

Executive summary

This document sets out the Government's preliminary views and reasoning on the likely implications of digital convergence for the legal and regulatory frameworks covering broadcasting and telecommunications. It is a consultative document designed to take the debate about convergence on to the next stage from the broad issues raised by the European Commission's own helpful consultation.

Our Information Age and convergence

Digital technology is rapidly being adopted for the reproduction, storage and transmission of information in all media. This means that any form of content (still or moving pictures, sound, text, data) can be made available via any transmission medium, eroding the traditional distinctions between telecommunications and broadcasting. Already it is possible to receive television or radio over the Internet, while digital televisions will have some of the capabilities we currently find only in computers.

The greatly increased capacity and versatility of networks provides opportunities to improve the delivery of existing services and to create new ones. Consumers will have easier access to a wider range of content through various transmission media. They will be able to select the services they want at a time convenient to them and to benefit from enhanced two-way communication (including on-line purchases) through interactivity. The potential benefits to the citizen/consumer, to business and to government are significant.

The recent policy statement, 'Our Information Age', sets out how the Government intends to harness the potential of these developments across the board to secure the considerable commercial benefits they offer while ensuring they benefit the whole of society.

In this document we focus on one strand of this programme: those elements of the legal and regulatory framework for broadcasting and telecommunications affected by these developments. Our system of regulation faces new challenges as delivery systems adopt a common technology and assume common capabilities. Some new services fall within the remit of more than one regulator, creating a risk of excessive and/or inconsistent regulation. Where an identical service is transmitted over different delivery systems, it may be subject to different regulatory regimes. The development of new services, and their wide availability, must not be jeopardised by such regulatory overlaps and anomalies.

Despite these potentially far-reaching changes, the public policy objectives which underpin regulation will remain largely the same. The Government will attach particular importance to:

- serving the consumer interest
- supporting universal access to services at affordable cost
- securing effective competition and, through this and other means, the competitiveness of industry as a whole
- promoting quality, plurality, diversity and choice in services
- encouraging investment in services and infrastructure
- providing economically efficient management of scarce resources.

This Green Paper explores and seeks views on the way these objectives can and should be secured in the digital age.

The pace of change

The pace of change is not uniform. The practices of some have been – and may well continue for some time to be – little affected, whereas others are being rapidly transformed. The debate on convergence often therefore polarises, with policy-makers sometimes asked to choose between two visions:

- a radically new regulatory structure is needed to avoid barriers to competitiveness because convergence is with us
- the status quo will suffice because mass markets have not yet converged to a significant extent.

The Government considers this a false choice. The fact that technologies are converging does not mean that the markets which employ them become indistinguishable. Virtually all broadcast entertainment and information services are still consumed on radios and televisions. It may be some time before most households have digital television, offering hundreds of channels and interactive services, or computers capable of receiving good quality audiovisual material via the Internet. Even then, consumers may not readily regard their TVs, radios and computers as interchangeable for all purposes.

From the providers' perspective, digital technology is already widely deployed before services are presented to the consumer. So convergence is already bringing significant opportunities to:

- gain economies of scope and scale across different areas of the business (eg production and distribution)
- gain value by extending services from one medium to another as their technical capabilities become increasingly interchangeable
- undertake alliances, mergers and significant investment to exploit these strategic opportunities.

From the consumers' perspective, the picture is far less clear:

- mass markets for digital services do not yet exist
- how they develop depends on the behaviour of individuals and communities reacting to new technology and services
- the behaviour and expectations of consumers will not change overnight.

It therefore seems likely that a spectrum of distinct elements of provision, reflecting established patterns of consumption, will persist for some considerable time to come. At one end of this spectrum there is likely to be a segment which looks much like the universal broadcast television as consumers know it today. At the other, there is likely to be a segment with many of the characteristics of the Internet.

The challenge to regulation

This Green Paper sets out the Government's approach to the regulatory issues which arise from convergence. Rather than making a false choice between tearing up our regulatory structures or sticking to the status quo, we will follow an evolutionary path. We will work with the regulators to ensure that they co-operate to manage overlaps and anomalies. Where those problems cannot be solved by regulators operating within the current legislative framework, we will, if necessary, amend the legislation on a case-by-case basis in advance of possible wider change.

The first requirement is to provide greater coherence in economic regulation across all digital delivery media and all parts of the converging value chain. Foundations for this are already being put in place with the new Competition Bill, complemented by appropriate sector-specific regulation, and the existing merger control provisions of the Fair Trading Act. The regulators and competition authorities (OFTEL, ITC, OFT and DTI) are committed to working together closely on matters affecting the converging sectors, and have announced the establishment of a co-ordinating group. That group will seek to identify at an early stage the regulatory issues which arise from new ventures, and to ensure that regulatory responsibilities are clear and handled in a coherent way. Regulators in these sectors will be expected to adopt an open and transparent approach to their work, and involve consumer interests as set out in the Green Paper on Utilities Regulation.

Secondly, it is essential to reassess the present regulatory distinctions based solely on the method of delivery to the consumer, and to take steps to provide greater consistency in the regulation of similar material delivered via different mechanisms. However, different segments of consumer demand will continue to merit different regulatory instruments so long as consumers expectations differ between them. The Government should not, for example, necessarily attempt to extend existing detailed regulation of broadcasting to new on-demand subscription services. Effective self-regulation will have an important role, with 'backstop' enforcement provisions as appropriate.

Public service broadcasting will remain important as a benchmark of quality and as a guarantee of plurality, diversity and impartiality across the whole range of programming. There can be no certainty that the market will provide the necessary incentives to meet consumer expectations in these respects, and there will be a continuing need to ensure that they are secured through other means.

The key issues for consultation

The adequacy of structures for the present

The Government believes we should proceed in an evolutionary way:

- in economic regulation, building on the Competition Bill powers and progressively withdrawing from additional regulation down to the minimum needed to deal with such issues as bottleneck control, interoperability and universal access
- in cultural and related regulation, evolving to regulation based on categories of service which reflect differing consumer expectations.

Work is in hand to augment the current framework, making it more appropriate for the future:

- we are enacting the Competition Bill, which will provide tough new competition powers across the whole economy, including the converging sectors
- we are progressively lifting the restrictions which prevent telecommunications operators from carrying broadcast entertainment nationwide
- we are planning a Secure Electronic Commerce Bill to provide the basis for the commercial use of encryption and a legal basis for digital signatures
- the principal regulators – OFT, OFTEL and ITC – have announced plans for closer collaboration.

The key consultation questions are:

- Do consumers and industry agree with this evolutionary approach to development in the short term?
- What else can be done to make current structures work better?

What changes to regulatory aims and methods are likely to be necessary in the medium term?

As new services become more significant, changes to regulatory aims and methods will be needed. Making changes early in the process might help to ensure a regime appropriate to the digital future at an early stage. It could give the UK ‘first mover’ advantages. However, it is impossible to be sure how the markets will develop. We risk developing a system of regulation around a prediction of what the digital world will look like which, if it turns out to be mistaken, will leave the regulatory system obsolete. As noted above, investors in new services, and those who run the traditional services which will remain important, require regulatory certainty and stability, which would be undermined by further major legislation so soon after the 1996 Broadcasting Act. As long as the current structures and aims do not distort the penetration of new products, the Government will favour an evolutionary approach to regulatory development, building on the strengths and flexibilities of the current system.

It is essential to the success of this approach that the effectiveness of regulation and its impact on the development of markets is closely monitored, and the need for detailed controls constantly reviewed. The system must adapt promptly to changing conditions. We aim to ensure that regulation remains appropriate at the minimum level necessary to achieve its clearly defined purposes. Our aim is to chart a clear course for the evolutionary development of the existing framework through this period of change, while retaining flexibility to deal with the uncertain pace and direction of change.

The key questions are:

- What will be the key regulatory issues in the digital future?
- What regulatory approaches are likely to be appropriate?

Timing

The pace and precise shape of these developments are unpredictable. Government should not second guess the market. Government should not regulate for a future which may not be as we expect. But nor should it maintain a regulatory framework that hinders the development of new services.

We seek to have in place a regulatory framework which enables and encourages the development of new services. The Government believes that the present system has sufficient flexibility to meet our aims for some time to come. How long this approach remains viable depends on the speed of development of the market and the ability of existing regulators to work together to deal with the issues which arise. In planning for the future, it is important to keep this under review, and to consider when more fundamental change might be necessary.

The key question for consultation is:

- How soon, and under what circumstances, will it be necessary to make fundamental changes to regulatory method and structure?

What are the implications for the regulatory structure?

Commitment to a particular institutional model would be premature. However, greater co-ordination will be increasingly necessary, and there may come a point when the present structure is unable to provide the necessary degree of integration of the decision-making processes. A number of models are possible for the eventual structure of regulation, for example:

- separate regulators for infrastructure and for content-providing industry
- separate regulators for economic and competition issues on the one hand and for cultural and content issues on the other
- either of these or other possible models, subject to a co-ordinating body spanning both areas of regulation (including perhaps a wider range of content/cultural regulatory bodies) to ensure coherence and consistency
- a single, fully integrated regulator whose internal organisation might be split along the lines suggested in the first two points.

The key consultation issue is:

- What regulatory structure is most likely to be appropriate once markets and services become substantially converged?

Next steps

Views are invited by 30 November 1998. The Government intends to publish a follow-up statement of its conclusions early in 1999.