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The Commission Green Paper On Convergence And The Need For Regulation In A Converged Era

Getting It All Together?

The EU Green Paper on the future of regulation in the converged infrastructure and content industries (Com(97)623) has received a mixed welcome. The Council of Telecom Ministers has urged caution, lest hasty interference stifles investment and innovation. Retention of the regulatory status quo is not seen as an option, neither is slow progress along what has become an evolutionary track - 'the last 40 years have produced five free to air, national, TV channels, nine major pieces of legislation and 12 organisations with regulatory powers.' (Sec 5, ITVA paper, 19 Jan 98). However, revolutionary change is a risky option when consensus as to what must be done, by when, is so unlikely to emerge from the disparate industries which are coming together, not only across Europe, but globally. Each views convergence through its own glass and each has its own sovereign remedy.

Focus of this Brief

Appendix A to the Briefing records opinion on ways in which the industry is converging and attempts to answer some of the posed questions. The brief does not, however, set out to offer an anodyne, consensus view on any consequent regulatory convergence. Rather it is an attempt to record and summarise divergent views on regulation from sectors within the converging communications industry (See Appendix B), assess their relative strengths and so inform the debate both in the UK and in Europe. A collection of sector-specific opinions on licensing and content regulation are provided in the Appendices and reference is made to other EURIM briefs where appropriate. For example, *meeting public interest objectives* has been dealt with in other EURIM papers and so privacy, data protection and public service broadcasting are not dealt with here.

Summary and Conclusions

1. There is a need for national governments in the EU to state clearly their public interest goals. Until that is done it will be difficult to reach accord on the wisdom of pan-European regulation. The desirability or otherwise of the harmonisation of global regulation might then become apparent.
2. There is a general consensus that retention of the current regulatory model(s) in the UK is not a long term option.
3. There is a general consensus that we must eventually arrive at a regulatory regime for the communications industry which is able to interact rapidly and effectively with regulatory bodies in other industries, is able to safeguard the consumer (ie: public) interest, and is a good fit with general competition law.
4. The issue is how best and how fast to move from the present regime to that of the future. This is the area where diverging views predominate. Any transition plan must not threaten innovation or retard market development. Radical, revolutionary change has too many dangers and evolutionary change is preferred.
5. The style of regulatory regime to be adopted in the near future must build on what is currently in place but be capable of rapid evolution as the communications industry changes and matures and as general competition law becomes the predominant mechanism. Change is most strongly indicated around economic or competition issues, where there is a pressing need for coherence in regulation across all the dynamic, converging sectors. Change should be more gradual on cultural issues where consumer demand and expectation is unlikely to change overnight, though differences based on delivery medium need increasingly to be reassessed.

Key Considerations

- a) Common ground can be found among all parties in a general acceptance of the need for some form of regulation, whether it be detailed, hands-on interference in issues of price, quality and choice, self-regulation by the industry, control of content in the interests of public taste and decency and/or the application of general or even sector-orientated competition law.
- b) Factors such as the reality and relative maturity of competition, changing cultural perceptions, the balance between sector specific regulation and a more fundamental reliance on competition rules, and the decline in importance (in electronic terms) of national frontiers all influence the shape and purpose of national regulatory regimes.
- c) Currently, national models tend to be sector-specific, reflecting a multiplicity of overlapping regulatory bodies focusing (in the communications industry) separately on content and infrastructure. There is little or no converged regulation.
- d) There is also a majority view that the current model is unstable and unsustainable. The status quo is not an option.
- e) EURIM Briefing 8 (Oct 95) considered a number of political, social and economic issues in the emerging communications industry and identified the risk of over-regulation by the large number of regulatory bodies involved. Appendix C to this Briefing lists UK content regulators, perhaps the area of greatest complexity. EURIM Briefing 13 (Jan 97) addressed the question of future regulation in the industry and concluded that a unitary regime should be created. EURIM Briefing 19 (Jul 97), on control of content on the Internet, examined the range of options relating to content and concluded that self-regulation (for that medium) was the optimum solution. On the other hand, the outgoing Director General of Tele-communications was firmly in favour of a bicameral solution covering competition and content regulation. (11 Mar 98 speech at Appendix D) These (seemingly conflicting and certainly confusing) threads are brought together by EURIM Briefing 22 (Feb 98) on the UK Value Chain (Appendix E), which pointed out that value chain management, allied to electronic commerce, was capable of improving inter-departmental co-operation, cutting resource costs and improving service levels. The principle is alluded to elsewhere in this Brief in the context of the application of value chain management to the issue of converged regulation. Figure 1 illustrates the principal regulatory options.
- f) Views on which model would be most appropriate at the present time vary in tune with opinions on how soon (if ever) convergence will be complete and therefore how soon it is practical to move the emphasis from direct intervention towards more reliance on the provisions of competition law. Notwithstanding this divergence of view, it does seem possible to draw the threads together at some indeterminate point in the future. Most participants in the debate seem to agree that the target regulatory regime must embrace the wider aspects of competition among the communication industries. Of equal importance, it must be able to address competitive and co-operative issues arising between the communication industries and applications/ content sectors (such as finance, travel and leisure) each of which is likely to retain its own form of regulation yet will have some form of interdependence with communications (ie: value chain management). That future model must also be capable of addressing matters of public taste and decency - or ensuring 'content probity'.
- g) It is further recognised that opinions on the form of regulatory regime which should apply to the supply side of the industries are not necessarily valid for the demand side. In very general terms, the development of the supply side is in a state of flux while that of the demand side (ie: that which embraces cultural issues) is fragmented and still immature.
- h) The key question, to which there will be no uniformity of view, is: 'how do we get from today's unsatisfactory model to the far future and how fast do we want to travel?' Those supporting greater reliance on Competition Law have a desire to move away from detailed regulation and believe that the market can move faster without it. On the other hand, those wanting to retain some form of direct regulation say that Competition Law is not necessarily flexible enough and fear the loss of expertise developed in separate regulatory organs. Additional concern is pointed toward the often lengthy and expensive process attaching to complaints to the MMC or DGIV.

- i) Underlying the wider debate is the general agreement that government must decide and be clear on its public interest goals. That has yet to happen in most European states and the lack of such clarity will make

even more difficult any agreement on harmonisation of regulatory frameworks in the converged future; frameworks which, in the last analysis, reflect national cultures.

An Interim Step for the Communications Industries?

Except for those who see little need for radical change (principally the independent television community, whose view is not shared by the BBC), there is a growing body of opinion which sees the need for a move away from a multi-body, diverse structure of regulation into a converged regime. This shift is powered by the current instability of the market. The debate is fuelled by those who favour a 'unitary regulator', having all sector responsibilities under one hand, together with the skills required to deal with issues of content and infrastructure with equal facility, and those who favour a twin-track approach, such as that postulated by the previous Director General of Telecommunications in the

UK. In general, no matter how much agreement there is on principles, the greatest differences are found in the suggested way forward. The Commission put forward three options but the papers we read had many more variations. Only a handful of opinions supported staying with the current structure. A greater number cautioned against moving to a new model too rapidly, citing the need to see the shape of the future more clearly and being made wary by the lack of any historical model. Further along the continuum are those who favour a merging of regulators (into one, two or three agencies). And finally, at the end of the spectrum, there are a few pushing for more radical change immediately. (see figure) .

REGULATORY MODELS

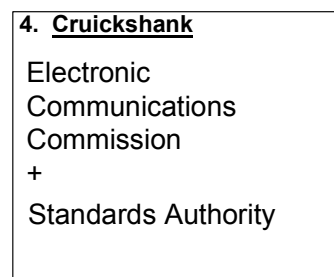
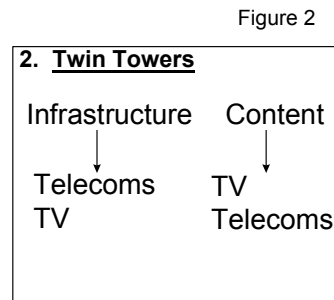
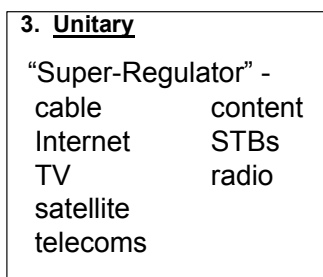
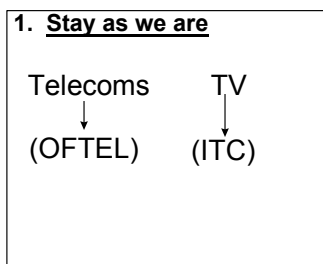


Figure 2

The argument against rapid, radical, revolutionary change is threefold: it is inconceivable that a new regulatory regime could be made to work effectively in the short term if a significant sector of the communications industry was against it from the start; the probability of making the wrong choice of regime and thereby inhibiting growth and competition is too great; and stability of regulation (still imperfect, but nevertheless important to those investing for the future in

advanced digital services and networks), would be completely destroyed. It therefore follows that:

- there must be a change from the status quo;
- radical, revolutionary change would be unacceptable and risky;
- evolutionary change is therefore the only remaining option, based on current regimes. The implication is that the multiplicity of

regulatory approaches to dealing with cultural content issues would continue, but that they would gradually alter in response to changes in consumer demand and expectations, ensuring that inappropriate distinctions were resolved;

- the pace of evolution must still be relatively fast, particularly on economic issues, if technological, economic and structural changes in the industry are not to overtake the ability of regulation to ensure the emergence of fair competition. Yet evolutionary change must not be so fast that regulatory stability and predictability, both so important to new entrants to the market in terms of investment risk, are jeopardised;
- part of the evolutionary process must take due account of the need to manage the value chain in the communications industries and how that value chain inter-relates with value chains in other industries, relying increasingly on communications for the delivery of their services. In particular, the potential abuse of market power through the exploitation of vertical integration must be constantly monitored;
- there must be a concept of an end game, a target for a regulatory regime in the longer

term which is capable of addressing value chain issues and with a logical relationship to competition law which might be either general or sector-specific.

The thrust of EURIM Briefing 13, which proposed a unitary approach based on the formation of a UK Communications Commission, was aimed principally at regulation of the economic, or supply side, of the industry. Not only has the nature of the industry changed since Briefing 13 was prepared, but also the continuing diversity of issues related to the demand side (ie: cultural issues) has become clearer as convergence gathers pace. The argument for a unitary regulator on competition and other economic issues in these sectors remains a strong one; full integration with cultural issues across all sectors is probably for consideration in the longer term and is too radical to find a place in the evolutionary process of the near-term.

Appendix B of the Briefing summarises the concerns expressed by various parties in the context of the interim steps which might take us from the current regulatory model (accepted as being unsatisfactory) to a more stable regime in the distant future (accepted as the desirable target).

The Way Ahead

The Green Paper has served to highlight the issues and, to some extent, bring them together. But it is very likely that further debate will be driven by separate decisions and events, not by consideration of the overall, indigestible picture. The thread will probably run alongside preparations for the 1999 Telecommunications Review and the challenge for member states is how best to contribute to the review while taking account of the conflicting views expressed in this Brief, not only derived from the telecommunications community but also from the equally important content industries. In the UK, EURIM's Communications Working Party is to begin work now, taking input from the relevant government departments and agencies and contributing to their developing views. At

Commission level, it would be useful if a single website could be established which, in drawing together information from all sources, could serve as a one-stop-shop for information and opinion for all those taking part in the debate.

Appendices

- A. Converging Industries
- B. Divergent Views on Regulation
- C. List of content regulators in the UK
- D. Cruickshank's speech
- E. EURIM Briefing 22 (Value Chain Management)

These appendices are on the EURIM website:
<http://www.eurim.org>