

Roads to Digitopia

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JULY 2000, London. One hundred invited 'media stakeholders' gather for a day in a windowless room beneath the Department for Trade and Industry in Westminster. These representatives from the broadcasting, telecoms and multimedia industry have been summoned to debate the future of media and communications regulation in the UK. A Communications White Paper is to be published in the winter, and legislation to replace the current Broadcasting and Telecommunications Acts will follow. The challenge for the legislation is clear. Familiar communications media such as television, the Internet and telephones are merging into 'converged' communications, and spurring the development of new services, new products, even a new economy. The government argues that communications regulation should be reformed to facilitate convergence by ensuring that regulation does not block the development of new services. At the same time—and here is the difficult part—they must protect the delicate ecology of broadcasting, by ensuring that new frameworks are put in place to promote the public interest in safe, quality broadcasting.

Having already announced a target date of 2008 for switch-off of the analogue signal, the government now has to encourage the transition to digital broadcasting. But reformers are realising that they need smarter policies to get the best digital deal for the public, for example by encouraging Internet access via TV. If in 2008 we have 100 per cent digital, but that includes a majority of homes that have access only to a tiny subsection of the Internet, this will neither spur the

new economy nor promote development of public e-services, like national curriculum materials online. If a significant proportion of digital homes have access only to a limited number of shops and banks from their digital television, the goal of an any-to-any information infrastructure will still be far away and the use of the Internet's educational potential will serve only the already lucky minority.

The stakeholder meeting is no side-show about culture but a key plank of New Labour industrial policy. As Janice Hughes put it in her presentation to the stakeholder meeting: 'The convergent media, telecommunications and computing sectors . . . represent more than £100bn in turnover and more than £11bn in direct and invisible exports. By 2002, the UK's convergent content and digital industries could represent economic activity totalling £120bn and employing more than 1.5m people.'¹ Four ministers are present, reflecting the importance of the exercise.

Many of the politicians who have been loudly enthusiastic about the communications revolution and the new economy are now contemplating large-scale reforms to facilitate their development. The proposition is a tricky but potentially rewarding one: to bring together broadcasting and telecoms legislation under one regime, reform competition regulation to promote innovation, and remove the tangle of regulation that confuses and hobbles industry. Will the government back its rhetoric with policy reform to enable the process of convergence, spur innovation and shape the emerging information society according to progres-

sive values? Or will this round of legislation be just another Broadcasting Bill, leaving detailed legislation to a later date? The camps are already forming in a debate that will follow the legislation through Parliament.

The commitment to reform runs deep, because New Labour loves new media. This is partly because it resonates with the brand. The 'modernising project' within the party became a slogan and identity marker for the government as a whole. The PM-driven *Modernising Government* and electronic service delivery agenda can be promoted as ideologically neutral, technocratic and business-friendly. For some in the labour movement, the new economy and the information society appear to have functionally replaced socialist utopia.

But the main reason why communications reform is so significant lies in a growing consensus on the importance of the new economy. This holds that—for all the hype and dotbomb disasters during the current consolidation—ICT developments are fuelling a major economic shift that could lead to a sustained period of high economic growth. This theory requires governments urgently to create an environment conducive to e-commerce.

The Electronic Communications Act has already cleared the ground by providing for security and digital signatures. But the laws and institutions that regulate broadcasting and communications remain fundamentally concerned with a world in which copper wires carried mainly voice phonecalls and the airwaves carried the BBC plus (if they behaved themselves) a few commercial players. They are simply not designed for a world in which global access to audiovisual content, shopping, wireless and other converged services becomes the norm. Communications reform, a broad cross-section of opinion has it, could be a crucial enabler: providing the competitive environment to spur rollout, the

open environment to bring new entrants into the market, and streamlined, predictable regulation for industry.

But this is not only about industrial policy. The networks carrying data also carry broadcasting—our cultural crown jewels—now often reduced to an undifferentiated category of 'content'. So some worried about the threats represented by the new technologies: their priorities were to shore up great and troubled institutions such as the BBC, and to protect public service broadcasting during the transition to digital. But few could deny that the system of regulation, for all its merits, was limping into troubled times. The Independent Television Commission and the telecoms regulator, Oftel, have endured a rather tense and competitive relationship, jockeying for jurisdiction on the new media regulatory issues.

Despite the zeal of the reformers, there was a feeling of fatigue and demobilisation in the air when the media stakeholders met. In the months before the July meeting the assembled CEOs of media companies, policy advisers, academics and regulators had been consulted almost weekly. The Independent Television Commission and the Broadcasting Standards Commission invited views on the future of Internet regulation; the Competition Commission called for responses on mergers in cable and also the ITV companies; telecoms regulator Oftel had almost a consultation per month. And that leaves out the European Commission's draft directive. Even IC-STIS, the regulator of phone sex lines, had been busy co-ordinating the archipelago of communications regulators that seemed to be drowning under successive waves of technological change. One topic featured in all the consultations I heard over lunch: too much consultation was leading to regulatory overload.

The coming bill might contain one answer to consultation fatigue: merge the various communications regulators

into a single body: Ofcom, which would regulate both content (sound, images, text) and carriage (wires, satellites). Such streamlining of the old tangle of regulatory authorities and reducing the burden on industry is a priority for the legislation. Competition regulation is another key question: one camp says that general competition rules can replace detailed oversight in the new digital world, and that old structures such as cross-media ownership rules could be torn down if Ofcom were made strong enough to deal with mergers. While these details must be got right, and we should not underestimate the continuing importance of placing limits on ownership of media companies, the arguments for Ofcom are compelling. No wonder, then, that the representatives of the dozen or so regulators that such an institution would replace were the most vociferous of participants in the stakeholder meeting. They led a camp of opinion arguing that the government should do nothing: that it was too soon to legislate, and that it would be wiser to wait and see how the market develops.

It remains to be seen whether the government will face down the 'forces of conservatism' in this particular field, but there are indications that it will. Communications reform lies at the centre of several government objectives, and is particularly crucial for electronic service delivery, a key aspect of Blair's *Modernising Government* reforms. It may be plausible to make all government services available electronically by the target year of 2005 and benefit from huge efficiency gains, as banks have; but that will look cosmetic and unfair unless the policies are put in place to broaden public access to the technologies—principally digital television and the Internet—which are necessary to access them.

Culture secretary Chris Smith has said that he would be happy if digital TV offered a gateway to the Internet when analogue TV is switched off within a

decade. Tony Blair and the first e-envoy, Alex Allen, have announced a target of universal Internet access by 2005. These laudable objectives depend on a proactive approach to such issues as digital TV licensing, the delivery of the government services portal, and the future of taste and decency regulation. Mass access to the whole Internet could provide an excellent spur to e-commerce, electronic service delivery and the new economy, but will explode in the face of the government if steps are not taken to empower the public to use the self-regulation tools available and inform them of their responsibilities for children. Without significant reforms, competition regulation could be weak and flatfooted, hindering innovation and rollout, and the government could appear equally unable to deliver on broader public expectation: that there will be easy access to free, high-quality public content and a degree of regulation where users expect it. The doom-mongers paint a gloomier picture, arguing that our delicate public service broadcasting ecology is about to be replaced by a rampant commercial free-for-all.

Ironically, a successful industrial and infrastructure policy now depends upon the government getting taste and decency right. The potential for press and political uproar about child safety or taste and decency may make the government reluctant to take positive action to reform the structure of regulation to spur e-commerce. Access to smut on the net and conditional access TV could become politically costly if there were a Bulger-type scandal that could be linked to communications regulation reform. In other countries such as Australia, populist politicians have attempted to regulate the net. They failed, and at the same time damaged their domestic Internet businesses. While UK regulators have generally accepted the futility of trying to regulate all that appears on the box in the living room, the public—digital revolution or no digital revolution—still

expects Auntie to vet the familiar channels, it and would hold the government responsible for a failure in protection.

It was an accident of history that video and audio delivered to the home could be—and justifiably should be—regulated. The fact that such regulatory power came to rest in the hands of public institutions was due to the role of government in licensing use of a scarcity of broadcasting spectrum, which meant that there were just a few public channels that we assumed would be seen by all, including children. Telephone calls were considered private and free from regulation. The government got involved with broadcasting because it could dish out the spectrum and deny it to those who were deemed unacceptable. Actions to restrict communication freedoms were justified, and the public held it to account because broadcasting was invasive, public, influential and pervasive.

When satellites, telephone wires, cable and a host of other means can deliver video and audio, the regulation game shifts entirely. The long-term outlook is clear: while core linear broadcast channels are likely to remain popular, the new technologies create new and multiple ways of delivering audiovisual material to the home, erode the boundaries between public and private communication, and at the same time give users themselves more control. Where parents can use pin numbers or Internet filters to protect children from harmful content, it becomes less justifiable to permit delivery only of material suitable for children before the 9 p.m. watershed, for instance.

Responsible use of new media depends on parents using filters, and the public complaining when illegal material is found. There is evidence that they will do so given the appropriate information: but the tangle of regulators militates against that. Fewer than 20 per cent of Internet users have heard of the Internet Watch Foundation, the industry-run

body with responsibility for regulating the Internet.² The new regulator must be legitimate, transparent, accountable and well known to the public.

None of these arguments is new. The novelty with the current legislation is that convergence is actually happening now, and the regulators are beginning to run into some genuine problems. It is not immediately evident which of the existing regulators should take care of the new aspects of the communications industry, such as electronic programme guides and conditional access systems. Despite the best efforts of regulators to co-operate, convergence is becoming a battlefield for a turf war among the existing communications regulators, which are organised according to the old technologies of television, film, radio and telecommunications. The need for decisive government action is clear.

But the barriers to reform were already being raised. Although industry wants clearer, quicker, more efficient regulation, some players are worried that regulators might be too strong. And what about the Beeb? The BBC is currently regulated by its own board of governors. If it decides to dig in its heels, and promote its own, rather than the broader public interest, the Corporation could oppose any shifting of the powers of the board of governors to another regulatory authority. Greg Dyke's Edinburgh speech outlined his intention to oppose external regulation of the BBC. This could pit the communications reformers against that most powerful institution.

The legislation has to deal with broadcasting and telecoms together. Those drafting it need a steady nerve if they are to find a legislative structure that will protect the vulnerable values of public service broadcasting, but at the same time actively encourage the transition to digital.

Notes

- 1 Janice Hughes, 'Equity and Access Delivered in a Market Context' paper delivered to the DTI/DCMS stakeholder seminar, 3 July 2000. Available on the DCMS website.
- 2 Damian Tambini, *Digital Danger*, London, Institute for Public Policy Research, 2000.