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This is the first part of a 2-part article on the United Kingdom's Communications White Paper. This first part examines the proposed regulatory framework and content regulation issues and the second part, to be published in the next edition of the *ABA Update*, will look at the UK's approach to access and competition issues.

Review of UK Communications White Paper and comparison with international regulatory models

In December 2000, the UK Government released its *Communications White Paper* in which it sets out its strategic responses to the new communications environment and its vision for a new regulatory framework.

Proposed regulatory framework

The UK Government intends to simplify regulatory structure, while maintaining some flexibility to regulate individual media for as long as required.

The proposed new regulator OFCOM (or Office of Communications) will replace the Broadcasting Standards Commission, the Independent Television Commission, the Office of Telecommunications, the Radio Authority and the Radiocommunications Agency.

Its powers will subsume those of the existing competition regulators, Office of Telecommunications and the Independent Television Commission, allowing it to take appropriate and effective enforcement action when necessary. The amalgamation of these agencies is to address criticism that, '... inappropriate legislation and overlapping agencies have throttled competition and growth in the industry'.¹

This approach, that economic regulation and content regulation in the industry are synonymous, mirrors that already adopted by the USA (which has the Federal Communications Commission), Canada (with its Canadian Radio-Television and Telecommunications Commission) and more recently, Malaysia (with its Malaysian Communication and

Multimedia Commission). Australia retains separate agencies to regulate the broadcasting and communications industries.

The proposed structure has also attracted criticisms such as the way in which organisations such as the BBC and the Internet Watch Foundation will relate to OFCOM.

A three-tiered approach

The White Paper proposes a three-tiered approach to regulation.

The first tier establishes minimum standards for all broadcasters on content and quality, impartiality and accuracy of news services, the protection of minors and some particular requirements for programming and access.

The second and third tiers set out the obligations that will apply to public service broadcasters. OFCOM will regulate original production quotas, regional programming, availability of news and current affairs at peak times, and the provision by broadcasters of an annual statement of programming.

Public service broadcasting?

In Australia the term 'public service broadcasting' may be taken to mean the national broadcasters, the ABC and SBS, however this is not the case in the UK. The release of the White Paper has reignited the debate on what exactly public service broadcasting is. While consensus has not been reached, it is considered to:

- be an 'implicit contract' between the public and the broadcaster, in which viewers accept that television channels

have either direct funding or certain obligations in return for airing public service television

- remedy deficiencies in the market and supply services the market would otherwise not provide

- provide informative, educational and entertaining programming in a way that the private sector, unregulated, would not;

- encourage creative services in the UK both in-house and from the independent sectors

- offer diversity and choice in programming

- encourage creative individualism

- attempt to reach underserved or unserved areas in the market, and

- provide wide-ranging UK-made programming.²

BBC One, BBC Two, Independent Television, Channel 4 and Channel 5 are all considered to be public broadcasting services. Each provides a free-to-air service and this is expected to continue, even after the full transition to digital television.

The BBC is arguably the largest media influence in the UK but its exclusion from the proposed regulatory framework has attracted criticism from various sectors.

Some critics argue that the BBC should be brought under OFCOM's remit in order to create a level playing field for regulation in the market. Media reports suggest that this will be the line taken by a report which is being prepared by the Commons Select Committee for Culture, Media and Sport.

Under the White Paper model, however, the BBC Board of Governors is to

retain its existing responsibilities for content on all BBC services and sole responsibility for delivering the BBC's public service remit. OFCOM will regulate some aspects of the BBC's output such as unresolved complaints by viewers, its quotas for independently commissioned programs and its targets for regional programming.

Objectives

The White Paper identifies five principal objectives for the communications industries and their regulation in the UK. Two of these relate to content matters:

- securing quality content, and
- protecting consumers and safeguarding interests of citizens.

Securing quality content

The White Paper sets out strategies to ensure high quality services are made universally available and address the needs of a modern society in an era of convergence. It aims to maintain and strengthen public service broadcasting in the digital age within a more relevant regulatory framework. To this end, consideration will be given to:

- spectrum scarcity, and its effect on the continuation and competitiveness of public service broadcasting
- the introduction of digital services and their effect on the scope and audience of public service broadcasting, and
- cultural justifications associated with public service broadcasting.

Each of these considerations may have the effect of shaping the quality of broadcaster's programming policies, addressing any deficiencies in the market regarding the supply of diverse services, the quantity of UK-made programming and the choice of quality services available. These considerations may also ensure that local and regional content is not only maintained but strengthened in the new regulatory environment.

In Australia, commitment to quality content is strengthened by the legislative framework of the *Broadcasting Services Act 1992*. It imposes such requirements as Australian content quotas, criteria for the evaluation of children's television

programs and encourages the development of industry codes of practice in conjunction with the ABA.

Safeguarding the interests of citizens

The second objective says the freedoms and advantages that result from new technologies must be balanced with consumer protection. To achieve this balance, OFCOM will be responsible for maintaining content standards in communications and the electronic media.

Its approach is to take account of the differences between services, their spheres of influence and people's expectations of them. These matters will be reflected in statutes and codes of practice and reinforced by industry self- and co-regulation. Citizens' interests will be further addressed by independent research into content matters and OFCOM's adjudication of complaints regarding fairness, privacy, accuracy, impartiality and political advertising.

OFCOM's objectives will be to:

- maintain freedom of expression and the right to impart and receive information and ideas
- ensure the protection of children in a digital television environment that has the potential to erode the 'watershed' hour on UK television that currently protects children from unsuitable material broadcast on television after 9 p.m.
- prevent crime and disorder
- protect privacy
- ensure consumer protection, and
- maintain accepted community standards.

Regulating the Internet

The White Paper proposals for Internet regulation are of particular interest to consumers in a market of converging technologies.

The White Paper acknowledges the pioneering role of the Internet Watch Foundation in developing responsible self-regulation by the Internet industry, in partnership with the UK government. The White Paper states,

The UK has led the field in this area, using

the strength of UK criminal law and effective international co-operation, through organisations such as the Internet Watch Foundation ... (which) is regarded as a model internationally.

The IWF hotline deals with illegal content, particularly child pornography. It does so through industry cooperation, links to law enforcement and through the growing and increasingly coordinated network of national hotlines. It also acknowledges that other ways of dealing with potentially harmful material are equally important as hotlines for illegal content. These include the use of an internationally accepted labelling and filtering scheme, and through community education and awareness campaigns.

OFCOM's role will be to continue to promote effective mechanisms for dealing with illegal material on the Internet both through hotlines and labelling and filtering initiatives to assist consumers in controlling the content they receive. These initiatives are being co-ordinated by the European Commission.

In advocating a continuation of the current approach, the White Paper relies on research indicating that, in relation to the Internet, people in the UK do not want third party regulation. The research shows that they want community education and a choice as to what filtering and screening systems they can use.

While the White Paper foreshadows the challenges that come with convergence, it does not provide a strategy to address the challenges posed by technology which is increasingly able to deliver the same content via different technologies; for example, access to movies, video, music and other media through the Internet.

There is likely to be a desire for and a need to provide consistent information about content and for effective tools for parents and other care-givers to use in safeguarding the interests of children against illegal content and prohibited material on both old and new forms of media.

¹ The Economist, 'New Labour, New Economy', 16 December 2000

² Broadcast, 16 February 2001 pp. 17-20