumer rights (e.g., invoice caps, requirement to implement a consumer complaint system, partial fees within mobile packages, detailed invoice requirements, regulation of cancellation fees, etc). These regulations aim to ensure that the telecommunication services are being provisioned above a certain quality standard and that the consumer security and satisfaction is sustained. However, it is important that proper cost-benefit analysis of such regulations are conducted prior to those decisions are adopted, and that it is reviewed whether the operational and financial burden on the operators are not going to be higher than the marginal benefits that the consumers are expected to realise.

For a list of recent telecommunications regulatory decisions that were adopted without prior public impact assessments and had unintended/unexpected impact on the operators and/or consumers after implementation, please refer to Box-1 in Section 2.3 of this report.

Roadmap for implementing an RIA in Turkey

The roadmap for introducing the RIA process into the telecommunications sector Turkey starts with finalising the framework. This framework will be a policy document which describes the impact assessment process that regulators should go through when making decisions. It should be focused on the four key building blocks of the RIA process.

An RIA framework for Turkey

The four key building blocks of the RIA framework in Turkey are the following:

Table-1: (Full Scope) RIA Framework

| Step | Purpose | Actions | Duration |
|--------------------------------------|---|---|------------|
| Identification of regulatory options | Defining alternative solution options | <ul style="list-style-type: none"> Problems will be defined for the regulation to resolve Alternatives will be determined for solving the problem | 1-5 months |
| Cost benefit analysis | Ensure that the costs and benefits of proposed regulations or regulation alternatives are measurable and comparable | <ul style="list-style-type: none"> Current regulation approach will be revised Regulatory solutions and potential impacts will be evaluated Potential costs of the regulation to consumers, society, economy, and environment will be identified | 2-3 months |

| | | | |
|-----------------------|--|---|--------------------|
| | | <ul style="list-style-type: none"> Potential benefits of the regulation, covering market, competition, penetration, innovation, investment, consumer welfare and all other relevant factors will be determined | |
| Feedback from public | Creating inputs for decision making process from feedbacks from different stakeholders | <ul style="list-style-type: none"> Stakeholder feedback will be received Received feedback will be analysed | 1-2 months |
| Decision | Final decision of the regulator | <ul style="list-style-type: none"> Final decision will be made according to the analysis and feedback Decision will be shared with the stakeholders and public | 1 month |
| Total Duration | | | 5-11 months |

There is little debate about the usefulness of an RIA; however, real life applications come with many questions such as: “*should there be an RIA for each proposed regulation?*”, “*when not to perform an RIA?*”, “*who should be involved when conducting the RIA?*”, “*how to quantify costs and benefits?*” etc.

Steps and timing of the RIA may change according to scope of proposed changes in the regulation, size of the expected impact, and groups that are involved in the process.

RIA types and indicative timelines

Regulators make many decisions every year. Some of these are major decisions which have a broad impact across the sector but the majority of them are technical or administrative decisions that are either not contested or have only a minor impact. There are also many decisions which may fall in between these two extremes. They would, for example, have a significant impact on stakeholders but for several reasons, it may not be appropriate to follow a full RIA process.

Regulators often prepare annual work plans. In principle, the issues and decisions should be aligned with these plans with no major unexpectedly sudden issues that might limit hinder the RIA process. Predictability and certainty are key concepts of a healthy regulatory environment.

It is clear that it is impossible for a regulator to attempt to follow an RIA process for every decision. The regulator therefore needs a process to prioritise the decision-making process. This process should be set out formally in internal guidelines and then management should follow the guidelines as a matter of course. Ideally, before finalisation, these guidelines should be consulted to get the views of stakeholders. This consultation and publication process also provides more stability and transparency over future decision-making.

The guidelines should clearly define a process with set thresholds and criteria that will result in the implementation of an RIA or not. Factors to take into consideration include:

- The decision does not have a major impact on either the industry or on customers; or
- The decision is technical and would not be suitable for a broad consultation exercise;

Depending on the evaluation of these factors, the regulator would choose one of the different options to execute:

- **Full Length RIA:** Performed for decisions which are expected to affect directly over 1 million consumers or have an impact over 15 million TL. Full Length RIA allocates sufficient time for the detailed analysis of the entire RIA steps and the cost benefit analysis. Estimated to take 5-11 months to complete
- **Shortened RIA:** Performed for decisions which are expected to affect directly over 500 thousand consumers or have an impact over 5 million TL. Shortened RIA offers an accelerated timeframe for the overall steps including the cost benefit analysis. Estimated to take 2-6 months to complete
- **Consultation with the sector:** Performed for decisions which are expected to affect less than 500 thousand consumers or have an impact less than 5 million TL. The process is comprised of a consultation with the sector stakeholders including soliciting feedback on cost/benefit estimates. Estimated to take 2-3 months to complete
- **Executive decision:** For technical issues that are not suitable for large scale public consultation process, affect only a narrow group of stakeholders, and have expected smaller financial impact, decisions may be made quickly through executive discussions. These decisions can be completed within 1-2 months, mainly because there are no cost benefit analysis or public consultation steps. Instead of public consultation, opinions from independent experts (e.g. academics, consultants etc.) may be requested. Finally, these decisions should be predictable and consistent. In addition, the reasons for the decisions should be shared with the public in a transparent manner.

Active, timely and constructive participation of each stakeholder (operators, sector representatives, other authorities, etc.) in the consultation process is critically important. As the stakeholders gain experience throughout the process, these timelines are expected to be shortened over time.

Success factors

An important element of implementing a successful RIA process is ensuring the regulator employs the right level of skills and time availability within the organisation. The key elements for achieving this are:

- **Drawing up internal guidelines for undertaking RIAs.** This provides a mechanism to standardise the procedure, provide technical guidance to members of staff and to provide assurance to external stakeholders that a coherent and coordinated approach is being applied.
- **Securing the right level of skills.** A particular decision and the RIA associated with it would typically be under the overall leadership of an official of the ministry or regulatory authority. This person would have a team working on the decision and carrying out the RIA. In the telecommunications sector, this team usually requires a mixed set of skills including: economics, legal and technical/engineering.

- **Internal training.** Once the ministry or regulatory authority has created teams within its organisation, training on the framework implemented in Turkey is required. While it is expected that lawyers, economist and regulatory specialists will have the required technical experience, the RIA implemented will be specific to Turkey and it is important that all employees understand how the RIA is to be managed within the Turkish and industry specific environment.
- **External communications.** Once an RIA framework has been developed and agreed internally this framework must be shared with the industry, relevant stakeholders and the wider public. External communications will also be required at various stages of the RIA process. Therefore it is important to ensure an external communications function is established within the RIA team or, for smaller organisations, the existing external communications function of the relevant ministry or regulator is utilised.

Recommendations for introducing an RIA framework in Turkey

In order for an RIA framework to be successfully introduced into Turkey, some key steps will be required. Our recommendations for four priority actions are:

1. Discuss and agree the sector specific RIA framework. This can be based on the example provided in this report;
2. Invest in developing the capacity of the relevant institutions in Turkey to carry out RIAs on a thorough and systematic basis, as needed;
3. Select a forthcoming regulatory decision to pilot the new RIA approach; and
4. Finalise implementation plan to ensure RIAs are carried out across all necessary decisions that affect the sector.

Conclusions

The RIA process is designed to prevent unexpected problems that may happen during the dynamic regulatory environment. For the telecommunications sector, considering the total investment level of 25 billion TL since 2010, RIA becomes a necessity rather than an option. RIA mechanism will allow all stakeholders to work together in a transparent and predictable manner, which will mitigate risks of inefficient usage of limited resources and sustain a successful economy and reliable future.

Leveraging the suggested RIA alternatives and provided case studies, this report identifies the potential challenges regarding the RIA framework and offers a roadmap for successful implementation in Turkey. By executing this road map, the goal is to achieve a predictable and transparent regulatory analysis process, aligned with the scope of decisions affecting the sector and size of the domain and consultation mechanisms. These developments are critically important for improving sustainability of innovation and investment in the sector.

By widespread implementation of RIA over years, regulatory authorities in the telecommunications sector are assumed to have great progress in becoming more efficient and effective. The major benefits of a successful RIA structure for regulatory authorities are listed below;

- **An established communication channel:** RIA establishes a defined and purposeful communication channel between regulatory authorities and all stakeholders.
- **Knowledge and productivity:** After each implementation, knowledge level will increase at the authority allowing for faster decision making.
- **Increased reliability:** Regulatory authorities will become more reliable through transparent and structured processes.
- **Integration and cooperation:** RIA is an important part of effective regulatory implementations, as it allows regulatory intervention to become transparent, proportionate and consistent. Implementation of RIA guarantees to evaluate all possible positive and negative effects to the sector and stakeholders. Thus, it increases the integration and cooperation of stakeholders.
- **Becoming a role model for other regulatory authorities:** Due to its wide domain, telecommunications sector is affected by the decisions of many other regulatory authorities. Therefore, for an effective regulatory environment, other regulatory authorities should have similar processes as BTK has. BTK, with its experience and RIA implementations, may be a role model for other regulatory authorities and support implementation to become widespread.

1 Introduction

Effective regulation is critical to the success of all modern economies and this is particularly true of the telecommunications sector. Evidence from around the world indicates clearly that countries with a stable and transparent regulatory framework have more investment, more effective competition and more innovation.⁴ Governments and multilateral agencies have therefore spend considerable time helping develop ways of improving the quality of regulatory decision-making.

A central pillar of these attempts to improve the quality of regulation has been the emphasis on Regulatory Impact Assessments (RIA). RIAs allow regulators to define and evaluate options for decisions on a systematic and empirical basis. They also provide a formal mechanism through which industry stakeholders can provide their inputs into the decision-making process.

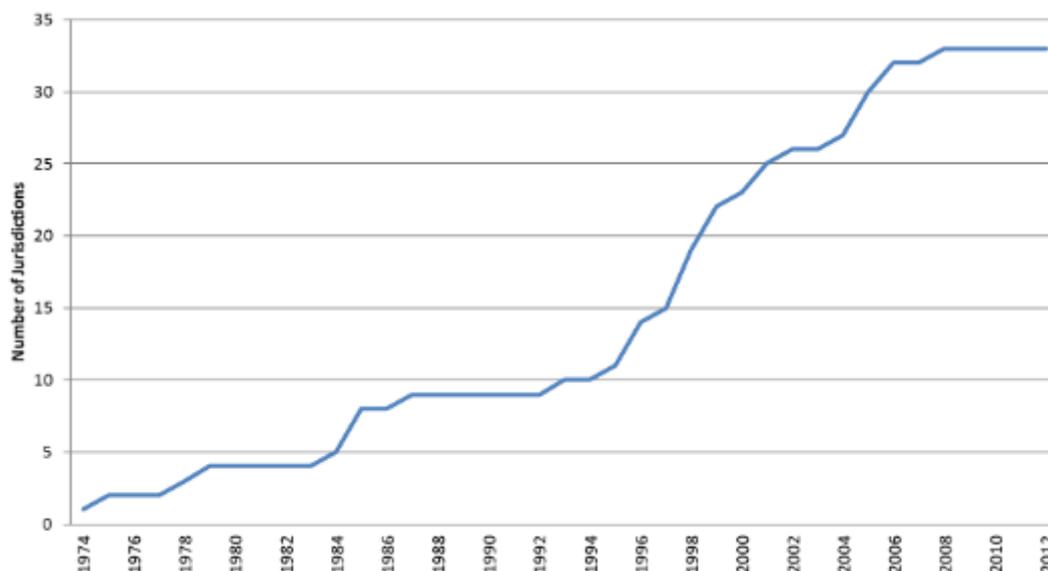
The result of governments and regulators progressively adopting the RIA framework has been:

- A more careful evaluation of policy options;
- A more systematic and rigorous evaluation of the impacts that might result from each of the options;
- More robust evidence contributed through the consultation process;
- A clearer, more transparent decision-making process that allows stakeholders to express an opinion and understand how this opinion has been incorporated into the final decision;
- and, ultimately, better quality regulatory decisions.

The success of the RIA concept and framework internationally, is evidenced by the number of countries that have adopted it as a way of improving regulatory decision-making. This process began in the 1970s and has progressively spread across around the world. The RIA framework is now accepted practice among OECD countries (Figure 1).

⁴ The ITU notes in the ICT Regulatory Toolkit that “*Regulatory intervention is necessary to ensure the successful transition of a monopolistic telecommunications market to a competitive one, to safeguard consumer interests, to maintain an effective competitive marketplace, and to foster the long-term development of the ICT sector. Effective regulation has resulted in many benefits, such as greater economic and technological growth, increased investment in the sector, better quality of service, lower prices and higher penetration rates.*”

The OCED states, in Regulatory Policy and the Road to Sustainable Growth, that “*Regulatory policy has already made a significant contribution to economic development and societal well-being. Economic growth and development have been promoted through regulatory policy’s contribution to structural reforms, liberalisation of product markets, international market openness, and a less-constricted business environment for innovation and entrepreneurship. Regulatory policy has supported the rule of law through initiatives to simplify the law and improve access to it, as well as improvements to appeal systems. Increasingly, it supports quality of life and social cohesion, through enhanced transparency which seeks out the views of the regulated, and programmes to reduce red tape for citizens.*”

Figure 1: Trend in RIA adoption across OECD jurisdictions

Source: OECD, 2012

1.1 The objective of this report

Deloitte has been asked by TÜBİSAD to provide an overview of regulatory impact assessment frameworks and potential applications in Turkey with a particular focus on the telecommunications sector. It is intended to describe how RIAs are used in other countries and how they could be implemented in Turkey within the current regulatory framework.

The study includes the following components:

- Overview of the current structure of the telecommunications market and regulatory structure in Turkey;
- A review of the European legislative framework and regulatory processes;
- A description of the need for an effective regulatory impact assessment;
- Reviewing the policies and processes governing regulatory impact assessments in countries across Europe;
- Highlighting best practice in regulatory impact assessments internationally and determining the common approaches across regulatory bodies;
- Developing a regulatory impact assessment model that could be adopted by regulatory bodies in Turkey; and
- Defining a roadmap and action items for the implementation of this model in Turkey.

1.2 Structure of this report

This report is structured as follows:

- Section 2 provides a high level overview of the current telecommunications market and legislation in Turkey and assesses the need for a regulatory impact assessment;
- Section 3 provides a detailed regulatory impact assessment process;
- Section 4 details a number of selected regulatory impact assessment case studies; and
- Section 5 provides a regulatory impact assessment framework and roadmap that could be applied in Turkey with specific action items and next steps

In addition

- Appendix A reviews the telecommunications regulatory structure in Turkey;
- Appendix B details the legislative framework in the European Union; and
- Appendix C provides selected examples of RIA frameworks.

2 Examination of the current market

2.1 The telecommunications industry in Turkey

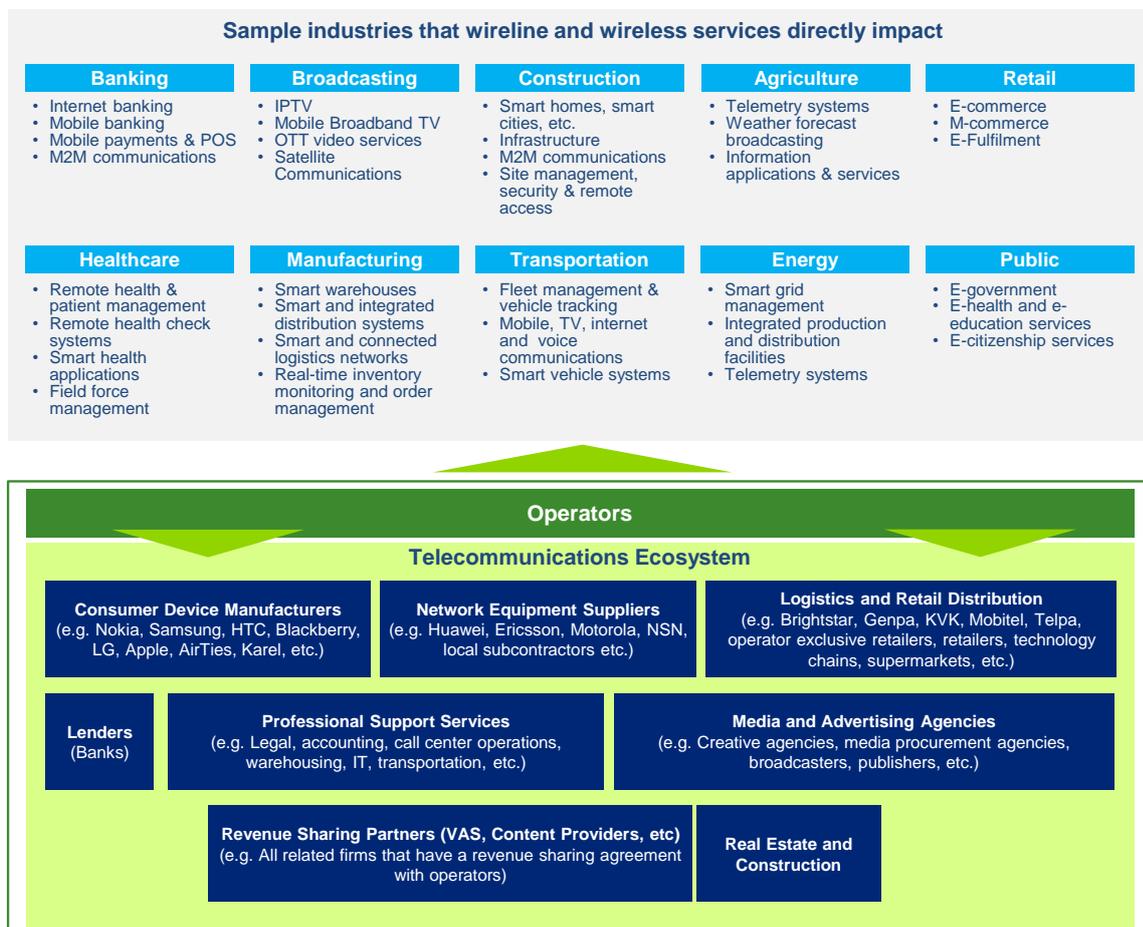
The telecommunications industry is a key contributor to the Turkish economy, with a direct impact on consumers' daily interactions and how business gets done. It is estimated that one unit of ICT sector growth in Turkey leads to 1.8x growth in the overall economy through an economic multiplier effect.

Aside from its direct contribution to the economy, telecommunications sector fuels efficiency and productivity of many others such as financial services, retail, logistics, healthcare, agriculture, e-commerce, etc. Many sectors rely on wireline and wireless communications products and services when increasing their productivity and output quality. For example, it is estimated that the direct impact of the smartphone on retail sales in Turkey was 1.7 billion TL in 2012⁵. In addition, the provision of telecommunications also provides a number of intangible benefits to consumers. These include the development of interpersonal and family communications, the promotion of social cohesion, a reduction in isolation for those in rural areas, the increase in the use of social networks and support services, the extension of communication to those on low incomes and assistance in disaster relief.

Figure 2 illustrates a high-level overview of this broader ecosystem and provides examples for how other sectors rely on wireline and wireless communications products and services when increasing productivity and output quality.

⁵ Deloitte analysis; The dawn of mobile influence, BMD 2014

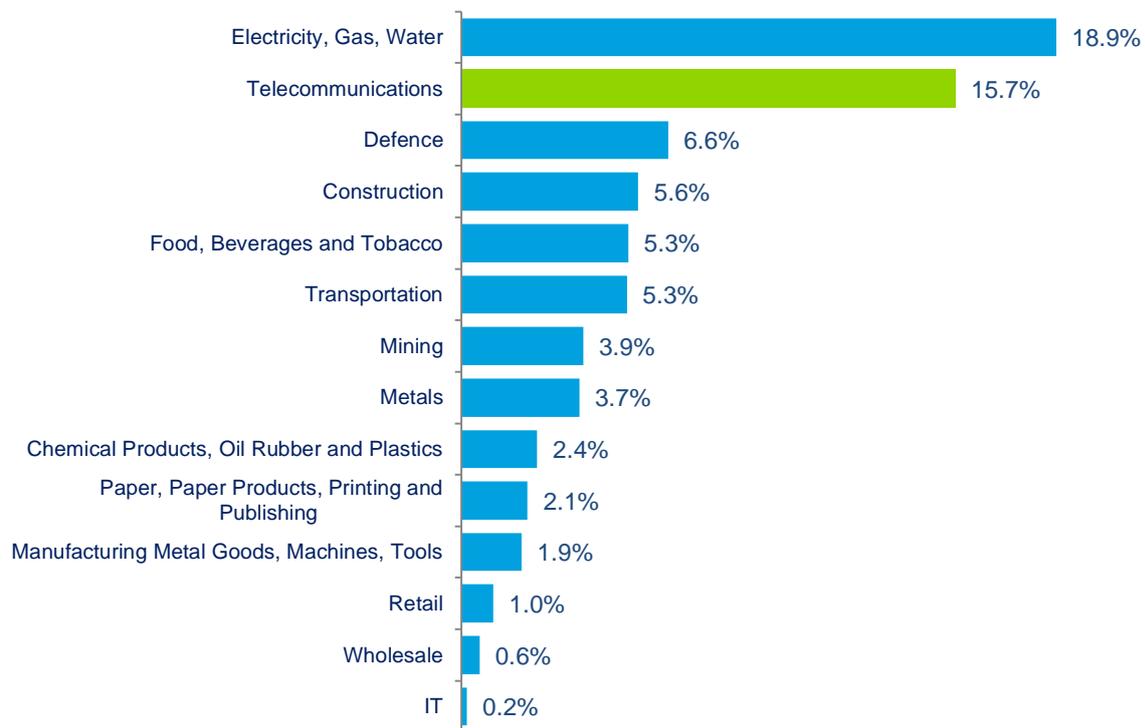
Figure 2: Overview of the telecommunications ecosystem⁶



Source: Deloitte analysis

In order to realize this broader economic and social impact, it is important that the operators keep innovating. Telecommunications is a capital intensive business and innovation requires sustained levels of investment. Considering the high cost of network coverage and capacity expansions, new technology (e.g. 3G, 4G/LTE, Fibre, IPTV, cloud computing, NGN, M2M, etc.) deployments, billing and customer care system enhancements; telecommunications is a considerably capital intensive business compared to other sectors in the economy (Figure 3). Most of these investments in the telecommunications sector have investment returns over 10 years.

⁶ Representative illustration; not intended to include the names of all players in the eco-system

Figure 3: Capex/Revenue ratios by sector in Turkey (2012)

Source: Capital IQ, Deloitte analysis

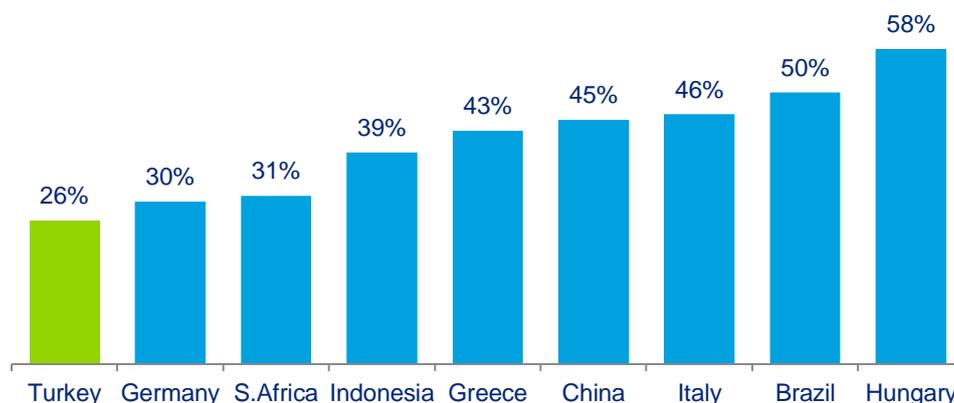
The market has enjoyed a significant growth over the last decade, reaching to around 70 mn mobile and 34 mn broadband subscribers in 2013. However, the growth in the subscriber numbers and usage levels has had limited contribution to revenue growth and profitability. For instance, one of the three mobile operators Vodafone posted net profit for the first time in 2013 and the smallest operator Avea still carries a negative net income balance⁷.

The incumbent fixed operator's voice revenues are declining mainly due to continued PSTN subscriber loss.

As seen in Figure 4, operator profitability in Turkey is considerably lower compared to those in other countries, a fact that is negatively impacting operators' ability to invest in growth, innovation and customer experience.

⁷ Based on operator's submissions to BTK

Figure 4: Average mobile operator EBITDA margins (2013)



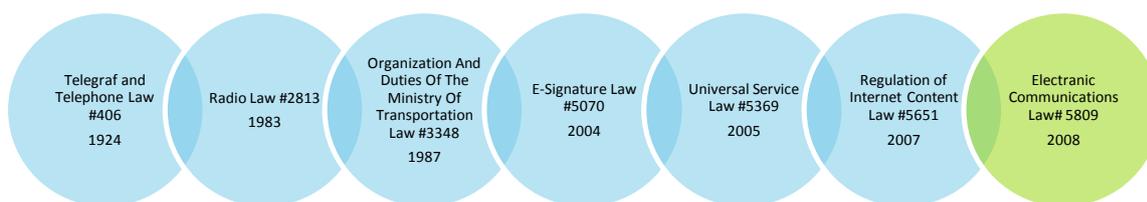
Source: BTK, Wireless Intelligence, Deloitte analysis

In order to sustain continued investments in the sector, operators feel the need to increase profitability levels and accelerate cash generation. Legal and regulatory requirements affecting the sector not only help grow the market by encouraging competition and healthy consumer participation; but may also negatively impact the sustainability of the sector by resulting in unintended financial and operational burden on the stakeholders.

2.2 Telecommunications legislation in Turkey

The telecommunications market in Turkey is governed by a series of laws enacted and updated over years. The most recent and comprehensive one is the Electronic Communications Law #5809 (“the Law”), which was adopted in November 2008.

Figure 5: List of primary laws concerning the telecommunications market in Turkey



The overall purpose of the Law is continued advancement of the electronic communications market in Turkey and has five principle objectives:

- enablement of effective competition;
- protection of consumer rights;
- deployment of services throughout the country (e.g. universal coverage and availability);

- efficient and effective use of the scarce resources (e.g. radio frequency, underground infrastructure, etc.); and
- promotion of innovation and continued investments in communications infrastructure, network and services.

The Law defines two authorities, The Ministry of Transport, Maritime Affairs and Communications (“the Ministry”) and BTK to formulate, execute and monitor the regulations to achieve these objectives. In addition to the Turkish laws, regulations are also influenced by the related EU legislation and laws

2.3 Existing regulatory practices in Turkey

Turkish legislative and regulatory framework for the electronic communications market is similar to those defined by the European Union and the Ministry and BTK’s regulatory objectives are aligned those of the European Digital Agenda.⁸ However, the main differences appear to be in the form of execution, specifically how i) the consultation processes are run and ii) impact assessments are conducted.

Consultation process

One of the most important components of regulatory process is public consultation. As part of an impact assessment, regulators share draft versions of prepared regulations with sector players and stakeholders to solicit comments and suggestions. Collected feedback and comments are then shared with public.

Although there are many cases of the regulators proactively seeking public comments through meetings, workshops or online postings, there are other cases where there were no structured consultation run or prior notification provided before a decision was reached.

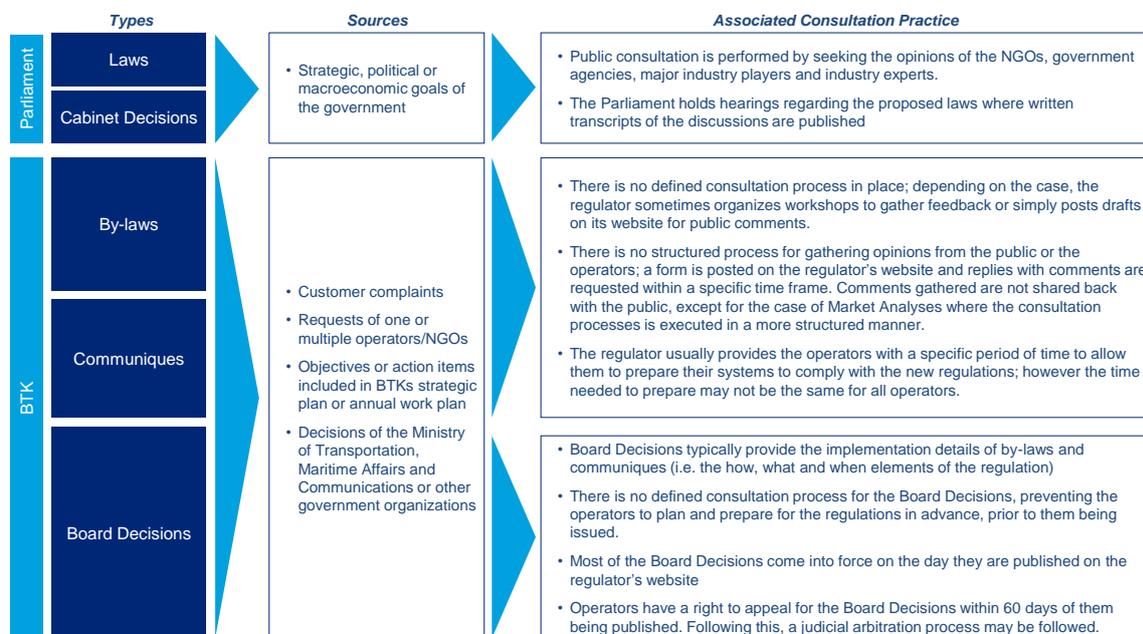
It is in the regulator’s initiative to start the consultation process and to determine the time allowed for responses. While a best practice consultation process is executed for certain decisions, for others decisions may be reached without proper prior discussions with the related stakeholders. In addition, stakeholders’ opinions and comments collected throughout the consultation process are sometimes not published and the rationale for why a regulation was passed or changed is not made available to the public in a transparent manner.

When there is no defined notification or prior consultation process, the operators usually end up with inadequately short timeframes to plan and prepare for a regulation in advance of it being issued. There have been many cases where regulatory bodies had given unrealistic deadlines to operators regarding new regulations where such deadlines were defined without proper consultation. These deadlines were usually the same for each operator even though their respective systems might have been different and required different durations to modify. Besides, there have been cases where operators were imposed substantive monetary fines due to non-compliance with deadlines, even though grounded objections have been raised and reasonable

⁸ The EU framework and the Digital Agenda are discussed further in Appendix B

deadline extension requests have been made. For example, regulation of subscription termination was legalized without taking adequate feedback and allowing sufficient time for adopting operators. This caused many problems, including many operators being fined by 1.2% of net sales in 2013.

Figure 6: Telecommunications regulations and overview of associated consultation practices



Source: Operator interviews

When a consultation process is not formally carried out by soliciting inputs of other regulators, operators and industry groups, there is always the risk of overlooking the impacts of the decisions and ending up with unintended consequences. Most regulations are imposed mainly to foster competition and protect the customers; however, there are many examples where such regulations had unintended consequences or negatively impacted sustainability of the operators. Many seemingly unrelated regulations may have the potential to harm the industry or consumer benefit in the long run, and it would more difficult to properly detect them when all stakeholders are not involved in a structured consultation process.

A consultation process helps achieve transparency and participation of key stakeholders. However, on its own, it is unlikely to be sufficient to guarantee that all policy options have been considered and evaluated thoroughly. For this, a more detailed and systematic ex-ante impact assessment, together with an ex-post evaluation, is required.

Examples of recent regulatory decisions with unintended consequences

As regulation experiences in recent years show, when RIA is not implemented, effectiveness and productivity of the regulations are weakened and a risk of causing undesirable effects on operators and even consumers can materialize. The following section lists a number of recent examples with such consequences:

3G coverage obligation

3G coverage obligation for mobile operators in Turkey is defined by signed concession agreements and is formed with metropolitan municipality boundaries for the first years of contract. In 2012, due to the changes in the Metropolitan Municipality Act, number of metropolitan municipalities increased from 16 to 30 and boundaries of provinces were expanded to territorial boundaries. In 2014, coverage obligation of operators changed significantly with the new BTK obligation. The new obligation suggests 100% population coverage and coverage of new boundaries of metropolitan municipalities. Therefore, operators should have implemented more 3G stations than they already had before (mostly in low populated areas) and so they were required to make large investments. This case has created a large and unforeseen impact on planning and budgets of the operators.

In the case of spending investments on low populated areas rather than spending on the infrastructure for the next-generation technologies in more densely populated settlements, investments will have a limited contribution to consumer welfare. Also payback periods of investments will be much longer and even in some settlements it will not be possible. Before adopting regulations, analysing all possible costs and benefits through an RIA process will be an input for efficient usage of resources.

Emergency calls from nomadic numbers

The Emergency Call Services regulation required the operators to send the location information of subscribers who have dialed an emergency call number (e.g., police, fire department, emergency health services, etc.) to the relevant local emergency centre. However, the obligation was equally imposed for all types of subscribers, including the non-geographic, nomadic numbers (e.g. VoIP subscribers) where actual location information cannot be provided by the operator automatically. The regulation was later repealed and re-published with amendments allowing operators to send the address information declared by the subscriber when emergency calls are made from nomadic numbers.

Renewal of mobile service subscriptions on the mobile device

A regulation imposing a “captcha” control input field when renewing mobile service subscriptions using mobile phones was later repealed due to concerns of customers who use low-end phones. The captcha requirement was later replaced with a “tick box” control, which was much easier for subscribers to use.

Periodical subscription renewal notifications via SMS

A regulation obliging operators to inform customers that their periodical subscription services have been renewed each time via SMS was repealed, since it was later seen that such SMS notifications resulted in customer dissatisfaction. One operator also conducted an ex-ante impact assessment predicting that the mobile value added service sector could have shrunk by about 50%, if this regulation were to be continued.

Open lines

In 2009, BTK enforced mobile operators to provide their subscribers with the information about the number of their "active prepaid lines" through confirmation of their credentials via call centers. For successful fulfilment of this, operators needed improvements in their systems. However, only one month was given to operators to comply with the new regulation and two operators failed to comply with the regulation within allotted time period. In 2012, both operators were fined with 0.02% of their 2010 net sales revenues. As in this and similar cases, operator feedback should be taken into account through the RIA process and decisions should be made by transparent and measurement based methods.

Limited usage services

With the legislation of BTK in 2010, operators were enforced to provide free of charge information about the usage amount in limited usage services via short message channel. Also due to the legislation, operators must inform their subscribers if they reach 80% and 100% of their usage limit. In 2013 despite operators' claims that the allowed time for developing corresponding messages was not sufficient, two operators were punished with administrative fines, due to not complying with the obligation in time. During the regulating process, RIA will allow adaptation duration to be defined in a transparent way while reviewing whether the risks of operators are realistic.

Regulations preventing new authorizations

With the change in the "Authorization Ordinance" 4th provisional article, it was stated that "operators authorized by authorization and concession agreements may not have additional authorizations". This change in the ordinance prevented operators to receive new authorizations from BTK for potential new services (that are out of the scope of authorization or concession agreements). This decision was viewed as one that potentially limits competition in the sector. Before passing regulations, evaluating these kind of arguments with the participation of all stakeholders should be the objective.

Network and information security in the telecommunications sector

Ordinance about the network and information security in telecommunications sector needs clearer definitions in certain areas (e.g., critical system and scope of BGYS, etc.). Determining scope of these points in accordance with the applicable limits and implementing a cost benefit analysis are recommended. Clauses, including updating and labelling the inventory of assets of operators, making critical system identifications, keeping records of the system and providing protection against malicious code, were added to the ordinance. Also limits of obligations of current ordinance were extended. Despite requiring significant amount of investment and long process of adaptation to provide the improvements defined in the new regulation, new regulation

became valid when it was published in 13 July 2014. It is possible to face unexpected risks in the implementation phase, because of not implementing RIA in regulation phase.

Pro-rated fees

A regulation to calculate pro-rated fees in proportion to subscribers utilized number of days, used minutes, used data in tariffs and packages was published by BTK and obligation date was determined as April 2015. Given the short implementation time, it would be difficult to foresee the problems that may arise during the design of the new structure. Regulation was claimed to make many tariffs and packages economically inapplicable. If an RIA was implemented, relevant possible effects of risks and practical difficulties might be compared with the expected benefits.

Invoice caps

The invoice cap regulation was passed to allow subscribers to better control their spending. In this context, operators invested significant amounts to fulfil the requirements of the regulation and provided the service to their subscribers. However, upper limit of the invoice application failed to become preferred service for subscribers and usage of this application remained limited, mainly due to the richness of available tariffs and packages for the various needs of subscribers. Despite the low usage of these applications, BTK has published another new draft regulation to make this application even more comprehensive. Before making a decision to continue regulating costs and benefits of the regulation might have been measured through a successive RIA.

Website for tariff comparisons

A BTK regulation required the mobile operators to create a website where subscribers could compare tariffs of all operators online. As a result of this regulation, operators completed the necessary developments and provided access to subscribers. Very few subscribers used these tariff comparison site, mainly because many channels to reach such information are available to subscribers today. In contrast, BTK requested operators to add campaign information to this website and preparations were completed in this direction. A cost benefit comparison by implementing a successive RIA would have been useful.

Sharing personal information of subscribers within group companies

Operators belonging to the same group, can not share personal information of subscribers within the group without the consent of subscribers. Due to this limitation, development of bundled services may not be possible. The processing of personal information, concerning not only telecommunications sector but also all other sectors to grow, is limited by the current legislation. If an RIA was implemented in this process a more efficient evaluation could be achieved.

Impact assessments

In 2006, the Turkish Prime Ministry issued a by-law⁹ that requires all legislators to undertake a regulatory impact assessment (“RIA”) for new regulations and amendments, excluding the ones that concern national security issues, with impacts over TRY 10mn. The Prime Ministry followed up this by-law with a detailed guide for conducting RIAs through a circular¹⁰ dated April 2, 2007. This guide was modeled after the full RIA framework proposed by the OECD and EU, as covered in Section 3.3 of this report.

According to the circular, all law makers and regulators are asked to establish an institutional capacity to conduct RIAs in accordance with the guidelines, ensure quality of such assessments and appoint a unit within their organization to coordinate these efforts with the Better Regulation Working Group that was to be formed at the Prime Ministry. The guide also outlines a detailed RIA Report format and suggests that the report covers the issues and addresses the questions summarized in Table 2.

⁹ Mevzuat Hazırlama Usul ve Esasları Hakkında Yönetmelik, February 2006

¹⁰ http://www.basbakanlik.gov.tr/genelge_pdf/2007/2007-0010-006-03896.pdf

Table 2 The RIA report format as suggested by the Turkish Prime Ministry

| Section | Topics to be covered |
|--|---|
| Introduction and Executive Summary | <ul style="list-style-type: none"> • Name of the agency that coordinated the impact assessment • Names of other agencies and stakeholders participated in the assessment • Executive summary <ul style="list-style-type: none"> ○ Brief description of the issue ○ Principal objectives of the proposed regulation ○ High-level description of the alternatives evaluated ○ Rationale for the alternative chosen and decision reached |
| 1. Consultation process | <ul style="list-style-type: none"> • The procedures followed throughout the RIA process and timetable • The stakeholders consulted and feedback received • General structure of the feedback received |
| 2. Definition of the issue | <ul style="list-style-type: none"> • What is the issue to be resolved? • What is the source of the issue? • Who are the impacted parties, how are they impacted, and to what extent will they be impacted? • If the current state (status quo) continues, how will the problem progress? • Are there any government policies or laws and regulations in play involving the problem area? • Is there need for a central or local interference for the resolution of the problem? |
| 3. Objectives | <ul style="list-style-type: none"> • What are the regulation objectives? • Are these objectives compliant with the governments' general strategy, politics and objectives? |
| 4. Solution alternatives | <ul style="list-style-type: none"> • What are the possible solutions to the identified problem? (not making any regulation should always be included as one of the alternatives) • Which options have been left out in the first phase and what are the reasons for their exclusion? |
| 5. Impact analysis | <ul style="list-style-type: none"> • What are the potential economic, social and environmental impacts of the short-list alternatives? • What are the direct and indirect cost and benefits? • Uncertainties should be identified and scenarios should be developed addressing these uncertainties? • How will these impacts change over time? • Which social group, economic sector and geographic regions will be impacted by the alternatives? |
| 6. Comparison of the alternatives | <ul style="list-style-type: none"> • What is basis of cost-benefit calculations? • What is the potential conflicts and synergies that will be caused by the alternatives? • What is the comparative ranking of alternatives based on the evaluation criteria? • What is the outcome of the evaluation of alternatives? • What is the most preferred alternative (optional)? |
| 7. Implementation, monitoring and evaluation | <ul style="list-style-type: none"> • What is the proposed program for monitoring and evaluation post implementation? • Which organization will be responsible for the implementation of the regulation? • Is there a timeplan to review and reconsider the regulation after being adopted? |

Source: Republic of Turkey Prime Ministry¹¹

¹¹ http://www.basbakanlik.gov.tr/genelge_pdf/2007/2007-0010-006-03896.pdf

According to the guide, for all regulations with an overall impact that is estimated to be above TRY 10mn, the regulators should try to assess the economic, social and environmental impacts of the proposed legislation and try to quantify these impacts in direct and indirect monetary terms. Sample components of such impact areas are listed in Table 3.

Table 3 Examples of impact areas to be assessed in RIAs

| Economic Impacts | Social Impacts | Environmental Impacts |
|---|--|---|
| Assessment of potential impacts on: <ul style="list-style-type: none"> • public institutions • consumers • industry players • small-medium sized enterprises • competition | Assessment of potential impacts on: <ul style="list-style-type: none"> • health and social security • security • education and culture • employment • work quality • gender equality • social inclusion | Assessment of potential impacts on: <ul style="list-style-type: none"> • air, water, and land sanitization • changes in land use • loss of bio-diversity • climate change |

Source: Republic of Turkey Prime Ministry¹²

Despite the direction provided by the by-law and the circular, there have been very few cases where the full RIA process was adopted by the regulators. This is mainly due to the fact that the regulatory bodies don't have the required capacity to perform these assessments in a timely and accurate manner.

Even if the estimated impacts are below the 10mn threshold, the legislation suggests that a thorough consultation process should be followed and ex-post impact assessments should be performed to monitor and evaluate adopted regulations.

In the telecommunication market, there are a number of cases where ex-post impact assessments were successfully carried out by BTK such as post- implementation reviews of mobile termination rates and number portability. The number of such assessments needs to be increased, with a particular focus on ex-ante impact assessments, and shared with the public.

¹² http://www.basbakanlik.gov.tr/genelge_pdf/2007/2007-0010-006-03896.pdf

3 Regulatory Impact Assessment

Regulators undertake impact assessments in order to measure the potential economic, social and environmental effects of proposed regulation. This assessment allows regulators, and other decision makers, to weigh the advantages and disadvantages of policy and intervention before implementation, reducing the potential for any unintended consequences. These assessments may also determine that no action is the best course of action.

3.1 Benefits of implementing RIA

The benefits, to regulators and the market, of implementing and undertaking an RIA framework may be grouped into the following three areas:¹³

- Economic impacts and consumer welfare: Undertaking an RIA can improve economic efficiency by assessing whether existing or proposed regulation impacts competition and consumer choice in the market. In addition, an RIA can ensure the regulatory remedies imposed do not constitute an undue regulatory burden on operators. From a welfare perspective benefits must exceed costs;
- Governance: Undertaking RIA increases the transparency of and access to regulatory processes. This provides stakeholders the ability to participate in governmental processes and focuses regulation on outcomes, accountability and monitoring; and
- Efficiency and effectiveness of the regulator: A robust RIA framework will increase the quality of policy and increase the level of information available to regulators prior to decision making. Effective regulation ensures that policy objectives are met, while efficient regulation ensures that the benefits of the *“preferred option not only exceed the costs but will deliver the highest level of net benefit”*.¹⁴

Furthermore, a clear, transparent and consistent regulatory framework contributes to the economic attractiveness of a country. The implementation of an RIA may provide investors with greater investment certainty and encourage economic growth, removing obstacles to business and negative commercial perceptions.¹⁵ Regulatory certainty, and a proportionate and justified regulatory burden, increase the likelihood of investments in sectors and reduce the costs to businesses of financing compliance activities. This is of particular importance in capital intensive industries, such as energy and telecommunications, where a high level of investment is required to ensure current services continue to be provided at the expected levels and innovation is driven.

¹³http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

¹⁴ <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis/03.htm>

¹⁵ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

3.2 When to undertake an RIA

The level of analysis undertaken in an RIA may be determined by the apparent or likely impacts and/or level of intervention required. For small scale regulation a full RIA may not be warranted.¹⁶ International theory on best practice regulation allows for exemptions to the requirement regulators undertake RIA as the value of an RIA may be limited in some circumstances. These circumstances include situations where the proposed changes would result in little or no impact on operators or consumers or where the proposal fails to meet a defined threshold. Therefore RIA may not be required where proposals involve:

- Technical revisions that fundamentally re-enact existing legislation in order to provide greater legislative or regulatory clarity;
- The repeal or removal of “*redundant legislative provisions*”;¹⁷
- A net impact of less than a specified monetary value;
- Little or no impact on “*competition, market openness, employment, productivity, innovation, investment as well the number of people*”;¹⁸
- Regulation that is essential in order for a country to comply with existing binding international obligations; or
- Only minor impacts on business or individuals.

This approach “*involves a preliminary RIA to identify regulations which should be subject to a detailed RIA*”¹⁹ and is of particular importance where countries do not have adequate resources to undertake a detailed RIA for all proposed changes. Undertaking an initial assessment of the proposed regulation will facilitate a two-step approach to RIA.

3.3 RIA process overview

The full RIA framework, as detailed by the OECD, the EU and other international organisations, covers the full decision-making process from start to finish. It includes nine steps, beginning with the baseline in which the current situation is described and going through the decision-making process, finishing with an ex-post assessment of the impact. The nine steps are:

1. Describe the status quo;

¹⁶ HM Government (2011), ‘The IA Toolkit’, August

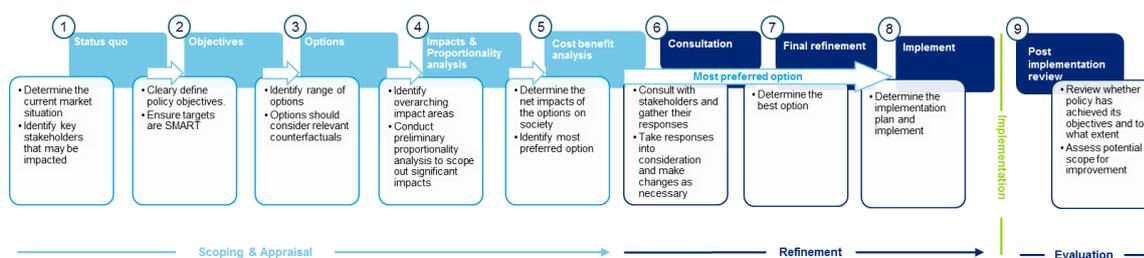
¹⁷ <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis/04.htm>

¹⁸ <http://www.oecd.org/gov/regulatory-policy/40984990.pdf>

¹⁹ <http://www.oecd.org/gov/regulatory-policy/40984990.pdf>

2. Define the regulatory objectives;
3. Define the alternative options for achieving these objectives;
4. Calculate the impacts and the proportionality of analysis;
5. Assess the costs and benefits of the proposed regulation;
6. Consult with stakeholders including: businesses, consumers, industry groups and other interested parties;
7. Determine the required action;
8. Implement; and
9. Establish ex-post monitoring.

Figure 7: Stages of an RIA

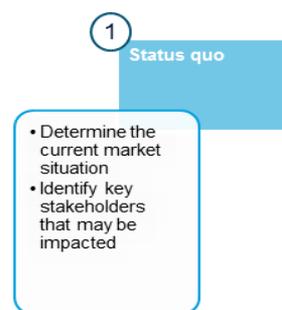


Source: Deloitte analysis

All nine stages are described in more detail in the following sections of the report. However, the implementation plan for Turkey, detailed in Section 5 of this report, only focuses on the four primary stages of an RIA: definition of the options; the cost benefit analysis; consultation; and the decision.

3.4 Stage 1: Describe the status quo

In order to undertake an RIA the regulator must first determine the current situation, the relevant market, the key stakeholders and the business and consumers that may be impacted by the proposed regulatory change. A clear and accurate definition of the status quo is crucial to the success of any RIA as the level of potential intervention and all regulatory options will be assessed against the current state. The definition of the status quo also enables regulatory bodies to justify the requirement for intervention and provides stakeholders a frame of reference from which to accept or reject any proposals.



In the UK, the Government Impact Assessment Toolkit²⁰ requires regulators to confirm that there is a problem and to clearly define it. Research should be undertaken to understand the concerns surrounding an issue, such as the nature of the problem and the likelihood or frequency of its incidence. The relevant experts should be consulted and it should be confirmed which people are in the best place to resolve or manage the problem.

This definition should then be presented to stakeholders, as part of the ongoing consultation process, for review and discussion. There is no requirement to reach an all-party consensus on the regulator's view of the status quo. However, it is important to obtain the support of key industry representatives in order to ensure a non-partisan assessment of the current market state.

3.5 Stage 2: Define the Regulatory Objectives

Regulators should clearly articulate the objectives of both the RIA and any proposed regulatory intervention. The rationale for government intervention needs to be identified early in the policy development process. In relation to regulation, the most relevant areas are often equity and economic efficiency, in terms of externalities, market power and information. Clearly defined objectives help to further define the framework for monitoring and measurement, as the success of regulatory intervention is measured against whether and to what extent, policy objectives have been met. This also ensures the appropriate scope of the analysis is defined and provides a reference by which stakeholders can rate the available options.²¹ After the policy objectives have been defined the achievability of the objectives should be assessed so that the risk of government failure if they are not achieved can be considered.²²



Once the regulator has defined the objectives of the proposed regulation these should be communicated to relevant stakeholders, including operators, industry groups and consumers. This allows stakeholders to begin assessing whether these objectives are appropriate and in line with other regulatory or legislative objectives for that sector. In addition, the definition of objectives allows stakeholders to assess how and if the proposed regulation will meet the defined objectives.

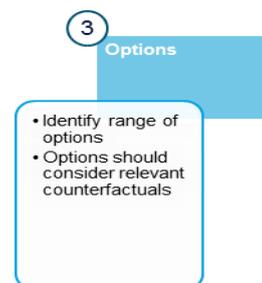
²⁰ <http://www.apfo.org.uk/resource/item.aspx?RID=121612>

²¹ <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis/14.htm>

²² <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf>

3.6 Stage 3: Define the alternative options for achieving these objectives

In order to ensure regulators employ the most appropriate regulatory remedy regulators should undertake a comparison of all options available, in order to weigh the positive and negative impacts of each. It is not sufficient to impose a regulatory remedy used in another market or country as no analysis has yet been undertaken to determine its impact in this particular market. Therefore, the regulator must consider a variety of options initially. This requires regulators to prepare a comprehensive list of all available regulatory and non-regulatory options, to be condensed further in the process. These options should be appropriate to achieve the identified policy objects and be relevant to the identified problem statement



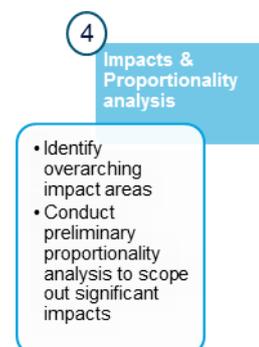
Regulators and stakeholders should then use the on-going consultation process to further reduce the options into a few measurable, realistic and considered set. Analysis of the options may include:

- Weighing the policy objectives against the current and expected future market conditions under each option;
- Determining what may occur in the market with no regulatory intervention; and
- Considering the nature and extent of the proposed intervention in light of prior regulatory experience.

There is no defined number of options required, as few as two may suffice. The important part of this step is to ensure the regulator has considered all practical options and communicated these to stakeholders. These options will then form the basis of the impact and proportionality analysis and the cost benefit analysis.

3.7 Stage 4: Calculate the impacts and the proportionality of analysis

Proportionality of analysis requires the regulator to determine “*the appropriate level of resources to invest in gathering and analysing of data for appraisals and evaluations.*”²³ This analysis calculates the “*scale of effort invested to conduct the analysis required for an Impact*



²³ <http://www.apfo.org.uk/resource/item.aspx?RID=121612>

Assessment".²⁴ It is important that while an RIA is undertaken, the level and extent of the analysis is not disproportionate to the impacts of and benefits expected from the regulation. The OECD states that

*"Proportionality applies not only to the analysis of costs, benefits and impacts but to the entire RIA process, including the number of options considered, the nature of the consultation process and the treatment of enforcement, compliance and review."*²⁵

3.8 Stage 5: Assess the costs and benefits of the proposed regulation

A key consideration of any regulatory intervention is to ensure that the proposed regulatory remedy is of sufficient quality to guarantee that appropriate outcomes are realised by the consumers, the industry and market as a whole, as *"the costs to society of poor quality regulation are substantial"*.²⁶ Regulators must show that *"regulation can address the market failure effectively without creating other, substantial costs."*²⁷ Regulators must also ensure that qualitative factors, such as efficiency and fairness, are not excluded from cost benefit analysis, even though the impacts of these are difficult to ascertain and measure. The OECD states that *"In situations where such qualitative factors are widely recognized as important, RIA guidelines should take care not to subordinate them to quantitative factors. An analysis should be sufficiently comprehensive to include and weigh all principal effects, including identifying any potentially irreversible consequences."*²⁸

5

Cost benefit analysis

- Determine the net impacts of the options on society
- Identify most preferred option

More specifically, these assessments are used to determine the impacts, including the costs and benefits, of existing or proposed regulation on society. All *"feasible alternatives must all be assessed, using the same method, to inform decision-makers about the effectiveness and efficiency of different options and enable the most effective and efficient options to be*

²⁴ <http://www.apfo.org.uk/resource/item.aspx?RID=121612>

²⁵

http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guide_lines_June_2009.pdf

²⁶ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

²⁷ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

²⁸ <http://www.oecd.org/gov/regulatory-policy/35258511.pdf>

*systematically chosen.*²⁹ This form of analysis provides regulators with a defined framework through which they can assess each option and its impacts. Thereby ensuring regulation is appropriate, proportionate and justified.

A cost benefit analysis is a critical component of a rigorous RIA framework. This requires:

- a. A review of the current regulatory approaches in the context of the specific market. This *“analysis or assessment of a regulatory regime should clearly establish the basis upon which the regime is to be assessed.”*³⁰ This review must first determine what criteria are required and how these will be measured in order to provide transparency and assurance to the industry, from the outset. Once this is established a full review of the proposed regulatory approaches can be undertaken, and consideration of the benefits that these are expected to confer or the problems they are expected to address.
- b. The second requirement, the assessment of the proposed regulatory remedy and its potential outcomes, must be scrutinised in light of international precedent and experience. Particularly as *“not referring to any specific benchmarks or methodologies that might help assess one regulatory approach against another, [renders] the principles...too ambiguous to be of use in a comparative analysis of any sort.”*³¹
- c. Thirdly, identification of the potential costs of the regulation and the identification of who bears this cost, over time. The third part of the cost benefit analysis cannot be carried out by the regulator alone. Operators, the industry, and to a lesser extent consumers are best placed to investigate the costs of regulation, both in terms of business costs, opportunity costs and end customer impacts. For each of the options, only the costs and benefits additional to a scenario where no action was taken should be considered. The costs of should not drive the operator out of the market; instead they should be proportional to the remedy required and enable the incumbent to deliver the desired results. Regulation must ensure that *“costs do not overly affect the ability of businesses to compete, grow or be profitable.”*³²

Costs can be categorised into one-off and recurring costs and include:

- Direct or fiscal costs: these are costs borne by regulators or public agencies as part of implementing, enforcing monitoring and assessing compliance with regulations;

²⁹ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

³⁰ Dounoukos S and Henderson A (2003): Structural Separation in Telecommunications: A Review of Some Issues, Agenda Volume 10

³¹ Dounoukos S and Henderson A (2003): Structural Separation in Telecommunications: A Review of Some Issues, Agenda Volume 10)

³² Dounoukos S and Henderson A (2003): Structural Separation in Telecommunications: A Review of Some Issues, Agenda Volume 10

- Compliance costs: these are other direct costs of regulation, incurred by the regulated parties as part of complying with the new regulation. These include systems and process changes, reporting systems and monitoring and measurement costs; and
- Indirect costs: those costs arising to regulators, operators, the wider industry and consumers arising as a result of the regulation.
 - a. Where costs are identified the parties associated with these costs should also be identified in order to assess the magnitude of the impact. Where costs have not yet been identified an assessment of the risk arising from this uncertainty should be estimated.³³
 - b. A detailed cost analysis is also important for regulators as the costs incurred by the operator may be passed onto consumers in the form of price increases. If regulation significantly increases an operator's costs and in turn the operator passes these costs to consumers further regulatory intervention may be required.
 - d. The final requirement of the cost benefit analysis is the identification of the potential benefits of regulation for the incumbent and market, including competition, penetration, coverage, innovation and investment impacts.³⁴ These often include the elimination of discriminatory practices, leading to increased competition at the all market levels. There is a tendency for regulators to be overly optimistic as to the benefits of regulation while understating the timings and costs of implementation. In order to address this tendency toward bias regulators should make explicit adjustments, including "*increasing estimates of the costs and decreasing, and delaying the receipt of, estimated benefits. Sensitivity analysis should be used to test assumptions about operating costs and expected benefits.*"³⁵

An example of a detailed cost benefit analysis carried out in designing a regulatory measure is the UK government's Department for Environment, Food and Rural Affairs (DEFRA) which, in 2008, proposed restrictions on power consumption for simple Set-Top Boxes ("STB") when in active use and on standby. Another example of this type of analysis is the government of Switzerland which analysed the options for the introduction of electronic health records. These case studies are provided in more detail in Section 4³⁶.

³³ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

³⁴ Dounoukos S and Henderson A (2003): Structural Separation in Telecommunications: A Review of Some Issues, Agenda Volume 10

³⁵ HM Treasury (2011), 'The Green Book. Appraisal and evaluation in central government.', July, p. 29.

³⁶ <http://webarchive.nationalarchives.gov.uk/20100407044034/http://www.ialibrary.berr.gov.uk/ImpactAssessm ent/?IAID=c8cbf905d9194a558059200a8f93d7e9>

3.9 Stage 6: Consult with stakeholders

RIAs require multiple levels and stages of consultation to be effective, including engaging stakeholders in the initial stages of the RIA process. The scale and impact of the proposed regulation determines who and how often to consult, in short, the greater the impacts the greater the consultation required. The level of consultation required at this stage of the RIA process is the most critical as this is when the regulator:

- Submits the findings of the analysis to date: regulators must establish that all options have been properly considered and the costs and benefits of all options have been considered;
- May request specific information from operators and consumers as those impacted by the regulation may have access to more accurate data, thereby reducing the risk of regulators and the industry working inconsistent or incorrect data;
- Takes note of stakeholder input that it may not have previously considered; and
- Requests formal submissions from stakeholders on the proposed regulation and underlying analysis.



Consultation needs to ensure:

- All affected or interested parties are included in the consultation;
- Consulted parties are given adequate time to respond, but insufficient time to slow down the process;
- Consultation documents are made available prior to consultation commencing: the quality of the discussion document will directly impact the success of the consultation as these documents ensure transparency, detail evidence based policy determination, increase stakeholders' trust in the process and enable regulators to test current findings. The consultation documents should detail preliminary discussions and findings and set out the questions or issues for discussion; and
- The process is fit for purpose and tailored to the characteristics and scale of the proposed regulation.

The table below sets out the best practice requirements of effective and efficient consultation.

Table 4 Requirements of efficient and effective consultation

| Feature | Requirement |
|----------------------------|---|
| Continuous | Undertaken throughout policy development process |
| Timely | Realistic timeframes for stakeholders to respond. Undertaken early enough to have an impact on policy design |
| Targeted | Need to consult relevant groups |
| Appropriate and accessible | The way the consultation is carried out should be tailored to the information needs and preferred engagement styles of those being consulted such as email, meetings and written submissions. It should also be scaled to the magnitude and proposed impact of the proposal |
| Transparent | Stakeholders should understand how feedback was incorporated in policy development. Officials also need the capability to understand feedback to be able to incorporate (e.g., may need to bring in technical expertise) |
| Clear | Consultation scope and objectives (including decisions already made) should be clear to stakeholders |
| Co-ordinated | To the extent possible, processes should be co-ordinated across policy areas/sectors |

Source: New Zealand Treasury Department³⁷

Some regulators define a general set of rules for consultation which are then applied to all regulatory decisions. For example, OFGEM, the UK energy regulator, specifies a general framework for its consultation process. It specifies that the length of the consultation period will take one of three time frames:

- Four weeks: this is the shortest period of time available for a consultation. It is reserved for impact assessments that are urgent or are involved with minor changes to existing policies;
- Eight weeks: this is the usual timescale when there has not been an earlier consultation or if reasonable stakeholder engagement has already occurred; or
- Twelve weeks: this is the maximum period that is typically allowed. It is used for consultations that have significant impact and interest.

More details of OFGEM's framework are provided in Appendix C.

³⁷ http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis/24.htm#_toc1

3.10 Stage 7: Determine the required action

Based on the above steps the regulator should now be able to make an informed decision as to the regulatory remedy, if any, to impose. It is also important that regulators note

“The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market”³⁸

7
Final refinement

- Determine the best option

This final determination should be communicated to stakeholders in accordance with the steps detailed below.

3.11 Stage 8: Implement

The implementation of new regulation, changes to existing regulation and repeals of regulation will vary from country to country and, within countries, between Ministries, government departments and regulatory bodies. Once the relevant regulatory authority has determined the required course of action an implementation plan must be developed. The method of implementation and enforcement will directly impact the level of understanding and compliance within the industry, and as a result the costs and benefits of the regulation itself. Significant costs are incurred by operators during the implementation phase and regulators must ensure that sufficient time is given to operators in order to transition to a compliant state, to manage the change process internally and to undertake adequate testing of compliance before presenting any evidential requirements to the regulatory authority.

8
Implement

- Determine the implementation plan and implement

It is important to plan the method of enforcement and how the changes in regulation will be implemented. For the enforcement policy, the scale, resources and skills necessary should all be taken into account. If it is decided that enforcement is necessary, the relevant authority should be notified at an early stage, and its costs included in the cost benefit analysis. At this stage the aims and timetable of implementation should be stated, including a risk associated with each method. The stakeholders who will be involved directly with the process should be identified and a clear communication strategy arranged.³⁹

³⁸ <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

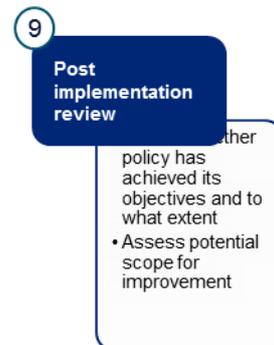
³⁹ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf>

3.12 Stage 9: Establish ex-post monitoring

In order to evaluate whether regulation is proportionate, relevant and effective regulators must undertake a post-implementation review. This process is designed to ensure that regulation delivers the anticipated net benefits to society and that the market has responded to the imposed regulatory remedy. This must be assessed against:

- The status quo, as defined in the RIA;
- The objectives, as defined in the RIA; and
- The current market context.

The RIA framework must include a model for monitoring and evaluating the chosen regulation against these performance indicators, when this is to be undertaken and what data will be sourced as part of the analysis. This may be implemented through a review clause inserted into the regulation or committing to a regular review process.



4 Detailed case studies

The following case studies illustrate different approaches to undertaking RIAs in a number of European countries. They cover a range of different issues and sectors. Each one is different but, together, they highlight the importance of undertaking cost benefit analysis and consultation with the industry, both to ensure transparency and the incorporation of stakeholder views.

Several key findings emerge from these case studies:

- Regulators do undertake RIAs, in one form or another, when making regulatory decisions. RIAs are not a theoretical exercise but are actually used to determine how decisions are made.
- The way in which RIAs are applied in practice varies. In some cases, regulators emphasise the cost benefit analysis. In others, they focus on the consultation.
- The cost benefit analysis should consider the distribution of costs and benefits across different stakeholders (i.e. operators, customers, manufacturers etc.) and should include a broad concept of costs, including environmental and social costs; and
- Consultation is crucial to the success of regulation as stakeholder input may significantly change the focus and direction of the regulation.

4.1 UK data protection legislation

Background

The EC stated in 2012 that although data protection laws had been in place since 1995, recent technological developments – particularly the internet and social media – necessitated an updating of data protection law to reflect the changes and bring the laws in line with other EU member states. The aims of the EC included:

- Taking into account the growth in the processing of personal data;
- Ensuring greater harmonisation across Member States;
- Reducing administrative burdens caused by the legislation; and
- Reinforcing consumer confidence by strengthening personal data protection rights, via more stringent requirements on organisations processing personal data.

According to a reference study, majority of the consumers who shop via internet and use social networks (82% and %74, respectively) claimed that they had no control over their personal information on the internet and that they didn't know about the existence of an authority responsible for protecting information security. In the same study, 90% of the consumers stated same rights should be valid across the EU in the field of information security. Commission believes that this

lack of information and confidence is one of the biggest barriers in the transition to the digital economy⁴⁰.

Due to this reason, Commission suggested simplification and ordering of information security rules across EU via “centralization of execution and increasing adaptation”.⁴¹ This suggestion by the Commission includes all operators to report to a single information security authority. Moreover, suggestions about simplifying the global information transfers were considered.

Commission believes that suggested new rules are simple, clear and strong and EU citizens will be more comfortable regarding information security. Simple standards brought by the new regulation are expected to reduce the costs of operators and increase competitiveness. In the analysis completed by the Commission, by simplifying unorganized legal structure and reducing operational workload, cost saving of approximately annual 2.3 billion € was estimated.⁴²

RIA

In 2012, the Ministry of Justice (MoJ) undertook an impact assessment to review the EC’s data protection recommendation. The Government stated that it believed the Commission had overestimated the benefits of a single law and had failed to take into account many of the compliance costs, since it had focused purely on administrative burdens.

The MoJ stated that it welcomed a revision to data protection law, but that the Government would like to see a framework for data protection that provided a proportionate level of protection in the course of fulfilling its objectives of stimulating growth and innovation. In its assessment, the MoJ expressed concerns that administrative sanctions in the regulation were disproportionate to the harm caused, voicing its opinion that excessively high fines would likely lead to inefficiently high resources being devoted to ensuring compliance with the legislation. Rather than reviewing a number of options, the impact assessment sought to evaluate the EC’s proposed regulation.

The MoJ acknowledged that their cost-benefit analysis was not exhaustive and that there might be further provisions in the proposed regulation that could have a significant impact. The assessment sought to identify the main burdens and savings arising as a result of the regulation. The impact assessment looked at monetised and non-monetised costs to businesses and the public sector, which included:

- The requirement to employ a data protection officer;
- The requirement to carry out data protection impact assessments;
- The requirement to notify all personal data breaches to a supervisory authority;

⁴⁰ http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/1_en.pdf

⁴¹ http://ec.europa.eu/justice/data-protection/document/review2012/factsheets/6_en.pdf

⁴² Ibid.

- The administrative cost of demonstrating compliance;
- The expanded role of the supervisory authority;
- Data portability; and
- Large fines, which may be disproportionate to the harm caused.

Following its impact assessment, the MoJ found that although costly to implement, the proposed changes would deliver benefits including:

- A reduction in the legal fragmentation of data protection laws across the EU;
- A reduction in the loss of personal data;
- No longer having to notify with a supervisory authority;
- Enhanced protection of personal data;
- Greater use of internet services through greater confidence in online data sharing; and
- Greater control over personal data for individuals through measures such as 'the right to be forgotten',

The impact assessment compared the costs and benefits of the data protection regulation set out in the proposal.

Financial impacts

- The assessment found that the introduction of the proposed regulation would involve:
 - Costs of £1,800m - £5,100m ('best estimate' £3,500m); and
 - Benefits of £900m - £1,900m ('best estimate' £1,900m).

Key findings

- The MoJ undertook a detailed impact assessment to analyse the likely costs and benefits of implementing the proposed regulation.
- The assessment concluded that the preferred policy option would deliver a net benefit (in present value terms) of -£2,100.
- Decisions by government and regulators can have a significant financial impact on the sector. An economic impact assessment can be useful to determine the likely impact of regulations at the proposal stage.

- RIA's may uncover overlooked issues during the regulatory process.

4.2 Consumer access to personal data ('midata')

Background

In April 2011 the Government's Department for Business, Innovation & Skills, along with the Cabinet Office's Behavioural Insights Team, published a report titled 'Better Choices: Better Deals – Consumers Powering Growth', which set out ways in which the Government could give consumers more control and protection.⁴³ One component of this was the 'midata' project, which focuses on giving consumers access to their personal data. The aim of this was to better inform consumers, thereby allowing them to make better decisions and achieve better value. After its publication, the programme proceeded on a voluntary basis.

In June 2012, the departments jointly published a review and consultation document,⁴⁴ which considered proposals to make the 'midata' programme compulsory. It set out a September deadline for responses to the open consultation and offered the opportunity for stakeholders to attend consultation events at which they could express their views.

The Government responded to the consultation document in July 2012,⁴⁵ which reported support for the programme but less agreement that regulation should be necessary. Privacy concerns were raised, although the Government assured readers that "appropriate safeguards will be in place". Concerns were also voiced around the Government's understanding of the cost to businesses.

RIA

In November 2012, The Department for Business, Innovation and Skills and the Cabinet Office's Behavioural Insights Team conducted a joint impact assessment of the proposals.⁴⁶ The aims of the proposals were to give consumers access to such data in order to help them make better informed decisions and choose products that provided them with most value.

The options assessed in the IA were to:

⁴³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294798/bis-11-749-better-choices-better-deals-consumers-powering-growth.pdf

⁴⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32687/12-943-midata-2012-review-and-consultation.pdf

⁴⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34700/12-1283-midata-government-response-to-2012-consultation.pdf

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34738/12-944-midata-impact-assessment.pdf

- Do nothing;
- Wait for EU data protection regulations (the final content of which was unknown);
- Introduce an order making power, which gives the Secretary of State the power, when requested by a consumer, to demand suppliers of goods and services to provide the consumer with their transaction data in a machine readable format; and
- Introduce order making power with a nominal charge to consumers.

The main objective of the impact assessment was to identify the proposal that would most effectively empower consumers, essentially ‘protecting’ them from the perceived advantage held over them by businesses with greater information availability. Although the objectives outlined in the impact assessment included the promotion of innovation among firms and increasing competition, these effects feed through to consumer benefits in the form of greater choice and lower prices.

The Government concluded that the option of taking no action would not achieve the desired objectives; despite some energy providers conforming to the midata programme, participation was slow and take-up was limited without considerable efforts by the Government, who also considered that a voluntary scheme was not enough to bring about consumer benefits.

The objective of the proposal to introduce an order making power involving cost recovery was to allow the Secretary of State to force firms to provide data to consumers. However, in its impact assessment, the Government said that any fee, even a nominal amount, would dissuade consumers from requesting their personal data. This would in turn create barriers to switching and inhibit the extent of consumer protection that the proposed legislation was originally intended to bring about. On balance, consumers and businesses together favoured the approach of an order making power with no charge to the consumer.

The Government considered that the most effective way to provide consumers with the requisite information to protect them from market power held by firms as a result of information asymmetries – and to drive competition – was to introduce an order making power at no charge to the consumer.

Financial impacts

The impact assessment explained that costs would only be incurred if the powers were used, since the preferred option was an order making power. The combined cost to businesses in other sectors – which included mobile phones, banking and energy – were estimated at less than £5 million.

In comparison, the Government claimed that “a one percentage point increase in switching rates in domestic energy, personal current accounts and post-pay mobile phone users could yield consumer benefits of £20 million, £38 million and £60 million respectively.”

Due to the associated uncertainty, the financial impact of this order making power, in net present value terms, was officially reported in the impact assessment as zero.

Key findings:

- It can be possible to protect consumers with legislation that is not costly to consumers or businesses by giving consumers the right, *on request*, to access certain data held about them.
- This information can be provided without reducing the value to businesses of the data they hold, by providing only the raw information provided to them and not any analysis conducted by the firm.
- The Government may intervene in markets by providing consumers with increased information in an attempt to level the playing field and resolve any information asymmetry, a type of market failure.
- Consumer protection can be emphasised in laws can be granting powers for consumers to access information at no cost, thereby removing any disincentive to exercise such powers.

4.3 RIA of an Electronic Health Record in Switzerland

Background

In 2010 a regulatory impact assessment was conducted for the implementation of an electronic health record in Switzerland.⁴⁷ A unified electronic system would mean that individual pharmacies, hospitals and medical practices could recall and amend data from the same source. If the regulations were not put in place each institution would have its own IT system which could create barriers to accessing or reconciling patient information. The benefits of the system would be avoidance of duplicate information which saves costs, better diagnosis due to historic information, and less dependency on a specific medical institutions' infrastructure.

RIA

The impact assessment considered the effect on a range of different groups. The groups considered included:

- Pharmacies: at the time of the proposal the major pharmacies had invested in information systems and were strongly networked. The system would require additional investment, but the benefits would overcome the costs in the medium term. The cumulative benefit is expected to be CHF 89 million by 2031;
- Hospitals: there will be IT systems that will be established in hospitals due to the implementation of the DRG system. As such, the costs and benefits of an information

⁴⁷http://www.bag.admin.ch/themen/gesundheitspolitik/10357/10360/14162/index.html?lang=de&download=NH_zLpZeg7t.Inp6l0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCKdoR3e2ym162epYbg2c_JjKbNoKSn6A-

system cannot be attributed to the current proposal. The incremental cost of the health record will be low as an information system is already in place. There will be more substantial incremental benefits from the unified system as it would allow access to medical records which can prevent unnecessary diagnosis, or duplication of treatments;

- Medical practices: the majority of the practices do not currently have information systems in place. It is viewed that the willingness to participate in the system is low because it will require certification, investment and operating costs. It is expected that a positive trend in the value will exist but due to the fixed costs initially incurred, the cumulative impact until 2031 is negative;
- Population: patients will be the main beneficiaries of the information system and benefit from better diagnosis and will improvements in accessibility to use other medical institutions; and
- Public sector: there will be costs from protecting and maintaining the patient information. However it is expected that these costs will be offset by other system related savings and result in a cumulative net benefit of CHF 131 million by 2013.

Financial impacts

The table below demonstrates the costs and benefits that accrue to different stakeholders between 2011 and 2031.

Figure 8: Estimated cumulative costs and benefits to individual stakeholders between 2011 and 2031 (CHF m)

| | Costs | | | Benefit | | | Total | | |
|--|-----------------|--|------------------|-------------------|--|--------------------|--------------|---------------|--------------|
| | Financial costs | Staff-related and other tangible costs | Intangible costs | Financial benefit | Staff-related and other tangible savings | Intangible benefit | Total costs | Total benefit | Net benefit |
| Medical practices, incl. general practitioners | 968 | 243 | 73 | - | 505 | 340 | 1,284 | 845 | -439 |
| Hospitals | 128 | 23 | 486 | 714 | 67 | 6 | 637 | 787 | 150 |
| Pharmacies | 90 | 46 | 13 | - | 130 | 108 | 149 | 238 | 89 |
| Federation and cantons | 373 | 63 | - | 567 | - | - | 436 | 567 | 131 |
| Medical practice staff | - | - | 16 | - | - | 18 | 16 | 18 | 2 |
| Hospital staff | - | - | 18 | - | - | 22 | 18 | 22 | 4 |
| Pharmacy staff | - | - | 5 | - | - | 21 | 5 | 21 | 16 |
| Population | - | - | 1,602 | 8 | - | 5,163 | 1,602 | 5,171 | 3,569 |
| - chronically ill patients | - | - | 410 | 2 | - | 2,282 | 410 | 2,284 | 1,874 |
| - remaining population | - | - | 1,192 | 6 | - | 2,881 | 1,192 | 2,887 | 1,695 |
| Grand total: | 1,559 | 375 | 2,213 | 1,289 | 702 | 5,678 | 4,147 | 7,669 | 3,522 |

Source: Regulatory impact analysis pertaining to the preliminary draft of the Federal Law on the electronic Health Record, 2011

It is estimated that there will be a positive socio-economic result overall due to the improvements in the quality and efficiency of healthcare. Consequently the analysis concluded that the regulation should be implemented.

Key findings:

- An important part of the cost-benefit analysis is the distribution of costs and benefits across different stakeholders. These should be analysed and then communicated clearly and effectively as part of the final decision.
- The RIA process can be applied to a wide range of decisions and covering a broad set of effects.

5 Roadmap for introducing RIA in Turkey

The principle of impact analyses and consultation on government and regulatory decisions is established in Turkey in law and, to some extent, in practice. However, this falls significantly short of the RIA framework that is defined by international organisations and applied by many governments around the world. Turkey would therefore clearly benefit from the increased rigour and transparency in decision-making that comes with the implementation of RIAs by government agencies.

Implementing RIAs in decision-making in Turkey would be a change to the way that the current process works. The RIA framework therefore needs to be tailored to the specifics of the country and should be introduced in a phased manner. This will encourage the acceptance of RIAs within government ministries and regulatory authorities and experience in implementing them will develop over time.

This section first discusses adapting the design of the standard RIA framework to the circumstances of Turkey and then discusses how it could be introduced.

5.1 Designing an RIA framework for Turkey

The full RIA framework, as described in Section 3 is comprised of 9 stages. This is a comprehensive standard, defined by governments and international institutions, constituting “international best-practice”.

In this report, we focus on the four key building blocks of the RIA process:

- defining the options at the beginning;
- conducting a cost benefit analysis;
- consultation; and
- decision.

The RIA framework for Turkey should cover each of these stages. The scope and contents of the particular regulation will drive in what depth these stages should be covered in the RIA. The essential components of this are described in more detail in the following sections.

5.1.1 Define options

In order to define the options the regulator must detail the status quo and the regulatory objectives. This will provide clarity as to the most appropriate regulatory options available. The requirements of this phase are detailed below.

1. In order to clearly and comprehensively **define the status quo** the regulator must set out:

- The current market conditions including supply and demand trends, participants, operators, consumers, regulators, interested parties or industry groups;
 - Any relevant social factors including service obligations, key social policy objectives and identification of potentially disenfranchised communities;
 - The parties in society currently being or that may be affected;
 - The existing legislative or regulatory requirements, if any;
 - The tools or resources currently available to relevant parties and regulators; and
 - Any recent decisions made in relation to this or similar issues.
2. Next the regulator should clearly **articulate the objectives** of both the RIA and the proposed regulatory intervention. The regulator should set out:
- The rationale for intervention;
 - The expected scope of regulation; and
 - The expected outcomes of intervention.

The objectives should be:

- **Precise:** the objective should be specific such that it does not open itself up to a variety of interpretations;
 - **Measurable:** the objectives should be expressed in quantitative terms, and if this is not possible the qualitative objectives should be clearly specified;
 - **Realistic:** the objectives should be achievable in the time frame given for the impact assessment;
 - **Related:** the objectives should be related to broader aims and objectives of the department or government; and
 - **Prioritised:** where a range of objectives are presented it should be clear what the main objective is.
3. **Prepare a comprehensive list of all available regulatory and non-regulatory options**, to be condensed further in the process. These options should be appropriate to achieve the identified policy objects and be relevant to the identified problem statement. Options may include:
- Self-regulation by industry groups;
 - Direct regulation;

- Non-regulatory options such as public information campaigns, taxes or subsidies; and
 - The option for no intervention.⁴⁸
4. Once the regulator has defined the criteria above this should be **communicated to relevant stakeholders**, including operators, industry groups and consumers. The options should be presented to stakeholders and ranked in order of preference
 5. Regulators and stakeholders should then use the on-going consultation process to further reduce the options into a few measurable, realistic and considered set. Analysis of the options may include:
 - Weighing the policy objectives against the current and expected future market conditions under each option;
 - Determining what may occur in the market with no regulatory intervention; and
 - Considering the nature and extent of the proposed intervention in light of prior regulatory experience.

This process will take between 1-5 months, depending on the scope of the proposed regulatory change, the expected extent of the impacts and the groups involved in the process.

5.1.2 Cost benefit analysis

The cost benefit analysis is a significant component of the RIA framework and requires regulators to:

1. Review the current regulatory approaches in the context of the specific market.
 - Determine what criteria will be measured in the CBA;
 - Set out how these criteria will be measured, including non-financial data; and
 - Establish a timeframe for this assessment, both in terms of time required to undertake this assessment and the timeframe this assessment will cover.
2. Assess the proposed regulation against international precedent:
 - Review whether and how this regulation has been implemented in other countries;
 - Take account of the impacts of this regulation on the telecommunications and wider market in these countries;

⁴⁸ <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

- Determine any common market factors; and
 - Assess any market differences which may impact these outcomes.
3. Identify the potential costs of this regulation:
- Determine the costs in terms of the following cost categories:
 - i. Consumer;
 - ii. Business;
 - iii. Social;
 - iv. Economic (including opportunity cost); and
 - v. Environmental.
 - Further categorise the costs into:
 - i. Direct or fiscal costs: these are costs borne by regulators or public agencies as part of implementing, enforcing monitoring and assessing compliance with regulations;
 - ii. Compliance costs: these are other direct costs of regulation, incurred by the regulated parties as part of complying with the new regulation. These include systems and process changes, reporting systems and monitoring and measurement costs; and
 - iii. Indirect costs: those costs arising to regulators, operators, the wider industry and consumers arising as a result of the regulation.
 - Determine who bears this cost and over what timeframe; and
 - Consider the costs under the “no action” scenario.
4. Calculate the potential benefits of the regulation:
- Calculate this in terms of:
 - i. The incumbent and market;
 - ii. Competition;
 - iii. Penetration;
 - iv. Coverage;
 - v. Innovation;

- vi. Investment;
 - vii. Consumer welfare; and
 - viii. Any other relevant factors.
5. The regulator must informally consult with the industry during this process to ensure data is valid and assumptions are correct.

This process will take between 2-3 months, depending on the scope of the proposed regulatory change, the expected extent of the impacts and the groups involved in the process.

5.1.3 Consultation

The regulator then needs to present the findings of this analysis to the wider industry and any interested stakeholders in a formal consultation process. Until now consultation will have been undertaken in an informal manner and only directed at impacted parties. This consultation process extends the option to respond to the public. This will impact the timeframes required to undertake a useful and comprehensive consultation process, however the regulator must provide clear and reasonable timeframes for submissions and response.

In order to undertake effective consultation the regulator must:

- Extend the consultation to the wider public;
- Publicly disclose all relevant information, analysis and findings. Consultation documents should include a summary of each step taken above;
- Provide adequate time to respond;
- Hold public hearings; and
- Respond to all points raised in the consultation.

This process will take between 1-2 months, depending on the scope of the proposed regulatory change, the expected extent of the impacts and the groups involved in the process.

5.1.4 Decision

In this step the regulator must use the information attained in the steps above to reach the final decision. Once the final decision has been made the regulator must publish this along with:

- An implementation plan, including timeframes for compliance; and
- Any evidentiary requirements and the timeframes for these.

This process will take roughly one month, depending on the scope of the proposed regulatory change, the expected extent of the impacts and the groups involved in the process.

5.2 When is an RIA required?

Regulators make many decisions every year. Some of these are major decisions which have a broad impact across the sector but the majority of them are technical or administrative decisions that are either not contested or have only a minor impact. There are also many decisions which may fall in between these two extremes. They would, for example, have a significant impact on stakeholders but for several reasons, it may not be appropriate to follow a full RIA process.

Düzenleyici kurumlar genellikle yıllık iş planları hazırlarlar. Yıl içinde düzenlenen konular ve verilen kararların bu iş planlarına uygun olması beklenir. Beklenmeyen ani kararlar düzenleyici etki analizi sürecinin verimli olarak uygulanmasını zorlaştıracaktır. Bu nedenle, düzenlemelerin öngörülebilir olması; sağlıklı bir sektör yapısı için önem arz etmektedir. İş planı dâhilinde belirlenmiş olan tüm düzenlemeler için ne tür bir DEA yapılması gerektiği ve ne kadar süreye ihtiyaç olduğu önceden belirlenmelidir.

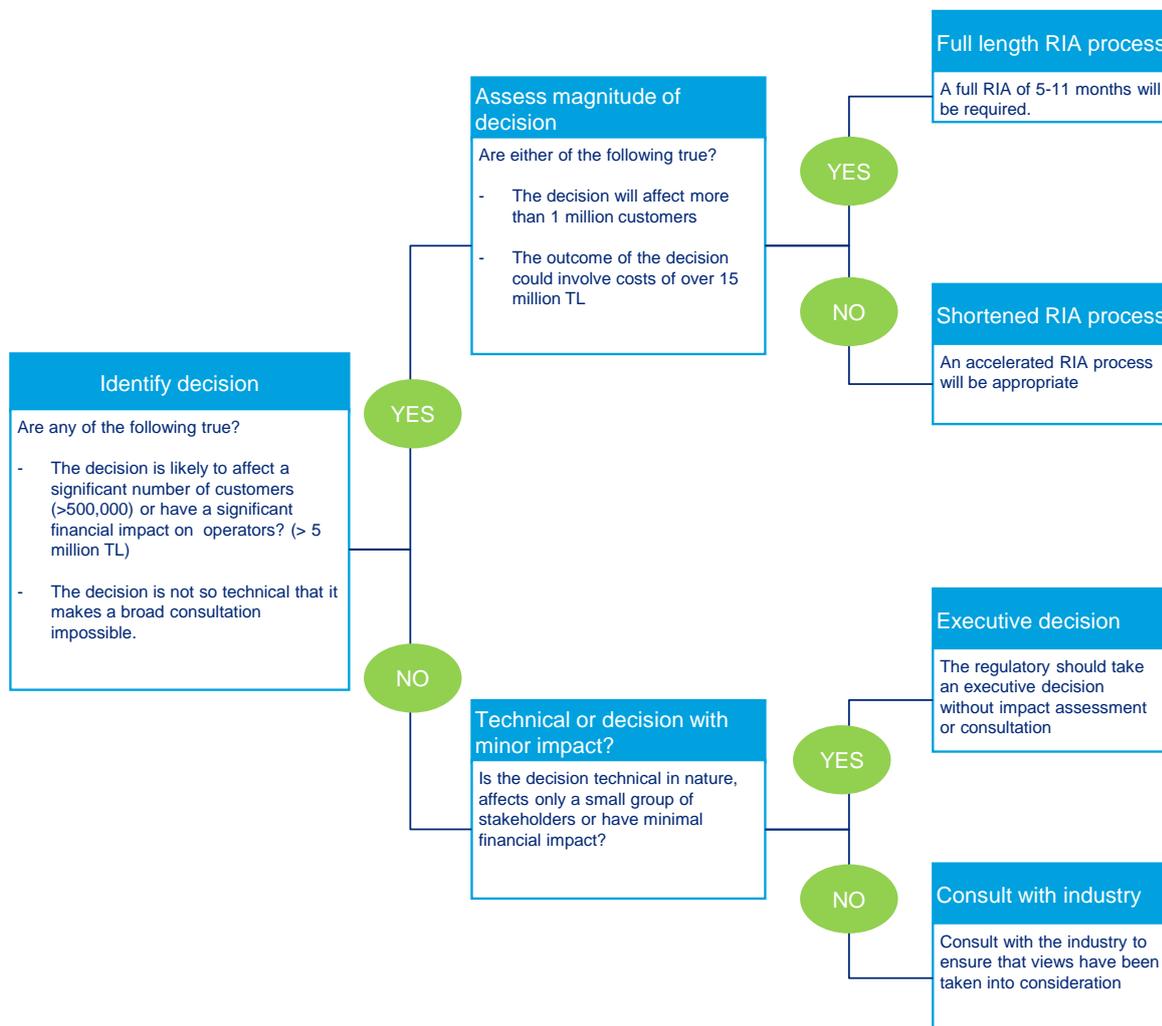
It is clear that it is impossible for a regulator to attempt to follow an RIA process for every decision. For example, BTK issues over 100 Board Decisions every year and if it were to conduct a full RIA for each decision, it would be impossible to move the regulatory agenda forward. The regulator therefore needs a process to prioritise the decision-making process. This process should be set out formally in internal guidelines and then management should follow the guidelines as a matter of course. Ideally, before finalisation, these guidelines should be consulted to get the views of stakeholders. This consultation and publication process also provides more stability and transparency over future decision-making.

The guidelines should clearly define a process with set thresholds and criteria that will result in the implementation of an RIA or not. Factors to take into consideration include:

- The decision does not have a major impact on either the industry or on customers; or
- The decision is technical and would not be suitable for a broad consultation exercise

An example of a decision-making process that could form the basis of the guidelines is given in Figure 9

Figure 9 RIA decision tree



Source: Deloitte analysis

Depending on the evaluation of the factors shown in Figure-9, the regulator would choose one of the different options to execute:

- Full Length RIA:** Performed for decisions which are expected to affect directly over 1 million consumers or have an impact over 15 million TL. Full Length RIA allocates sufficient time for the detailed analysis of the entire RIA steps and the cost benefit analysis. Estimated to take 5-11 months to complete
- Shortened RIA:** Performed for decisions which are expected to affect directly over 500 thousand consumers or have an impact over 5 million TL. Shortened RIA offers an accelerated timeframe for the overall steps including the cost benefit analysis. Estimated to take 2-6 months to complete

- Consultation with the sector:** Performed for decisions which are expected to affect less than 500 thousand consumers or have an impact less than 5 million TL. The process is comprised of a consultation with the sector stakeholders including soliciting feedback on cost/benefit estimates. Estimated to take 2-3 months to complete
- Executive decision:** For technical issues that are not suitable for large scale public consultation process, affect only a narrow group of stakeholders, and have expected smaller financial impact, decisions may be made quickly through executive discussions. These decisions can be completed within 1-2 months, mainly because there are no cost benefit analysis or public consultation steps. Instead of public consultation, opinions from independent experts (e.g. academics, consultants etc.) may be requested. Finally, these decisions should be predictable and consistent. In addition, the reasons for the decisions should be shared with the public in a transparent manner.

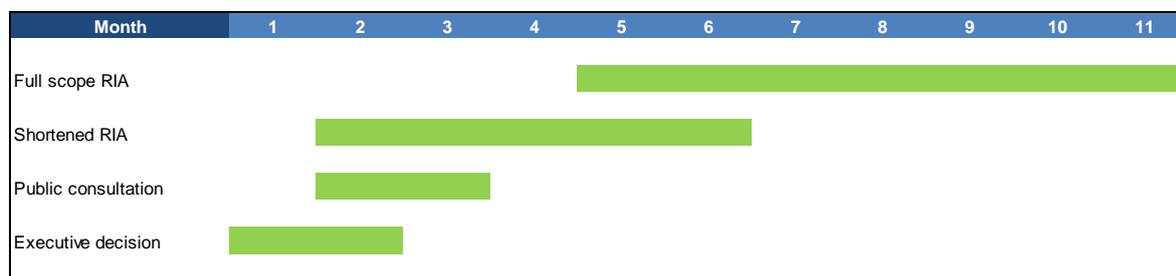
From a scope perspective, regulatory decisions associated with market analysis/SMP regulations such as access and tariff decisions are not usually subject to full-RIAs. Market analysis/SMP decisions are already adopted within a clearly defined framework and must be proportionate with regard to the objectives pursued (i.e. SMP decisions incorporate a built-in RIA). For such decisions an additional CBA is not required and a proper consultation process should suffice. Full-RIAs are mostly applied for decisions related to consumer rights and protection.

5.3 Timelines

The timeline for completion of an RIA will depend on the type and level of analysis required. As noted above, a full RIA may take up to 11 months to complete. However, where the regulator has determined that either a consultation, technical analysis or a shortened RIA is required this may take between 2 and 3 months to complete. These timelines are determined by the level of analysis required, the amount of industry consultation and feedback and the expected impact of the proposed regulation.

The following diagram provides an indicative analysis of the timeframes.

Figure 10: Indicative timelines for completion



As the stakeholders gain experience throughout the process, these timelines are expected to be shortened over time.

5.4 Skills and work load

An important element of implementing a successful RIA process is ensuring the regulator employs the right level of skills and capacity within the organisation. In this section, we provide a summary description of the way in which Ofcom resources RIAs. This is followed by a discussion of staffing and capacity considerations for Turkey.

5.4.1 Staffing requirements for implementing RIAs at Ofcom

RIAs are a very important part of Ofcom's decision-making process.

*"Impact Assessments form a key part of best practice policy making, which is reflected in our statutory duty to carry them out. They provide a way of considering different options for regulation and then selecting the best option. In selecting and analysing options, the need to further the interests of citizens and consumers is of paramount importance."*⁴⁹

Once an issue is identified by Ofcom a project team is formed, based on both the specific requirements of the subject matter and the general requirements of impact assessments. The structure and size of these teams is dependent on factors such as scope of the RIA, subject matter expertise, specific economic or legal requirements and the timeframe for assessment. As the RIA develops more specific resources may be required.

Ofcom does not have a specific RIA team, rather, as RIAs are undertaken by the existing project team. In general Ofcom's teams include the following roles:

- **Project manager:** This is the person responsible for managing the RIA process, end to end. The project manager will typically be a subject matter expert on the regulatory issue at hand, for example, where spectrum will be covered by the RIA a spectrum expert will stand in as project manager. The project manager is also responsible for engaging senior staff and external stakeholders, as part of good governance.
- **Specialists:** These are Ofcom employees with specialist knowledge of the subject matter. They contribute to providing market context, technical knowledge, undertaking analysis and responding to industry submissions.
- **Legal expert:** Legal experts detail the legal framework for the proposed regulation, consider the legality of all options and provide general legal advice throughout the process.
- **Economist:** an RIA would typically involve an economic assessment of the costs and benefits and economists will therefore be heavily involved in developing the RIA, identifying any relevant competition issues, as well as factoring in the wider impacts of the proposed regulation. The RIA broadly follows a standard CBA framework in terms of seeking to identify the relevant economic costs and benefits of different options but differs in that as well assessing the overall impacts of different options it would seek to identify the impact

⁴⁹ <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

on specific stakeholder groups. The RIA may be a quantitative or qualitative assessment of costs and benefits depending on the information available and what would be proportionate given the issue at hand.

- Internal and external communications manager: Typically the project team will manage the consultation process with stakeholders. However, if there is a significant policy issue then the communications team will be involved in terms of briefing the press and engaging in consultations
- Technical support, including engineers: Are responsible for considering any technical implications of the proposed regulation.

The size of the team will vary during the course of the RIA and decision.

5.4.2 RIA Staffing and governance considerations for Turkey

Internal guidelines

Internal guidelines are a very useful part of the capacity of an institution to undertake effective RIAs. They present best practice within the institution and provide a reference point that can be used by staff to ensure that they are following the correct procedures.

Internal guidelines would typically include the following elements:

- A detailed process map (and a decision tree) for agencies to follow in conducting regulatory decisions. This includes internal decision-making, materiality thresholds and timelines.
- Detailed internal methodology for carrying out CBAs. This includes quantitative techniques, data sources etc.
- Internal guidelines on consultation documents – structure, authorship, approvals etc.

Skills and staffing

The RIA would be under the overall leadership of an official of the ministry or regulatory authority who would be responsible for the process and have overall accountability for the decision. This person would have a team working on the decision and carrying out the RIA. In the telecommunications sector, this team usually requires a mixed set of skills including: economics, legal and technical/engineering. The number of people working on a decision would vary according to the nature of the decision and the scope. For example, minor changes to license conditions would be primarily a legal issue and would require mainly legal skills. However, a decision on spectrum would typically involve economist, engineers and lawyers so would require a bigger team to work on it. Regulators would typically assign teams to work on specific RIAs and decisions according to the nature of the work required.

In addition regulatory authorities would often have a central unit operating under a senior official such as a chief economist. This office would provide a central pool of highly skills professional

resources which can support operational departments within the agency. The team will develop expertise in RIAs over time and can liaise with international bodies, such as the OECD and the European Union, and other regulators to further develop the agency's internal capacity.

Internal training

Internal training is an important part of successfully implementing and embedding the use of RIA in any industry. Once the ministry or regulatory authority has created teams within its organisation, training on the framework implemented in Turkey is required. While it is expected that lawyers, economist and regulatory specialists will have the required technical experience, it is important that all employees understand how the RIA is to be managed within the Turkish and industry specific environment.

Examples of relevant training programmes include (unless already being administered):

Foundational programs:

- Introduction to regulatory principles: concepts, regulatory institutions, competition analysis, market reviews, remedies, costing and price-controls, consumer protection.
- Legal aspects of regulation: overview of law and regulation, law and regulation of the telecommunications sector, statutory duties of regulatory institutions, public administrative law and the implications for regulators, open government and freedom of information, arbitration and litigation.
- Regulatory practice: introduction to public administration, management of regulatory institutions, powers and duties of regulatory bodies, introduction to consultation, arbitration, litigation and better-regulation principles

RIA specific topics:

- Cost benefit analysis: economics of cost benefit analysis, principles of public choice, policy making and economic management, economic forecasting, trends in telecommunications technology, quantitative techniques and econometrics, survey design and implementation.
- Consultation techniques: process of effective consultation, structuring consultations, writing consultation documents, responding to public submissions, running public hearings

Training may be undertaken by internal experts or outsourced to third parties; however the training must be specific to each stage of the process and highlight the technical requirements of each stage. For example communication and consultation experts will be required to train employees on best practice consultation, while economists will be required to provide training on the CBA. In addition to the initial training requirements it is important that the ministry or regulatory body undertakes regular refresher training to ensure best practice standards are maintained and employees understand any changes or updates to the RIA framework.

Finally, in order to leverage off available experience, the ministry or regulatory body could also consider external training options such as engaging international counterparts or experience from

other sectors in Turkey, where RIA frameworks may have also been implemented. Other countries or industries may be able to provide useful insights into how the process works in practice.

External communications

Once an RIA framework has been developed and agreed internally this framework must be shared with the industry, relevant stakeholders and the wider public. External communications will also be required at various stages of the RIA process. Therefore it is important to ensure an external communications function is established within the RIA team or, for smaller organisations, the existing external communications function of the relevant ministry or regulator is utilised.

External communications is important for providing:

- A central point of interaction with public;
- Coherent and unified messaging;
- Notification of upcoming RIA and consultations in particular;
- A central point of data collection from the industry and relevant stakeholders; and
- Notification of any updates or changes to the established process.

The regulator should also try to educate the external parties on the consultation process and run training programmes for the industry and stakeholders providing guidance on:

- The consultation process;
- Understanding documents; and
- Providing submissions.

5.5 Recommendations for introducing an RIA framework in Turkey

The introduction of an RIA framework for the telecommunications sector in Turkey is expected to be done through a phased approach. This is consistent with other countries where the practice of RIAs has spread gradually and progressively throughout government agencies. The RIAs themselves have also become more detailed and robust over time as government agencies have developed experience in carrying them out.

Governments often require RIAs via a piece of legislation or through an internal government order, typically from the President's or Prime Minister's office. These will place an obligation on governance ministries and agencies to carry out RIAs before making decisions that have an effect above a defined threshold. This is sometimes supported by detailed guidance on methodology through internal instructions such as the UK Government's HM Treasury Green book.

However, in practice many governments agencies will choose to carry out RIAs in the interests of better decision-making without waiting for detailed instructions from a central authority. Regulators such as OFCOM and OFGEM in the UK have both developed internal guidance and methodologies for carrying out RIAs which they follow. This is partly in the interests of better decision-making and partly as a defence against legal challenge on the basis that they have not followed the statutory requirements to make decisions that are sound and rational.

In Turkey, there already is a requirement on ministries and regulatory authorities to undertake consultations as discussed in Section 2.3

The following actions are recommended for introducing RIA in the Turkey telecommunications sector:

- Recommendation 1. Discuss and agree the framework for RIA in the telecommunications sector;
- Recommendation 2. Develop the capacity of the relevant institutions to carry out RIAs;
- Recommendation 3. Select a forthcoming regulatory decision to pilot the new RIA approach; and
- Recommendation 4. Finalise implementation plan to ensure RIAs are carried out across all decisions that affect the telecommunications sector.

These are discussed in more detail in the sections below.

5.5.1 Recommendation 1. Discuss and agree the framework for RIA in the telecommunications sector

Designing an RIA framework for the telecommunications sector

The implementation of RIAs is typically done at the institutional level because it affects the decision-making process which is internal to individual government bodies. Hence, although there may be a general RIA framework established at the government level, it is often the case that each agency will have its own detailed RIA process and framework which it follows. The UK is a good example of this where the Treasury (Ministry of Finance) provides an overall framework for impact assessment⁵⁰ but then each regulatory authority has its own detailed process that it designed and then follows when making decisions.

The starting point of introducing RIAs is therefore to establish the overall guiding framework. This framework should be agreed between the relevant governmental and regulatory bodies (see below) and include industry consultation. The framework would be a customized version of the Prime Ministry guidance and should include the following components:

⁵⁰ See Appendix C.3 for further details

- The structure of the RIA process, including the way in which stakeholder consultation is to be carried out, the methodology for carrying out cost-benefit analysis, timeframes for RIAs etc.
- The scope of the RIA process – which government bodies and which type of decisions are covered by the RIA framework.
- An agreed framework for assessing the proportionality of decisions, including materiality thresholds that trigger different types of RIA decision.

It should have broad consensus within the relevant government departments and industry stakeholders and should be agreed in the spirit of the industry and government working together to ensure that the sector delivers the maximum benefits to the economy and society of Turkey. It should also be informed by international experience, particularly in Europe.

Institutions covered

The institutions that most directly affect the telecommunications sector in Turkey are:

- The Ministry of Transport
- The sector regulator, BTK
- The Competition Authority.

The primary focus of the RIA framework should therefore be in these institutions. However, other government bodies also have an impact on the industry and should also be included. They are:

- RTÜK;
- The Ministry of Customs and Trade;
- Metropolitan Municipalities;
- BDDK;
- EPDK;
- Ministry of Science Technology and Industry;
- Ministry of Justice;
- Ministry of Economy;
- Ministry of Finance; and
- Ministry of Environment.
- Non-Governmental Organizations

The RIA framework should involve as many of these institutions as possible through consultation and discussion. Once it is finalised, individual bodies can be left to develop detailed processes that they will use to implement the framework.

5.5.2 Recommendation 2. Develop the capacity of the relevant institutions to carry out RIAs

In order for RIAs to be successfully introduced in Turkey, it is essential that the relevant government agencies have the required skills and capacity to be able to conduct RIAs successfully. It is recommended that the relevant bodies within the Turkish government further invest in this capacity, as detailed in Section 5.4 above, so that they are able to implement RIAs of the highest standard and in the most efficient and effective way.

In order to do this the regulator must develop the following four areas:

- Internal guidelines: the regulator must document a detailed process map for agencies to follow in assessing whether or to what extent an RIA is required; a detailed internal methodology for carrying out CBAs; and internal guidelines on compiling consultation documentation.
- Staff: expand the central pool of highly skills professional resources which can support operational departments within the agency. This team will be used by various departments within the regulator in order to undertake an RIA.
- Training: training on the framework implemented in Turkey is required. This includes specialised training on the CBA and consultation processes.
- External communications: this framework must be shared with the industry, relevant stakeholders and the wider public. External communications will also be required at various stages of the RIA process.

In the short term the regulator must undertake the following actions

- Activate the RIA business unit;
- Identify skills and capacity shortages and implement a recruitment strategy as needed;
- Launch an internal training programme; and
- Agree and document the RIA framework for circulation and consultation.

At BTK, the Sectoral Research and Strategy Development Department is responsible for conducting RIAs for topics that are identified in the annual work plan or determined by Board decisions. The RIA framework and process can be structured and led by this department.

5.5.3 Recommendation 3. Select a forthcoming regulatory decision to pilot the new RIA approach

RIAs represent a comprehensive change to the way that regulatory decisions are managed and made in Turkey. As with any new process, it is expected that the process will take some time to embed and therefore a suitable test case should be chosen to pilot this process. From this the ministry and the regulator will better understand the timeframes required to complete the RIA, the skills and expertise used as part of the process, industry engagement and the overall success of the approach. Once this initial pilot is complete the RIA framework, and its underlying processes, may be updated or amended, as required.

It is recommended that a decision is identified to undertake an RIA assessment on a pilot basis. This should be consistent with the RIA framework described above, including meeting the threshold criteria for materiality. Ideally, it should also be an issue that lends itself to the RIA process, including a quantification of the likely costs and benefits of the decision.

The government body concerned should undertake an RIA of the decision in full consultation with the industry, understanding that this is being done on a pilot basis. The experience gained during this pilot will inform the way in which RIAs are applied in future.

5.5.4 Recommendation 4. Finalise implementation plan to ensure RIAs are carried out across all decisions that affect the telecommunications sector.

Once the RIA framework has been finalised and a pilot implemented for one decision, the RIA framework should then be rolled out across all of the other government bodies that affect the telecommunications sector. This will take time as it will be up to individual government bodies to develop detailed processes and procedures for implementing RIAs.

It is recommended that this process is monitored and reviewed on a regular basis in order to ensure that the process of better decision-making in the telecommunications sector spreads across the government and does not lose momentum.

Following the development of the agreed framework (Recommendation 1 above), a steering body should be set up to monitor progress. This should be comprised of both industry and government representatives. It is recommended that it is chaired by a senior representative of government either from a body such as the Prime Minister's office or from the sector (e.g. the Ministry of Transport). The primary objective of this steering body would be to track the development and implementation of RIAs in the government and to report back to the broader stakeholder group on the success of the process.

Appendix A The telecommunications regulatory structure in Turkey

A.1 Regulatory bodies

A.1.1 Responsibilities of the Ministry

The main responsibility of the Ministry is to formulate strategies and develop related policies to increase the global competitiveness of the country and quality of life for the citizens by enabling leading-edge communications services accessible by all. The Law outlines the following responsibilities for the Ministry that are centred around the **strategy formulation and representation** theme:

- Setting strategies and policies to enable the development of the sector
- Conducting necessary research
- Determining policies to encourage competition and support transition to an information society
- Designing policies to enable development of infrastructure, network and services meeting the needs of the market and national security interests
- Building strategies to secure continuity in the event of natural disasters and extraordinary situations
- Encouraging domestic design and production of electronic communications systems and equipment
- Representing the state at international associations and organizations for sector related events and meetings

A.1.2 Responsibilities of BTK

BTK has administrative and financial independence and is mainly responsible for executing and monitoring the strategies and policies formulated by the Ministry. BTK executes these strategies by enacting by-laws, communiqués and other secondary legislation and is required to make its Board Decisions publicly available with their rationale. As shown on Figure 11, majority of BTK's regulations have been related to authorization, protection of consumer rights, access/tariffs and inspection topics.

Figure 11: Summary of BTK Board Decisions since 2009

| Regulation Types | | # of Regulations | Categories |
|-------------------|-----------------|--|--|
| Laws | 7 | Electronic Communication Law (5809), Telegram and Telephone Law (406), Radio Law (2813), Electronic Signature Law (5070), Universal Service Law (5369), Postal Services Law (6475) | |
| Cabinet Decisions | 12 | Authorization Plan Regarding Infrastructure and Services (2), Cyber Security (1), Broadcasting (1), Information Society (1), Authorization (1), Other (6) | |
| BTK | By-laws | 52 | Electronic Communication Services and Infrastructure Administration (21), Wireless Activities (7), Market Watch and Inspection (9), Electronic Signature (1), Internal Bylaws (10), Other (4) |
| | Communiqués | 23 | Standardization (4), Fixed Service Quality (3), Mobile Service Quality (1), Service Quality in General (2), Technical Communiqués (4), Infrastructure Sharing (1), Process (2), Market Analysis (2), Cyber Security (1), Other (3) |
| | Board Decisions | 640* | 640 Board Decisions in total. Around 140 decisions per year |

| Departments | 2013 | 2012 | 2011 | 2010 | 2009 | Total | % |
|--|------|------|------|------|------|-------|-----|
| IT | 3 | 3 | 1 | 1 | 0 | 8 | 1% |
| Authorization | 34 | 30 | 40 | 22 | 7 | 133 | 21% |
| Industrial Research and Strategy Development | 3 | 0 | 1 | 1 | 1 | 6 | 1% |
| Consumer Rights | 18 | 19 | 25 | 37 | 14 | 113 | 18% |
| Spectrum Monitoring | 3 | 7 | 1 | 4 | 0 | 15 | 2% |
| Spectrum Management | 3 | 1 | 3 | 2 | 2 | 11 | 2% |
| Access and Tariffs | 47 | 59 | 46 | 57 | 46 | 255 | 40% |
| Industrial Inspection | 28 | 46 | 3 | 2 | 1 | 80 | 13% |
| Industrial Competition | 0 | 2 | 2 | 2 | 0 | 6 | 1% |
| Information Systems | 1 | 0 | 2 | 0 | 0 | 3 | 0% |
| Presidency of Telecommunications (TIB) | 1 | 4 | 1 | 0 | 0 | 6 | 1% |
| Technical Regulations | 4 | 0 | 0 | 0 | 0 | 4 | 1% |
| Total | 145 | 171 | 125 | 128 | 71 | 640 | |

* Board Decisions between 2009-2013. Source: BTK

BTK’s main execution responsibilities can be grouped under the following areas:

Authorization: Authorization is the process of registration of companies and provisioning of certain rights and obligations as they offer electronic communication services and/or infrastructure.

Responsibilities of BTK related to authorization include:

- Managing authorizations regarding electronic communications services, network and/or infrastructure and supervising their implementation; and
- Coordinating the authorization of institutions that perform installation, measurement, maintenance and repair activities in the sector.

Consumer Rights and Protection: In accordance with the Law, BTK is responsible to supervise data protection and rights of subscribers, consumers, and end-users:

- Right to get equal and quality service;
- Transparency and right to access information;
- Fairness of subscription contracts; and
- Personal data protection and privacy.

Fostering and Sustaining Competition

- Eliminating anti-competitive practices;
- Imposing sanctions when necessary;
- Working in collaboration with Competition Authority in relevant cases;
- Defining the scopes of commercial secrets and publicly available information;
- Conducting market analyses regarding electronic communications sector, determining relevant markets and the operator/s that have significant market powers;
- Determining criteria and procedures regarding tariffs; approving and supervising the tariffs;
- Approving reference access offers of operators; and
- Determining the procedures and principles concerning access including interconnection and national roaming.

Inspection: The scope of inspections covers compliance with terms of license agreements, equipment standards and all other regulatory legislations and decisions. In that regard, penalties may be applied against non-compliant companies. The Law defines the following inspection responsibilities for the BTK:

- Performing inspections regarding authorization, tariffs, access, right of way, numbering, spectrum management; licensing for the installation and use of radio equipment and systems; monitoring and inspection of the spectrum and market surveillance
- Requesting any kind of information and documentation from operators, authorities, institutions, legal entities, etc.
- Setting independent inspection standards
- Inspecting or having third parties to inspect operators' conformity to the existing regulations
- Inspecting service quality of operators
- Imposing sanctions when necessary

Dispute Resolution: In accordance with the Law, BTK is responsible for the operation of the reconciliation procedure to settle disputes between companies. If mediation is unsuccessful, BTK is responsible for taking precautions and necessary measures.

Information Technology: Given the dynamic nature of the sector, it is important follow the latest technologies, services, best practices, global developments and trends. To that end, it is among BTK's responsibilities to conduct research and stay connected with its global/regional counterparts and other related organizations:

- Following the developments in the sector and conducting researches
- Participating in relevant events of international associations and ensuring coordination with them

Technical Regulations: In order to create and sustain an advanced electronic communications sector, it is important to manage scarce resources and ensure compatibility with global standards:

- Planning and allocating frequencies, satellite positions and numbering, internet domain names, etc.
- Supervising installations and operations of technical systems
- Ensuring the compliance of all kinds of systems to national standards

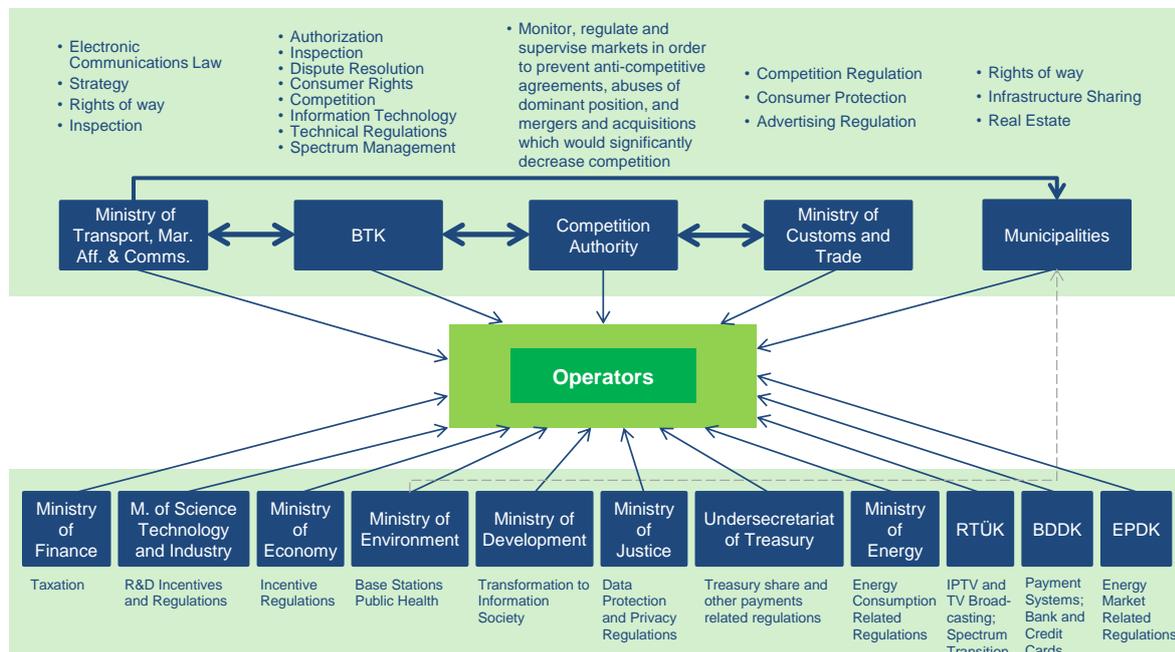
Spectrum Management: Planning, assignment, and registration of radio frequencies; granting permissions for the installation and usage of radio systems and equipment; and related monitoring activities are all under the responsibility of BTK in accordance with the Law.

A.1.3 Current regulatory landscape

Although the Ministry and BTK are the two main regulatory bodies defined in the Law, there are many other authorities and organizations that directly or indirectly affect how the telecommunications market operates and evolves in Turkey. Such organizations include other ministries, municipalities, and regulators including, but not limited to, the Competition Authority (RK), Radio and Television Supreme Council (RTÜK), and Banking Regulation and Supervision Agency (BDDK), etc.

Telecom operators, ecosystem participants and end-users are often impacted by regulations imposed by this diverse group of regulators and organizations, a natural outcome of the sector being closely linked with rest of the economy.

Figure 12: Telecommunications regulatory landscape and key stakeholders in Turkey



Source: Deloitte analysis

Ministries

- Ministry of Customs and Trade:** governs all commercial and competition related issues, including consumer protection and advertising related disputes through the Directorate General for Consumer Protection and Market Surveillance. The Advertising Board is responsible for ensuring that all advertising campaigns and communications are compliant with regulations, where telecommunications operators are among the key stakeholders given their large share of the total advertising spend in Turkey.
- Ministry of Development:** responsible for preparation of the national development plans, including strategies and action plans for the information and communication technologies sector. The Information Society Department leads several programs including development of the national information society strategy, preparing action plans on how telecommunications infrastructure, services, and products should be utilized in continued growth of the overall economy and advancement of the society.
- Ministry of Finance:** governs tax policies and plans including the special communications tax which has a budget of TRY 4.6 billion for 2014, based on the plan prepared by the General Directorate of Revenue Policies.
- Under-secretariat of Treasury:** regulates the treasury share paid by operators (e.g. directly impacts the development of the MVNO market due to double-taxation issue), including the universal service fund (to be used to fund operators’ investments to fulfil their universal service obligations).

- **Ministry of Science, Technology and Industry:** Responsible for development and execution of policies, strategies, plans and programs to improve the technology infrastructure of the domestic industry and improve national competitiveness. The ministry regulates R&D related issues (including the R&D activities of the telecommunications operators) and associated incentive and subsidy programs through its own administrative bodies and related organizations such as TÜBİTAK, KOSGEB, Turkish Patent Institute and Turkish Academy of Sciences.
- **Ministry of Economy:** regulates support programs, investment incentives (e.g. incentives provided for call centre operations in certain geographic regions) and import policies (including importation of telecommunications equipment and mobile devices).
- **Ministry of Environment and Urban Planning:** responsible for the environment, public works, and urban planning in Turkey, including regulations regarding deployment of GSM base stations and their impact on public health.
- **Ministry of Justice:** responsible for justice affairs including the governance of data protection and privacy related issues. The draft Personal Data Protection Law has potential implications on telecommunications operators regarding their sales/marketing activities and compliance related requirements.

Other Authorities

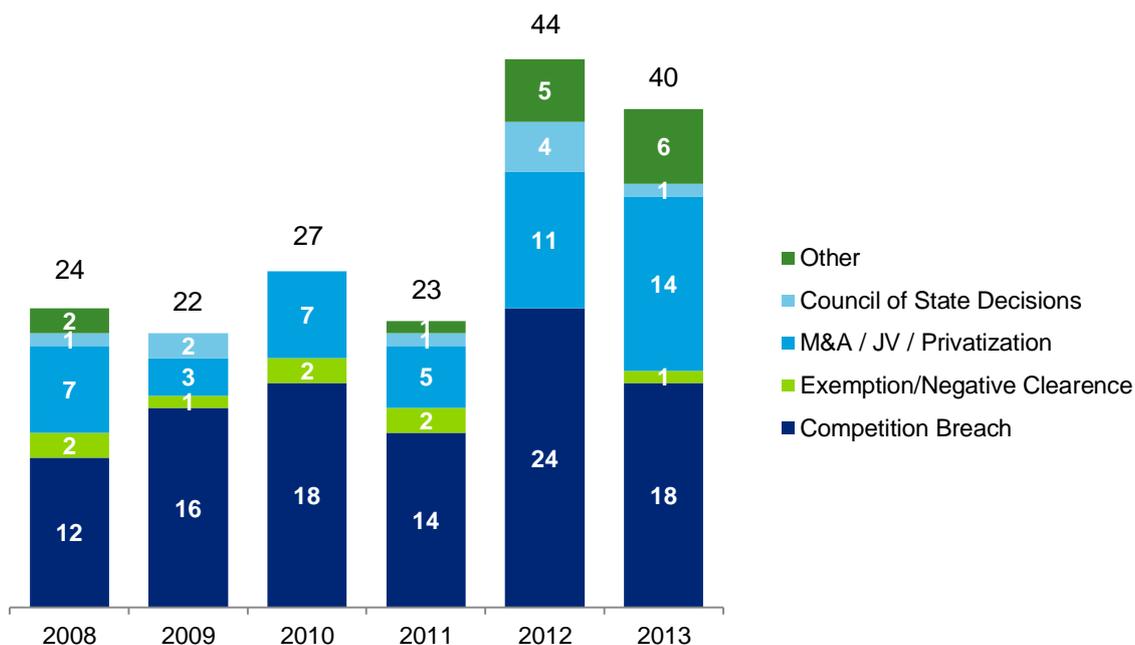
- **Competition Authority (“RK”):** The role of the Competition Authority is the establishment, protection and development of a competitive environment in all sectors within the economy, including information and communication technologies. RK is responsible for monitoring, regulating and supervising markets in order to prevent anti-competitive agreements, abuses of dominant position, and mergers and acquisitions which would significantly decrease competition. RK, whose powers are defined by Protection of Competition Law #4054, is empowered to impose ex-post regulations and coordination of activities concerning the telecommunication sector is governed by the protocol signed with BTK in November 2011⁵¹. According to this protocol, there are a number of ex-ante topics where RK and BTK agreed to cooperate:
 - BTK may ask for RK’s guidance when preparing legislation and communiques for topics that are related to enhancement and protection of competition within the electronic communications sector. One recent good example for this is the collaboration during the preparation of the procedures for identification, prevention and remediation of margin squeezes.

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http://www.tk.gov.tr/elektronik_haberlesme_sektoru/sektorel_rekabet/piyasaanalizleri/dosyalar/PROTOKOL.pdf

- BTK agrees to seek RK’s opinions when conducting market analyses
- BTK may seek RK’s opinions regarding anti-competitive incidents in the electronic communications sector

Figure 13: Summary of Competition Authority decisions on the ICT sector



Source: Competition Authority

- **Radio and Television Supreme Council (“RTÜK”):** serves as the sole authority of radio and TV broadcasting, regulating IPTV licensing and broadcasting related issues and managing transition to terrestrial digital broadcasting where 700-800 MHz spectrum band is being cleared for future mobile telecommunications use.
- **Banking Regulation and Supervision Agency (BDDK):** responsible to regulate and supervise the financial markets, ensuring an efficient credit system and protecting rights of the savers. Recent regulations that impact the telecommunications operators and consumers include the legislation that prohibits bank and credit card instalments when paying for telecommunications services and mobile devices. Originally targeting to reduce the current account deficit, the BDDK “instalment” legislation is argued to have the potential to adversely impact the growth of the smart-phone and tablet penetration in the country, leading to a negative impact on overall data usage.

In addition, the Payment Systems, Services and Electronic Money Law #6493, which was adopted in 2013, regulates all issues related to payment systems and methods, including micro-credits, P2P money transfers, NFC/iBeacon, mobile payments and

wallets – products and services that operators and value-added service providers are currently developing and/or offering. The Law #6493 introduces the Central Bank as another indirect regulator for the telecommunications operators.

- **Energy Market Regulatory Authority (EPDK):** regulates the energy market in Turkey, including all energy and energy consumption related issues. EPDK determines the minimum communications specs and mobile and PSTN networking requirements for the meters that the energy distribution companies can install and operate.
- **Municipalities:** as a right-of-way service provider, decisions of municipalities regarding the provision of under- and above-ground facilities directly impact telecommunications operators looking to deploy broadband networks and share existing infrastructure and facilities within municipal borders.

Appendix B The European Union legislative framework

European Union (“EU”) law has “*equal force with national law*”⁵² and sets out the rights and obligations for national authorities in member countries. These laws are based on treaties (which govern the procedures of EU institutions and are approved by all EU member states) and may be set out in regulations, directives, recommendations and opinions.

The types of EU legislation are shown below.

Figure 14: Types of EU legislation

| | |
|-----------------|--|
| Regulations | Legally binding |
| Directives | Must be applied in its entirety across the EU |
| | Legislative act that sets out a goal that all EU countries must achieve |
| Decisions | Individual countries can determine how to do so |
| | Binding on those to whom it is addressed, either individual or company |
| Recommendations | Directly applicable |
| | Allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed |
| Opinions | Non-binding |
| | Allows the institution to make a statement in a non-binding manner Does not impose any legal obligation on those it is addressed to |

Source: Europa⁵³

The EU’s institutional and legislative framework is governed by four primary bodies: the European Council; the European Parliament; the Council of the European Union; and the European Commission (“EC”), as shown in the diagram below.

⁵² http://europa.eu/eu-law/index_en.htm

⁵³ http://europa.eu/eu-law/decision-making/procedures/index_en.htm

Figure 15 The European Union’s institutional set-up

| European Council | European Parliament | Council of the EU | European Commission |
|---|---|--|---|
| <p>Sets the EU’s broad priorities</p> <p>Is comprised of national heads of state and EU level leaders</p> <p>Has no power to pass laws</p> <p>Meets at least every 6 months</p> | <p>Comprised of directly elected representatives of EU citizens: Members of the European Parliament</p> | <p>Represents the governments of individual member countries</p> <p>Members are appointed by national governments</p> <p>The Presidency of the Council is shared on a rotating basis</p> | <p>Established to promote the interests of the EU as a whole</p> <p>Members are appointed by national governments</p> |

These are the three main institutions involved in preparing EU legislation

Source: Europa⁵⁴

The European Parliament, Council of the EU and EC are responsible for producing the policies and laws applicable throughout the EU. The EC proposes legislation for Parliament and the Council to oversee, however, the EC must undertake impact assessments of proposed initiatives in order to ascertain the potential economic, social and environmental impacts of the proposed policy prior to the proposal. As part of this process the EC consults with interested parties including industry, consumers and non-governmental organisations. This process is illustrated below.

The “Ordinary Legislative Procedure”⁵⁵ empowers the European Parliament and the Council of the European Union with the same influence over areas of law, including economic governance, immigration and energy. European legislation is required to be jointly approved and adopted by both the Parliament and Council,⁵⁶ referred to as “*co-decision*”.

Under Article 289 of the Treaty on the Functioning of the European Union consultation with Parliament is required before the Council can adopt legislation. While the Council “*is not legally*

⁵⁴ http://europa.eu/about-eu/institutions-bodies/index_en.htm

⁵⁵ http://europa.eu/about-eu/institutions-bodies/index_en.htm

⁵⁶ <http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>

*obliged to take account of Parliament's opinion but in line with the case-law of the Court of Justice, it must not take a decision without having received it.*⁵⁷

Once the EC proposes legislation the European Parliament and the Council undertake an initial reading and may propose amendments. If the two bodies agree on amendments the proposed legislation is implemented. When the two bodies do not agree, a second reading is scheduled. Both parties may block the proposed legislation in its final reading.⁵⁸

Once these laws are in place the EC drafts and applies the legislation, with national authorities responsible for implementing and enforcing applicable EU law countrywide.

B.1 Regulatory framework for electronic communications⁵⁹

The European Parliament issued a Directive on 7 March 2002 on the common regulatory framework for electronic communications networks and services. The "Framework Directive" forms part of the telecommunications agenda designed to make the sector more harmonised and competitive and includes:

- Scope and general principles;
- Basic definitions;
- General provisions on NRAs;
- Guidance on Significant Market Power; and
- Rules for granting essential resources, such as radio frequency and rights of way.

The EC directs NRAs to ensure:

- Independence;
- Right of Appeal;
- Impartiality and Transparency; and
- Consolidation of the internal market.

The obligations and tasks of NRAs include:

- Promote competition in the provision of communications networks and services;

⁵⁷ <http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>

⁵⁸ http://europa.eu/eu-law/decision-making/procedures/index_en.htm

⁵⁹ http://europa.eu/legislation_summaries/information_society/legislative_framework/l24216a_en.htm

- Contribute to the development of the internal market through the establishment of trans-European networks and international co-operation;
- Promote European public interests through USO obligations, simple dispute resolution processes and protecting personal data and privacy;
- Manage radio frequencies;
- Manage and control numbering, naming and addressing;
- Control and grant rights of way;
- Manage infrastructure sharing and co-location;
- Manage regulatory controls for operators with SMP;
- Undertake market identification and definition;
- Undertake market analysis;
- Manage dispute resolution; and
- Lay down rules and penalties applicable to any infringements of the provisions in the Directives.⁶⁰

⁶⁰ http://europa.eu/legislation_summaries/information_society/legislative_framework/l24216a_en.htm

Appendix C Selected examples of RIA Frameworks

C.1 Regulatory Impact Assessment in the OECD

The OECD published a report detailing the ten best practices in regulatory impact assessment, based on procedures adopted in OECD countries. It states that the aim of the analysis should be to assess the negative and positive impacts of proposed and existing regulation. RIAs should not be used solely for the decision making, but provide a guide that improves quality, effectiveness and efficiency of the decisions. It also embodies the political values of openness, public involvement and accountability.

The ten best practices are detailed below:

1. Maximise political commitment to RIA: The RIA should be endorsed by the highest levels of the government to gain support and validity. There should also be clear accountability for compliance.
2. Allocate responsibilities for RIA programme elements carefully: there should be a central body that oversees the RIA process and ensures this is credible and consistent. By locating the responsibility of the RIA with the regulator it allows more integration into the decision making and improves the overall ownership of the process.
3. Train the regulators: Training programmes should be implemented in order to give regulators the necessary skills to carry out high quality RIAs.
4. Use a consistent but flexible analytical method: cost-benefit analysis should be adopted by regulators in order to undertake a quantitative and qualitative analysis. The actual analytical method should be variable, but stay within particular guidelines to ensure consistency.
5. Develop and implement data collection strategies: as the quality of the data used ultimately determines the accuracy of the results, there should be explicit policy standards for data and strategies suggested for collecting high quality data at low cost.
6. Target RIA efforts: the RIA should be applied to all significant policy proposals and resources should primarily be applied to where the impacts would be the largest.
7. Integrate RIA with the policy-making process beginning as early as possible: regulators should see the impacts of the RIA as integral to policy decision making rather than an add-on solely for external use.
8. Communicate the results: the results of the RIA should be clearly communicated with the options explicitly defined to help aid policy makers who would not have had a large part in the analysis.

9. Involve the public extensively: the groups of individuals that will be affected by the regulations should be consulted, with appropriate time provided for responses. This is likely to mean that there are multiple stages of consultation.
10. Apply RIA to existing as well as new regulation: the RIA should also be applied to existing regulation as well as to proposed regulation.⁶¹

OECD Regulatory Impact Assessment checklist

This checklist can be used both as part of the RIA process and as a checklist for review:

1. Is the problem correctly defined?

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. Is government action justified?

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. Is regulation the best form of government action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. Is there a legal basis for regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. What is the appropriate level (or levels) of government for this action?

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. Do the benefits of regulation justify the costs?

⁶¹ <http://www.oecd.org/gov/regulatory-policy/35258828.pdf>

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. Is the regulation clear, consistent, comprehensible and accessible to users?

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. Have all interested parties had the opportunity to present their views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. How will compliance be achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.”⁶²

C.2 The European Commission Regulatory Impact Assessment Guidelines

The EC published regulatory impact assessment guidelines in 2009⁶³ aimed at ensuring initiatives and legislation are based on balanced, transparent and comprehensive evidence. The impact assessment typically considers: the scale of the issue; the parties involved; the possible options; and the economic, social and environmental impact of each option. The guidelines further state that this process should be used to aid political decision-making but should not be a substitute for it.

The process includes the following steps:

- Establishment of an Impact Assessment Steering Group (“ISC”) to monitor each stage of the process to ensure consistency;
- On-going consultation throughout the process;

⁶² <http://www.oecd.org/gov/regulatory-policy/40984990.pdf>

⁶³ http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf

- Definition of the problem: including magnitude, parties involved, how the issues has developed over time and any underlying causes;
- Identification of key stakeholders;
- The EU determines whether they are entitled to act: are they better placed to act than the Member State;
- Develop the baseline scenario: this is the situation that would evolve without additional intervention. This involves considering the policies and regulations that are already in place in member countries, actions that are planned or proposed by countries, the evolution of relevant markets and the recent trends in the market;
- Define clear objectives that are directly related to the problem identified. This allows for identification and comparison of the options;
- The potential options are then compiled. There should be a range of options including the base scenario, no EU action, self- and co-regulation and improved implementation or enforcement. These options are then further reduced to a select few to be assessed;
- For all policy options the information obligations for businesses, citizens and other relevant parties should be clearly stated. When the change is likely to be significant, the effects should be quantified using the EU standard Cost Model;
- The quantification of the impact of the different options should be considered both in terms of the direct and the indirect effects and from environmental, economic and social perspectives;
- The options are compared based on the effectiveness and efficiency of reaching the desired objectives and how coherent it is with the overall objectives and strategies of the EU;
- A draft of the assessment is sent to the Impact Assessment Board (“ISB”). The ISB scrutinises the quality of the impact assessment, and provides support and advice. They may require a number of changes or provide recommendations;
- The next version of the impact assessment should explain how the ISB’s recommendations have been taken into account, what changes have been made to the earlier draft and if there are significant changes to the objectives, options or conclusions;
- The report should be resubmitted to the IAB. After the changes recommended by the ISB have been taken into account, the final report is sent to Inter-Service Consultation alongside IAB opinions and the draft proposal;
- The finalisation of the report should be mentioned in a press release, in conjunction with when the proposal will be adopted by the Commission. The report may be drafted in French, German or English. Generally the report is not translated into other languages, but the executive summary must be translated into all official languages; and

- The report should be produced even when the conclusion is that no action should be taken. The report should clearly state the analysis and the reasons why this is the case. The IAB are to examine it and it will be published on the Europa website as a Staff Working Document.

C.3 Impact assessment in the United Kingdom, central government guidelines⁶⁴

HM Government provides guidance for regulators on how to carry out cost benefit analysis. This guidance states that there are a number of important factors that need to be taken into account ensure that the net value of a proposal is as accurate as it can be. All of the relevant costs and benefits to society and the government should be valued for each of the options being considered so that the best option can be selected.

Valuing the costs and benefits

The first step is to value the costs and the benefits. Where possible the market price should be used as it takes into account a variety of factors, including the opportunity cost of the next best alternative. However exceptions exist where the market price would provide an inaccurate value. This may occur when the market is dominated by a monopoly supplier or buyer or when there are significant taxes or subsidies that distort the market.

The wider economic, social and environmental effects should also be taken into account. These will be more challenging to assess as there are no readily available market prices. In such instances the valuation may require specialists such as accountants, economists and experts in the field.

Other impacts that are difficult to place a monetary value on include the impact on noise, aesthetic value or time saved. There are a range of techniques that can be employed, depending on the nature of what is being valued. A common approach is to use multi-criteria analysis that weighs up the costs and benefits and provides a score, which can be used to rank the options. Another approach is to assess whether the options meet, or fail to meet, the minimum performance criteria.

Adjustments

As well as the total impact, the cost benefit analysis should include a breakdown of the effect between different groups in society, so that fairness and other social impacts can be considered. For instance, an additional pound will be worth less to wealthier groups than to those that are more deprived. It is generally the case that proposals that give greater benefit to groups that have lower income are favoured to those that benefit the higher income groups.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf Chapter 5

As well as grouping in terms of income, the impact on society can be broken down between age, ethnic group, health, gender, location or skill. The way the impact has been split and the method of achieving this split should be clearly stated.

The analysis should either be in terms of constant prices or in real terms, rather than current prices or nominal prices. This is done by adjusting the prices in the future with the future inflation. If it is not adjusted, the cost benefit analysis will be misleading as it will also portray the effect of the price changes as well as the actual costs and benefits of the proposal.

Some prices will need to be adjusted at a higher or lower rate than the expected inflation. For instance, if the good is scarce it is likely that the price will rise at a faster rate as it becomes scarcer. However, if there are likely to be substitutes in the future the prices will rise at a lower rate than inflation.

The analysis will also need to be adjusted for the risk. The value of an option should account for how much exposure it has to future uncertainty and the measures that can be put into place to reduce or prevent this uncertainty.

After the cost benefit analysis has been performed and adjusted, the analysis should demonstrate how future uncertainty can impact the results. This can be achieved through sensitivity analysis that demonstrates the impact changes in the expected path of key variables, such as the real wage or inflation, would have on the results. A number of scenarios can also be provided that brings to attention any major economic, political or technical uncertainty that will substantially impact the value of the options.

HM Government Toolkit

The HM Government IA Toolkit⁶⁵ requires regulators to confirm that there is a problem and to clearly define it. Research should be undertaken to understand the concerns surrounding an issue, such as the nature of the problem and the likelihood or frequency of its incidence. The relevant experts should be consulted and it should be confirmed which people are in the best place to resolve or manage the problem.

The key steps involved in describing the status quo are:

- Describe the key features of the current situation, including any existing legislation/regulations or other government interventions/programmes and features of the market, as relevant;
- Explain any relevant decisions that have already been made;
- Describe the costs and benefits of status quo, i.e. the expected outcomes in the absence of any further government action; and
- Identify the root cause of the problem (not just the symptoms).

⁶⁵ <http://www.apfo.org.uk/resource/item.aspx?RID=121612>

C.4 Regulatory Impact Assessment in the United Kingdom telecommunications sector

In 2005 Ofcom published a report outlining its strategy for regulatory impact assessments - "*Better Policy Making*."⁶⁶ In this Ofcom noted that its decisions can impose significant costs on stakeholders and, as such, it is important to assess the situation carefully before implementing regulation.

Impact assessments aim to take all of the possible impacts into account by analysing the entire value chain and knock-on effects across the communications sector. A wide range of options are included in the analysis, including no regulation and alternatives to direct regulation such as co-regulation. The intention is to provide a view of all alternatives and to uncover any unintended consequences. A key principal of impact assessments is proportionality - this means the more substantial the impact, or wider the range of stakeholders, the more comprehensive the study should be.

The impact assessment will generally:

- Identify the impacts of each proposed option on stakeholders;
- Identify any impacts on competition;
- Identify and, if possible, quantify the costs and benefits of each option; and
- Assess the key risks associated with each option.

Ofcom will then choose the option that most closely fulfils its principal duty; which is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets by promoting competition (where appropriate).

Stages involved in Ofcom's impact assessment

Six analytical steps are undertaken:

1. Defining the issue and identifying the citizen or consumer interest:
 - Clearly define the issue at hand: which particular groups will be affected; and the overall scale of the problem.
2. Define the policy objective:
 - The required outcome is defined and will be consistent with Ofcom's broad objectives.

⁶⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

- The general aim is to avoid regulation wherever possible.
3. Identifying the options:
- Consider the range of options that could be undertaken to achieve the objectives. The method of choosing options will depend on the characteristics of the case: it may be a straightforward case requiring options to address a single issue, or there may be multiple issues that will require an option for each, or if a sequence of issues needs to be addressed choosing the options will be more complex.
 - The option of leaving the situation unchanged is considered the base case.
 - The option of removing existing regulation is considered, where applicable.
 - Other options include revising, reducing or increasing existing regulation, and a 'wait and see' option which is to refrain from intervention in the short term, with a commitment to monitoring and reviewing the situation in the future.
 - If only a limited number of options available it may be because the policy objective has been framed too narrowly. If this is the case the policy objectives can be reconsidered.
4. Identify the impact of different types of stakeholders:
- After the options have been selected, Ofcom assess the likely impact on relevant stakeholders.
 - As well as citizens and consumers the impacts could extend to: small and large businesses; broadcasters; telecommunications operators; telecommunications service providers; equipment manufacturers; and transmission companies.
 - Other important groups, such as the elderly and disabled may be considered separately.
5. Identifying the impacts on competition:
- Ofcom have committed to promoting open and competitive markets, and as a consequence, it is appropriate to consider the impact of each of the options on competition.
 - It is important to distinguish between the impacts on competition that would occur in the current context and those which would occur as a result of action.
6. Assessing the impacts and choosing the best option:
- The bias against regulation means that there must be a clear case for regulation, and that the benefits should exceed the costs. If regulation should be implemented, the chosen outcome will be the least intrusive method of achieving the objectives.

- Within the cost benefit analysis all the significant costs should be taken into account and Ofcom should state whether these are financial or non-financial. It should be stated explicitly which groups bear the costs and which gain the benefits. The assumptions should be clearly stated and the sensitivity of the results should also be taken into account.
- As there are a number of wider issues beyond the consideration of costs benefit analysis, the results of the analysis should inform, rather than determine the decision.
- It may be necessary to develop criteria to rank the options if there are a number of objectives that are taken into consideration.
- Other initiatives that are being implemented to tackle the same issue should also be taken into consideration.

After the assessment has been conducted Ofcom consult stakeholders formally with the proposed decision. This will include clearly demonstrating the analysis that has been undertaken and what the recommendations are. Following this consultation stage Ofcom will publish the decision and a policy statement summarising the analysis undertaken, the responses to the stakeholders, how these responses have been considered, the option chosen and the reasons why.

C.5 Impact Assessment in the United Kingdom Energy Sector

The sector regulator, Ofgem's impact assessment guidance specifies the consultation process though the process consultation will vary depending on the complexity, urgency and impact of the assessment. The formal consultation process typically occurs after the options have been refined and a draft report has been prepared.

The length of the consultation period usually takes one of three time frames:

- Four weeks: this is the shortest period of time available for a consultation. It is reserved for impact assessments that are urgent or are involved with minor changes to existing policies;
- Eight weeks: this is the usual timescale when there has not been an earlier consultation or if reasonable stakeholder engagement has already occurred; or
- Twelve weeks: this is the maximum period that is typically allowed. It is used for consultations that have significant impact and interest.

The consultation period is seen as an essential part of ensuring a robust impact assessment. It allows third parties to scrutinise the analysis and provide information or variables that had not been considered in the initial analysis.

As the consultations are beneficial to the process the information should be as easily accessible as possible. The consultations are published on the website but in some instances it is required to notify the parties that will be directly affected by the proposals. The consultation period can be accompanied by other forms of consultation, such as bilateral meetings, workshops and seminars, so that the proposals are presented as clearly as possible.

Any interested parties can submit a response to the proposals including consumer groups, individuals and market participants. All of the representations are considered if they are received within the consultation time period. The final report will include a summary of the consultation responses and how these responses have been taken into account in the impact assessment.

C.6 Regulatory Impact Assessment in Switzerland

Switzerland has a number of different approaches for conducting both regulatory impact assessments, which are primarily concerned with the impact on business and the national economy, and sustainability assessments, which have a greater emphasis on the impact to society, the distributional effects and the impact on the environment.

The federal council requires that an impact assessment is conducted for important proposals to evaluate the likely effects to the economy, environment and society for future generations. The impact assessment is to be led by the department that is putting forward the proposal, and is monitored and scrutinised by the state Secretariat for Economic Affairs (SECO).

The sustainability assessment lists 15 criteria that should be considered when evaluating the impact⁶⁷. These criteria are split equally between the economic, environmental and social impacts:

- Economic:
 - Productive capital: the productivity of human and social capital should be at least maintained or improved;
 - Competitiveness and innovation capacity: the competitiveness within the economy and the innovation potential should be increased;
 - Market mechanisms and true costs: the prices through the market mechanism should be the primary instrument rather than interventionist measures;
 - Public-sector business: the actions of the public-sector should not unduly burden future generations; and
 - Incomes and employment: the impacts on unemployment and incomes and how is it distributed spatially and across income groups should be considered.
- Environment
 - Natural habitats and biodiversity: key natural environments and biodiversity should be at least maintained;
 - Renewable resources: the use renewable energy should be either at or below the regeneration level;

⁶⁷http://www.are.admin.ch/themen/nachhaltig/00270/03005/index.html?download=NHzLpZeg7t,Inp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yuq2Z6gpJCDfXx4fGym162epYbg2c_JjKbNoKSn6A--&lang=en

- Non-renewable resources: the use of non-renewable resources should be below the development potential of the renewable resources used;
 - Pollution: the impact of the pollution caused to humans and the natural environment should be negligible; and
 - Environmental disasters: the risk of an environmental disaster should be reduced or prevented as much as possible.
- Society
 - Health and security: the effect of the proposal on the health and safety of individuals should be protected and actively encouraged;
 - Education and personal development: the development of education and personal development should be at least maintained;
 - Culture and social heritage: the impact on the national, local and social heritage should be encouraged;
 - Equality: all groups of individuals should be guaranteed the same legal certainty and rights; and
 - Solidarity: the proposal should not reduce the unity between social groups, other countries and across generations.

C.7 Regulatory Impact Assessment in Poland

In 2006, the Ministry of the Economy published regulatory impact assessment guidelines⁶⁸ in order to improve the quality of administrative and political decision making to ensure that the best regulatory option is chosen. It is the responsibility of the department that is proposing the regulation to conduct the impact assessment. Once it is conducted the both the Government Legislation Centre and a team within the Chancellery of the Prime Minister scrutinise the analysis to determine whether it sufficiently covers the scope and if additional clarifications or analysis is required.

The RIA follows the principle of proportionality, which means that the more substantial or far reaching the impact of the regulation, the more detailed the impact assessment is required to be. As such, there are some issues that do not need a full impact assessment, whereas for other areas an RIA is compulsory. The areas where an impact assessment is compulsory include:

⁶⁸ <http://www.mg.gov.pl/NR/rdonlyres/49F92D8B-5D7B-4D1E-AB62-F9E12365DFB9/56421/Wytyczniedooceny skutkow regulacji1.pdf> an English translation: https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CDIQFjAA&url=ht tp%3A%2F%2Flegislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F2164%2Ffile%2FPoland_Guidelines_Regulation_Impact_Assessment_.pdf&ei=eCsHU5ueLMKS7AaMCw&usg=AFQjCNG6msDl1lv1H00z8Hbcem7GNNSOkw&sig2=mRAjS7iw33zd1ull-fQChw&bvm=bv.61725948,d.ZGU

- Labour markets: this is where the proposal substantially impacts unemployment, the creation of new jobs, productivity or labour mobility;
- Competitiveness in the economy: this covers a range of factors including entrepreneurship, the ability of companies to strengthen their advantage and barriers to entry;
- Public finance: this includes proposals that have considerable impact on the expenditure and income of state or local government bodies. The knock on effects to the public sector should also be taken into account;
- Regional impacts: this is primarily concerned with restructuring and the impact on regions that are suffering from structural issues; and
- The environment: this is when the proposal will have considerable impact on the environment in either the short term or long term.

When the impacts are difficult to quantify, an in-depth qualitative assessment can be undertaken, rather than cost benefit analysis.

The procedure for the impact assessments is typical for an OECD country⁶⁹: the problem is defined, the objectives are clarified, the options are developed, the impact analysis is undertaken and the options are compared. At the beginning of the process a risk assessment is undertaken that estimates the risk of each of the options and assesses the potential for unintended consequences.

The guidelines note that consultations should start at the earliest stage possible, and continue throughout the assessment. One of the benefits of the consultation process may be that it is seen to increase approval of the proposals. There is a variety of consultation processes that are recommended that includes panel groups, focus groups, and semi-structured interviews.

C.8 Impact Assessment Framework in Austria

In 2013 Austria introduced a new procedure for impact assessments that was outcome orientated.⁷⁰ Its implementation has been viewed as a success with over 50 impact assessments being submitted in the first quarter of 2013, from a variety of departments. Different recommendations were given to improve the process that included: more clarity on how to formulate the assessment; issues with verifiability; and what the correct qualitative and the quantitative performance indicators to use.

An impact assessment is required if a new law, regulation or project is undertaken that will have major impacts on one of the key policy areas. The key policy areas identified include:

⁶⁹ [http://www.oecd.org/gov/regulatory-policy/Sustainability%20in%20impact%20assessment%20SG-SD\(2011\)6-FINAL.pdf](http://www.oecd.org/gov/regulatory-policy/Sustainability%20in%20impact%20assessment%20SG-SD(2011)6-FINAL.pdf)

⁷⁰ http://www.wfa.gv.at/English/_start.htm

- Public budgets;
- Gender equality;
- Social affairs;
- Children and youth;
- Consumer politics;
- Administrative burden for citizens;
- Businesses;
- Economy;
- Administrative burden for businesses; and
- Environment.⁷¹

It is the responsibility of the department that is drafting the proposal to conduct the impact assessment. The Federal Performance Management Office provides support in term of tools, checklists and training to aid the respective departments. They also provide quality assurance and make recommendations based on how consistent, comprehensive and relevant the analysis is. The department responsible will need to then implement the changes or provide explanations for the occasions that they have not.

⁷¹ http://www.wfa.gv.at/English/_start.htm