REVISION OF THE TELEVISION WITHOUT FRONTIERS DIRECTIVE

H3G COMMENT ON ISSUES PAPERS
05.09.2005

This paper presents comments by the Hutchison 3G companies (together, H3G) on the Issues Papers presented by the European Commission DG INFSO on the forthcoming revision of the Television Without Frontiers (TVWF) Directive.

The H3G operating companies in the EU are: Hi3G Access AB (Sweden); H3G Spa (Italy); Hutchison 3G UK Limited; Hutchison 3G Austria GmbH; Hutchison 3G Ireland Limited; and Hi3G Denmark ApS.

Hutchison is a leading player in 3G mobile multimedia telecommunications operations at the global level. The Group has 3G licenses in 10 markets: Australia, Austria, Denmark, Hong Kong, Ireland, Israel, Italy, Norway, Sweden and the UK. Hutchison was the first operator in Europe to launch 3G services in Europe, in 2003. Our 3G services were first rolled out in the UK and Italy in March 2003, and subsequently in Austria, Denmark, Sweden, and most recently in Ireland. The Group has recorded over 9 million customers worldwide (August 2005), and is one of the fastest growing telecom companies in Europe.

Summary

H3G welcomes the consultation on a revised framework for the regulation of content available across a range of communications platforms. H3G acknowledges that in a world of digitalisation of content and a move away from the traditional broadcasting model it is timely to review the regulatory framework for the provision of audiovisual content.

H3G fully supports the objectives underlying the TVWF Directive, namely the protection of the general public interest on the one hand and the promotion of an internal market for audiovisual broadcast content on the other, while respecting the cultural differences between Member States. H3G is particularly supportive of self-regulatory measures already undertaken by industry to protect minors. H3G also fully supports the stated objective of the revision to the TVWF Directive, namely to increase legal and economic certainty with a view to encouraging new services and more content.

However, H3G is concerned that the proposed approach as set out in the Issues Papers will not assist in the achievement of these important objectives:

- The current “linear”/”non-linear” distinction is not robust with respect to current services, and is likely to become even more unhelpful as new services emerge;
- There is a real risk of duplication with existing regulation such as the eCommerce Directive and the Framework Directive which may well undermine the i2010 objective of an open and competitive market for digital content services in Europe;
- There is a real risk of increasing costs and uncertainty in both the public and private sector with regard to the range of supervisory bodies competent for different types of services.

H3G fully supports the GSME position paper. In this submission, H3G has restricted its comments to the Issues Papers relating to:

(i) Scope and definitions;
(ii) Protection of minors; and
(iii) Commercial communications.

ISSUES PAPER: PROTECTION OF MINORS AND HUMAN DIGNITY; RIGHT OF REPLY

Protection of minors and human dignity

H3G is fully supportive of measures taken to protect minors and human dignity. The H3G group of companies recognise the increased concerns regarding the access by minors to age restricted or inappropriate content, and have actively participated in self-regulatory initiatives in specific member states to address these concerns. H3G UK jointly pioneered the development of the UK mobile content code (the first such mobile related code in Europe) and the associated classification framework. In Italy H3G has participated actively on the definition of the Premium Services Code of Conduct and Protection of Minors that has been signed by all mobile operators. The relevant code provides for the fulfilment also by third party operators. Indeed, any agreement shall include the Code of Conduct as a binding provision. In Denmark, H3G is one of the parties to a self-regulatory framework for premium rate SMS and MMS. In Ireland H3G is in discussions with the other mobile network operators, service providers and government to implement self-regulation for audio-visual services, most likely similar to the UK model.

The current provisions of Article 22 of the TVWF Directive are consistent with an approach based upon a distinction in terms of the existence of access controls i.e. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. On the other hand, programmes which are likely to impair the physical, mental or moral development of minors may be broadcast where it is ensured by selecting the time of the broadcast, or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

We therefore suggest, in so far as such provision is feasible, that the proposed article concerning non-linear services would cover both linear and non-linear audiovisual services: *“Member States shall take appropriate measures to ensure that audiovisual content services are not distributed in such a way that might impair the physical, mental or moral development of minors”*.

Furthermore, H3G does not understand the reasoning for the more directive second paragraph according to which Member States are encouraged to put in place systems of co-regulation or self-regulation, as well as systems of filtering, age verification, labeling and classification of content” would apply only to non-linear services.

H3G is particularly concerned that the Commission’s intentions of promoting co-regulation on a discretionary basis as a means of implementing the objectives of the new Directive will lead to an inflation in the number of independent bodies at the national level, duplication, confusion and increased costs for both the public and private sector. H3G is also concerned that where industry has spent considerable resources developing self regulatory measures, the setting up of an additional oversight body, with no direct stake in the existing codes, could render work already done by industry obsolete.