

COMMUNICATIONS WHITE PAPER

INITIAL REGULATORY IMPACT ASSESSMENT

1. INTRODUCTION

This is an Initial Regulatory Impact Assessment (RIA) of the proposals set out for consultation in the Communications White Paper (CWP). A full RIA will be produced at a later stage, when we develop detailed plans to implement the proposals in the White Paper. **In this document we scope the range of likely costs and benefits and invite views from consumers and industry on quantifying those costs and benefits.**

2. PURPOSE OF THE WHITE PAPER PROPOSALS

2.1 Issues

2.1.1. The White Paper proposes, and in some cases, seeks to consult on, a new regulatory framework for communications. Already TVs can be used for e-mail and the Internet and computers can receive video, TV and radio, whilst mobile phones now offer Internet access. The rapid changes in technology and innovation, which are bringing about this convergence, require a coherent, regulatory framework to correct market failure, meet public policy aims, and promote competition and innovation whilst safeguarding the consumer and citizen interest.

2.1.2 The present system is increasingly outdated. It lacks consistency, clarity and flexibility to respond to the changing market place; there are nine different regulators striving to work together to keep up with a fast-changing market. The government recognises the benefits available to consumers, business and the whole economy from the communications revolution. Getting the legal and regulatory framework right is essential if we are to seize these opportunities for the UK.

2.1.3 Any new framework must ensure inclusivity in the new communications world and the new Information Age. This requires a continuance of strong public service broadcasting. At the same time, the framework must ensure that opportunities are perceived and seized; and that neither citizens nor business are inhibited from exploiting what the new technologies have to offer.

2.2 Objectives

2.2.1 Although the consultation process may generate additional or modified options for ministers, the principles underlying the objectives for the new regulatory framework are clear:

- ◆ protecting the interests of consumers in terms of choice, price, quality of service and value for money, in particular through promoting open and competitive markets;

- ◆ maintaining high quality of content, a wide range and diversity of programming, and plurality of public expression;
- ◆ maintaining accepted community standards in content, balancing freedom of speech against the need to protect against potentially offensive or harmful material, and ensuring appropriate protection of fairness and privacy as well as the accuracy and impartiality of broadcast content.
- ◆ In all its activities, the regulator should also give proper weight to:
 - ◆ the protection of children and vulnerable persons;
 - ◆ the prevention of crime and public disorder;
 - ◆ the special needs of people with disabilities and of the elderly, of those on low income and of persons living in rural areas;
 - ◆ the promotion of efficiency, including efficient use of spectrum and telephone numbers, and the promotion of innovation.
- ◆ the Better Regulation Taskforce “Principles of Good Regulation”

2.2.2 The White Paper sets out the proposals in more detail. It is acknowledged that, these objectives give rise to a range of proposals, which are generally supportive of one another. This initial regulatory impact assessment will thus address many matters in general terms since much of the finer detail will be determined at a later stage. A more detailed assessment will be undertaken taking account of the responses to this document and the White Paper (and made publicly available) as and when the proposals are spelt out in more detail as we approach legislation.

2.2.3 The proposed regulatory framework will consist of:

- ◆ The present Competition Act and Competition Commission, relating (as they do for other parts of the economy) to matters of ownership in the communications sector;
- ◆ A new independent regulatory body, OFCOM, responsible for both economic issues and content regulation and management of radio spectrum;
- ◆ A consumer panel to advise the regulator on matters from a consumer perspective; and
- ◆ self-regulatory bodies, established by the industry and registered with the regulator, to deal with issues where statutory regulation is inappropriate or ineffective.

2.3 Options and the risk assessment

2.3.1 The government has decided that a fundamental change to the system of communications regulation will better serve the interests of the consumer and the industry than the other main option of leaving the system unchanged. The reasons for this are set out in 2.1 above.

2.3.2 Relevant costs cannot be separated for most elements of the existing framework, and no quantified analysis of risks is yet practicable. **We welcome views from industry and consumers on the risks inherent in the policy proposals we set out in the white paper and, where possible an economic valuation of them.**

3. EXPECTED BENEFITS

3.1.1 The Government judges that the proposed new regulatory framework will provide benefits to consumers, business and the economy as whole. Developing and sustaining dynamic competition is one of the government's key objectives for the communications sector, providing the best incentives for innovation, efficiency and lower prices. Regulatory measures will also produce high quality, widely accessible content. This will help to position the UK as one of the leaders in the communications revolution and information age.

3.1.2. Most of the benefits are implicitly premised on trying to avoid and rectify potential market failures in the communications and broadcasting sectors. Examples of market failures include:

- \$ Some products in the communications and broadcasting industry might be under-provided in a free market since non-payers cannot be excluded from the benefits. The benefits in any case may, unit by unit, create utility for each and every consumer, rather than a single consumer. The ability of suppliers to overcome the first (excludability) condition has increased significantly in recent years through advances in technology.
- \$ Firms with significant market power can reduce output, raise prices and reduce innovation compared to what would occur under efficient competition. In communications markets, some factors tend to limit the number of players, though the transition to digital technology may give scope for additional players. The last effect is, however, limited and network and scale effects may mean efficiency demands few suppliers; a role for the regulator clearly remains: to promote competition when it is feasible and regulate when it is not.
- \$ Asymmetric information allows suppliers to exploit (less knowledgeable) consumers and more generally excludes some consumers from access to new technology, since they cannot judge its value until after consuming it.
- \$ Externalities from the existence of, or potential for competition or plurality of providers, include the assurance of availability of a range of independent services of information and opinions to sustain a healthy, functioning democracy. However, in the absence of potential new entrants to the market, concentration of ownership might mean that the number of sources of independent views might

be limited and this loss of plurality could have wider effects on society and democracy.

3.1.3 The occurrence of, or potential for, these market failures means that markets may not produce the best outcomes for society. The government recognises that market failures in the communications and broadcasting sectors can change over time due to the rapidly changing technology, so the regulatory framework needs to be flexible to adjust to the dynamic nature of these sectors. Therefore, the Government wishes to ensure the new regulatory structure is well placed to deal with any new market failure that may arise.

3.2 Benefits to consumers

3.2.1 One of the three key objectives of the White Paper is to safeguard the interest of consumers. A new improved regulatory framework should help to promote competition, innovation and quality in the communications and broadcasting sectors, whilst ensuring there is universal access to diverse services of the highest quality. Regulatory duties and requirements to improve access to communication services for those with disabilities will be maintained. The proposed regulator will continue to ensure that telecommunication services used by the majority and essential to full social inclusion will be made available to everyone on reasonable request and at an affordable price.

3.2.2 The (piecemeal) development of the existing regulatory framework reflects persistent incidences of market failure. More specifically, the proposed framework will be coherent, flexible and designed to ensure that consumers interests are paramount. Some of the powers envisaged for the regulator are intended to ensure that public service broadcasting channels are given due prominence and can be accessed easily, irrespective of the broadcasting platform. The main consumer benefits are:

- \$ Improved consumer choice derived from a regulatory framework that promotes new innovation and additional sources of information. Whilst the diversity and plurality of broadcasting will ensure that the consumer tastes and preferences are adequately catered for, more effective and coherent regulation to correct market failure and ensure delivery of public service content.
- \$ Competition is the best way to promote innovation, higher product quality and lower prices. In order to safeguard the consumer interest, the general principle is to promote competition where it is possible and to regulate when not. In the absence of competition, more effective regulation should seek to achieve the same effect. As the market develops regulation may need to be rolled back to encourage competition where innovation and new technology makes it feasible. Consumers will gain from the assurance that while there will be a unified regulatory framework and industry regulator for communications. A specific example of the need for intervention to secure change is the need for government to promote the establishment of Open University, which would not have emerged spontaneously

- § Other aspects of the framework are intended to benefit specific groups or ensure the continuation of specific output guarantees deemed vital to the sustaining of an informed, inclusive democracy. There will be a maintained commitment to ensuring public service television channels are available to more than 99% of the population, free at the point of consumption both before and after digital switchover; and support for the universal availability of radio services. Technology developments are offering new opportunities for the provision of new information services. Industry is investing heavily in higher bandwidth technologies that offer faster access to information. The government recognises that they must support this innovation so that all consumers can benefit from quicker and better services and not just a privileged few.
- § A further, vital, component of the basis for having a regulatory framework is that which resides in the “merit goods” concept. Specifically there is an argument for government responsibility for ensuring the provision of outputs, the merits of which cannot be assessed accurately by the consumer, especially before consumption. One very specific facet of this argument is that which pertains to ensuring that the electorate in a democracy has good access to news and related outputs vital to keeping that electorate well-informed. These general and specific arguments underpin the public service broadcasting obligation.

Respondents are invited to submit any information they have on the prospective size and value of these benefits.

3.2 Benefits to Industry

Benefits to industry may be different for different suppliers in different sectors. Competition encourages business to increase product quality and lower prices, whilst also encouraging business to undertake innovation to stay one step ahead of their competitors. The (non-consumer) benefits of increased competition would thus accrue to those firms newly entering (parts of) the communication sector and those in the sector who will be able to source cheaper supplies. The incumbents will benefit from a more flexible and coherent regulatory structure.

The potential for cost reduction arises from several parts of the proposals:

- ◆ The new regulatory framework should help to promote greater clarity and certainty as compared with the existing piecemeal system of regulation. Currently, nine different regulators operate a number of regulatory regimes. Convergence has resulted in the overlap of some of the duties of the regulators creating confusion for business and citizens alike. Therefore, we propose to set up a regulatory framework that is light-touch and flexible, but robust. Making the regime compatible with the convergence expected over the next decade or so. Transparency and flexibility are seen as essential to reduce overall regulatory uncertainty whilst being able to safeguard the consumer interest;
- ◆ Communications have always been regulated in detail to create competition, underpin high quality content, and ensure access. The proposals in the White paper will substantially reduce the burden of regulation, whilst achieving the same aims in modern market conditions. We realise that, due to innovation and technological change, the scope and degree of regulation may need to be rolled

back further in the future. This will protect consumer and business interests by removing un-necessary burdens on business. The single regulator focus simplifies the rules for business and their interaction with the regulator.

- ◆ Encouragement of self-regulation. Where possible the regulator will be able to take a more hands-off approach to allow self-regulation. This provides business and consumers with added flexibility within set boundaries;
- ◆ Increased flexibility to meet public service broadcasting obligations. The ITV companies will not be subject to such detailed, rigid regulation in meeting their public service broadcasting obligations.
- ◆ The BBC will be subject to external economic regulation to ensure a level playing field with its commercial competitors.

Respondents are invited to submit estimates of the scale and value of any of the categories of benefit suggested above.

3.3 Benefits to Taxpayers and the overall economy

Over the next decade or so the amount of business conducted over the different communications platforms will grow rapidly. Having a dynamic communications sector will place the UK as one for the world's leaders in the information age. Not only will it be good for consumers, but also for the UK's international competitiveness.

High speed, innovative networks increasingly will only prosper if there is good quality content to make people buy into the network. Digital technologies increase substantially the amount and range of media content on offer. The new regulatory structure will continue to ensure a true diversity of output is achieved

The rationalisation and harmonisation of the regulatory framework will allow a holistic, rather than piecemeal view of regulation. It should be more cost efficient and be a much lower burden upon companies.

3.4 Quantifying Benefits

It is not possible to quantify the benefits identified above at this stage. The White Paper takes a very high level view of the future of regulation. As we draft more specific proposals, it will be possible to take a better view of the monetary benefits. However, many of the benefits of the system are very hard to quantify; for instance, an informed electorate, social inclusiveness, the protection of children and the vulnerable. **We would welcome comments on how one might quantify these wider social benefits.**

4. COSTS

4.1 Costs to Consumers

It is not foreseen that consumers will suffer detriment from these changes. The

proposals are designed to safeguard the consumer's interest. The government is also keen to ensure the disadvantaged groups in society are not excluded from the wider social and economic benefits from the new information and broadcasting sources. **Respondents are invited to provide information on prospective detriments which may arise.**

4.2 Costs to Industry

Most of the proposals are deregulatory and will reduce burdens on business. However, circumstances may develop over time when a market failure warrants a tightening of the regulatory regime. There may be additional costs to industry, if, for example, the regulator were to decide to impose tighter rules than currently exist in a particular set of circumstances. The regulator would embark on such a strategy only if it was assessed that the benefits justify the costs. **Comments are invited on the scale of any such burdens.**

There are likely to be additional one-off costs attributed to familiarisation with the new regime. This would involve being aware of the new set of proposals and dealing with a unified regulator. The benefits of the new regulatory regime are likely to far outweigh these learning costs. **Information is invited on the scale of any such one-off adjustment.**

4.3 Costs to Taxpayers and the overall economy

Total costs to taxpayers are likely to be small. The proposals for one new regulator will be cheaper than the current regime due to lower overhead costs and management efficiency savings. However, there may be some initial (temporary) set-up costs, through moving to new accommodation and re-organising workloads. Overall, we expect these costs to be more than offset by the benefits of the new regulatory regime.

4.4 Quantifying costs

The majority of the proposals are designed to be deregulatory so as to reduce the burden of regulation on business and to reduce uncertainty. As with the benefits, quantification is neither appropriate nor feasible at this initial RIA stage. **However, we are interested in receiving the views of interested parties during the consultation period of the likely costs to consumers, business and the economy.**

5. CONSULTATION

The White Paper seeks to obtain comments on the proposed regulatory framework through consultation. As far as this initial regulatory impact assessment is concerned, this is an ideal opportunity to seek specific information on the nature, size and value of the costs and benefits that might arise from the proposals. Such information will be very important in assisting the development of the full RIA in due course.

We value consultation on the proposals in the white paper. Responses to consultations are invaluable in informing policy development, particularly in a complex area subject to rapid change. Consultation was invited in the Green paper

(1998) and responses were received in 1999. We ran a further consultation in spring 2000. We aim to publish more detailed proposals for further consultation in summer 2001. **To assist that process, we seek comment on this document and the white paper within two months of publication.**