ANGA response to the Commission's Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”

Introduction and summary

ANGA Verband Deutscher Kabelnetzbetreiber e.V. (Association of German Cable Network Operators, referred to hereinbelow as “ANGA”) represents the interests of over 180 companies in the German broadband-cable industry, including Kabel Deutschland, Unitymedia KabelBW, Tele Columbus, PrimaCom, wilhelm.tel, Pepcom, Deutsche Telekabel und NetCologne. The cable network operators organized in ANGA directly or indirectly serve approximately 18 million cable customers in Germany. At present, more than 4.7 million households use their cable connections also for broadband internet access and telephony.

ANGA welcomes the Commission's Green Paper on a Fully Converged Audiovisual World and comments on the questions asked in it as follows:

Question 2: What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

As outlets for media content and especially premium content multiply with the emergence of new operators and/or OTT platforms, premium content tends to become of even greater importance for network operators and platform providers to compete. Broadcasting organizations must therefore be prevented from exploiting their position of power and blocking network operators from offering this content to the end users. This would contradict with the basic principle of pluralism enshrined in media law.

For this purpose, suitable tools must be created in order to prevent the abuse of content monopolies. A “Must-Offer” obligation must be created: any television operator that has premium content available or a premium brand must allow interested platform operators to transmit the program on the same conditions given to any other platform operator.

Question 3: Are there obstacles which require regulatory action on access to platforms?

The German platform operators see a potential for de-regulation rather than the need for more regulation as regards platforms.

The German cable network operators are the engine driving the media sector; they are the actors guaranteeing a lively media landscape characterized by pluralism, as is evidenced by the consistently growing selection of programs available in their networks. When compared internationally, the diversity of programs and content offered by the German cable networks ranks at the top of the list. Both as providers of infrastructure and as platform operators, cable companies are making an important contribution towards achieving the objectives of pluralism and media diversity; for many years now, they have served the broadcasting organizations as reliable partners.

The convergence in the media has blurred the boundaries previously in place; structures are changing or are dissolving entirely. Hybrid forms made up of linear and non-
linear content are developing. The range of digital content available, increasingly differentiated, is encountering a new diversity of platforms. It is no longer just the traditional operators of infrastructure who are bundling content, it is also the network-independent platforms on terminal devices that are doing so, concurrently offering a broad range of navigation opportunities. These developments are noticeable to recipients, since they no longer consume audio-visual content by traditional television formats on a TV set, and instead find a comprehensive offering comprised of the most varied content, transmission forms, and terminal devices. But also the content providers and providers of transmission services and portals must adjust to the new situation. This entails challenges, while also holding out significant opportunities.

Cable network operators play a significant role in linking traditional television content with new services via the internet and various terminal devices.

The convergence of linear and non-linear content, in parallel with the explosion in the number of means of transmission and platforms, both within traditional infrastructures and, more recently, on terminal devices, is referred to as “connected TV” where it concerns television. In this context, the term is a general category for different developments on the market and at the regulatory level. For the cable industry, the debate concerning connected TV is of particular interest because significant sub-areas of this topic fall under the purview of the platform regulation stipulated by the German Interstate Broadcasting Agreement (Rundfunkstaatsvertrag – RStV). Cable network operators, as traditional platform operators in the sense of said Agreement, must comply with a variety of legal obligations in disseminating and making publicly accessible broadcasts and other telemedia. This comprises, inter alia, the obligation to carry certain TV broadcasters (Must-Carry) as well as the prohibition of discrimination where access to their platforms is concerned.

As the consequence of new and mostly quite strong actors from the terminal device industry entering the market, along with online platforms and search engines, the media ecosystem has been undergoing significant change. Because terminal devices, mobile platforms, and internet platforms are no longer tied to a network infrastructure of their own, they are able to develop their own forms of business models and establish correspondingly strong market positions vis-à-vis the content providers. This applies both for the German providers and those entering the German market from abroad. As a matter of principle, the cable industry welcomes this newly arising competition, provided that it can take place without distortions.
The cable industry has not remained idle, and is likewise availing itself of the opportunity to further develop its existing offerings. In addition to providing linear television content and its own video-on-demand services, cable customers are increasingly being given the opportunity to access “over the top,” app-based offerings on the portals run by cable network operators. Apps from the field of social media, for example, are promising to expand the portfolio of services provided by cable companies in a profitable way, and thus to enhance their customers’ experience.

However, cable network operators in the meantime see themselves, as compared to the new players, of being subject to significantly more stringent regulation. The cable industry sees this situation threatening to distort competition. The media policy and regulatory framework in the EU and the member states must ensure that any future added value will continue to be fairly distributed among all actors in the industry. This can probably best be achieved by lowering the level of regulation for all market players.

**Question 5: How will convergence and changing consumer behavior influence the current system of content financing? How are different actors in the new value chain contributing to financing?**

A discussion started in Germany in the past about the possibility to obligate internet service providers (ISP) to contribute to the production of national films for the mere offer of internet access products. This claim has to be rejected.

ISPs are neither responsible for the editorial content of films nor do they market films to their customers. The product of ISPs is the provision of broadband access. In case an operator also provides films to their customers – as is the case with cable operators who also offer video on demand, near video on demand and pay TV channels – they already pay film fees for the marketing of these services. It appears that the discussion is based on the fact that the providers of the growing offer of video-on-demand mostly do not reside inside EU territory. And even if they do, national law still does not have any jurisdiction over them. Hence, internet-based new players directly involved in the exploitation of the relevant content are often exempted from the obligation.

Rather than demanding film fees from ISPs, the legislator should aim for a solution that would include international over-the-top (OTT) players in the financing of EU films. Another important aspect as regards the financing of films is windowing. The current windows based on exploitation models and business cases (cinema exhibition, followed by pay TV, on demand, free to air broadcasting etc.) do not meet today’s demands anymore. Therefore, ANGA encourages the Commission to put an end to the territoriality of release windows and that this system’s exploitation is revised. Release windows go some way to help explain the piracy issue. If the release windows question could be addressed, piracy would likely drop considerably.

**Question 6: Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?**

Due to the enormous variety of platforms – be they traditional platforms in the sense of the German Broadcasting Agreement (Rundfunkstaatsvertrag – RStV), smart TVs, or platforms on the open internet – competition among providers has intensified. Cable network operators offer hybrid services to their customers, and they support approaches ensuring interoperability and the development of industry solutions. Full
interoperability is ensured via the use of HDMI audio and video interface connected to cable operators set top boxes or via the DVB CI+ interface as appropriate. It should be left to the market to decide which approach will prevail, on the basis of performance and ease of use.

As early as today, cable network operators are transmitting the HbbTV signal and are thus allowing the corresponding content to the accessed, provided the hardware required is available. It should be left to the market to determine whether or not HbbTV will prevail as a uniform standard – in light of the dynamic developments currently ongoing, this cannot be decided as yet. At any rate, there is no reason to mandate the application of the HbbTV standard.

**Question 8: What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?**

New sharing models for spectrum allocation cannot be addressed without the full consideration for the possible impact on existing services operating in the spectrum bands in question. For example, during the first Digital Dividend in the 800MHz band discussions, the impact on Cable systems was not fully studied and taken into account when setting up the technical conditions enabling the deployment of the new mobile broadband services. Tests in Germany, UK and the Netherlands have shown that interferences between LTE devices and cable customers’ devices can occur to an extent that cable services cannot be used properly anymore.

ANGA would like to emphasise that coexistence issues need to be addressed from the outset in order to maximize the overall value for spectrum reallocation or sharing. In the context of the overall objectives, releasing additional spectrum at the expense of existing services is counter-productive and will disincentivise investment across the value chain.

We would also highlight the fact that Cable operators have progressively introduced upgrades to their networks to make more efficient use of the spectrum within which they deliver services. The upgrade to the Docsis 3.1 standard will increase efficiency further and thus the capacity available to deliver services.

In addition, the migration from analogue to digital TV services, as has already been undertaken by many cable companies, results in a more efficient use of the available frequencies resulting in additional capacity becoming available for innovative, next generation products.

Viewed in this context, it is important to note the role that fixed networks such as cable play in meeting the ever increasing demands placed on available spectrum. In addition to progressively improving the efficiency with which they utilise frequencies within their own networks, fixed networks play a crucial role in supporting wireless services. Wireless services are ultimately dependent on fixed line capacity to underpin their operation. Moreover, fixed networks can help to alleviate the capacity pressures experienced by wireless services by, for example, providing off-loading facilities, expanding WiFi capability etc.

While the increasing demand for mobile and wireless connectivity inevitably leads to calls for more spectrum to be made available for mobile broadband, meeting that demand should not be limited to simply allocating more spectrum for use by 4G/5G services. There should instead be a greater focus on ensuring that existing spectrum allocations are used efficiently and maximising the opportunity presented by alternative wireless technologies.
In this regard, regulators and policy makers must not overlook the role that Wi-Fi services can play. Wi-Fi has evolved into a vital component of the end user experience and a key factor in reducing the demands on mobile networks. Ensuring that sufficient spectrum remains available for Wi-Fi services in the future should therefore be a priority for the Commission. Again, however, we would stress the need to ensure that existing services operating in the frequency bands in question, including Cable, are not disrupted.

**Question 9: What specific research needs with regard to spectrum have to be addressed to facilitate such development?**

ANGA encourages research to take a new approach to spectrum coexistence as highlighted by the European Forum for Spectrum Coexistence. The Commission is also investigating the role of WiFi as an alternative to pure mobile or terrestrial capabilities.

**Question 10: Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?**

ANGA considers that the current system of linear and non-linear services differentiation works well and still fits the converged audiovisual world. Even if linear and non-linear services will increasingly compete on the same screen, they remain different from background as the degree of customer control remains a significant feature for users.

**Question 11: Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?**

ANGA considers that the definition of AVMS providers in the Directive is fine and should not be changed. Current regulatory obligations however are borne by European providers only and impede to compete with external players like OTT. ANGA advocates for a lowering of the barriers to everyone to allow European providers to effectively compete with external players. The main prospective of the European lawmaker should be, to prevent the discrimination of European cable operators compared to international OTT players.

Deregulation could be complemented by self-regulation measures for certain specific aspects like children protection for example. This kind of approach may also be very positive for players as it could give some competitive advantage in terms of branding for example etc.

**Question 12: What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?**

ANGA considers that the country of origin principle should be protected. This is essential to give AVMS providers legal certainty and help them develop new cross border business models. Derogations to this principle would undermine both the main aim of the Directive to create an internal market as well as the free flow of information: it allows indeed for the unhindered distribution of AVMS throughout the EU.
Question 13: Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

No, despite increased convergence in the audiovisual landscape, ANGA considers that the AVMSD and e-Commerce Directive continue to regulate different services and the barriers should remain that way to ensure legal certainty of AVMS providers.

Question 15: Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

“EPG regulation”

The existing framework regulation already places cable network operators under obligations to grant discrimination-free access to their platforms to content providers, including electronic program guides. And so far only traditional cable network operators and not device manufacturers or other portal operators have been included in the scope of these provisions.

Against the backdrop of the changed balance of powers in the media environment, the traditional criterion of owning a network for any form of access regulation, including pre-defining choices, is no longer appropriate with a view to the objective pursued by such regulations: to ensure pluralism and a diversity of offerings. It is not only the cable network operators who are offering electronic program guides and navigating tools but it is also the manufacturers of devices and other portal operators – who offer the same orientation function as the navigators in place with the network operators. The navigators used by network operators are receding into the background as internet-capable televisions and CI-Plus modules are becoming more and more relevant, and in many cases are no longer even visible to customers at all (since they generally require a set-top box to be installed that is either made by the corresponding network operator or has been certified by the manufacturer). Their place is being taken by the portals and navigators offered by the manufacturers of terminal devices. Estimates are that by the end of 2013, more than 13 million internet-capable television sets will be available in German households, and that they will be actually put to use in more than 5 million households.

This development means that the existing regulation must be reviewed. The result of the increased number of platforms should be that regulatory authorities should more and more concentrate on the potential abuse by individual market actors, possibly in an ex-post procedure. This should not only address the traditional players, but also the providers newly entering the market. This concerns device manufacturers just as much as the providers of internet portals or mobile portals.

However, in order to create a level playing field for the various parties involved, the rules governing the operation of platforms should be deregulated in the long term. Instead of an ex-ante control in the form of registrations and clearance certificates under broadcasting law for navigators, it seems that a supervisory authority of abuse, ex-post, is sufficient in order to safeguard the objectives of ensuring the variety of media and pluralism. This is even more the case as no abuse of power in this regard is known.

Deregulation would seem to be advisable also because international terminal device manufacturers are easily able to evade regulation as a result of the enforcement deficit often found in international scenarios. In particular in the interests of end customers, these distortions of competition must be avoided.
As a result of the multiplication of content to end customers, another paradigm of regulation has been changing. General opinion now accepts that what was once a bottleneck situation has started to shift. It is no longer the scarce transmission frequencies that pose the challenge for ensuring pluralism and relevance to public opinion. Rather, the oversupply, or at any rate the clear increase in number, of linear and non-linear content has become what some claim to be a problem. Because the offers available in the audio-visual sphere are steadily increasing and services are being developed that compete with traditional TV offerings, it is becoming more and more difficult for content providers to be perceived by end users, in other words to be “found.” The “Must-Carry” approach, based on the paradigm of the scarcity of means of transmission is starting to fail its purpose.

In this context, both public and private broadcasters request on the basis of the pluralism principle that their offering is placed in a good position in the navigators offered by platform operators but also those of the device manufacturers and other portal operators.

Even if this approach – of controlling users’ attention by giving better placements to individual broadcasters and monitoring that placement by the regulatory authority – is conceptually questionable, not to mention in terms of regulatory law, ANGA considers that the legitimate interests of the other parties involved should not be disregarded.

To begin with, the interests of customers need to be considered. For end users, the growing offering of audiovisual content – be it linear TV, video-on-demand (VoD) or content made available “over the top” (OTT) – enables them to access content in new ways and to select from the content so offered. But end users also need to have the possibility of finding the content relevant to them.

In order to meet this demand, cable network operators no longer just offer mere program lists to their customers, providing current numbers and, as needed, categories – increasingly, they are putting in place “recommendation engines” and search engines that deliver recommendations for the content available on the platform. Such recommendations are aligned with customer behavior or searches performed previously. These recommendations include OTT content in addition to linear television and VoD offerings, and thus offer customers the most comprehensive media landscape available to them.

As a result, while user number 1 may find recommendations at the top of his recommendations list consisting of the offerings from public and private broadcasters, user number 2 may be referred primarily to offerings from the cable operator itself (VoD) or to those of an OTT provider. The decisive factor in this regard is what the customer wants to have. From the perspective of the cable industry, it is natural that a user-controlled selection and placement will be legitimate at all times. Placing the traditional broadcasters at the top of the results list, as a matter of principle, would not be compatible with that concept.

From the perspective of the cable industry, the innocent demand for improving visibility is just the one side of the coin. Being able to be found means that data must be retrievable. Thus, for recommendation engines and search engines to be able to generate comprehensive and objective recommendations lists, the operators must have information (meta-data) regarding the content that is accessible. Where no such information is provided to the operator, it cannot be assured that the corresponding offering is taken into account by the search engine and subsequently recommended or listed. Accordingly, the cable network operators depend – as does any other potential
subject of such a Must-Be-Found regulation – on the content providers making accessible sufficient amounts of information regarding their offerings. Where no such information is provided, any form of Must-Be-Found regulation will miss its goal. In other words, any statutory obligation in this regard must be based on the pre-requisite that content providers likewise will be obliged to provide information about their content. Where such provision of data is refused, it is not possible to demand that an obligation be established to present the content of the provider concerned in a results list generated by a cable network operator or any other platform operator.

In addition to a corresponding obligation under media law to make information on content accessible, copyright law would also have to be modified. It must be prevented that content providers frustrate the provision of meta-data by dragging out the licensing negotiations for an excessively long time. As a consequence, the legislator will have to make it clear that the actual content, in fact the program signal, for example, must be licensed along with the meta-data.

Question 16: What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy ‘general interest content’?

An important aspect for the media regulation of the future, while safeguarding a fair allocation of the value added, should be that the platform operators’ Must-Carry obligations are matched by an obligation of content providers to pay reasonable compensation for the transmission of their content.

Cable is, by comparison, the most cost-effective means for program suppliers of disseminating broadcasts in Germany, and reaches the largest number of households in Germany. The cable network operators are bearing the brunt of the distribution work as compared to that done by the public-law broadcasting companies. Accordingly, there is no justification whatsoever for the public-law broadcasters to refuse to pay feed-in compensation, other than is the case for satellite and DVB-T, and thus indirectly pass on the distribution costs to cable customers, although these customers are already paying for the distribution of the programs by the broadcasting fees charged for the public-law broadcasters’ program. This holds true in particular in light of the fact that cable network operators are paid no other compensation for this comprehensive transport service. The “double remuneration” often cited as a benefit cable network operators allegedly enjoy, supposedly paid by end customers and program suppliers, does not exist in Germany. On the contrary: it is only the costs of the subordinate distribution network that are borne by the consumers connecting to it. The dissemination services for the super-ordinate feed-in network are provided by the broadcasters.

At the same time, the public-law broadcasters are harping on their far-reaching Must-Carry status. That is where there is a gap between the universal service obligation of the broadcasters and the interests of network operators in refinancing their investment.

This gap must be closed by the legislator as it becomes clear that commercial negotiations can fail. The opportunity given to the legislator to create a compensation obligation where there are Must-Carry obligations has already been established by the laws of the European Union: Article 31 (2) of the Universal Service Directive expressly permits Member States to stipulate, in establishing transmission obligations, that compensation payments be made in favor of the network operators.
Accordingly, it is incumbent on the national legislators enacting the laws governing the media, to review the reasonableness of this concept and to address the question of anchoring in their respective media laws an entitlement on the part of the network operators to the usual distribution compensation. This applies particularly to those states having a high share of regulated channels and little or no involvement of network operators in the program selection.

The concept might be based on a compensation obligation for feeding in Must-Carry programs on the basis of the costs of efficient provision of services. The cable industry believes it is possible to distinguish between Must-Carry programs and “non-Must-Carry” programs. Another model could consist of a modification of copyright law. Thus, the legislator could stipulate for Must-Carry programs (in a scope yet to be defined) that compensation under copyright law will no longer apply, at least for the ancillary copyrights of the broadcasters profiting from the Must-Carry provisions. Accordingly, the statutory feed-in order would thus be countered by a statutory release from the entitlements in this regard under copyright law. This model in particular would have the benefit of balancing out the existing interests in a transparent and easily understood manner. Finally, the legislators could permit new marketing forms to be used by platform operators for broadcasters, by relaxing the marketing prohibition, if and insofar as the broadcaster is not willing to pay feed-in compensation. In this way, the alternative application of a transport model (feed-in compensation) or of a marketing model (no feed-in compensation) might be flanked by the corresponding legal provisions. The cable sector will be happy to enter into discussions with all parties involved at any time.

Question 19: Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Content providers and platform providers should work together to create an appealing offer to the consumers who would have the final say on the screen. There should not be further regulation on platforms that would increase competitive discrimination with OTT players. Competition on the screen must be allowed.

The present debate is characterized by the broadcasting companies in particular taking a strong stance against overlay and the scaling of images and media content on television screens. In some instances, the demand is that overlays and/or scaling of the television image should be permitted only where the content provider has authorized this and, additionally, where the user initiates it.

From the cable sector perspective, the issue of “program integrity” seems to enjoy significant levels of protection already today. It should be noted in this context that neither overlay processes nor scaling on the television screen tamper with the broadcasting signal. Accordingly, the protection of the broadcasting signal is not called into question in any way.

In light of the fast-paced development of the market for hybrid offerings, putting any requirements in place above and beyond those governing the protection of the broadcast signal in order to protect the “on-screen presentation” would seem premature and too restrictive. At present, it is impossible to forecast how broadcasting content will be integrated into hybrid platforms, and in which scope. As a tendency, it can be assumed that content providers and platform operators have a shared interest in integrating broadcasters’ content on hybrid platforms in order to enhance both the dissemination of the content and the platform’s drawing potential. In this context, overlay and scaling offer completely new forms of presenting content. Cable network operators are not interested in calling into question the offerings made by broadcasting companies.
On the contrary, the intention is to make use of the opportunity to expand the existing offerings and to thus make them more interesting for users.

Overall, the discussion should focus more strongly on the aspect of user autonomy: from the perspective of the cable sector, the television screen belongs to the customer. The customers are the ones who are buying interactive television sets in order to use the varied offerings available from traditional linear television broadcasts as well as new services, and, as the case may be, to do so in parallel. Accordingly, it must be left to the customers to decide how to use their screen. Regulatory restrictions on the first-screen experience by prohibiting overlays and scaling would unjustifiably restrict such user autonomy.

Any restrictive regulation enacted at the present time would hinder the further development of business models and would have detrimental effects on content providers, platform operators, and – in the end result and primarily – on viewers. Competition on the first screen is what allows new providers to enter the media world. Against this backdrop, it seems sensible to generally deem overlay and scaling possible if and when the measure is authorized by the content provider or is consciously controlled by the end user.

Berlin/Cologne 26 March 2013
European convergence consultation: Response by Arqiva

About Arqiva

Arqiva is at the forefront of network solutions and services in the digital world and provides much of the infrastructure behind television, radio, satellite and wireless communications in the UK; with a significant presence in Ireland, mainland Europe and the USA. Arqiva also provides uplink services on which many TV and radio services are distributed.

Our UK customers include major broadcasters such as the BBC, ITV, Channels 4 and 5, BSkyB and the independent radio groups, major telecommunications providers, including the UK’s four mobile network operators, and the emergency services.

Arqiva is also the licensee for 2 of the UK’s 3 current digital terrestrial television commercial multiplexes, providing over 40 services to 20 million homes, and for both of the new HD multiplexes being built now.

Arqiva owns the UK’s national commercial Digital Audio Broadcasting (DAB) multiplex (Digital One) and directly, or with partners, owns 25 local DAB multiplexes.

In addition Arqiva provides end-to-end capability for broadcasters, media companies and corporate enterprises, with services including:

- satellite newsgathering (30 international broadcast SNG trucks);
- TV studios;
- spectrum services for Programme-Making & Special Events (PMSE)\(^1\); and
- satellite distribution (over 1200 services delivered).

Beyond “linear” broadcasting directly to consumers, Arqiva operates a wide range of corporate satellite data services; is a shareholder in YouView (the revolutionary “hybrid” television service launched in 2012); and owns Connect TV, a company which integrates services provided over broadband with broadcast digital terrestrial television services.

Arqiva is also a leading force in European digital cinema, which is revolutionising how films are brought to consumers, replacing delivery by couriers of 35mm prints (both expensive and a piracy risk) with delivery of files via satellite direct to the Cinemas own internal Theatre Management systems.

And finally, through our ‘Secure Solutions’ business, Arqiva provides mission-critical communications services, including front-line emergency services, to a variety of government entities in the UK and Ireland.

\(^1\) Such as the wireless cameras operated by the BBC and Sky News, and the radio mics used in virtually all television production and many West End shows. The London Olympics made extensive use of Arqiva’s expertise in this area. There is no other company in Europe which has this capability.
Executive Summary

Convergence has been a long time coming, but no provider of telecommunications or audiovisual services, or their suppliers, can ignore it now.

Never have consumers had (legal) access to so much content, wherever they are, at any time of day.

Long-established service providers increasingly find themselves competing with their suppliers and with companies which previously didn’t operate in the same market.

This challenges sector regulators and competition authorities, a challenge made harder to address by the rapid speed of change in the market.

Yet regulatory structures put in place following the Audio Visual Media Services Directive (AVMS), such as the UK’s co-regulatory system for video on demand service providers, are still nascent. At this stage any public consideration of changing the AVMS would only sow uncertainty in the market, likely to dampen down investment in new innovative services.

Additionally consumers increasingly expect content and services to be available to them on devices of their choice, with the “last hop” to those consumers increasingly becoming wireless.

With data connectivity becoming essential for many consumers (supported by cloud services), despite increasing availability of public WiFi hotspots consumers are demanding in-building cellular broadband coverage which is reliable and fast.

These consumer demands lead to cellular operators increasingly looking to UHF spectrum long used by broadcasting to offer them that in-building penetration.

While the economic value of ubiquitous access to fast mobile broadband is clear, the economic and social value in many Member States of digital terrestrial television is also clear. Indeed, there is no more efficient way to ensure that a wide range of linear television services can be made available to consumers universally supporting regional and cultural diversity.

Additionally both PMSE and White Space devices can be accommodated in the spaces around Multi-Frequency Networks, which wouldn’t be the case for mobile use of the same spectrum.

Accordingly, in considering clearing 700 MHz spectrum of television use, and particularly if looking beyond that to 470 - 694 MHz spectrum, we would urge the Commission and NRAs to tread carefully and recognise the potential to undermine the viability of digital terrestrial television with social and competition implications in many Member States, and unintended consequences for investment in European content.
Answers to Questions

GROWTH AND INNOVATION

Market considerations

(1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

The USA is a very large single market with (essentially) a single language and a reasonably uniform culture. It has to be recognised that in the USA, public intervention isn’t seen as the answer to any and all problems. When combined with the largest capital markets in the World, a cultural appetite for entrepreneurship, and a highly flexible and mobile labour market, it is no surprise at all that US companies have such a presence within the EU.

If there are solutions to address that, it is beyond the scope of this Paper.

Financing models

(4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

Given that a significant amount of the investment across the EU made in audiovisual content with high production values is made by Member States’ public service broadcasters, the Commission may wish to ensure that, going forwards, those broadcasters continue to have access to the funding and distribution which enables that investment to be made.

That would include, for those Member States where Digital Terrestrial Television (DTT) has mass adoption, that that platform’s viability isn’t undermined by any clearance of 700 MHz or (subsequently) 470 - 694 MHz spectrum.

(5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

The recent high-profile investments in content creation by Google, Netflix and Amazon are to be welcome, even if little of this investment has yet made its way to Europe.

For the foreseeable future it will be traditional linear television which will generate the overwhelming majority of investment in high-quality European audiovisual content underpinned by licence fees and advertising income, with public service broadcasters as the core of that.

If the health of broadcasters, and in particular the public service broadcasters, were to decline then “Over-The-Top” (OTT) operators may not be able to make good any reduction in investment in European content.
Interoperability of connected TV

(6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

The advantages of standardisation to equipment manufacturers and to providers of services and content are clear, which is why the market has a history of competitors working together to develop standards (e.g. DVB, CD, DVD, USB) or otherwise adopting a single provider’s standard (e.g. Ericsson’s Bluetooth, Sony’s 3½ inch computer disk).

Arqiva particularly notes that DVB-T is the most widely utilised transmission standard for digital terrestrial television in the world. It is also worth highlighting the D-Book and the benefits of standardisation that has allowed an ecosystem of DVB-T2 enabled devices to be acquired by consumers which could subsequently be connected to the internet.

It is clear that an absence of standards could result in a Market which was less single than was desired for competition and policy reasons.

However Arqiva is far from convinced that intervention to ensure greater standardisation for connected TVs would be justified.

As the Green Paper observes, even within the HbbTV ecosystem, national specifications sometimes differ to reflect the wider market. It also has to be recognised that there are so many ways that consumers are currently accessing IPTV on TV displays, both using software embedded within connected TVs and using a range of dongles, Set Top Boxes, games consoles and tablets, most of which aren’t candidates for the adoption of HbbTV. Indeed, given the number of connected TVs which remain unconnected after installation, there must be many consumers who have HbbTV displays but who nonetheless access IPTV services on that display by other means. Connected TV does not equate to “Smart TV”.

Which content and services consumers could easily access on TV displays is now about so much more than the software pre-loaded by the display manufacturer and discussion about potential intervention to secure the standardisation of that software is, to a considerable degree, an out-dated concept.

For the limited potential benefits, EU action to ensure greater interoperability of connected TVs would be disproportionate and highly disruptive. The history of direct or indirect governmental intervention in the selection of technical standards is not one of unbridled success and, in the case of connected TV, many market players have already selected technical specifications which work for them.

If there were to be any such intervention, it would be even more disproportionate if many millions of installed connected TV displays then had to be replaced. To the extent that any intervention in support of HbbTV were undertaken, Arqiva would

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argue that this should be restricted to “greenfield” only i.e. only implemented in respect of markets and platforms where an alternative to HbbTV hadn’t already reached mass adoption.

In respect of new or updated standards, market players are usually in the best position to determine any need.

**Infrastructure and spectrum**

*(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?*

Each of terrestrial broadcast, satellite broadcast, cable, mobile and fixed broadband offer consumers and service providers a different mix of characteristics such as cost, ease of use, ubiquity (particularly availability to rural consumers), gatekeeper control and range of access devices and their price points. Most EU consumers will be able to choose between most of these networks with many having access to all of them.

These platform differences offer real choice to consumers and to service providers. In particular, DTT offers a wide (if not necessarily the widest) range of content with regional and cultural variances to ensure plurality of choice whilst supporting cultural diversity. DTT is the most practical means of broadcasters offering a wide range of regionalised services. In the UK the public service television channels offer consumers (and, where relevant, advertisers) many regions e.g. BBC 1 offers 17 regions and ITV 1 offers 20 regions.

It is also worth recognising that the way in which DTT is provided allows for shared use of spectrum to support PMSE and, in the future, potentially White Space services. PMSE and White Space devices cannot share spectrum with mobile services.

DTT is also a horizontal platform, offering consumers a wide range of receivers at many price points from a range of manufacturers.

In 4 of the 5 largest EU television markets (i.e. the UK, Italy, Spain, France) DTT has mass adoption and provides real competition (not just for consumers, but also for broadcasters/service providers and for advertisers) to cable, satellite and IPTV. Indeed in the UK, Digital Switch-Over would have been impossible unless DTT had offered an appealing proposition to millions of consumers.

Many consumers who have selected satellite or cable for delivering television to their main display will rely on DTT to easily and cost-effectively serve their secondary sets. 75% of UK households actively use a DTT enabled second set and secondary set contribute almost 15% of viewing.

In many Member States terrestrial broadcasting has traditionally been the most heavily regulated. Given that digital terrestrial television in the UK is an open, horizontal platform with no gatekeeper, it is entirely appropriate that a range of public interest obligations (e.g. universal coverage, regionalisation of public service television, service line-up guarantees, access services) attach to the
platform which do not attach to satellite or cable. Some other Member states also have public interest obligations which effectively recognise digital terrestrial television as being the default means of offering television or “platform of last resort”.

However, despite the popularity of digital terrestrial television with consumers and service providers in many Member States, its reliance on access to spectrum places its future, not just the platform’s ability to meet increasing demand but even to remain viable at all, in the hands of governments and NRAs weighing up the consumer and public interest benefits of the platform in comparison to mobile broadband.

Despite the very different reliance on digital terrestrial television across the EU, the need of mobile operators for 700 MHz to be cleared to a European band plan results in a European “one size fits all” approach to determining how much spectrum digital terrestrial television will continue to be permitted to access.

In some Member States, such as the UK, that would necessarily place a severe constraint upon digital terrestrial television. Quite simply, without upgrading the platform’s transmission technology to DVB-T2, it would be impossible to give up the proposed 700 MHz band while preserving the platform’s coverage and service line-up.

Such a technology upgrade (which would lead to greater spectrum efficiency and enable more HD services to be offered) would need to be co-ordinated by NRAs across all multiplex licensees. Unfortunately most UK consumers would need to upgrade their displays/set top boxes, but as more consumers choose to upgrade to HD displays over time the number of consumers forced to upgrade as 700 MHz was cleared would diminish. It should also be noted that it would be harder for multiplex operators to justify the investment in upgrading to DVB-T2 without certainty of long-term continued use by digital terrestrial television of 470-694 MHz spectrum.

Increasing adoption of hybrid models wouldn’t be able to mitigate releasing 700 MHz while retaining legacy DVB-T given:

- the continuing lack of universal coverage of sufficiently fast and reliable broadband;
- the huge investment (in the “middle mile”, not just the access “last mile” which gets most public attention) necessary to ensure that IP networks could match the consistent reliability with which linear networks offer content to consumers at any time of day;
- the absence of any residential broadband access which is free at the point of use.

Consequently, in the UK at least, 700 MHz would have to be cleared simultaneous with a platform-wide technology upgrade to avoid significant consumer disbenefits. However if UHF Channel 48 is allocated to Public Protection and Disaster Relief (PPDR), in the UK even with a platform upgrade to DVB-T2 it may be difficult to preserve the platform’s coverage, service line-up and regionalisation of public service channels.
(8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

Although technology developments continue to make more efficient use of spectrum, spectrum remains a finite resource. With increasing demand for spectrum, Arqiva supports the Commission’s objective of identifying unused and under-used spectrum held by the public sector across all Member States.

We also recognise that spectrum will increasingly have to be shared in future between different uses where feasible. Where exclusive allocations to specified uses can still be justified, then NRAs must have regard to the efficiency with which those uses make use of exclusive spectrum and, where relevant, public interest objectives attached to certain uses, such as DTT. DTT offers a combination of coverage, capacity, regionality and support for cultural diversity which no other television distribution platform currently can.

Broadcasting and mobile broadband networks cannot realistically share spectrum, although PMSE and “White Space devices” are compatible with DTT, especially when broadcast as Multi-Frequency Networks. In the UK spectrum has been allocated very successfully for many years to PMSE in the spaces around television by JFMG, an Arqiva company, on behalf of Ofcom.

Given the need, in respect of clearing 700 MHz, for separate spectrum between mobile on the one hand; and broadcast, PMSE and White Space devices on the other, it is worth considering the relative efficiency of spectrum utilisation.

The Green Paper highlights how advances in compression technology will help IP (fixed and mobile) networks meet consumer demand for more AV content in higher definition than is generally served to them today, but that required bandwidth will also have to keep increasing.

But advances in compression technology and bandwidth delivery are continuing in linear broadcast networks, too. Digital terrestrial television in the EU is transitioning from DVB-T transmission technology to DVB-T2 (increasing bandwidth per multiplex by up to two thirds) and from MPEG-2 compression technology to MPEG-4/AVC (with potential to transition in the future to HEVC).

This continual improvement greatly increases the efficiency with which spectrum allocated to digital terrestrial television is used and ensures that these networks will be able to meet demand for increasing amounts of HD and (potentially) UHD content. Satellite linear television is also transitioning to upgraded transmission and compression technologies (DVB-S2 and AVC).

However such efficiency improvements would require consumers to upgrade their receivers and there would need to be sufficient capacity to accommodate simulcasting of SD and HD services (and the introduction of UHD services would require the same).

It is also worth noting that, when considering the benefits of displacing terrestrial television for mobile broadband, that the relevant mobile operators are so far showing far less interest in deploying 800 MHz LTE in rural areas than expected, other than where regulators require them to.
What specific research needs with regard to spectrum have to be addressed to facilitate such development?

Arqiva would suggest that research is required to assess:

- acceptable levels of interference between different uses sharing the same spectrum, and whose responsibility mitigating interference then should be.
- the role of band managers and how any necessary databases are to be paid for and maintained.
- how might geographic sharing (i.e. separating different uses by distance rather than by frequency) improve spectrum efficiency without introducing unacceptable levels of interference.
- The development of enhanced device (receiver) filters to reduce the need for wasteful guard bands between adjacent services.

Regulatory framework

Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

Although it has been a long time coming, use of converged services has only recently moved from the early adopter phase into the fast follower phase. Use of services which blur the difference between linear and non-linear services is still very low by comparison to clearly linear services (which are regulated as such). When it is recognised that a very large amount of the audiovisual content consumed on demand has actually been commissioned by television and first shown on linear television (and therefore complies with broadcast regulation) any market distortion remains small.

Until use of converged services moves in any significant way beyond the current (unrepresentative) user base, it is too early to determine how mass consumer expectations and behaviour might alter; to what extent most consumers may recognise (and accept) the regulatory differences between linear and non-linear content (including on advertising); and the extent to which most consumers would be willing to accept that greater individual control justifies less stringent regulation.

In the UK, co-regulation of video on demand services is still developing with determinations by Ofcom following appeals gradually establishing the “caselaw” which provides certainty across the sector.

Arqiva would therefore suggest that, although NRAs and the Commission should maintain an overview of this fast-moving market, it would be premature to revise the AVMSD. Given the difficulty that market players are having in keeping up with developments, any proposed revision of the Directive would be getting too far ahead of the market (which is likely to be in transition phase for many years), with resulting cost to industry and regulatory uncertainty disincentivising investment in the EU and handing a competitive advantage to non-EU media service providers.
(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

Even if it were clear how media service providers, or online content gatekeepers such as manufacturers of connected TVs, currently outside the scope could be brought within scope, it would be premature and disproportionate to propose revisions to the AVMSD to address that when the market is developing so quickly and use of out-of-scope audiovisual content remains a minority activity (whether measured by number of users or time spent).

(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

The country of origin principle is well established and any proposed change would inject uncertainty and cost upon industry, and could have unintended consequences.

Media freedom and pluralism

(15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?
(16) What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy ‘general interest content’?

Despite the diversity of views available online, it remains important that EU consumers have access to divergent, impartial, accurate news and opinion, which may be provided by pubic service broadcasters and commercial players. In the UK research repeatedly shows that consumers trust television news more than any other.

In the UK, public service broadcasters have an extensive range of public interest objectives, including a requirement to be universally available and present on all linear television platforms. Given those objectives, which have widespread support despite 4 out of 5 consumers having access to the internet, it is appropriate that public service channels receive prominence on Electronic Programme Guides, which ensures that commercial gatekeepers cannot deter consumers from finding impartial sources of news.

While convergence provides the challenge that consumers may search for audiovisual content without using a regulated Electronic Programme Guide, for the foreseeable future it appears that use of unregulated guides and search will only be used a minority of time. Indeed research repeatedly shows that, in the UK, consumers seeking audiovisual content (on their TV displays, at least) will first check live linear programming on Electronic Programme Guides, then check recorded (on Personal Video Recorder) programming, and only finally will they search on demand sources.
If use of unregulated guides and search increases in important as a means of locating audiovisual content, then public intervention could be justified, but at the moment that would be premature, not least as commercial operators of filtering mechanisms have an incentive not to demote the most popular content and services and, in many Member states, much of that is provided by public service channels.

**Commercial communications**

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Consistent with previous answers above, Arqiva would argue that it is too early to determine what consumer expectations might be in respect of changing advertising techniques.

To the extent that regulation is required or desirable to address new advertising techniques, or advertising on services which had a potential to confuse consumers as to what was a commercial message, we would suggest that only self or co-regulation could possibly keep up with such a fast-changing environment.

**Protection of minors**

(20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

(21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

(22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGOs and providers of products and services in making sure that adequate feedback is properly delivered to people reporting harmful or illegal content and complaints?

Protecting minors in an environment where all of the World’s content is a click or two away is an issue of ongoing concern for parents. In free societies, there can be
no simple solution to this, but a combination of public and industry co-operation, combined with consumer education, looks to be the best approach.

But while child abuse and hate speech are abhorred in every Member State, there are considerable cultural differences across the EU in the public acceptance of nudity, violence and portrayals of sex. Accordingly there can be no EU standard on what content of these types it would be inappropriate to serve to children of certain specified ages, and therefore there can be no EU-wide content rating, so it should be for Member States to work with industry to reach a workable solution reflecting local consumer expectations.

In the UK, the Government and industry (major ISPs and the largest operators of public WiFi hotspots, including Arqiva) have recently agreed means of increasing the use of parent control tools.

Electronic Programme Guides on linear television platforms will often let consumers decide whether “adult” programming would even be visible on their devices, and in the UK on digital terrestrial television adult television channels are listed at the end of the Electronic Programming Guide. Ensuring that such services are “unprominent” in their listing helps reduce the potential for minors accidentally discovering them.

It is worth noting that in the UK the Internet Watch Foundation, entirely funded by industry, has had considerable success over many years having child abuse images taken down and providing data to law enforcement.
A Associação Portuguesa de Radiodifusão – APR é uma Associação patronal, inscrita e reconhecida pelo respectivo Ministério, com perto de 200 Estações Emissoras de Radiodifusão associadas, públicas e privadas e com âmbitos de cobertura Nacional, Regional e Local, e que tem como objectivos, entre outros, a criação e coordenação dos meios de actuação destinados a apoiar o exercício da actividade de radiodifusão e a representação dos interesses dos seus associados junto de entidades administrativas, tutelares e governativas, nacionais e internacionais.

A APR tem como associadas entidades legalmente habilitadas para o exercício da actividade de radiodifusão, independentemente da plataforma que possam utilizar para fazer a distribuição do seu sinal, congregando cerca de duas centenas de operadores de radiodifusão sonora, de todos os âmbitos de cobertura.

Assim, temos como associados: quatro, dos seis canais de radiodifusão sonora de âmbito nacional, incluindo os três canais do operador de serviço público; um dos dois canais de cobertura regional, sendo o outro emissor de um nosso associado; mais de centena e meia de operadores de âmbito de cobertura local, representando mais de cinquenta por cento da totalidade das rádios licenciadas no país.

Apresentamos em seguida a resposta da Associação à Consulta Pública sobre o Livro Verde da Convergência, sendo que não nos opomos à publicação da nossa posição no sítio electrónico da Comissão.

**RESPOSTAS À CONSULTA PÚBLICA:**

(1) Que fatores permitem às empresas dos EUA implantar-se com êxito no mercado fragmentado da UE, apesar das barreiras linguísticas e culturais, enquanto muitas empresas da UE lutam com dificuldades? Que fatores criam dificuldades às empresas da UE?

Os americanos produzem, essencialmente, conteúdos ao gosto dos consumidores, nomeadamente, dos europeus, com dinheiro privado. Contrariamente, os europeus produzem conteúdos “artísticos” para educarem os consumidores, com dinheiro público.
(2) Que fatores afetam a disponibilidade de conteúdos de elevado valor comercial? Há, atualmente, práticas relacionadas com os conteúdos de elevado valor comercial a nível grossista que afetam o acesso ao mercado e a sustentabilidade das atividades das empresas? Em caso afirmativo, qual é o seu impacto nos consumidores? É necessária uma intervenção regulamentar para além da aplicação das regras da concorrência em vigor?

O mercado deve fluir livre e normalmente, o excesso de regulação e (ou) regulamentação raramente tem efeitos positivos. Por vezes, cria constrangimentos tais e círculos viciosos que dificilmente se sai deles.

(3) Existem obstáculos que exigam uma intervenção regulamentar em matéria de acesso às plataformas?

Não se pode ainda falar – sublinha-se o ainda - na existência de obstáculos, no que respeita ao acesso às plataformas, isto claro se não tivermos em linha de conta as questões de nível financeiro. Todavia, esta é uma questão que nos preocupa e que deverá ser alvo de uma reflexão profunda.

Neste momento, o facto dos chamados meios de comunicação social tradicionais estarem a perder a sua vertente de radiodifusores e detentores de rede própria é preocupante e pode levar, em último caso, ao surgimento de problemas na área do acesso às plataformas. Neste momento as televisões já perderam a sua capacidade de operadores de telecomunicações, limitando-se apenas a ser produtores de conteúdos, dependendo de uma outra entidade para poder difundir aquilo que produzem, e esta é uma situação que, na nossa opinião, pode representar sérios riscos para os actuais operadores.

Primeiro, porque o operador fica condicionado ao pagamento que a outra parte exigir pela utilização da sua rede; segundo, porque fica também condicionado às regras que a outra parte possa definir para a utilização da sua rede; terceiro, porque corre o risco de “desaparecer” no meio de todos os conteúdos disponibilizados pelo detentor da rede; e, por último, porque pode estar a concorrer em situação de desigualdade com outros produtores de conteúdos que tenham participação dos próprios detentores da rede.

É assim essencial garantir não só a neutralidade da rede, e do seu detentor, mas também que os detentores de rede não possam ser, simultaneamente, produtores de conteúdos, ou detentores de empresas produtoras de conteúdos que possam ser disponibilizados nas suas plataformas, nem vendedores a retalho das redes que detêm.

(4) Os atuais requisitos da Diretiva SCSA constituem a melhor forma de promover a criação, a distribuição, a disponibilidade e a atratividade comercial das obras europeias?

Não pensamos que seja do interesse quer do produtor de conteúdos, quer do agregador de conteúdos, quer do próprio público, a imposição de quotas ao nível de produção nacional, ou neste caso, de produção europeia.
Estas quotas prejudicam seriamente o produtor de conteúdos que, para além de se ver coartado na sua liberdade de programação, corre o risco de se ver obrigado a difundir conteúdos que não têm a aceitação do público e que por isso causam a perda de audiência, com todos os efeitos negativos que isso acarreta, e com benefício, sem dúvida, para os produtores/fornecedores de conteúdos concorrentes e não sujeitos às regras europeias ou às quotas de exibição de conteúdos.

Os conteúdos deverão valer pela sua qualidade e não serão impostos por uma qualquer regulamentação externa.

Por outro lado, faz ainda menos sentido obrigar o produtor de conteúdos a financiar a produção de conteúdos por outras entidades, muitas vezes concorrentes directas desse mesmo produtor.

Pensamos assim que não faz sentido perpetuar o erro em que a União Europeia incorre neste momento, estendendo aos novos players obrigações que consideramos desadequadas, desajustadas, e até extremamente onerosas em tempos de crise financeira como a actualmente vivida não só pelo sector da comunicação social mas por todos os sectores de actividade económica.

Esta é assim a oportunidade para repensar toda esta política e procurar não sobrecarregar os novos players mas sim desonerar os actuais, procurando assim obter um equilíbrio entre as partes não pelo reforço das obrigações mas por um alívio das mesmas.

(5) De que forma irão a convergência e a evolução do comportamento dos consumidores influenciar o atual sistema de financiamento de conteúdos? De que modo estão os diferentes intervenientes na nova cadeia de valor a contribuir para esse financiamento?

Atendendo à posição defendida na questão anterior, pensamos que mais importante que discutir o que os novos serviços ou players contribuem, ou deverão passar a contribuir, é discutir as obrigações e condições de contribuição dos actuais operadores, contribuição essa que consideramos, como anteriormente referido, excessiva e sem justificação.

(6) São necessárias medidas da UE para resolver a questão da fragmentação real ou potencial e assegurar a interoperabilidade transfronteiras? É necessário criar novas normas ou atualizar as utilizadas no mercado?

Não temos opinião sobre esta matéria.

(7) Em que medida são importantes as diferenças entre as várias plataformas de distribuição de conteúdos (por exemplo, radiodifusão terrestre e por satélite,
banda larga com fios, inclusive por cabo, banda larga móvel) em termos de experiência para os consumidores e de obrigações de serviço público?

Consideramos ser essencial a existência de varias plataformas para a emissão do sinal dos operadores de radiodifusão, independentemente da tipologia do operador/ produtor de conteúdos.

É preciso garantir condições para que todos os utilizadores/ públicos acedem aos conteúdos quando quiserem, onde quiserem e como quiserem, portanto é essencial manter a possibilidade de transmissão de sinal através do espectro hertziano, em sinal aberto, pois para além desta continuar a ser a melhor forma de garantir uma maior cobertura e uma maior equidade na distribuição e acesso ao sinal, deve ser tido em linha de conta que nem todos têm possibilidade de pagar para aceder a conteúdos, e através da internet essa é a única forma de ter acesso aos conteúdos, ainda que o pagamento não seja pelo conteúdo em si, mas pelo acesso ao sinal, ou seja, esse pagamento não se destina a financiar os produtores de conteúdos mas sim os operadores de redes e serviços de telecomunicações.

Para além disso, cada uma das plataformas apresenta as suas especificidades próprias, não sendo possível, neste momento pelo menos, garantir que o “desaparecimento” ou substituição de uma delas por outra permita assegurar essa mesma especificidade.

Assim, qualquer uma das plataformas é importante, seja ela analógica, digital, através do ar, da nuvem ou do satélite, pelo que é essencial garantir que todas elas continuem disponíveis para utilização por parte dos radiodifusores ou dos produtores de conteúdos.

(8) Que modelos de atribuição e partilha de frequências poderão viabilizar oportunidades de desenvolvimento de aplicações para radiodifusão, banda larga móvel e outras (designadamente equipamento para a feitura de programas) a utilizar nas mesmas faixas de frequências?

Não acreditamos na partilha de frequências e ainda menos no que respeita à actividade de radiodifusão, pois as especificidades, particularidades e exigências da actividade não se coadunam, nem sequer do ponto de vista meramente técnico, com uma eventual partilha de frequências.

A Associação, é assim totalmente contra esta possibilidade de partilha de espectro que, procurando obter uma maior eficiência na utilização do espectro, põe em causa a qualidade do serviço de radiodifusão, sendo que não aceitamos que o serviço prestado pelos radiodifusores possa ser posto em causa por esta razão, pelo que consideramos que o benefício retirado desta situação não justifica, de forma nenhuma, o prejuízo que irá causar, quer para os radiodifusores quer para os próprios utilizadores/ público final.

(9) Que necessidades específicas de investigação, no que respeita ao espetro, devem ser satisfeitas para facilitar esse desenvolvimento?

Resposta prejudicada pela resposta anterior.
(10) Dada a convergência entre os media, existem indícios de distorção no mercado causada pela diferenciação regulamentar entre serviços lineares e serviços não lineares? Em caso afirmativo, qual seria a melhor forma de eliminar essas distorções, protegendo simultaneamente os valores subjacentes ao quadro regulamentar da UE para os serviços de comunicação social audiovisual?

A convergência entre media é uma falsa questão. Todavia, a distorção existe, podendo ser eliminada por uma regulamentação e regulação igual para todos, novos media e tradicionais.

(11) É necessário adaptar a definição de fornecedores de serviços de comunicação social audiovisual e/ou o âmbito de aplicação da Diretiva SCSA para que quem não está abrangido pelas suas disposições passe a está-lo, parcial ou totalmente, ou existem outras formas de proteger os referidos valores? Em que domínios é importante a autorregulação e/ou a corregulação?

É necessário abranger todos e fazer as adaptações que resuitem na igualdade de tratamento para com todos os players. A auto-regulação, em todos, a co-regulação, naqueles em que se venha a mostrar conveniente, tendo em vista a referida igualdade de tratamento.

(12) Qual seria o impacto de uma mudança de estratégia de regulamentação do audiovisual no princípio do país de origem e, por conseguinte, no mercado único?

Não temos opinião sobre esta matéria.

(13) O aumento da convergência no setor audiovisual vem pôr em causa, de um modo novo, a relação entre o disposto na Diretiva SCSA e o disposto na Diretiva Comércio Eletrónico? Em que domínios? Indique exemplos concretos.

Não temos opinião sobre esta matéria.

(14) Que iniciativas a nível europeu poderão contribuir para melhorar o nível de literacia mediática em toda a Europa?

Não temos opinião sobre esta matéria.

(15) A possibilidade de predefinição das escolhas através dos mecanismos de filtragem, incluindo os meios de pesquisa, deve ser objeto de intervenção pública a nível da UE?

A mera possibilidade de limitação ou condicionamento da escolha individual e de definição de filtros para os conteúdos que se recebem é, na nossa opinião, desprovida de sentido e até mesmo inaceitável, do ponto de vista dos próprios utilizadores.
É preciso garantir contudo – é neste aspecto que a União Europeia deve centrar as suas preocupações – que o operador não possa impor qualquer filtro ou limitação, mas não se deve impedir que esses mecanismos estejam disponíveis para quem os pretenda utilizar, a nível individual e de forma totalmente autónoma.

(16) Qual deve ser o âmbito de aplicação da regulamentação em vigor relativa ao acesso (artigo 6.º da Diretiva Acesso) e ao serviço universal (artigo 31.º da Diretiva Serviço Universal), tendo em conta a convergência crescente de serviços lineares e não lineares em plataformas comuns? Num ambiente convergente de radiodifusão/banda larga, em que medida é necessário garantir a acessibilidade e a facilidade de pesquisa e visionamento dos conteúdos de interesse geral?

Não temos opinião sobre esta matéria.

(17) As disposições em vigor da Diretiva SCSA em matéria de comunicações comerciais continuarão a ser adequadas quando a experiência de convergência se tornar progressivamente realidade? Indique exemplos concretos.

Não temos opinião sobre esta matéria.

(18) Quais os instrumentos de regulamentação mais adequados para dar resposta à rápida evolução das técnicas de publicidade? O recurso à autorregulação e à co-regulação poderá ser alargado?

Nesta matéria a auto e a co-regulação são essenciais, mais até que a regulação imposta pelos próprios estados membros.

Atendendo às especificidades de cada plataforma de serviços disponibilizados, e às diferenças existentes entre elas, apenas um código de conduta instituído pelos próprios intervenientes poderá ter resultados mais abrangentes, e até mesmo eficazes, sem prejudicar ou regulamentar em excesso nenhuma das partes envolvidas.

Esta devia ser aliás a posição a adoptar pela Comissão noutro tipo de matérias relacionadas, nomeadamente, com questões de conteúdos.

(19) Quem deve ter a última palavra na aceitação ou não aceitação das manchas publicitárias ou de outras novas técnicas de publicidade no ecrã?

Olhando de uma forma desprendida para esta matéria, a ultima palavra deverá, sem duvida, ser dada ao consumidor final, no entanto, e uma vez que em causa está aquela que é a principal fonte de financiamento do produtor de conteúdos, a possibilidade de escolha de introdução, ou não, de uma mancha publicitária deverá ser deixada ao critério do radiodifusor/ produtor de conteúdos.

Caso se entenda que isto não é possível – não deixar esta decisão ao critério do radiodifusor/ produtor de conteúdos – deverá, no mínimo, ser possível fazer o que já...
acontece actualmente on-line: caso opte por não ver a publicidade ou a mancha publicitária, o conteúdo não será disponibilizado na totalidade ou com todas as funcionalidades. Para isso acontecer poderá ter de se fazer um pagamento ou aceitar visionar a publicidade.

(20) As disposições em vigor da Diretiva SCSA são adequadas para fazer face aos problemas da proteção dos menores no mundo convergente dos media?

Não temos opinião sobre esta matéria.

(21) Embora as ferramentas de controlo parental estejam cada vez mais disponíveis nos dispositivos e plataformas de acesso aos conteúdos, a sua utilização parece continuar a ser reduzida. Que mecanismos seriam desejáveis para sensibilizar os pais para essas ferramentas?

Não temos opinião sobre esta matéria.

(22) Que medidas seriam adequadas para a efetiva verificação da idade dos utilizadores dos conteúdos audiovisuais em linha?

Não temos opinião sobre esta matéria.

(23) A Diretiva SCSA deve ser alterada de modo a abranger, em especial, a classificação dos conteúdos e o controlo parental em todos os canais de transmissão?

Não temos opinião sobre esta matéria.

(24) Os utilizadores devem ser mais bem informados e habilitados a determinar onde e como podem formular observações ou apresentar queixas relativamente aos diferentes tipos de conteúdos? Os atuais mecanismos de tratamento das queixas são adequados?

Não temos opinião sobre esta matéria.

(25) Os meios (financeiros, regulamentares ou outros) utilizados no tratamento das queixas são adequados para responder adequadamente aos autores das denúncias de conteúdos prejudiciais ou ilegais, em especial quando envolvem crianças? Quais devem ser os papéis e as responsabilidades das autoridades públicas, das ONG e dos fornecedores de produtos e serviços, para assegurar o fornecimento de respostas adequadas às pessoas que denunciam a existência de conteúdos prejudiciais ou ilegais ou apresentam queixas?

Não temos opinião sobre esta matéria.
(26) Considera ser necessário um maior esforço de normalização neste domínio? Não temos opinião sobre esta matéria.

(27) Que incentivos poderiam ser oferecidos para encorajar o investimento em serviços inovadores destinados a pessoas com deficiência? Não temos opinião sobre esta matéria.
European Commission
Directorate- General for Communications Networks, Content and Technology
Unit G1
Office BU25 05/181
B- 1049 -Brussels /Belgium

Only by e-mail: CNECT-CONVERGENCE-AV@ec.europa.eu

BNE comments on the ideas raised in the Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”.

Dear Sirs,

Broadcast Networks Europe (BNE)\(^1\) welcomes the opportunity to comment on the European Commission Green Paper on the convergence of the Audiovisual Sector. The attached response contains a summary section which is followed by specific answers to the questions raised by the Commission that relate directly to the core business interests of Broadcast Networks Europe’s members.

Yours sincerely

[Signature]

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\(^1\) Broadcast Networks Europe (BNE) is a trade organisation for European Terrestrial Broadcast Network Operators. BNE currently has 16 members with operations in 22 European countries. Members are Abertis (Spain), Arqiva (UK), České Radiokomunikace (Czech Republic), Digea (Greece), Digita (Finland), ETV (Serbia), Elettronica Industriale (Italy), Norkring (Norway), Div (Croatia), ORS (Austria), Swisscom Broadcast (Switzerland), Radiocom (Romania), Rai-Way (Italy), RTENL (Ireland), TDF (France) and Teracom (Sweden). In addition Terrestrial Network Operators in Belgium, Germany, Estonia, Hungary, Monaco and Denmark are represented by their respective parent (and BNE member) company.
1. Summary

Regarding the spectrum and infrastructure aspects outlined in questions 7-8-9, BNE considers that it is worth reflecting on the observations made in our response to the RSPG Draft Opinion and revisited below. We believe that the following aspects should be considered as part of Commission’s work on Convergence to ensure that the outcome of its evaluation is complete and balanced.

- The Important role played by DTT across Europe in terms of uptake and investment in European originated content production
- That further displacement of DTT services out of existing spectrum should be subject to detailed Cost-Benefit Analysis
- Refarming of existing IMT spectrum which is currently occupied by legacy systems, e.g. GSM and EDGE, should be prioritized
- Greater emphasis on the importance of Wi-Fi offload and Small Cells to deliver the growth in data traffic
- Due consideration be given to the extent to which traffic is truly mobile, i.e. subject to cell handover
- Greater scrutiny should be given to growth forecasts for wireless broadband traffic with key forecasts recently revised down.

Considering the importance and impact of the availability of spectrum for the terrestrial broadcasting industry and the very high number (240 million) European consumers that depend on it for their daily consumption of Broadcast content, BNE is committed to working with the European Commission to ensure that fully informed decisions are made and that the future spectrum strategy that is developed is optimized to support the interests of the consumer from both DTT and wireless broadband perspectives. Finally we urge the Commission to consider in its analysis the extent to which European originated content, a highly lucrative source of export income, is critically dependent on the DTT platform for its funding.

2. QUESTIONS FOR PUBLIC CONSULTATION:

BNE’s response is focused on the aspects that are core to its members’ interests and hence our response is focused on questions 6 – 9.

Question 6. Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

BNE are supportive of the development of common standards and implementation guidelines for consumer equipment. A good example is the European DVB-T standards suite which is the most widely utilised set of standards for digital terrestrial television in the world. The development of this suite of standards has underpinned the investments made by Consumer Equipment Manufacturers (CE) to develop receivers for a very large international market. Clearly future commercial opportunities will be enhanced if there are common standards for connected / broadcast devices whether they be fixed or mobile.

Common standards and implementation guidelines should include all aspects to guarantee the interoperability between receivers and various service providers and also allow real time identification of certified devices. An obvious example is the Freeview brand in the UK. Further examples where common standards should be developed are for the Digital Rights Management technology and implementation of HbbTV and DVB-GEM (formerly DVB-MHP). Wherever possible interoperability should also consider the need for systems to be upgradeable over time and hence due consideration
should be given to systems that can be upgraded via software updates rather than the need for full equipment replacement.

Moreover, for equipment that is bought and paid for by the consumer, Government and Industry should work to ensure that this equipment is standardised to work across as many countries as possible and where exclusions apply, these should be obvious to the customer.

**Question 7. How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?**

There are indeed significant differences between the various platforms for TV-distribution - terrestrial, satellite, copper- and fibre-based broadband, cable-TV and mobile broadband.

**About the Digital Terrestrial Television networks (DTT)**

DTT is one of the largest and most effective and efficient platforms for distribution of broadcast TV. The terrestrial platform has evolved dramatically over the last ten years to become fully digital offering a wide range of high quality content, both Standard Definition and High Definition, to a large number of European users.

In fact, DTT is a spectacular success. With its low cost per viewer served and easy access it has become the most popular delivery platform for television content in Europe. European consumers have embraced DTT and are investing in new receiving equipment to gain access to the service. DTT networks now deliver some 2000 TV channels and this content is enjoyed in close to 50% of European households in their permanent homes. This sums up to circa 240 million viewers, each spending some 4 hours watching linear TV every day. In addition, a large number of households depend on DTT to receive TV on their second and third TV sets at home, in summer houses, boats, caravans, etc.

This success has also contributed to the widespread adoption of the suite of European DVB-standards for DTT around the world.

To receive TV from the terrestrial networks is an obvious choice for many European households, particularly in rural areas, where availability of alternative distribution platforms is limited.

There is currently no evidence showing strong growth of other platforms at the expense of the terrestrial platform. Rather, the terrestrial networks maintain a strong position and it must be noted that willingness by households to change technology is usually a much slower process than forecasts suggest. This is underpinned by new and attractive services being introduced on the DTT platform (Pay-TV/VOD, HD and 3D). Our conclusion is that DTT will remain an extensively used and key distribution platform for broadcast TV and will play an important role in European content production and freedom of expression and information provision.

**DTT versus other platforms**

Terrestrial Networks have many benefits versus other forms of distribution:

- The DTT networks are characterised by high availability, robustness and the scope to deliver local and regional content such as local news, programming and advertising which are valued by consumers and content providers.
- DTT networks are built with a high degree of redundancy and backup power. This means that terrestrial networks are able to maintain broadcast services even under difficult conditions, such as extended power outages and during natural disasters.
- Terrestrial networks typically provide national coverage offering services beyond densely populated areas.
- Terrestrial Networks are not limited by the number of simultaneous viewers unlike services delivered via fixed or mobile internet.
To receive TV from the terrestrial networks with a simple and inexpensive standard TV aerial is easy for each individual household. Satellite reception typically requires a more expensive and complicated antenna installation which has to have line of sight to the satellite, which is not always possible.

Free-To-Air (FTA) TV channels in the terrestrial network are unencrypted, which means that households can receive content without having to sign up for a subscription and pay a monthly fee to an operator. Furthermore, there is no commercial "gatekeeper" between free-TV channels and citizenship. This is of particular importance for Europe's public service channels to ensure independence and transparency. TV viewers are also anonymous. It is not possible to track and record what he or she is viewing.

In a hypothetical threat of an impending terrorist attack, it may be necessary to turn off the mobile networks to avoid mobile phones being used to trigger detonators. In such case the ability to provide information to the public via video and radio broadcasts in the mobile networks is lost. Terrestrial Networks for TV and radio do not have this limitation.

Alternative distribution platforms

The overall goal for broadband access in Europe is that 100 per cent of households will be able to access a connection of at least 30 Mbit/s and 50 percent of households shall subscribe to connections offering at least 100 Mbit/s by 2020. At a first glance this could challenge the need in the long term for traditional distribution platforms for TV - terrestrial, satellite and cable.

The technical solution to achieve the overall goal for broadband will include a combination of copper-and fibre-based infrastructure, wireless broadband services in mobile networks and broadband in cable TV networks. However, it should be noted that 30 Mbit/s or 100 Mbit/s is a very 'soft' specification and that delivering such transmission capacity for data transmission or Internet surfing means something completely different to delivering the same capacity for the live streaming of video services, to many users simultaneously, with high expectations regarding the quality and availability of the content – as is the case for linear broadcast services.

Coaxial cable based distribution networks for television (Cable TV) are well established in most European countries even if reach varies widely. Even if the Cable-TV networks can be used to deliver high capacity broadband, further geographical extension is unlikely to be practical for cost reasons.

New fibre networks are also being built in many countries, but to achieve full population coverage that extends to sparsely inhabited areas will be prohibitively expensive and uneconomic. Consequently it is questionable whether it will be technically and economically feasible to build cable and fibre networks to cover all households. Moreover, there is a great risk that the cost of such investments will ultimately end up in higher bills to the current FTA-TV viewers in the form of subscriptions and/or monthly fees. It may also adversely affect what Pierre Lescure’s recent report has identified as a transfer of value from content production/investment to delivery networks.

BNE further notes that the mobile networks will never become a realistic option for the distribution of linear television to large user groups. The networks are built for bidirectional individual data connections and not for continuous live video streaming services to many concurrent users. Capacity in the networks is hugely inadequate to deliver traditional high quality TV services and the network design is not optimised for in home reception, where the majority of content consumption occurs.

Fundamentally, mobile operators are struggling to find the money to invest in the widespread roll-out of basic wireless broadband services to European citizens and hence it is difficult to imagine how they would fund networks for broadcast content delivery, even if it was technically practical.

Experience from the roll-out of 4G mobile broadband services in the 800 MHz band in Europe shows that there is virtually no 4G coverage in rural areas across the EU and that only three countries have achieved extensive roll-out of 4G despite high ambitions from policy makers.

http://www.culturecommunication.gouv.fr/var/culture/storage/culture_mag/rapport_lescure/index.htm#
It should also be noted that the actual bit rate that a user receives is considerably lower than the theoretical maximum speed. The received bitrate is further decreased as the number of concurrent users of streaming services increases as compared to today’s unicast packet-oriented networks. This also applies to MBMS technology (a broadcast type service in the mobile networks) which gives a much lower bit rate than the theoretical maximum speed for unicast services. BNE also notes that there is no example in the world where a mobile network operator has introduced MBMS on a large scale.

If political and regulatory decisions are taken to gradually weaken the position of digital terrestrial networks by limiting spectrum access, services will eventually deteriorate. Furthermore barriers to the launch of additional new services on DTT such as HDTV, 3DTV, UHDTV will further weaken the attractiveness of the platform and drive consumers and broadcasters to alternative forms of distribution. This in turn will provide reduced competition and increased control for fully commercial entities over the remaining distribution platforms for radio and television. Ultimately, this may lead to an outcome where there is no longer a simple and low cost solution for TV distribution such as terrestrial broadcasting on which European citizens currently depend – this would be clear evidence of a regulatory failure.

As a conclusion BNE cannot see any other distribution platform for TV that offers the attributes manifest in the terrestrial networks, i.e. coverage, security, availability, stability, ease of access and regionality. The terrestrial networks are in most EU countries the only platform where free-to-air public service channels are broadcasted unencrypted and without subscriptions or payments to a service provider. In addition, the terrestrial networks have a unique and central role in giving important information to the public during crises and disasters.

BNE therefore consider that a vibrant DTT platform is fundamental to sustaining competition and enabling low cost access to content for European citizens over the long term and hence should be a core focus of the Digital Agenda.

**Linear TV and Video-On-Demand viewing**

Convergence between technologies and services is not a new subject and it can be concluded that an established technology or an established mode of use is not always replaced by newer ones. The ability to order video services (VOD - Video On Demand or sometimes called Play services) over broadband and IP networks have gradually established over the last 10-15 years and the consumption of VOD services has increased. But any "transition" from linear services of established broadcast networks to VOD over broadband does not seem to be underway. Still today VOD services represent only a few percent of the total viewing time. It is a simple and convenient model of thinking to speak of a "transition", but the evidence from consumption patterns does not support this perspective. As has been recently confirmed by a study from Médiamétrie, Broadcast Television is still the killer application in the distribution of audiovisual content, especially in Europe. In 2012 the average European consumed 3 hours and 55 minutes per day of scheduled linear television content, 7 minutes more than in 2011.\(^1\)

Although VOD and Play services from the major TV channels have become popular these account for only a few percent of the total viewing share. VOD and Play services are used mostly to watch programs shown on linear TV usually only one or a few days earlier. Demand for play services is thus driven in large part by what has previously been shown on linear TV.

It is also worth noting that linear TV is driving much of the content of newspapers and magazines. You write about what’s going on and what’s been on TV and it is often the daily topic of conversation between people. Linear TV fulfils an essential function by creating a common framework for conversation and interaction between people. This is not the case with VOD.

BNE’s view is rather that different forms of distribution support different needs and that linear TV and VOD services over broadband are and will continue to be complementary to each other.

Another conclusion of the Green Paper is that services distributed over broadband will change consumer behaviour almost automatically, from “reclined consumption to active participation.” This conclusion seems to be based on a rather simplistic train of thought. The way a TV program is consumed can hardly be linked to whether the viewer is active or not - the difference may only be pressing a button on the remote or touching an app.

The figure below further illustrates the points made above showing recent projections from Screen Digest on the proportion of linear and non-linear TV consumption for the EU ‘Big 5’ countries.

**Question 8. What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?**

The migration from analogue to digital terrestrial television made the digital dividend possible. The end result is that terrestrial television is now utilising nearly 20% less spectrum than analogue was whilst also enabling a significant expansion in the range and type of services on offer such as Standard Definition and High Definition TV. Moreover, the allocation of the 800 MHz band to wireless broadband has not yet shown the anticipated benefits that justified its release to mobile in particular as the widespread roll-out of wireless broadband services to rural areas.

To date the spectrum discussion has been primarily focussed on the needs of the wireless broadband and IMT sector with little account taken of the consequences to existing licensed and commercially attractive services in the Broadcast UHF band 470 – 790 MHz. Whilst we recognise that there is significant growth in wireless broadband data traffic we believe that it is important to note that this growth in traffic is already being served by a combination of technology solutions, i.e. Fixed, Wi-Fi, terrestrial IMT and Satellite broadband networks, which will be further augmented by the new 800 MHz and 2.6 GHz wireless networks being rolled out. Furthermore, the bulk of data traffic takes place in residential areas, where UHF spectrum is far less relevant than spectrum at higher frequencies. The importance of WiFi spectrum to the future delivery of mobile data traffic has been emphasised in the recent study undertaken by WiK/Aegis for the European Commission where they predict that in future upwards of 80% of mobile data traffic will be delivered over WiFi networks.

Moreover, DTT networks already exist and provide an efficient means of delivering very large volumes of data traffic, typically in the form of Audiovisual Content. For this purpose the DTT platforms are cost
efficient, spectrum efficient and extremely reliable. In this context DTT has become an essential part of the Audiovisual Ecosystem representing a key pillar of European content creation, enabling freedom of choice, cultural diversity and political cohesion. Finally, Digital Terrestrial Television is proving to be what consumers want: an easy and immediate means of accessing a multitude of TV and radio channels, complemented by a rapidly developing range of hybrid interactive services. Therefore any political action sacrificing the value brought by DTT to European citizens in order to reach long term policy targets centred on access to ultrafast broadband would most likely end up with counterproductive effects, i.e. higher costs for consumers, reduced access to European audio-visual content, lower quality and diversity of free to air TV on offer and reduced competition – in essence a regulatory failure.

We envisage a bright future for DTT in Europe with continued investment and innovation to support the migration to HDTV and to accommodate 3D and UHDTV in the future using the next generation of technology DVB-T2/HEVC. However, this will only be possible if the platform is afforded the appropriate certainty and access to spectrum over the long term. Furthermore, we believe that the Market and Consumers should be allowed to choose their preferred platforms for broadband services and media distribution. The market should not be biased by a far reaching regulatory intervention that results in a distortion of competition and choice. To not interfere with market forces is the philosophy normally adopted by the EC and should also apply in this case.

Finally, joint or shared use of frequencies is already a well established and successful practice between DTT and wireless production equipment such as wireless microphones (PMSE). Several studies have also been carried out within the framework of the ITU that show coexistence of mobile broadband (LTE) and DTT on shared frequencies is impossible. Some possibilities for coexistence between DTT and White Space Devices (WSD) may be found even if such systems have not yet been established in Europe. Studies conducted in the UK have shown very large differences geographically in the amount of spectrum that could be used for White Space systems with greater availability of spectrum in rural areas to potentially support wireless broadband applications.

**Question 9. What specific research needs with regard to spectrum have to be addressed to facilitate such development?**

The Commission is already in the process of commissioning research to inform its thinking with regard to network sharing and BNE encourages the Commission to engage extensively with industry stakeholders. Alongside this research we see merit in undertaking additional research studies as follows:

**Consumer perspective to examine future trends in:**

- Fixed, mobile and nomadic consumption.
- Multi-device consumption, i.e., use of more than one device at same time.
- Appropriate content formats for device/platform options?
- Linear TV versus on demand content
- Continuity of viewing across platforms?
Technical perspective:

- For all platforms, the industry and where possible European administrations, should seek to evolve and innovate the recording, processing, compression, distribution and broadcasting technologies and standards.
- In terms of enhanced spectrum utilisation between adjacent uses enhancements to electromagnetic compatibility need to be considered to minimise interference.
- Options for shared spectrum use should be explored in detail to consider the scope for spectrum efficiency gains.

Social & economic costs perspective:

- Prior to any decision about changes to current spectrum use, an extensive and detailed Cost-Benefit analysis is necessary. This analysis should take account of recently revised and “considerably less exponential” forecasts for mobile data traffic growth from both Cisco and Analysys Mason⁴ alongside the impact and economic consequences of clearing any band, including a detailed appraisal of the costs of network changes / transition / interference mitigation / consumer management taking account of lost opportunity cost of such a change for consumers and broadcasters / network operators as appropriate. This analysis should endeavour to determine the timetable, legal / regulatory aspects as well as the social / cultural / political impact of any change, including its impact on European originated content production. The UK regulator is currently undertaking a similar programme of analysis and we urge European Policy makers to follow Ofcom’s lead.

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⁴ Cisco, The 2013 VNI forecast shows considerably less growth than the 2012 VNI forecast. See Fig 1, Page 5 and Analysys Mason Fig 4 and 5 in Section “Illustrations”
EC Green Paper
Preparing for a Fully Converged Audio-visual World:
Growth, Creation and Values

BT Response
September 2013
Summary

We are witnessing a profound period of change for audio-visual markets owing to the continued globalisation of media and, more critically, the accelerating pace of convergence between communications and media. The change that is driving market dynamics is the convergence of broadband and broadcast technologies, which has the result that end-customers are able to consume any content on any device at any time by means of communications networks. Although technology convergence has been underway for some time, it is now fundamentally changing the way that communications and media markets operate in terms of competition, distribution and end-customer consumption. However, problems with access to key content that drives consumer take-up and retention, which has limited the emergence of effective competition in traditional pay TV services, will be amplified in a converged world, preventing the achievement of consumer benefits unless these problems are addressed. High quality content services are characterised by high fixed costs and very low marginal cost. As such, appropriate access to scale bottlenecks, which are substantial barriers to entry, will be essential if the full benefit of competition in converging markets is to be delivered to consumers.

The Commission’s Green Paper consultation is a timely and important opportunity to review market developments and consider the appropriate policy response to the convergence of communications and media. BT welcomes the opportunity to respond to the European Commission’s Green Paper on convergence. BT has engaged in policy issues relating to the impact of convergence for some years.

BT has taken a proactive lead in investing heavily in next generation networks – striving to deliver the EC’s Digital Agenda for Europe – and has made very large scale investments in linear and non-linear content too. We are confronted by markets where consumers are increasingly buying together what they previously bought separately, where they increasingly purchase triple-play bundles of services including telephony, broadband and content, and where content (linear and non-linear) is the most compelling differentiating factor influencing consumer purchase decisions. While we are responding commercially to this profoundly different market environment, the regulatory and policy frameworks in which markets and competition operate have not kept pace with economic developments. There is an urgent need to update the regulatory regime, to ensure consistency in approach across communications and media markets, so that end-consumers are able to make informed choices between providers competing on a level playing field, where consumer choices are unbiased by distortions in the underlying regulatory regimes.

Consistent regulation and a level playing-field for competition are a necessary precondition to ensure that European industry remains at the forefront of competition and innovation and European consumers enjoy the benefits of converged competition through enhanced choice, functionality, and pricing.
In summary, we believe these outcomes can be achieved by:

- Putting in place a consistent approach to regulation to ensure competition across converging markets in communications and media;
- Applying this consistent approach to economic barriers to entry in content markets, specifically in relation to pay TV and, more specifically, in relation to key pay TV content that is capable of driving consumer take-up and retention;
- Ensuring access to key content and scale platforms on a fair, reasonable and non-discriminatory basis;
- Using the application of this approach to create a vibrant level playing-field for competition at all levels of the pay TV value chain by securing wholesale access to key content, as well as to scale bottleneck platform assets; and
- Reforming the approach to content standards regulation so that it is fit for the converging world.

**Economic foundations**

The traditional economic analysis of telecommunications markets, building on competition law and economics and embodied in the European Regulatory Framework, identifies market failures arising as a result of significant market power or scale bottlenecks that have the capacity to prohibit the emergence of effective new entrants. These might occur at any point in the value chain, from downstream retail markets to upstream wholesale markets, and across a wide range of services and products. As a result, the European Framework sets out a set of general conditions and SMP conditions that regulate the operation of markets for consumer benefit. Further, the analysis typically identifies the SMP conditions as arising from the ownership of enduring bottleneck assets upstream and the vertical integration of operators across the value chain, which creates the incentive and ability to discriminate in favour of their own operations on a continuing basis, thereby erecting insurmountable barriers to entry. Remedies to these market failures have typically taken the form of mandated and price regulated wholesale access to the bottleneck assets, as a basis for promoting retail competition. In the UK this has evolved to a point where we have the complete operational separation of BT’s access and backhaul networks into Openreach, and equal, regulated, access for BT’s competitors to these wholesale products to the “equivalence of inputs” standards.

Similar economic failures are evident in the media value chain, particularly in pay TV. UK pay TV markets are characterised by Sky’s high and persistent market share (over 60%) at the retail level, its persistent near monopoly of premium sports and movie channels at the wholesale level, and its ability to outbid third parties consistently for exclusive control of
key content upstream. Reviews by competition authorities (Ofcom and the Competition Commission) since 2007 have consistently found market failures in pay TV markets.

Sky’s market power across the pay TV value chain arises from similar market failures to those that arise in telecommunications, i.e., the control of irreplicable bottleneck assets upstream, which are vital inputs into downstream retail markets, and the vertical integration of the dominant operator, which creates both the incentive and ability to discriminate in favour of its own downstream business.

The most important irreplicable upstream assets take the form of those key content rights that are capable of driving consumer take-up and retention (historically premium sports and premium movies content, but as markets reach saturation increasingly basic content too). The most obvious example in the UK is the FA Premier League live broadcast rights, which are worth £1bn a year, and are an order of magnitude more valuable than any other sports (or movies) broadcasting right. There are no substitutes for this content. In bidding for such rights, Sky, the incumbent pay TV operator, has a systematic advantage in the bidding process, because it has the vast majority of the relevant subscriber base (i.e., those with an interest in premium sports content and a demonstrated propensity to pay for this content), whereas a new entrant begins with no such subscribers. Added to this, Sky refuses to wholesale its channels containing this essential content to third parties on fair, reasonable and non-discriminatory terms, which in turn systematically prevents other pay TV operators from building a viable base of relevant subscribers. It is therefore always possible for the incumbent to outbid new entrants, ensuring it retains the key rights, thereby allowing it to continue to perpetuate this “vicious circle”.

This process has been borne out in practice over many years of bidding for the FA Premier League live broadcast rights, with Sky maintaining the vast majority of the rights continuously. In the case of the most recent FA Premier League auction in 2012 Sky materially outbid the new entrant (BT), and purchased the maximum number of games that it was allowed to buy under the auction rules. This self-reinforcing cycle of control of the key rights leading to recruitment of the vast majority of subscribers, refusal to wholesale that content on FRND terms to rival pay TV operators, leading in turn to securing the rights when next auctioned, is an enduring economic barrier to entry as strong as any in the communications value chain. Indeed, the evidence in the UK over the past two decades has borne this out, as will be illustrated in our response to question two.

Sky’s structural advantages in outbidding rivals for FAPL rights are replicated across other important live sports rights, as well as across premium movies content (i.e., first subscription pay TV window movies content from the major Hollywood studios) and increasingly across basic content rights.
Access to key content is vital for downstream retail operators because such content drives consumer take-up and retention, as access to key content has been shown to be the most important determinant in a subscriber’s choice of pay TV platform. The inability to outbid Sky for these rights, combined with Sky’s refusal to wholesale the channels containing such rights on FRND terms ensures that rival pay TV retailers are unable to grow scale and compete effectively.

This stranglehold over key content rights is not alleviated by the convergence of communications and media as similar market failures arise with respect to non-linear (on-demand) content:

- In the case of key sports content, non-linear (on-demand) sports rights are not a substitute for live sports rights. For example in the case of FA Premier League the non-live (near-live) rights are worth a small fraction of the live rights. Given this, convergence will not address the underlying barrier to entry resulting from lack of access to key live sports rights and/or channels that contain those rights.

- In the case of key movie rights (i.e., the first subscription pay TV window movie rights from the major Hollywood studios), where non-linear (on-demand) content is a substitute for linear content, both linear and non-linear rights are sold together on an exclusive basis, and across all distribution platforms (i.e., TV, computer, tablet or mobile). The incumbent (Sky) has acquired 100% of the rights in the first pay TV subscription window across all distribution platforms, and this has been the case for many years. In its review of first subscription pay TV window movies the Competition Commission hoped that the emerging over-the-top movie providers (NetFlix and LoveFilm) would be able to challenge Sky’s stranglehold over these rights: this hope has turned out to be unfounded, as Sky has continued to secure all the first subscription pay TV window rights from the major Hollywood studios and NetFlix and LoveFilm have secured none. As such, it has been demonstrated that convergence will not, in itself, address the underlying barrier to entry resulting from lack of access to key movie rights and/or channels that contain those rights.

- In the case of basic content, as with movies content, non-linear (on-demand) content is a substitute for linear content, but typically both linear and non-linear rights are sold together, and the right is a digital pay TV right across all distribution platforms (i.e., TV, computer, tablet or mobile). As such, similar to the case with movies, it is unlikely that convergence will address the underlying barrier to entry resulting from lack of access to these rights and/or channels that contain those rights.

BT acknowledges that the market structure and competition issues in pay TV markets in the UK is probably the most extreme instance of this economic phenomenon in European
member states at the present time. We believe this arises from two structural characteristics in the UK. The first is that pay TV and broadband convergence has proceeded ahead of the convergence of fixed and mobile communications, perhaps because BT is unique among incumbent telecommunications operators in not having a mobile network business. The second is that the structure of pay TV markets has proceeded to very high concentration ahead of other countries, probably because of the early exploitation of premium sports by the dominant operator. However, the underlying economics of the industry – the vicious circle between ownership of content, vertical integration and dominant positions in retail markets – tends to result naturally in the market structures that are found in the UK. The regulatory regime needs to have the flexibility to deal with market failures as they arise, and of course need not deal with them where they do not.

**Regulatory remedies**

To deal with the structural market failures in pay TV, regulation to ensure effective competition of a similar form and nature to that which applies in the telecommunications sector is required, in order to achieve vibrant competitive markets for the benefit of end-consumers. In order to ensure that competition is not distorted as a result of the regulatory regime, a consistent application of competition regulation in converging markets on a secure legal foundation is a necessary and urgent step. Equally, the application of this regulation to ensure access to key content at the wholesale level on FRND terms is essential to remedy the “vicious circle”.

The next barrier to entry for new players, which is a necessary but not sufficient condition for promoting new entry and competition in pay TV markets, is regulated access to the full features of bottleneck platforms (which is addressed in detail in our response to question 3 later in this document). Regulation to secure access to the set-top-boxes of scale pay TV platforms and available functionality, on an FRND basis, is vital to ensure that content producers and channel providers are able to overcome the relative disadvantages of small scale in markets characterised by high fixed costs, low marginal costs and tipping points. Basic access to Sky’s scale platform via EPG access, Conditional Access and Access Control services, as covered by the current TPS regulation in the UK, has been enshrined in the European Framework from the outset and is even more vital today for BT and other players as convergence takes hold. In addition, in light of convergence and the increasing importance of on-demand content, it is essential to ensure that TPS regulation is adapted in a way that is consistent across linear and non-linear content access, by ensuring access to the Ethernet ports of scale TV platforms, including those on Sky’s set-top box platform. Such access would allow for the provision of a substantially richer consumer offering than can be provided today, and could promote retail competition for certain types of pay TV services.
Consistent with these aims, it should be recognised that set-top boxes can be viewed as a network termination device for TV distribution networks. In this respect it is important to note that the European Commission has promulgated a policy that call termination rates on fixed and mobile networks should be regulated to reflect pure long run incremental costs (pLRIC) in order to address specific policy aims around ensuring competition. Similarly regulating the pricing of TPS in line with this policy, at pure-LRIC, would help address existing competition concerns in retail pay TV markets.

In addition to a stronger regime of consistent competition regulation, the media sector needs consistent consumer protection regulation. There are plenty of consumer protection provisions in telecommunications markets already, for example, around selling, notification of price increases, supplier migrations practices, contract terms and access to services like directory enquiries. For example, communications service providers must provide customers with one month’s notice of a price increase and the right to terminate contracts without penalty: the same protection should be given to subscribers to pay TV services. This obligation does not apply to pay TV providers who can increase prices without notice or the right to terminate. These provisions do not extend to the retailing of content, introducing gaps in protection when consumers purchase telecommunications and content services in a single bundle. The General Conditions that apply to communications services to promote the end-customer interests should similarly apply to subscriptions to content services (clearly free-to-view content is subject to different end-customer interest issues). Addressing these imbalances would not only serve to protect consumers, but would ensure a level playing field when seeking to acquire and retain subscribers to content or converged triple play services.

We address these critical policy themes in more detail in our responses to the Commission’s questions. In addition to these issues, our responses to the Commission’s questions also raise several other key policy themes:

- As regards search engines / filtering mechanisms, the essential point is the same across all levels of the content value chain: where scale bottlenecks are operated by vertically integrated market participants, which could give rise to the incentive and ability to distort market outcomes, it would be beneficial to end-customers for ex-ante regulatory powers to be available to promote competition. In these circumstances, where there are clear risks of market outcomes being distortion by dominant positions, search engines / filtering mechanisms should be required to ensure (i) all available content is included in the search results and (ii) the ordering of the search results are positioned using an objective, transparent and non-discriminatory set of criteria (akin to the rules around EPG prominence and ordering that already exist in the UK). Clearly, where there is no reason to consider market failures to be present, there is no reason to intervene.
• It is beneficial to end-customers that certain spectrum bands are allocated for broadcasting use. It is important that digital terrestrial broadcasting has sufficient spectrum, which is managed in a sufficiently efficient fashion, to ensure that DTT is a viable platform in competition with other broadcast platforms, such as satellite and cable. In particular DTT needs to have sufficient spectrum and network capacity to offer a competitive range of High Definition channels. Spectrum policy needs to ensure that digital terrestrial broadcasting platforms remain competitive with other digital TV platforms in the future. In the medium to longer term a transition to more efficient spectrum use is possible, releasing spectrum for other uses and opening opportunities for sharing of spectrum (e.g. TV white spaces) to further improve overall spectrum efficiency.

• It is important to provide a safe internet environment for children by ensuring appropriate filtering mechanisms are provided in a manner that is well balanced with basic freedoms of speech and expression. The AVMSD carries over rules from the TV without Frontiers Directive and provides a satisfactory degree of protection for minors without the imposition of further regulation. Differences in culture and tastes across EU Member States means that this aspect of protection will need to reflect specific country laws. BT provides free family protection tools for its consumer broadband customers enabling them to decide which categories of content to filter, and in doing so does not think that it is appropriate for ISPs or any non-governmental organisations to act as censors or to police the internet beyond preventing access to illegal material such as child pornography. The responsibility for providing a safer internet should be a shared responsibility for all players in the supply chain.

• BT supports the requirement to provide accessibility for persons with disabilities and supports a standardised approach to ensure a consistent experience is provided for end users. The AVMSD provides a good framework for accessibility for persons with disabilities and does not warrant additional standardisation.
1. Market Considerations

Question 1 - What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

There are numerous economic, cultural, commercial and other differences which may support US companies in their efforts to build a successful presence in foreign markets. The most significant is advantage of a very large homogenous and dynamic home market with a common language and media culture which can be leveraged in other markets. Scale also conveys a relative advantage with regards to access to finance, ability to manage risk, rights acquisition and associated negotiations.

Despite the inherent economic factors enjoyed by US firms, certain EU companies have demonstrated themselves very capable of competing effectively on the global stage. In particular, the UK’s audiovisual companies have performed particularly well in TV programme and format exports with many examples of both public sector and private sector successes.

Question 2 - What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

BT agrees with the Green Paper that certain key content (in particular premium sports and premium movies content, but as markets reach saturation increasingly basic content too) generates a high level of consumer demand and significant pay TV revenues, and that the ability to offer such content to viewers drives firms’ success. The UK pay TV experience has demonstrated clearly that persistent exclusive control of key content, concentrated in the hands of a single player with significant market power, combined with vertical integration and a lack of regulated wholesale access to the channels containing this content, creates persistent barriers to entry distorting competition and undermining consumer outcomes with respect to choice, innovation and pricing. In addition to distorting outcomes directly in the provision of pay TV services, bundling and convergence is enabling players who control key content to distort competition in adjacent markets for wider bundles of communications services.

Exclusive access to key content, with limited or no substitutes, represents an enduring structural barrier to entry. An incumbent who has previously acquired key content rights has an advantage in the bidding process, because it has already been able to amass subscribers with a demonstrated propensity to pay for the content, whereas a new entrant, bidding for the first time, begins with no such subscribers. This advantage is
further exacerbated by a regulatory regime which favours the owner of key content assets by allowing it to withhold the wholesale supply of channels containing this essential content from rival pay TV operators entirely, or to refuse to wholesale it on fair, reasonable and non-discriminatory terms. This in turn prevents other pay TV operators from building a viable base of relevant subscribers, ensuring that the incumbent will systematically maintain its bidding advantages and hence win the rights in the next auction round. Thus, the lack of an effective wholesale regime perpetuates this “vicious circle”.

Moreover, in light of increased convergence, the distortive effect of the vicious circle no longer effects only competition in the provision of pay TV services. As pay TV services are increasingly bundled with wider telecommunications services competition in the provision of these wider telecommunications services (both when bundled with pay TV services and on a stand-alone basis) are also affected.

In the UK, BT and other parties have highlighted the vicious circle that enables Sky to continuously reinforce its market power due to its vertical integration and its ability to aggregate key content rights, while creating high barriers to entry and expansion as a result of its terms of wholesale supply, all of which confer on Sky considerable advantages in bidding for key content rights in future. The vicious circle starts with Sky’s exclusive ownership of key premium content and refusal to provide wholesale supply of its channels that contain this content to competitors on fair, reasonable and non-discriminatory terms.

Live sports content is the most important premium content right for driving pay TV take-up and retention. In the UK the most important of these rights is the FA Premier League live rights, which, based on the most recent auction round, are worth approximately £1bn a year. Sky has perpetually outbid all new entrants in order to acquire the vast majority of these rights since 1992. Indeed, Sky retained monopoly control over these rights between 1992 and 2007 until an intervention by the European Commission in 2006 prohibited Sky from acquiring all of the rights by imposing a “no single buyer” rule on the sale of FAPL rights. Following the imposition of the no single buyer rule Sky has continued to win all of the rights that it is permitted to acquire.

The same vicious circle exists with respect to premium movie content (i.e., the first subscription pay TV window movie rights from the major Hollywood studios). Unlike with respect to live sports, in the case of premium movie content non-linear (on-demand) content is a substitute for linear content. However, both linear and non-linear rights are sold together on an exclusive basis, and the right is a digital pay TV right across all distribution platforms (i.e. TV, computer, tablet or mobile). The incumbent (Sky) has acquired 100% of these rights across all distribution platforms, and this has been the case for over two decades. In its review of first subscription pay TV window movie rights the Competition Commission hoped that the emerging over-the-top movie providers (NetFlix
and LoveFilm) would be able to challenge Sky’s stranglehold over these rights: this hope has turned out to be unfounded, as Sky has continued to secure all the first subscription pay TV window rights from the major Hollywood studios and NetFlix and LoveFilm have secured none. As such, it has been categorically demonstrated that convergence will not, in itself, address the underlying barrier to entry of access to key movie rights and/or channels that contain those rights.

Sky’s stranglehold over the key content that drives pay TV take-up and retention restricts competition and has allowed Sky to build a retail pay TV subscriber base of approximately 10.4 million subscribers. As can be seen from Figure 1, Sky has persistently retained over 70% of pay TV subscribers which is more than twice that of its nearest rival, Virgin Media. Moreover, as the Competition Commission found in 20121:

“*The entry of TalkTalk and TUTV in 2004, as well as BT Vision in 2006, caused only a small impact on the market shares of both Sky and Virgin Media. We estimated that the Herfindahl-Hirschman Index (HHI) of concentration for pay TV was around 5,000 up to May 2012*. (Comments: HHI index of less than 1000 usually indicates a competitive market and anything over 2000 is usually considered highly concentrated).

This contrasts significantly with the UK broadband market which has enjoyed vibrant competition among over 60 players and an incumbent (BT) with a market share of just 30%, the lowest of any incumbent telco in Europe. As figure 1 also shows, Sky has been successful at leveraging its unregulated exclusive control of key content into adjacent broadband markets through the marketing of triple-play bundles of pay TV, broadband and telephone.

<table>
<thead>
<tr>
<th>% of UK Pay TV Subscribers</th>
<th>UK Broadband Shares</th>
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<tr>
<td><strong>Source:</strong> BT compilation &amp; graph based on company reports</td>
<td><strong>Source:</strong> BT compilation &amp; graph based on Ofcom data</td>
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</tbody>
</table>

**Figure 1**

1Competition Commission report “Movies on pay TV market investigation – A report on the supply and acquisition of subscription pay TV movie rights and services”. 2 August 2012, para 5.18.
Sky’s entry level pay TV prices have increased by 21%\(^2\) between 2006 – 2011 compared with a 35%\(^3\) reduction in broadband prices over the same period with average broadband speeds also experiencing a six-fold increase. As a result, Pay TV subscribers in the UK have been left worse off than they would have been had Sky faced effective competition. Consumer access, choice and flexibility are severely limited leading to some of the highest prices among major EU countries – see figure 2. BT acknowledges that it is very difficult to draw like for like comparisons of pay TV pricing across different European countries given the differences in market structures, regulation, and the composition of content packages. There are a number of important qualitative factors that make direct comparison challenging. However, a recent analysis by Analysys Mason showed that indicative pay TV subscription pricing in 2012 ranged from €38/ month in the UK to €12/ month in Germany, and €18/ month in France. Additionally, it showed that the largest pay TV supplier in the UK was Sky with a market share estimate of 67% in the broad “all pay TV” retail market, the highest share of the market leaders in other countries. The Competition Commission was concerned that this market position limited competition in this market\(^4\).

\(^2\) Source: Screen Digest Data
\(^3\) Ofcom data
\(^4\) It is important to note that in other retail pay TV markets, such as the retailing of core premium sports channels or movie channels, Sky’s market share is likely to be even higher “The Commission […] considers that BSkyB has a strong position in the market for the retail supply of pay TV in the UK, with a market share raising a presumption of dominance” see paragraph 226 Case No COMP/M.5932 – News Corp/ BSkyB dated 21 December 2010.
Sky’s ability to price above competitive levels has been a consistent finding of recent investigations into pay TV markets in the UK. Based on detailed cost and pricing models, Ofcom’s pay TV Statement concluded “…that it is likely that the wholesale and retail prices of bundles including Sky Sports, and those containing Sky Movies, are appreciably above the competitive level. This is supported by two pieces of evidence – Oxera’s analysis of Sky’s profitability and Ofcom’s pricing model…” Sky’s ability to price above competitive levels in the absence of effective competition over many years, which has translated into super normal profits and a prolonged return on capital above its cost of capital, is evidence not only of its dominance in the provision of certain pay TV services, but also of a significant loss of consumer welfare.

Sky’s ability to price ‘appreciably above the competitive level’ was echoed by the Competition Commission’s findings in the retail pay TV market it defined in its movies investigation: “In our view, Sky’s high profitability was consistent with other evidence showing a lack of effective competition”. The Competition Commission found that Sky’s average return on capital employed of 30% between 2005-2011 was significantly above that of BT and Virgin Media who achieved a ROCE of 10% and -4.8% respectively. Sky’s

Notes:
1) For speeds up to 4Mbps, 8Mps and 30Mbs (except Italy where 30Mbs not available) – Source: Ofcom 2012
2) Estimated Average Spend per Subscriber per month – Source: Analysys Mason
3) Estimated market share of the largest pay TV provider by country – Source: Analysys Mason

N.B. – Because of the differences in pay TV products and markets across EU countries, even direct analysis of pay TV packages falls short of like-for-like assessment, such that the pricing information can only provide a comparison of what consumers pay on average, not what they pay for comparable products

It is important to note that in other retail pay TV markets, such as the retailing of core premium sports channels or movie channels, Sky’s market share is likely to be even higher. Although parts of Ofcom’s Pay TV statement are currently under appeal at the Court of Appeal, Ofcom’s findings in this respect were not challenged by any party in the lower court.
ROCE was also consistently higher than competitors in all but one year between 2003-2012 – see figure 3.

<table>
<thead>
<tr>
<th>Year</th>
<th>SKY</th>
<th>Virgin</th>
<th>BT</th>
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<tbody>
<tr>
<td>2005</td>
<td>12%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
<tr>
<td>2006</td>
<td>14%</td>
<td>-5.0%</td>
<td>10%</td>
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<tr>
<td>2007</td>
<td>15%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
<tr>
<td>2008</td>
<td>3%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
<tr>
<td>2009</td>
<td>11%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
<tr>
<td>2010</td>
<td>3%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
<tr>
<td>2011</td>
<td>15%</td>
<td>-5.0%</td>
<td>10%</td>
</tr>
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</table>

**Average ROCE: 2003 - 2012**

**Average ROCE: 2005 - 2011**

Sky and BT figures sourced from Bureau Van Dijk
Virgin Media and Netflix figures sourced from Merrill Lynch
Apple and Google figures sourced from Forbes
ITV figures sourced from Morninglight

- **CC Final Decision:** “Sky had achieved profits which had been both persistently and substantially in excess of its cost of capital” and “these excess profits for the whole of Sky’s UK pay-TV business were likely to persist into the future... it appeared to us that Sky’s profitability could no longer be explained by the risk of its investments.”
- **Ofcom Pay TV Statement:** “we found that it is likely that the wholesale and retail prices of bundles including Sky Sports, and those containing Sky Movies, are appreciably above the competitive level. This is supported by two pieces of evidence – Oxera’s analysis of Sky’s profitability and Ofcom’s pricing model...”

**Figure 3**

BT believes that consistent regulation and a level playing-field for competition are a necessary pre-condition to ensure European consumers enjoy the benefits of converged competition through enhanced choice, functionality, pricing and innovation. Currently, all communications markets across Europe are subject to consistent application of ex post competition law.

However, under ex post competition law a regulator can usually intervene only after competition has already been damaged\(^6\), i.e. after a firm has gained a dominant position and after it has abused that position or after it has entered into one or more anti-competitive agreements. It is important to remember that, even if a firm is dominant (or jointly dominant) in a market, a regulator cannot use ex post competition law to intervene and make that market more competitive in the absence of an abuse. Although the Commission has acted under its competition law powers in the past (as set out in the Green Paper), structural problems and barriers to entry such as the vicious circle call for a comprehensive regulatory solution covering all key content which allows the regulator the flexibility to define markets, identify failures and administer appropriate remedies.

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\(^6\) Although there are powers to impose interim measures there are significant hurdles to overcome before these can be imposed; moreover these powers are not suited to remedying systemic market failures.
We believe that to do this requires adopting measures that ensure the regulation of media sectors, and pay TV in particular, is consistent with the model of regulation applied to the telecommunications sectors. The regime regulating the telecommunications sectors is set down in European Directives and is essentially economically and legally sound; at its foundation is a mature, rational and structured approach, consistent with well-established principles of competition law and economics. Most importantly, the regime is designed to ensure effective competition through intervention to promote competition where necessary by addressing structural market failures, barriers to entry and enduring SMP.

In the UK this would be achieved by applying the existing telecommunications regime to the media sector so that Ofcom has the same powers to define markets, identify market failures (including, but not limited to, market power), and the design of remedies to promote effective competition and provide a consistent level of protection for consumers in media markets as it has in telecoms markets. This essentially means aligning the ex ante regulatory regimes for telecoms and broadcasting so that regulators such as Ofcom can intervene in a consistent way across these markets. In the UK this could easily be implemented through some minor changes to Ofcom’s existing television licensing powers\(^7\) to strengthen them and clarify the circumstances of their intended use.

As communications markets converge, and triple play offers become increasingly important, as well as the take-up of non-linear TV services, it is essential that regulation is applied consistently in a way that can address competition problems across the board. The regulator should have the same powers to address competition problems on an ex ante basis across the whole of the communications and media sectors, as well as linear and non-linear content, using the established legal and economic framework of market definition that underpins the European regulatory framework which in the UK is built into the Communications Act.

**Question 3 - Are there obstacles which require regulatory action on access to platforms?**

Regulation to secure access to the set-top-boxes of scale pay TV platforms, on an FRND basis, is vital to ensure that content producers and channel providers are able to overcome the proven disadvantages of small scale entrants in markets characterised by high fixed costs, low marginal costs and tipping points.

In the UK, Sky’s satellite platform remains the key means of delivering multi-channel TV services and in particular pay TV services. In 1999, Sky had approximately 3.5 million pay TV subscribers\(^8\), which represented less than half of all UK retail pay TV subscribers while

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\(^7\) Section 316 Communications Act 2003.

\(^8\) Ofcom’s Pay TV Statement of March 2010.
Sky now has approximately 10.4 million subscribers, which represents nearly two thirds of total UK retail pay TV subscribers. As Sky has consolidated and grown its position in retail pay TV, the importance of its satellite platform for the delivery of TV channels, and pay TV channels in particular, has also grown.

In the UK, Technical Platform Services (TPS) regulation, which derives its powers from the Access Directive in the European Framework, currently provides direct third party access to certain technical services (including conditional access, EPG access and access control services) within the set top boxes of a regulated entity. In light of its scale, in the UK Sky’s platform is the only one currently required to provide TPS to third parties and it is required to do so on FRND terms.

BT believes it is necessary to ensure that third party content providers continue to have access to TPS on the Sky platform. In light of the scale of the Sky platform, it is economically necessary for a pay TV channel to distribute its channel on the Sky platform. This is particularly the case for higher cost channels such as a live sports channel. Access to Sky’s 10.4 million subscribers is necessary for the channel economics to be viable. Absent conditional access (CA) regulation, the only option for a channel seeking to be distributed on the Sky platform and seeking to access Sky’s subscribers would be to agree wholesale carriage terms with Sky. Absent CA regulation, the channel’s bargaining power for carriage would be non-existent, whereas with CA regulation the channel can decide to retail itself (“self-retail”) to Sky’s existing subscriber base instead.

In this respect it is worth noting that at the launch of Sky’s digital satellite platform in 1998, ITV attempted a boycott by refusing to distribute ITV1 over it. In 2001, the ITV Sport pay TV channel was launched and that too was not distributed over Sky’s satellite platform. Both these courses of action proved to be unsuccessful and would be unthinkable now. Indeed, when Setanta, ESPN and BT launched their premium pay TV sports channels (which included among other things live FAPL matches) in 2007, 2009 and 2013 respectively, they all immediately made these channels available via Sky’s satellite platform. In each case, that platform provided by far and away the biggest proportion of the subscribers to these channels. In respect of BT Sport for example, BT currently has approximately 1.7 million retail subscribers in total of which approximately 60% are on Sky’s satellite platform.

In addition, regulation of EPG access on FRND terms is also essential. There is limited value in being able to retail a channel to Sky’s subscribers on the satellite platform if those subscribers are unable to locate the channel on the EPG. Therefore, maintaining this aspect of the existing TPS regime is also essential.

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9 Sky’s Annual Report 2012/13. NB the publicly available subscriber numbers for Sky tend to include figures for the UK and Ireland, and so the UK-only figure will be lower.
The existing TPS regime also requires that Sky provide access control (AC) services which allow channel providers such as BT to offer customers enhanced interactive services. The only possible (or at least in some cases the only viable, efficient and cost-effective) way to deliver enhanced TV services and ancillary interactive TV services to channel subscribers on Sky’s satellite platform is via regulated AC services. It is notable that although BT only started broadcasting BT Sport in the last few weeks, it is already making use of Sky’s AC services, having entered into an Application Signing Agreement (ASA) with SSSL in April 2013.

BT already uses the software signing tools provided under Sky’s ASA to develop and sign an application which can cause a ‘commercial watermark’ to be displayed on its sports offering. This watermark indicates that a customer is a valid commercial subscriber and, as such, is entitled to show these channels to the public in commercial premises (such as pubs, hotels and betting shops). The commercial watermark is a vital part of the enforcement of commercial subscription agreements and underpins the commercial revenues that BT is already earning from BT Sport. This is because it enables the easy identification of actual fraudulent use of residential subscriptions in commercial premises. In addition, its presence, and the ease with which it can be identified, is a deterrent to potential fraudulent use (e.g. by publicans, who may consider using a residential subscription in their public premises). The sale of commercial subscriptions is a very important activity for any premium pay TV sports channel, and BT Sport is no different in this respect. In order to be able to bid effectively for sports rights in future, among other things BT needs to know that it will have a significant and secure stream of revenue from commercial premises. Hence the commercial watermark, and the AC service that underpins it, is a key component in the future viability of BT Sport.

AC services are also essential for “clash management”, which uses red button functionality to allow viewers to select from multiple concurrent matches that are effectively broadcast as part of a single channel. Clash management issues become more acute the more additional live rights a (sports) channel accumulates. Absent the ability to use red button functionality to show multiple matches a channel would also be placed at a material bidding disadvantage when bidding for sports rights, as this would change the economics for bidding for rights and put a bidder at a disadvantage in the “beauty parade” element of rights bids. This is particularly important when bidding for certain rights such as the UEFA Champions League rights.

Finally, AC services can be used to allow easy one button upgrades for existing subscribers (for example from SD to HD), as well as to provide enhanced TV services (such as additional commentary or camera angles and greater social media integration) in order to provide a rich interactive consumer experience.

Ensuring the continuance of regulated TPS on Sky’s platform is not only vital to BT but also to other players - both commercial and publicly funded, providing both pay and non-
pay TV content. Absent regulation, Sky would cease to provide these services to competing third parties. In this respect it is important to note the surprisingly candid admissions by Sky in its recent submission to the Ofcom consultation on Sky’s AC services in which Sky confirmed that if the regulation of its AC services is removed, Sky will cease to provide those services to broadcasters such as BT by 2016 at the latest.

As well as the need to maintain the existing TPS regime, BT also believes that there is scope to strengthen the existing regime through increased accounting transparency and changes in the current approach to the setting of TPS charges. Currently there is limited external scrutiny of the appropriateness of the underlying cost base recovered by SSSL or the distribution of costs as between Sky and third parties acquiring TPS services. BT believes there is considerable scope to improve the accounting transparency of the existing arrangements in light of Sky’s vertical integration and ownership of Sky Subscribers Services Limited (SSSL), its platform provider.

Despite TPS regulation having been in place for almost 15 years, and the relative scale of the Sky platform, there has never been a successful scale pay TV retail service launched on satellite that directly competes with Sky’s own services. While this outcome is largely driven by Sky’s monopolisation of key content (discussed in response to question 2 above), the current level of TPS charges clearly represents a cost of entry for new entrants. In line with recent changes in the approach to setting voice call termination charges, the adoption of LRIC based pricing for TPS charges would be an appropriate approach in this case to assist in lowering entry barriers. This approach to charge setting could be reviewed once effective competition at the retail level was established.

Finally, BT also believes that in light of convergence and the increasing importance of on-demand content, it is essential to ensure that TPS regulation is adopted in a way that is consistent across linear and non-linear content access. In this respect, BT believes that it will be important to ensure that the existing TPS regulation is capable of ensuring access to Sky’s Ethernet ports, rather than simply access to the dial-up modem within Sky’s legacy set-top-boxes. Such access would allow for the provision of a substantially richer consumer offering than can be provided today using a dial up modem and narrowband return path.

In addition, the ability to provide on-demand services (similar to Sky’s own on-demand services) directly to Sky’s scale subscriber base would materially alter the cost of investment in such content. Indeed, arguably the fact that retailers who provide a linear service are permitted to retail their services directly to Sky’s subscriber base, whereas retailers who provide a non-linear service are prohibited from doing so creates a competitive distortion as between linear and non-linear services. Opening up access to Sky’s Ethernet ports for the provision of such services would benefit many small, pay TV entrants and could be genuinely market transformative in terms of retail competition for certain types of pay TV services.
2. Financing models

| Question 5 - How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing? |

Content is financed in three main ways, advertising, subscription and pay-per-view. Convergence has the potential to enhance all three main financing mechanisms.

In relation to subscriptions, convergent broadcast and broadband platforms have the potential to revenue streams. Access to content to sell for subscription is the key determinant of the opportunity to drive subscriptions. Convergent platforms enable subscriptions to on-demand content to be combined with linear content. For example, in the UK, the bundling of on-demand movies rights with linear movies rights sold by the major Hollywood studios has given monopoly control of linear and on-demand subscriptions to Sky.

The convergence between broadcast and broadband also has the potential to drive subscriptions more broadly. For example, in the UK, the subscription to BT’s new BT Sport channels is waived for customers also subscribing to its broadband packages. In this example, the convergence of channel content and broadband is supporting BT’s entry into the content business, and financing the acquisition of content rights. This example makes clear how important it is, therefore, that regulation achieves a level playing field across communications and media markets.

Pay-per-view revenue models will also be enhanced by convergent platforms: by bringing on demand content to the broadcast devices – the TV – customers will have readier access to pay-per-view content on the device where most of their viewing takes place.

Similarly advertising for the purposes of financing free-to-air / free-to-view content will be enhanced by convergent platforms. For example, evidence of this can be seen by some PSBs offering new paid for, Ad free, VOD products that consumers are happy to purchase. In addition, as on-demand video-streams are specific to individual end-user devices, advertising can be targeted more accurately to likely viewers, enhancing its value to advertisers.

Convergent platforms have the potential to enhance ancillary revenue streams as well, such as voting and betting.

There are of course off-setting challenges to revenue models from convergence. Convergent platforms often provide access to a wide range of internet content, much of it available for free and much of that unencumbered by advertising. This can be a threat to
traditional revenue models. For example, pirated content undermines legitimate revenue streams. It is important that reasonable steps are taken by all the actors in the content distribution value chain to support efforts to protect copyright material and to ensure that rights-owners are properly remunerated.

However, subject to this caveat – the protection of copyright – the presence of a wide range and vast quantity of internet content should not be seen as a substantial threat to traditional revenue models supporting the content industry. Content of quality will be sought after by end-customers. It is ownership of the quality content that will drive revenue models.

3. **Interoperability of connected TV**

| Question 6 - Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market? |

The most efficient approach is for the industry to develop the requirements for interoperability and standards going forward. Initiatives such as the Smart TV Alliance, and progress in web based standards and streaming technology such as Smooth Streaming and MPEG-DASH by the industry indicates good progress is being achieved.

4. **Infrastructure and spectrum**

| Question 7 - How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations? |

In their pure form, broadcasting and broadband platforms have very different characteristics that are relevant for customer experience and public interest obligations. Pure broadcasting is a one way distribution of content, whereas broadband has the potential to be a two-way communication, facilitating on-demand distribution. Broadcast regulation has been based on the notion that the content distributors choose what is distributed and so are regulated for public interest to ensure that what is distributed complies with rules to support the customer interest. Internet content distributed by broadband has had less formal content regulation, reflecting the fact that the end-users choose which content to access. Fixed broadband, having much higher bandwidth and performance, out-performs mobile broadband as a distribution mechanism for stationery devices, such as TVs, but mobile broadband is becoming increasingly important with the prevalence of larger format wireless devices, particularly tablets, and the deployment of 4G networks with higher bandwidth.
However, increasingly all content distribution platforms are hybrids converging broadcast and fixed broadband – mobile broadband not yet being a typical part of this convergence. Consequently regulation including content regulation has to be aligned across the two sectors, both as to the services being provided in markets and to content standards of which those services comprise.

The main barrier to effective competition, which in turn drives different consumer experiences across platforms, is the inability to access key content on certain platforms. Lack of wholesale supply of the key content that drives pay TV take-up and retention is a fundamental problem that must be addressed in order to deliver effective competition across platforms to the benefit of consumers. BT’s views on this issue are set out in detail in our response to question 2.

A further difference across platforms is the relative established scale of the existing subscriber base to that platform. As set out in response to question 3, for new entrant channel economics to be viable, access to existing scale bottleneck platforms is essential. In the UK, this means the continued regulated provision by Sky of all TPS services on FRND terms to its 10.4 million subscribers on the satellite platform. In addition, as set out in response to that question, BT believes that it is necessary to extend the application and scope of this regulation to avoid distortions as between the provision of linear and non-linear pay TV services.

BT agrees that hybrid models exist for the delivery of pay TV content to consumers. Increasingly new entrants are providing content by way of over the top (OTT) apps rather than solely over traditional, established pay TV platforms. However, it is essential to recognise that these services are typically viewed by consumers as complements to, and not substitutes for, traditional pay TV services to the main TV set in the home. Moreover, as discussed in response to question 2, absent access to key content it does not matter how many additional distribution channels become available, consumers will not reap the benefits of effective competition.

**Question 8 - What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?**

Frequency sharing of broadcasting spectrum (TV White Spaces) will improve efficiency of spectrum use and can bring new benefits to consumers, for example enabling new machine-to-machine applications. This form of dynamic access to spectrum based on a database system represents a significant step forward in spectrum management and should be facilitated and encouraged.

Mobile and broadcasting networks cannot share the same spectrum, with experience to date showing that guard bands are needed and modification to TV receiving equipment in
some circumstances. Allocation decisions need to be based on proven requirements and clear demonstrations that the benefits of changes outweigh the costs, analysed in the widest sense.

### Question 9 - What specific research needs with regard to spectrum have to be addressed to facilitate such development?

Research is needed to fully understand all costs and benefits to underpin potential allocation decisions (e.g. mobile versus broadcasting).

Research is needed to promote dynamic shared access to spectrum via database systems (e.g. TVWS and other bands).

### 5. Regulatory Framework

#### Question 10 - Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

As set out in our response to question 3, BT believes that it will be important going forward to ensure that the existing TPS regulation is capable of ensuring access to Sky’s Ethernet ports, rather than simply access to the dial-up modem within Sky’s legacy set-top-boxes. The fact that retailers who provide a linear service are permitted to retail their services directly to Sky’s subscriber, whereas retailers who provide a non-linear service are unable to do so creates a distortion. Opening up access to Sky’s Ethernet port for the provision of such services would benefit many small, pay TV entrants and could be genuinely market transformative in terms of retail competition for certain types of pay TV services.

For completeness, the asymmetric nature of regulation placed on comms players needs to be addressed by ensuring a consistent regulatory regime is applied to the media sector that specifically addresses consumer protection distortions arising from:

- a. Losing supplier led switching process to prevent ‘save calls’ being made by the losing pay TV supplier, compared with an industry agreed ‘gaining supplier’ led process for telephony and broadband (provided by fully unbundled players) that prevents save calls being made.
- b. Consumer protection concerns arising from pay TV providers not being required to notify consumers in advance of price increases and the ability to terminate
contracts.

Outside of addressing these specific competition issues, BT believes that existing codes of practice for self- and co-regulation should be sufficient to address any content specific issues around advertising rules, protection of minors, support for independent production, watershed protections or media literacy. To date BT has not seen any distortions arising, and consider that the current provisions work effectively to ensure full protection of the related values for non-linear content. In the UK the self-regulatory body ATVOD publishes evidence demonstrating the appropriateness and success of the current approach and as such it would be disproportionate to implement additional requirements at this time.

**Question 11 - Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?**

The existing approach of self and co-regulation as the core principle working in conjunction with bodies such as the ASA for advertising and ATVOD for non-linear TV regulation with Ofcom as a backstop remains fit for purpose. Having a clear complaints and appeals process that operates satisfactorily for all stakeholders is fundamental for the status quo to continue.

**Question 12 - What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?**

Local markets must be provided with appropriate freedoms to manage the production and delivery of broadcasting content that complies with consistent rules whilst providing the flexibility to meet local country norms – the country of origin principle for all broadcasters is therefore fundamental and practical in achieving this objective.

Changing this country of origin principle for non-linear content would be unworkable on the basis that user content is generated and consumed anywhere in the world, irrespective of time, place or device. To extend the country of origin principle to VoD would, inter alia, lead to regulating ISPs in areas such as copyright, child protection, net neutrality in order to support and implement specific in-country norms such as cultural and religious ones.

**Question 13 - Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?**

In practice, increased convergence does not test the relationship between the between
AVMSD and the E-Commerce Directive and is appropriately “future-proofed”. The delineation between AVMSD and the E-Commerce Directive was well explored during the preparation phase of the AVMSD (e.g. MediaKabel decision that near VoD services are characterised as “television broadcast services”\(^\text{10}\)) and the negotiations resulting in the AVMSD’s final text, as reflected in particular by Recitals 17 to 29.

The 7 part cumulative test which incorporates a dynamic approach to the concept of “programme” (Recital 24) in assessing what is a “TV-like” on-demand service together with the core definitions is working well to determine which non-linear online services should be classified as in, or, out-of-scope of AVMSD regulation.

Our experience in the UK is that, in practice, implementation has resulted in fewer “grey” areas than stakeholders anticipated. The UK’s two tier co-regulatory mechanism - ATVOD makes determinations of which services should be notified to it as being within the scope of AVMSD regulation on the basis of its evaluation and representations from affected service providers and its determinations can be appealed to Ofcom – is satisfactory in producing thorough examinations and detailed decisions and guidance to help provide clarity and certainty to stakeholders in cases where there is uncertainty.\(^\text{11}\)

In our view, the current AVMSD recognises the relationship between AVMSD and the E-Commerce Directive and is appropriately “future-proofed” to address issues arising on this matter.

6. Media freedom and pluralism

| Question 15 - Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level? |

BT supports the EU public policy objectives for media freedom and pluralism, and we agree that ‘the availability of various platforms providing valuable content to users, as well as the openness of those platforms, is an important condition for a thriving media landscape’.

This openness and availability has to be underpinned by a clear legal and regulatory framework, that protects consumers and ensures that their choice cannot be distorted through selective availability of information. A key driver to enable these objectives is a regime that ensures that search engine facilities and filtering mechanisms provide access

\(^{10}\) C-89/04 Mediakabel BV v Commissariat voor de Media

\(^{11}\) See ATVOD http://www.atvod.co.uk/regulated-services/scope-determinations
There have been approximately 60 occasions when ATVOD has had to intervene to make scope determinations and approximately 20% of these have led to appeals to Ofcom
to all content and present this choice of content in a fair and equitable way, in circumstances where the operator of the search function or filtering mechanism may not, itself, have the incentive to do so.

In general, BT believes that those operating open, non-scale platforms which offer search functions or filtering mechanisms have neither the incentive nor ability to distort consumer choice. In those circumstances, regulation is unnecessary.

However, as the recent Commission/Google case\(^\text{12}\) found, there are circumstances in which search functions and filtering mechanisms can distort consumer choice and competition, specifically where the operator of the search function/filtering mechanism is dominant and vertically integrated. BT’s concern is that dominant vertically integrated players who control content rights and operate retail platforms, such as Sky, have both the incentive and ability to distort competition by restricting consumer choice through a search engine or filtering mechanism that either restricts certain content from being offered and/ or placing this content at the bottom of the search results. As the extent of content available to consumers increases, the importance of search functions and filtering mechanisms is also likely to increase. As such, the potential distortive effects of allowing dominant, vertically integrated firms to determine the outputs of search functions/filtering mechanisms unfettered is also likely to become more acute.

The appropriate remedy for this potential market distortion would be an ex-ante regulatory regime that provides clear, specific rules for search engines/filtering mechanisms to ensure:

- a. all available content is included in the search results; and
- b. the ordering of the search results are positioned using an objective, transparent and non-discriminatory set of criteria (akin to the rules around EPG prominence and ordering that already exist in the UK).

To do otherwise, would likely result in increasingly large competitive distortions which mean that the overall public policy objectives of media plurality and choice will not be achieved effectively.

**Question 16 - What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?**

Another key requirement for BT to achieve its public policy objectives laid out in our response to question 15 regarding media pluralism and consumer choice, and to prevent

\(^\text{12}\) Commission case against Google, November 2010
market distortions arising, is the availability and access to PSBs’ content on a fair and non-discriminatory (FRND) basis to all players.

A pre-condition to achieving this requirement is to ensure that any must carry rules and any associated "must offer" rules are applied in a uniform and consistent way across all platforms. Existing rules which allow certain platforms to benefit from the protection of the must carry/must offer rules more extensively than others are problematic as they have the potential to distort competition amongst competing platform operators.

This issue becomes more acute the greater the degree of platform convergence. In circumstances where these rules are likely to distort commercial incentives, BT believes that consumers will be better served by the removal of these rules entirely rather than to have them applied selectively as is currently the case.

7. Commercial communications

**Question 17** - Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

We believe the current rules around commercial communications will be appropriate in the “converged” future. This view is based on our experience of the existing regulatory regime for on demand content where ATVOD is the devolved regulator and the ASA already provides co-regulation for linear and non-linear advertising content. We have found this arrangement effective in dealing with advertising complaints and focuses regulatory scrutiny on those providers in the on demand area who are least compliant.

**Question 18** - What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

We do not believe there is a compelling reason to increase formal regulatory instruments in the advertising area as the current role of the ASA for regulating adverts in linear and non-linear broadcasting operates sufficiently well in the UK and is a good example of a functioning and respected co-regulatory body in the broadcast sector.

**Question 19** - Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

The final say in running innovative advertising solutions across channel broadcasts should sit with the broadcaster, subject to meeting Ofcom and ASA guidelines. We therefore need
regulators to be responsive to new advertising techniques and to quickly update their codes to reflect them so that all parties can ensure they are operating under the same understanding of the applicable rules.

8. Protection of minors

BT is committed to protecting children when they access content and broadcast services. The work initiated by Commissioner Kroes on the CEO Coalition has shown the potential for industry and Government to come together beyond national boundaries and collaborate effectively on child protection. We are actively engaged with UK Council for Internet Safety (UKCCIS) in this area, but think that the current self-regulatory framework in the UK should be left to develop before considering any formal regulation in this area.

One example where this industry based voluntary approach has been a success is the UK Government backed Internet Service Providers Code of Practice published in October 2011. This code outlined a set of core commitments for each of the UK’s top for ISPs to inform and educate parents regarding content filtering tools available for them to apply to enable a safer internet for their children and families.

Going forward, all players in the TV supply chain have the opportunity for collaboration at the EU level with initiatives such as the CEO Forum and Safer Internet for Kids.

Question 20 - Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

The AVMSD carries over rules from the TV without Frontiers Directive and provides a satisfactory degree of protection for minors. Differences in culture and tastes across Member States means that this aspect of protective will need to reflect specific country laws.

BT has provided ‘Clean Feed’ in the UK since 2004 to block illegal content as defined by the Internet Watch Foundation (IWF). BT also provides its broadband customers with free family protection software that enables our customers to opt in and apply content filtering to up to seven PCs in the home.

In June 2013, BT undertook to actively notify users who try to access child pornography with a specifically designed ‘splash page’ warning them that they have done so and that this is an illegal activity. BT, together with the UK’s leading ISPs, agreed in June 2013 to provide a further £1million to help the IWF’s broader remit to carry out a more active role in searching for abusive images.

However, in the absence of clear primary legislation from Parliament, or an EU wide legislative instrument, BT does not wish to police the internet beyond preventing access to illegal material such as the child pornography example given above. To do so would set an unfortunate precedent in which an ISP would become the arbiter of taste and decency.
in relation to online content. It is not for an ISP to be placed in such a position.

We are planning to launch network based controls during 2013 that will cover all devices in the home that connect to the internet.

**Question 21** - Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

Education and awareness campaigns of parents and other non-users such as schools will enhance awareness and protection of users/children. BT is working with industry, parents, schools and its customers to deliver regular communications and education initiatives in the UK.

The same approach should be considered by all players in the supply chain such as device manufacturers, browser and content providers especially in the absence of a ‘standard’ age rating system for content (linear or non-linear) in the UK.

**Question 22** - What measures would be appropriate for the effective age verification of users of online audiovisual content?

Currently, no age rating is applied to broadcast content apart from the watershed and in certain circumstances guidance warnings about the nature of ‘disturbing’ content such as violence and sex.

BT’s position is that rating of content should ideally be undertaken once at the point of production rather than reviewing/re-rating the content every time a VoD provider purchases new content. BT use the British Board of Film Classification (BBFC) ratings for all films and some TV shows (where the TV show has been BBFC rated), otherwise any TV show which includes any “Guidance” information is automatically defaulted to “18” and the guidance information is shown in the programme synopsis. All music videos are personally viewed by a BT scheduler (checking for sex/drugs/language/violence) and given an appropriate BBFC equivalent rating by BT TV prior to publishing on the platform.

**Question 23** - Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

No, the current directive is satisfactory.
Question 24 - Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

Education and awareness of users is important to making sure that mechanisms are being fully used. Existing reporting facilities to organisations such as the Internet Watch Foundation (IWF) and the Child Exploitation and Online Protection Centre (CEOP) and the ASA are available in the UK, and BT also provides reporting facilities via email or telephone. We believe that existing reporting mechanisms provided in the UK are good and education of users’ awareness of these is important.

Question 25 - Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting?

BT works with the Child Exploitation & Online Protection Centre (CEOP) in the UK for reporting of online content. We believe that this is appropriate and any changes should be made at a national level. Effective reporting needs all parties to work together to solve any concerns.

We provide guidance on our bt.com website on how to report concerns to BT at abuse@bt.com which also contains links to the Internet Watch Foundation (IWF) and CEOP websites. Reports are received by a dedicated Internet Customer Security Team (ICST) who investigate reports of misuse by BT’s customers according to our acceptable use policy.

BT will take direct action if one of its customers has been proved to have breached its acceptable use policy.

9. Accessibility for persons with disabilities

Question 26 - Do you think that additional standardisation efforts are needed in this field?
Question 27 - What incentives could be offered to encourage investment in innovative services for people with disabilities?

The AVMSD provides a good framework for accessibility for persons with disabilities and does not warrant additional standardisation. The ability to regulate the entire VOD market
in a consistent way is impractical as content is varied, ranging from user to professionally generated and across jurisdictions. However, where the application of subtitles and audio description is applied by the content provider, BT will undertake to deliver this content as far as is possible within technical/practical constraints.

End
Cable Europe Response to the Commission’s Green Paper on Converged Audiovisual Worlds

30 September 2013

INTRODUCTION

Cable Europe welcomes the Commission’s Green Paper on a Fully Converged Audiovisual World. The on-going transformation of the audiovisual media landscape is bringing convergence and with this, increasing competition between a fast growing number of distribution platforms and devices and more opportunity for consumers.

The development encompasses numerous interrelated aspects, such as the display of user generated content as well as Video on Demand and “catch-up” services on the TV screen. Moreover, these services can also be accessed on a number of other devices, such as a tablet PC, a laptop, a connected game console or set-top box.

Viewed in this context, what is called “Connected TV” is not a new phenomenon. Cable and other operators have been offering enhanced, interactive services for many years that combine traditional broadcast streams with on-demand and other intelligent functionalities. Certain Cable operators have also in the last few years launched services that further integrate those combined products with services and applications delivered via the internet.

The fully converged audiovisual world should not be viewed as simply enabling the delivery of internet content to television sets. It should be regarded as a means by which multiple sources of audiovisual content, services and applications can be delivered to, and consumed via, a multitude of different devices and platforms, in many different ways.

The further development of converged audiovisual services has great potential to deliver additional benefits to citizens and consumers and indeed to the economy as a whole. However, if this potential is to be realised, regulation and policy must allow a competitive, market-driven approach to prevail and should avoid the promotion of a single technology or platform. Factors, such as the availability of content across multiple devices/platforms and the fostering of privately funded platforms as well as distribution infrastructures must also be recognised and addressed. Suitable tools must be created in order to prevent the abuse of content monopolies.

Cable Europe advocates for a lowering of the barriers to all market players to allow European providers to effectively compete with external players. The main prospective of the European lawmaker should be, to prevent the discrimination of European players compared to international OTT players. Deregulation should be complemented by self regulation measures for certain specific aspects like children protection for example.
1. **Consumer experience of the future – portability of content:**

Cable Europe believes that the ability to distribute content across multiple devices and platforms must be ensured and the portability of content within and across borders must be facilitated. This means enabling subscribers to benefit from the content they have already paid for at any time on any screen or device of their choice regardless of their location.

Our understanding is that from the perspective of a cable operator the concept of “content portability” at least encompasses two different situations. In the first place, the subscriber may wish to download content from his TV provider (e.g. via the set-top box) into a portable device (e.g. an i-Pad) which allows him to watch that content in other locations. In the second place, the subscriber may wish to access his local TV provider's content from any location where he has an internet connection. We observe that both types of content portability are going to be increasingly demanded by Cable TV subscribers and offer a high potential for market development to cable service providers.

Cable operators are trying hard to innovate to provide consumers with choice and diversity. Portability of cable products is being developed in a number of Member States and is therefore entirely technically possible, but those efforts are substantially frustrated by restrictions in clearing Copyrights. Being able to answer this demand is also paramount to embracing the emerging competition from online offers.

It should be noted that cable operators negotiate content rights for their television services with content owners, mainly broadcasters. The multi-screen strategy extends the existing cable television service and is an integral part of the service. Rights therefore have to be negotiated for multi-screen viewing as well. This has not proven to be an easy task. In this regard we are keen to see improvement in the overall efficiency of the rights clearance system.

We believe that once the rights are cleared for a subscriber, the latter should be able to benefit from his subscription regardless of their location, on any screen or device of their choice. For communication of content to the public, broadcasters clear the rights on a territorial basis or, if so desired, on a multi-territorial basis; Operators of distribution platforms clear the rights, if need be on a country by country basis, for their service areas where their subscribers have their residence. This is current practice.

However, once the rights have been cleared in this way and the target audiences of the broadcasters or the subscribers of the distribution platforms are known, these national consumers should be granted a portability right (to other territories and to other devices of their choice).

For making content available to the public (eg subscription based VOD), the same principle should apply. Once rights have been cleared by the distribution platform, the subscribers should be in a position to enjoy his subscription anywhere and on any device of their choice.
We believe that it is extremely important for policy makers not to pick winners in a given market. The regulatory framework should therefore have the same operational and cost impact irrespective of the exploitation form (satellite, cable, IPTV, internet, mobile). One should recognize though that some exploitation forms are national by nature, others are international by nature and some can be both (“TV everywhere” experience of national services).

On the content rights acquisition side, Cable Europe believes that as long as commercial agreements allow for portability of content there is no need for specific regulation. A “subscriber based access code” is indeed the way forward and such authentication systems are already being developed. If, however, commercial agreements are not feasible, some intervention from the Commission might be necessary.

2.  **Exclusivity/access to content**

**Question 2: What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?**

As outlets for media content and especially premium content multiply with the emergence of new operators and/or OTT platforms, premium content tends to become of even greater importance for network operators and platform providers to compete. Broadcasting organizations must therefore be prevented from exploiting their position of power and preventing network operators from offering this content to the end users. This would contradict with the basic principle of pluralism enshrined in media law.

For this purpose, suitable tools must be created in order to prevent the abuse of content monopolies. A “Must-Offer” obligation must be created: any television operator or content owner that has premium content available or a premium brand must allow network operators interested to transmit the program to enter into negotiation on equivalent conditions whoever finally gets the contract at the end of negotiations process.

Moreover, Cable Europe fully endorses the Green Paper’s analysis contained in section 2.1 when it refers to the fact that whereas exclusive deals between premium content providers and some market players are not per se anticompetitive, in occasions they restrict the possibilities of third parties to provide such content to their audiences. More specifically, in the last decade, access to premium content has proved highly contentious from a Competition Law perspective in some jurisdictions. This has been the case in the UK and also in Spain, where a vertically integrated operator, with a dominant or highly significant presence in the pay TV retail market, has the means and incentives to restrict access by its retail competitors in the upstream market to premium content with the goal of foreclosing the market.
Therefore, in 2002 for example, the European Commission concluded that a merger between the two main pay-TV platforms in Spain raised competition concerns (case COMP/M.2845 SOGECABLE / CANAL SATELITE DIGITAL / VIA DIGITAL) and, on that basis, the Spanish competition authorities accepted a number of remedies proposed by the parties limiting the lengths of contracts signed by the merged company with football clubs and American majors and setting-up access condition to third-party operators. However, this did not stop the competition proceedings concerning access conditions to premium football rights in the Spanish market. On the contrary, these have continued and rose ever since.

Under the circumstances described above, we think that the Commission should undertake a fact finding exercise showing how diverse the rules are across the EU as this would help to bring more transparency to the system. A specific problem could be solved by competition law or other regulatory way if competition cannot help. Regulators could have competences over competition rules and produce a report on the state of competition on the market.

**Question 3: Are there obstacles which require regulatory action on access to platforms?**

No, platforms are not the bottleneck. There is strong and increasing competition among platforms like cable, satellite, DTT, IPTV and OTT, while Content is in dominant players’ hands as the viewing share of main broadcasters across Europe has remained stable over the last years.

3. **Financing models**

**Question 4: Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?**

**Question 5: How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?**

The Commission’s Green Paper rightly points out that whereas the current framework (the AVMSD) envisages that broadcasters are responsible for editorial content and on-demand service providers should contribute to support the production of European works, internet-based new players directly involved in the exploitation of the same content seem to be exempted from the obligation.

At the same time, in some member states (e.g. Spain and Germany) the authorities impose the obligation to contribute to the production of national films to operators that do not have editorial responsibility over content (e.g. cable operators), which can be understood as a misinterpretation of the aims and purpose of the AVMSD.

Cable Europe encourages therefore the Commission to avoid discrimination among platforms in terms of contribution to the production of content. National measures that would go into this direction and put a burden on the wrong platform should not be allowed.
Windowing is also key to finance content. Windows based on exploitation models and business cases (cinema exhibition, followed by pay TV, on demand, free to air broadcasting etc.) could continue to be justified. However, Cable Europe encourages the Commission to put an end to the territoriality of release windows and harmonise the various national rules in that matter. Release windows go some way to help explain the piracy issue. If the release windows question could be addressed, piracy would likely drop considerably.

4. **Interoperability of connected TV**

**Question 6: Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?**

Cable Europe supports openness and transparency but this should not be counterproductive to innovation. There should not be competition in excess that kills innovation. This is one of the reasons why the US is so successful. Look at Apple and how they compete with Samsung.

Cable operators are innovating and making increasing use of the internet as a delivery and access mechanism for content and they should be encouraged to continue and invest in their platform further. This would allow for more competition between platforms to the benefit of the consumers.

Cable Europe's members do not foresee any interoperability issue across borders and therefore do not see a need for EU action. The consumer electronic industry constantly brings up new devices that include new functionality. Cable operators are embracing this diverse ecosystem chosen by consumers providing appealing services that are supported by a variety of devices such as television or tablets. Full interoperability is ensured via the use of HDMI audio and video interface connected to cable operators set top boxes or via the DVB CI plus interface as appropriate. Standards respond to market demand and as such should be embraced by the industry on their own merits. Cable Europe is aware of the emerging debate about HbbTV as a technology and standard for interactive services. As is rightly pointed out by the European Commission in the Green paper there are already other technologies in the market for the distribution of interactive services such as YouView, MHP and the CI+ technology. Market parties have already invested in several ecosystems for interactive television.

It would be inappropriate, therefore, to mandate any particular standard or technical specification – not to mention to oblige platforms to implement such. It would also contradict the principle of technology neutrality.

5. **Spectrum**

**Question 7: How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired**
broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

Consumers are increasingly seeking to access the services and content of their choice via a multitude of devices, in different places and at different times. A choice of different content delivery platforms and the ability to select the most appropriate product based on preferences or particular needs is therefore an important aspect of the consumer experience.

Taking the convergence of mobile and fixed networks into consideration and the uptake of IP technology for the distribution of content, the public interest perspective is even more safeguarded than before. This is for instance also taken into account by the Dutch government that recently has decided that the Must-Carry obligation that over the last years only applied to cable TV operators should be extended to all television distribution platforms including satellite, terrestrial and IPTV platforms. This also supports the principle of technology neutrality that is of crucial importance for European legislation.

Moreover, differences in characteristics, capability and delivery methods/technology foster competition and innovation. The continued existence of a range of different content delivery platforms is therefore critical to the development and sustainability of the digital ecosystem. With this in mind regulators and policy makers must strive to maintain that choice and diversity and should avoid favouring one type of platform over another.

For their part, Cable operators have a history of progressive investment and innovation. Successive upgrades and innovative product launches across a wide range of services, particularly in content delivery (for example the Horizon and TiVo services offered by many European Cable operators), have delivered choice and value to consumers and have acted as a catalyst for investment by competing operators.

The Cable platform remains fully adequate for the distribution of content as well as to embrace the convergence to IP services delivery. Cable operators across Europe have deployed successfully advanced television services for their customers leveraging on the new devices available in modern households and providing some of the best in class consumer experience.

**Question 8: What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?**

Cable Europe welcomes new sharing models for spectrum allocation. However, this cannot be addressed without the full consideration for the possible impact on existing services operating in the spectrum bands in question. For example, during the initial discussion on the Digital Dividend in the 800MHz band, the impact on Cable systems was not fully studied and taken into account when setting up the technical condition enabling the deployment of the new mobile broadband services. Tests in Germany, UK and the Netherlands have shown that interferences between
LTE devices and cable customers’ devices can occur to an extent that cable services cannot be used properly anymore.

Cable Europe would like to emphasise that coexistence issues need to be addressed from the outset in order to maximize the overall value for spectrum reallocation or sharing. In the context of the overall objectives, releasing additional spectrum at the expense of existing services is counter-productive and will disincentivise investment across the value chain.

We would also highlight the fact that Cable operators have progressively introduced upgrades to their networks to make more efficient use of the spectrum within which they deliver services. The upgrade to the Docsis 3.1 standard will increase efficiency further and thus the capacity available to deliver services.

In addition, the migration from analogue to digital TV services, as has already been undertaken by many cable companies, results in a more efficient use of the available frequencies resulting in additional capacity becoming available for innovative, next generation products. We would welcome the Commission to confirm that the analogue switch-off promotes digital services, innovation and further investment.

Viewed in this context, it is important to note the role that fixed networks such as cable play in meeting the ever increasing demands placed on available spectrum. In addition to progressively improving the efficiency with which they utilise frequencies within their own networks, fixed networks play a crucial role in supporting wireless services. Wireless services are ultimately dependent on fixed line capacity to underpin their operation. And, fixed networks can help to alleviate the capacity pressures experienced by wireless services by, for example, providing off-loading facilities, expanding WiFi capability etc.

While the increasing demand for mobile and wireless connectivity inevitably leads to calls for more spectrum to be made available for mobile broadband, meeting that demand should not be limited to simply allocating more spectrum for use by 4G/5G services. There should instead be a greater focus on ensuring that existing spectrum allocations are used efficiently and maximising the opportunity presented by alternative wireless technologies.

In this regard, regulators and policy makers must not overlook the role that Wi-Fi services can play. Wi-Fi has evolved into a vital component of the end user experience and a key factor in reducing demands on mobile networks. Ensuring that sufficient spectrum remains available for Wi-Fi services in the future should therefore be a priority for the Commission. Again, however, we would stress the need to ensure that existing services operating in the frequency bands in question, including Cable, are not disrupted.

**Question 9: What specific research needs with regard to spectrum have to be addressed to facilitate such development?**

Cable Europe encourages research to take a new approach to spectrum coexistence as highlighted by the European Forum for Spectrum Coexistence. The Commission is also investigating the role of wifi as an alternative to pure mobile or
5. **Regulatory Framework**

**Question 10:** Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

Cable Europe considers that the current system of linear and non-linear services differentiation works well and still fits the converged audiovisual world as even if linear and non-linear services will increasingly compete on the same screen, they remain different in essence as the customer control element remains a significant differentiating feature for users.

**Question 11:** Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

Cable Europe considers that the definition of AVMS providers in the Directive is fine and should not be changed. Current regulatory obligations however are borne by European providers only and impede to compete with external players like OTT.

Cable Europe advocates for a lowering of the barriers to all players to allow European providers to effectively compete with external players. The main prospective of the European lawmaker should be, to prevent the discrimination of European players compared to international OTT players.

Deregulation should be complemented by self regulation measures for certain specific aspects like children protection for example. This kind of approach may also be very positive for the market as it could stimulate competition, for example by brand leveraging etc.

**Question 12:** What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

Cable Europe considers that the country of origin principle should be protected. This is essential to give AVMS providers legal certainty and help them develop new cross border business models. Derogations to this principle would undermine both the main aim of the Directive to create an internal market as well as the free flow of information: the country of origin principle allows indeed for the unhindered distribution of AVMS throughout the EU. In addition, Cable Europe favours a full harmonisation of the AVMS rules that would avoid too many differences between EU countries.
Question 13: Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

No, despite increased convergence in the audiovisual landscape, Cable Europe considers that the AVMSD and e-Commerce Directive continue to regulate different services and the barriers should remain that way to ensure legal certainty for AVMS providers.

6. Media freedom and pluralism

Question 15: Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

“EPG regulation”

Against the backdrop of the changed balance of powers in the media environment, the traditional criterion of owning a network for any form of access regulation, including pre-defining choices, is no longer appropriate to ensure pluralism and a diversity of offerings.

It is not only the cable network operators who are offering electronic program guides and navigating tools but it is also the manufacturers of devices and other portal operators – who offer the same orientation function as the navigators in place with the network operators. The navigators used by network operators are receding into the background as internet-capable televisions and CI-Plus modules are becoming more and more prevalent, and in many cases are no longer even visible to customers at all (since they generally require a set-top box to be installed that is either made by the corresponding network operator or has been certified by the manufacturer). Their place is being taken by the portals and navigators offered by the manufacturers of terminal devices. The result of the increased number of platforms should be that regulatory authorities should more and more concentrate on the potential abuse by individual market actors, possibly in an ex-post procedure. And this should not only address the traditional players, but also the providers newly entering the market. This concerns device manufacturers just as much as the providers of internet portals or mobile portals.

We therefore invite the Commission to look at disparity in regulation between European companies and their foreign counterparts. In order to create a level playing field for the various parties involved, the rules governing the operation of platforms should be deregulated in the long term. It seems that a supervisory authority of abuse, ex-post, is sufficient in order to safeguard the objectives of ensuring the variety of media and pluralism. This certainly is the case as no situation of abuse of power is yet known.

Deregulation would seem to be advisable also because international terminal device manufacturers are easily able to evade regulation and in many cases are
not regulated at all as a result of the enforcement deficit often found in international scenarios. In particular in the interests of end customers, these distortions of competition must be avoided.

“Visibility in search engines, recommendations”

As a result of the multiplication of content to end customers, another paradigm of regulation has changed. General opinion now accepts that what was once a bottleneck situation has started to shift. It is no longer the scarce transmission frequencies that pose the challenge for ensuring pluralism and relevance to public opinion. Rather, the oversupply, or at any rate the clear increase in number, of linear and non-linear content has become what some claim to be a problem. Because the offers available in the audio-visual sphere are steadily increasing and services are being developed that compete with traditional TV offerings, it is becoming more and more difficult for content providers to be noticed by end users. The “Must-Carry” approach, based on the paradigm of the scarcity of means of transmission is starting to fail its purpose.

In this context, both public and private broadcasters request on the basis of the pluralism principle that their offering is placed in a good position in the navigators offered by platform operators but also those of the device manufacturers and other portal operators.

Even if this approach – of controlling users’ attention by giving better placements to individual broadcasters and monitoring that placement by the regulatory authority – is conceptually questionable, Cable Europe considers that the legitimate interests of the other parties involved should not be disregarded.

To begin with, the interests of customers need to be considered. For end users, the growing offering of audiovisual content – be it linear TV, video-on-demand (VoD) or content made available “over the top” (OTT) – enables them to access content in new ways and to select from the content so offered. But end users also need to have the possibility of finding the content relevant to them.

In order to meet this demand, cable network operators no longer just offer mere program lists to their customers, providing current channel numbers and, as needed, categories – increasingly, they are putting in place “recommendation engines” and search engines that deliver recommendations for the content available on the platform, such recommendations being aligned with customer behaviour or searches performed previously. These recommendations include OTT content in addition to linear television and VoD offerings, and thus offer customers the most comprehensive media landscape available to them.

As a result, while user number 1 may find recommendations at the top of his recommendations list consisting of the offerings from public and private broadcasters governed, user number 2 may be referred primarily to offerings from the cable operator itself (VoD) or to those of an OTT provider. The decisive factor in this regard is what content the customer wants to have. From the perspective of the cable industry, it is natural that a user-controlled selection and placement will be permissible at all times. It is up to the customer to choose the recommendation
he wants to follow. Placing the traditional broadcasters at the top of the results list, as a matter of principle, would not be compatible with that concept.

Furthermore, from the perspective of the cable industry, the demand from the broadcasters for improving visibility is just one side of the coin. Being able to be found means that data must be retrievable. Thus, for recommendation engines and search engines to be able to generate comprehensive and objective recommendations lists, the operators must have information (meta-data) regarding the content that is accessible. Where no such information is provided to the operator, it cannot be assured that the corresponding offering is taken into account by the search engine and subsequently recommended or listed.

Lastly, it must be prevented that content providers block the provision of meta-data by dragging out the copyright licensing negotiations for an excessively long time. As a consequence, it should be made clear that the meta-data must be licensed along with the program signal.

**Question 16: What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content’?**

As per answer to question 15, in order to create a level playing field for the various parties involved in the new media landscape, the rules governing the operation of platforms and access in article 6 of the Access Directive should be deregulated in the long term. It seems that a supervisory authority of abuse, ex-post, is sufficient in order to safeguard the objectives of ensuring the variety of media and pluralism.

Furthermore, the principle that content originally produced with direct or indirect public subsidy should be made available to all distribution platforms on fair and non-discriminatory terms remains as relevant as ever. This principle plays to the long established role of the public service broadcasters (PSBs). The Commission must be mindful of changes of incentives and behaviour in respect of content syndication, especially where that behaviour favours interfaces and platforms created and sponsored by the PSBs.

The PSBs are given significant public subsidy in the form of preferential positioning on platform interfaces, benefiting from ‘must carry’ status and gifted spectrum. However, such privileges should also entail obligations to distribute content widely on FRAND terms. It is critical that the remit of PSBs’ is clearly defined; subject to independent and transparent governance mechanisms; and exposed to the same regulatory scrutiny as any other broadcaster.

Currently, PSBs benefits outweigh their obligations. Increasingly, cable companies are finding it difficult to secure PSBs’ content and are required to pay for it, whilst at the same time being under must-carry obligations. This is iniquitous for cable operators and unfairly penalises consumers who choose to subscribe to cable.
According to art. 31 Universal Service Directive (USD), the imposition as well as the scope (when imposed) of obligations on platform operators are governed by an assessment of the necessity, proportionality and transparency of such measures.

In Cable Europe’s view, the “Must Carry” paradigm should be replaced or at least complemented by a “Must Offer” obligation for those broadcasters enjoying access to operators’ network resources in accordance with “Must Carry” rules to ensure that content is widely available on all devices and platforms and at zero direct or indirect cost to those same consumers who have subsidised the content. Moreover, the “Must Carry” rights of broadcasters vis-à-vis operators who have to invest in the improvement and maintenance of their network must also be paired with reasonable obligations for the broadcasters to remunerate operators for the transportation and to take full responsibility for the clearance of all copyrights necessary for the distribution. This is already a possibility enshrined in article 31 USD and Member states should now be obliged to foresee for such appropriate remuneration [See the special German case on this claim for compensation in Annex].

**Question 19: Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?**

Content and platform providers should work together to create an appealing offer to the consumers who would have the final say on the screen. There should not be any further regulation on platforms that would increase competitive discrimination with OTT players. Competition on the screen must be allowed.

The present debate is characterized by the broadcasting companies in particular taking a strong stance against overlaying and scaling of images and media content on television screens. In some instances, the demand is that overlaying and/or scaling of the television image should be permitted only where the content provider has authorized this and, additionally, where the user initiates it.

From the cable sector perspective, the issue of “program integrity” seems to enjoy significant levels of protection already today. It should be noted in this context that neither overlaying processes nor scaling on the television screen tamper with the broadcasting signal. Accordingly, the protection of the broadcasting signal is not called into question in any way.

In light of the fast-paced development of the market for hybrid broadcast/broadband offerings, putting any requirements in place above and beyond those governing the protection of the broadcast signal in order to protect the “on-screen presentation” would seem premature and too restrictive. At present, it is impossible to forecast how broadcasting content will be integrated into hybrid platforms, and in which scope. As a tendency, it can be assumed that content providers and platform operators have a shared interest in integrating broadcasters’ content on hybrid platforms in order to enhance both the dissemination of the content and the platform’s drawing potential. In this context, overlay and scaling offer completely new forms of presenting content. Cable network operators are not interested in calling into question the offerings made by broadcasting companies. On the contrary, the intention is to make use of the
opportunity to expand the existing offerings and to thus make them more interesting for users.

Overall, the discussion should focus more strongly on the aspect of user autonomy: from the perspective of the cable sector, the television screen belongs to the customer. And the customers are the ones who are buying interactive television sets in order to use the varied offerings available from traditional linear television broadcasts as well as new services, and, as the case may be, to do so in parallel. Accordingly, it must be left to the customers to decide how to use their screen. Regulatory restrictions on the first-screen experience by prohibiting overlays and scaling would unjustifiably restrict such user autonomy.

Any restrictive regulation enacted at the present time would hinder the further development of business models and would have detrimental effects on content providers, platform operators, and therefore on viewers. Competition on the first screen is what allows new providers to enter the media world. Against this backdrop, it seems sensible to generally deem overlaying and scaling possible if and when the measure is authorized by the content provider or is consciously controlled by the end user.

To avoid this situation, the Commission should launch a fact finding exercise to examine whether competition is hurt by any national regulations that would have not been notified according to Directive 83/189/EEC on information in the field of technical standards.

Such a notification has not been followed for the Flemish decree adopted in August which prohibits distribution platforms in Flanders to offer any TV or interactive functionality - e.g. fast forward, set-top box recording - allowing viewers to watch broadcast programs in a non-linear manner without the explicit prior approval from broadcasters as well as the payment for distribution. Should no broadcaster approval be agreed within 6 months, the decree requires that these functionalities should immediately be withdrawn.

In our view, the decree restricts the principle of free movement of services and should be assessed with these general treaty provisions. We also believe the measure - at a minimum - would also require assessment under the information society services transparency directive.
ANNEX: “Claim to compensation in return for transmission obligations” – the German case

An important aspect for the media regulation of the future, while safeguarding a fair allocation of the value added, should be that the platform operators’ Must-Carry obligations are matched with an obligation of content providers to pay reasonable compensation for their content being transmitted.

Cable is, by comparison, the most cost-effective means of disseminating broadcasts in Germany for program suppliers, and reaches the largest number of households in Germany. The cable network providers are bearing the brunt of the distribution work. And there should be no justification whatsoever for the PSBs in Germany to refuse to pay feed-in fees compensation to cable operators while still paying it to satellite and DVB-T. This would have as a consequence to indirectly pass on the distribution costs to cable customers, although these customers are already paying for the distribution of the programs by the broadcasting fees charged for the public broadcasters’ program. This is certainly the case since cable operators do not receive any other compensation fee for this comprehensive transport service. The “double remuneration” often cited as a benefit cable network operators would allegedly enjoy, supposedly paid by end customers and program suppliers, does not exist. What is happening instead is a two-sided market approach: consumers are bearing the costs of the subordinate distribution network and the dissemination services for the super-ordinate feed-in network are provided by the broadcasters.

Meanwhile, the PSBs are seeking to consolidate and extend their already far-reaching Must-Carry status. The opportunity given to the legislator to create a compensation obligation where there are Must-Carry obligations has already been established by the European legislation: Article 31 (2) of the Universal Service Directive expressly permits Member States to stipulate, in establishing transmission obligations, that compensation payments are made in favour of the network operators.

Accordingly, it is up to the national legislator to review the reasonableness of this concept and to address the question of anchoring in their respective media laws an entitlement to distribution compensation for the network operators. This applies particularly to those Member States having a high share of regulated channels and little or no involvement of network operators in the program selection.

The concept might be based on a compensation obligation for feeding in Must-Carry programs on the basis of the costs of efficient provision of services. The cable industry believes it is possible to distinguish between Must-Carry programs and “non-Must-Carry” programs. Another model could consist of a modification of the laws governing copyright in order for copyrights fees not to be due for Must-Carry channels. This model in particular would have the benefit of balancing out the existing interests in a transparent and easily understood manner. Finally, the lawmakers could permit new marketing forms to be used by platform operators, if and insofar as the broadcaster is not willing to pay feed-in compensation. In this way, the alternative application of a transport model (feed-in compensation) or of a marketing model (no feed-in compensation) might be flanked by the corresponding legal provisions.
The cable sector would be happy to further discuss these proposals with all parties involved at any time.
Høringssvar vedr. grønbogen – Forberedelse på en fuld ud konvergeret audiovisuel verden: Vækst, kreativitet og værdier.

Indledning

I Danmark modtager mere end 500.000 husstande tv-signaler gennem brugerejede antenneforeninger. Antenneforeninger er formentlig et særligt dansk fænomen, hvor den kollektive andelstanke resulterer i konkrete leverancer til forbrugerne.

A2012 skriver i dette høringssvar, dels i sin egenskab af repræsentant for en del af de danske husstande, og dels i sin egenskab repræsentant for de brugerejede distributør af tv-pakker, som begge vil blive berørt af mulige politiske reaktioner, herunder evt. tiltag af reguleringsmæssig karakter.

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Ad. 1 ”Amerikanske virksomheders etablering på det europæiske marked”. De amerikanske tjenesters bekvemmelighed, lette tilgængelighed og pris er nogle af de faktorer, der sætter disse virksomheder i stand til at etablere sig solidt på det fragmenterede europæiske marked. Faktorer som fx begrænsende rettigheder fra rettighedshaverne og krav om yderligere betaling for rettigheder, står i vejen for at de brugerejede antenneanlæg, har svært ved at tilbyde disse tjenester til samme pris, og i samme omfang som amerikanske virksomheder kan.

A2012 ser udviklingen i rettighedshaverne og forvaltningsorganisationernes håndtering af rettigheder, som en af de væsentligste årsager til, at amerikanske virksomheder er i stand til at etablere sig solidt på det fragmenterede europæiske marked.
Det opleves, at national rettighedshåndtering er central barriere for bedre og bredere forankringer af nationale foreninger/virksomheder og et friere valg at tv. Der er forskelle i nationale ophavsretlovgivninger, og dermed også forskelle i nationale rettighedshåndteringer hos forvaltningsorganisationer og hos rettighedshavere.

En amerikansk udbyder (Netflix) har valgt at operere fra Luxembourg, hvor der betales 3% moms (VAT), mens danske operatører skal betale 25% moms (VAT) for tilsvarende ydelser/tjenester. Det betyder, at den amerikanske udbyder via nationale, skattemæssige forskelle, får økonomiske fordele.

A2012 støtter fri adgang til tv fra samfundsmæssigt vigtige begivenheder, herunder bestræbelserne på at vigtige sportsbegivenheder skal være til rådighed for landsdækkende brodcaster. Et tiltag, hvor vigtige begivenheder vises landsdækkende, kan medvirke til bedre forankring af nationale virksomheder, fordi der i Danmark er tradition for, at nationen samles omkring sådanne begivenheder.

A2102 mener tillige, at EU skal samle og anvende hele Europas forhandlingsstyrke (500 mill. borgere i Europa mod 300 i USA), så der kan føres reelle forhandlinger og aftaler mellem EU og USA. Den traditionelle franske model til at fremme europæiske medier og deres muligheder, har været at lukke markeder og give tilskud. Det har vist sig ineffektivt. USA's dominans på internettet er blevet øget med fx Netflix, Facebook, Google, Microsoft m.fl. EU bør i stedet for at lukke sig om sig selv søge at modvirke USA- eller anden dominans gennem bindende internationale aftaler.

Ad. 3. “Forhindringer, der kræver regulering, når det gælder adgang til platforme”
A2012 ser disse forhold som de væsentligste forhindringer til fri afgang til platforme:

- Lukket, begrænsende og leverandørafhængig software i tv-apparater
- Lukkede universer hos operatører i distributionsleddet
- Vertikal integration.

- Lukket, begrænsende og leverandørafhængig software i tv-apparater
Tv-producenternes håndtering af egen firmware, og kommercielle aftaler med rettighedshavere, er en barriere for hvor meget tv borgerne kan anvende af bestemte, tekniske platforme i tv-et.

A2012 mener, at der er behov for, at nationale myndigheder følger udviklingen i hardware producenternes, herunder især tv-apparat-producenternes, håndtering af firmware/middleware.


Opfyldelsen af dette behov vil være nødvendigt for at sikre et effektivt frit valg af tv. Det drejer sig især udvikling af betalingsmodeller, der gør, at man på en enkel måde kan bestille og se en enkelt udsendelse hvor, hvornår og hvordan man ønsker det, og betale for den forud for valget.

- Lukkede universer hos operatører i distributionsleddet
Kommercielle virksomheder i distributionsleddet søger at binde forbrugerne til lige netop deres løsninger, hvilket ofte vanskeliggør eller reelt umuliggør forbrugernes muligheder for leverandørskift. Aktuelt søger de 2 største kommercielle aktører YouSee og Stofa på det danske marked at binde forbrugerne til lige netop deres løsninger, hvilket besværliggør leverandørskift.
**Et eksempel er**, at disse operatører stiller gratis e-mail-adresser til rådighed for kunderne, og at kunderne ikke kan beholde disse eller skal betale for dem ved leverandørskift.

På telefoniområdet er der sket regulering. Mens e-mail-adresser er bundet til leverandøren, der har rettighederne til den, kan nummerportering (på telefoniområdet) til en anden telefoni-udbyder ske på 1 dag.

A2012 mener, at der er behov for sikring af e-mail-portering, så der kan ske smidig operatør-skift uden skift af e-mail-adresse. Dette skal bl.a. ses i lyset af, at digital information og kommunikation må forventes at blive en integreret del af offentlige initiativer. Digital information og dialog med og mellem borgere og virksomheder bliver helt naturligt med tiden og er i Danmark gjort obligatorisk på de fleste områder for virksomheder fra 1.11.2013 og for borgere fra 1.11.2014.

**Et andet eksempel er** de samme operatørrers teknologi (fx tv-bokse) kun kan anvendes til at modtage operatørrernes egne tv-signaler og services. Tv-boksen kan enten købes eller lejes. Hvis kunderne ønsker leverandørskift, kan tv-boksen ikke anvendes for modtagelse af tv-signaler eller services fra en anden operatør.

På telefoniområdet er der sket regulering. Mens tv-seningen kan være bundet til tv-boksen og dermed leverandøren, kan telefoni-kunder skifte udbyder uden at skulle skifte telefon.


**Et tredje eksempel er**, at man hos nogle operatører kun kan bruge bestemte muligheder på tv-området, hvis man samtidigt køber operatørrens internet-ydelser/services, som er operatørrens cashcow.

A2012 mener, at der er behov for afskaffelse af bundling af samtidige tv- og internetydelser hos operatørerne i distributionsleddet, fordi det hindrer frit forbrugsvalg og det slører de reelle priser.

**- Vertikal integration**
Kommercielle virksomheder i distributionsleddet indgår samarbejdsaftaler med kanalproducenter (fx TV2 Danmark A/S, Viasat eller SBS/Discovery Media A/S). Disse samarbejdsaftaler betyder urimelig skævhed i blandt andre antenneforeningernes distributions- og salgsmuligheder.
Et konkret eksempel er at YouSee, kan bringe TV3 i sin grundpakke uden at betale for indkøb, mens andre, herunder antenneforeningerne, må betale for TV3.

Et andet eksempel er, at fx YouSee og TV2 Danmark A/S overvejer at lave en fælles streaming-tjeneste, der således kun stilles til rådighed for YouSee-kunder og at TV2 Danmark A/S næppe vil indgå en tilsvarende aftale med antenneforeningerne.

A2012 mener, at der er behov for afskaffelse af denne skævvidning, så der skabes fri konkurrence og lige muligheder og vilkår for alle operatører i distributionsleddet.

**Ad. 6 "Sikring af interoperabilitet på tværs af grænserne“**
A2012 ser 2 grundlæggende forhold, der medvirker til fragmentering:

- **Tv-producenternes håndtering af software i fjernsynene.**
- **Rettighedshavernes håndtering af rettigheder for tv-produktionerne.**
- **Tv-producenteres håndtering af software i fjernsynene.**

Producetører af tv-apparater og andet hardware forhindrer forbrugerne i optimal udnyttelse af de produkter, de køber. Fx ved kun at frigive funktionalitet delvist i nogle lande. Et fjernsyn fx købt i et EU-land (fx Tyskland) kan have begrænsede anvendelsesmuligheder i andre EU-lande (fx Danmark) selv om fjernsynet i øvrigt er fuldstændig identisk. Fjernsynets funktionaliteter og anvendelsesmuligheder styres – og begrænses - af producenterne på software-niveau (middleware).

Der har i mange år været enighed om nytten af fælles, åbne tekniske standarder på det danske og nordiske tv-område (fx NORDIC-standarden). På internetområdet er der også mange internationale åbne standarder (fx DOCSIS-standarden).

A2012 oplever at tv-producenter og operatører i distributionsleddet etablerer egne tekniske standarder for at pleje egne kommercielle interesser, i stedet for at arbejde hen imod åbne, tekniske standarder, som vil gavne forbrugerne.

A2012 mener, at der er behov for sikring af åbne, tekniske standarder i tv-apparaterne, for tv-området og for internetområdet.

- **Rettighedshavernes håndtering af rettigheder for tv-produktionerne.**

Rettighedshaverne sikrer sig, at kunderne enten kun kan se tv i det det hus, hvor kunden bor, eller inden for nationale grænser. Derimod er det hverken teknisk eller rettighedsmæssigt muligt at se tv over internettet på tværs af landegrænserne.

Opholder en dansker sig i England, kan han ikke se dansk tv over internettet. Og omvendt, kan en dansker i Danmark ikke se BBC over internettet på fx BBCiPlayer. Der sættes begrænsninger rettighedshaverne og af operatørerne i distributionsleddet på domæne-niveau.

A2012 mener, at der er behov for at disse rettighedsmæssige, geografiske hindringer fjernes, så der kan ses nationalt tv på tværs af grænserne.

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A2012 vil gerne have mulighed for at uddybe de ovenfor afgivne svar på de i grønbogen stillede spørgsmål ved et fremmøde i Kulturministeriet i Danmark, som har modtaget kopi af dette høringssvar.

Med venlig hilsen

Carsten Jørgensen
Formand
Introduction

Deutsche Telekom welcomes the opportunity to comment on the European Commission’s Green Paper on the converged audio-visual world. Deutsche Telekom is looking forward to contribute to the debate launched by DG Connect on the right way forward, in particular in relation to the eventual need to revise the current regulatory landscape in order to better adapt to new and innovative products/services.

Deutsche Telekom Group is offering a broad variety of audiovisual services all over its European footprint. Notably, Deutsche Telekom group is a pan European player in the TV distribution market offering FreeTV and payTV services in Germany, Slovakia, Hungary, Croatia, Romania, Greece, Bulgaria and in the accession candidate state Montenegro. In all of these countries Deutsche Telekom or subsidiaries offer IPTV services. In some countries this offer is supplemented with a satellite and/or cable option and/or an on-demand video service.

With regard to the underlying legislative framework created by the reviewed Audiovisual Media Service Directive (AVMSD) Deutsche Telekom is supporting the following messages, which will be outlined in more detail in our answers to questions 10,11,12,13:

- Any review should be medium term and based on a solid assessment of the competitive landscape of audiovisual services their impact on society and the regulatory goals of the AVMSD. The assessment should cover the full picture of audiovisual services regardless of their current regulatory category and irrespective whether they are falling under the scope of the AVMSD today.
- Overall the assessment should focus on the question whether the current form media regulation is still adequate, proportionate and appropriate to achieve the main regulatory objectives of the media regulation. In our view such an assessment will identify possibilities to deregulate audiovisual media services.
- At the same time Deutsche Telekom strongly supports to treat services equally, which do have a comparable impact on society and are functionally equivalent.
- Stringent regulation for linear services should be limited to those services having a significant impact on opinion forming.
- On-demand services with increased user control should be subject to a lighter regulatory regime.
- The country of origin principle should remain the guiding principle for providing audiovisual services within the European Union.
- Service providers established in third countries targeting European citizens with their services should subject to the same rules than European providers.

Beyond the scope of the AVMSD Deutsche Telekom notes that the current Green Paper seems particularly focused on the changes and challenges that Internet-based services are bringing to the traditional broadcasting sector and devotes less attention to the impact that the dramatic increase in traffic growth is registering on broadband networks. The Internet ecosystem is undergoing huge change due to the increase of video traffic on broadband networks (a number of studies report that by 2016, video traffic will amount to 55% of total Internet consumption), which raises questions about current capacity levels. New players have emerged in the Internet value chain and, in particular, ‘Over the Top’ players (OTTs) who come from unregulated sectors or different regions of the world but who compete in the same market as European telecoms operators. These OTTs have the flexibility to provide
similar services, often for free or at significantly lower tariffs, as they do not contribute to the underlying networks and so the playing field is not level.

The ongoing migration towards an all-IP environment correlates with the shift of value from telecoms to OTTs. Between 2008 and 2012, European telecoms lost nearly €70 billion in aggregate market capitalization while OTT digital service providers, device manufacturers and cable companies gained more than €200 billion. This process was accompanied by a substantial value migration from European to foreign players\(^1\). Additionally, revenues are decreasing sharply and are expected to continue to contract over the next decade by up to 2 percent a year, representing a cumulative decline of €70 billion to €190 billion\(^2\). This leads to a loss in telecoms’ competitiveness and investment capacity in high speed networks and innovative services. In this asymmetric market context, European network operators are still called upon by the European institutions to heavily invest in broadband network deployment and upgrades, in order to support the video traffic increase requested by users and to meet the ambitious EU Digital Agenda goals. If one wants to meet users’ expectations (users require new service features such as interactivity, ubiquity and multi-device use), the market structure with its newly shaped value chain needs to be reconsidered. We need to rethink the traditional paradigms which were developed when the Internet was still in its infancy and symmetric data flows were a feature.

There is general agreement about the need to guarantee a sustainable Internet ecosystem.

As such the European Commission should take a holistic approach when considering the impact of convergence on EU competitiveness and consider in its analysis the following areas:

- The IP interconnection field. Operators must have the freedom to be able to explore new relationships with those players who send large amounts of traffic into the network. The volume and sometimes network sensitive nature of these services may require a reassessment of the commercial realities in these relationships.
- Privacy and data protection. Telecoms are regulated through a binding EU Directive while digital services players are not and yet both are providing functionally equivalent services. The particular nature of the digital services (provided by global operators active in a cross-border market) requires the establishment of a level playing field among players also at geographical levels. The current proposal of EU regulation on data protection goes in the right direction to address this need.
- Switching and data portability. Again, these areas are regulated for telecoms, not for OTT players.
- Taxes. As new entrants, OTTs often have more flexibility than telecoms to maximize tax savings by choosing where to have their European headquarter operations.

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\(^1\) BCG/ETNO Study: Reforming Europe’s Telecoms Regulation to Enable the Digital Single Market

\(^2\) BCG/ETNO Study: Reforming Europe’s Telecoms Regulation to Enable the Digital Single Market
QUESTIONS FOR PUBLIC CONSULTATION:

(1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

In general, so-called Hollywood majors (dominating US production studios together with their distribution and marketing branches) benefit from securing financing of their products (particularly films (“blockbusters”) and series) already in the home market. Exportation of these productions to EU markets is considered an “add-on”, partly not even requiring adaptation to local languages in those cases where audiences in Member States either speak the same language (UK; Ireland) or are not requesting costly translation. Marketing of US productions gains a competitive advantage from the fact that European audiences – through prior reporting on US premiers – have already acquired awareness. In case adaptation to local language requirements (translation; sub-titling; dubbing) is needed, the necessary costs will more likely be covered rather easily from exploitation revenues because the latter do not have to contribute to the financing of the initial production budget. Output deals concluded (even upfront production has been finished) between US majors and European TV broadcasters add to the overall income – a source of financing that is hardly available for production companies based in the EU which mainly or exclusively are able to target a single national market. As regards making available, to date US companies have not put a major emphasis on exclusivity, monitoring market developments in Europe and in particular of different business models in the area of VoD services. Any additional income generated in this sector again adds to the overall revenues without clearly involving either related specific costs or a genuine risk-taking.

US companies acting in an OTT environment in essence do not have to obey to the requirements of the EU regulatory framework benefitting from less stringent rules in their home market. Furthermore, companies not being subject to EU and/or Member State (sector-specific) regulation and which are integrating different and significant segments of the value chain in the audiovisual market and acting alongside a vertically integrated business model have been able to leverage market power from one market to another, i. a. through lock-in effects regarding distribution platforms (owning or having preferential access to content, establishing a relevant terminal equipment basis, restricting consumers choice in respect of third party service offers, etc.).

With regard to the factors hindering EU companies to establish a successful presence on the audiovisual market we would like to point to our response to the Green Paper on the online distribution of audiovisual works introduced in November 2011. It included the following key issues:

- simplification of the multi-territorial rights clearance, but without abolishing the possibility to clear licences with a limited territorial scope
- simplification of the licensing of music embedded in audiovisual works
- harmonisation of the copyright regime - especially with regard to the private copy exemption

Some improvements to these factors will probably be achieved via the legislative procedure concerning the proposal for a Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal
market. However, the process is not final yet and not all of the issues mentioned above are covered by the proposed Directive.

The existence of different directives (AVMS, E-commerce, ECS) which apply to different service providers may also be considered as another constraint for the successful presence of EU companies. Moreover, the absence of common EU standards across media may result in the implementation of non-harmonised rules by NRAs to market players regarding their position in the value chain.

Another relevant issue for the online distribution of content is the question of a level playing field with regard to VAT rates. A harmonised VAT rate for online and physical versions of the same content as well as for linear and non-linear services should be taken into consideration by the legislator in order to avoid market distortions. Any future market developments should also be carefully assessed in terms of possible competition problems due to VAT rates.

(2) What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

Access to premium content, which is generally considered a key asset for many business models in different relevant parts of the audiovisual sector (free TV, payTV, VoD etc.) can become an issue in different situations. Upstream, acquiring licences from rightsholders (producers) may become difficult for newcomers or economically less strong competitors; wholesale access to channels delivering premium content may prove difficult for service providers attempting to establish a new platform either on an infrastructure which is already used for the distribution of relevant services (payTV on cable networks, for instance) or by using a competing infrastructure (e.g. DSL versus terrestrial and/or satellite TV networks), and so on. In principle, competition law instruments have shown to provide adequate remedies in a number of related situations; however, disadvantages related to a preference of behavioural over structural remedies (not just) recently in some Member States have come to the fore.

Bearing in mind that competition law interventions take place on a case-by-case basis, a more general approach might be favoured. Based on the principles and criteria as established mostly in European competition law jurisprudence, particularly as regards must-offer obligations a general provision in EU law to that effect should be foreseen, but be made conditional upon – as in the case of must-carry-rules – the discretion left to Member States to decide on whether and how to regulate in view of the specific national circumstances at hand.

At present, a European regulatory framework regarding market concentration and/or the preservation of diversity in the audiovisual (or the wider media) sector appears premature taking into consideration the still mostly nationally-fragmented media markets.

At the national level, it might be considered to review existing instruments which aim at the preservation of cultural or linguistic diversity and base themselves on the opinion-forming power of (specific) media services. Convergence may lead, in a mid- to long-term perspective, to a need to address content “markets” in a more comprehensive manner (e.g. by way of including the press, search engines, audio services). In any event, it should be requested that methods of measurement and weighting are based on objective criteria and particularly take into account actual usage patterns.
(3) Are there obstacles which require regulatory action on access to platforms?

At a European level, the notion of ‘platform’ seems to require additional attention in describing relevant functionalities and delineating it specifically from “mere” infrastructure on the one hand, and technologies which are traditionally used in connection with the distribution of content to audiences, on the other. More specifically, the scope of existing EU directives (AVMSD, ECD and telecoms package) and their relationship have to be looked at more closely, not least in order to verify the already existing level of regulation which relevant providers have to observe.

Irrespective of the foregoing, there do not seem to exist “generic” cases of market failure which would advocate for a more general approach in the regulation of access to “platforms”. To the contrary, it might well be argued that there is functioning competition and that the interest in the preservation of diversity is secured through the prevailing design of business models that are applied to new platforms.

However, the emergence of undue competitive advantages should be prevented in situations where new market players exercise similar or equivalent functions as a provider of a (technical and/or marketing) platform but are not subject to the applicable rules simply because their role is less service-oriented but rather hardware- (terminal equipment) based.

(4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

As pointed out by the European Commission in its first report on the application of the promotion scheme in linear and non-linear audiovisual media services, the existing level of information on the effects of Art. 13 AVMSD is to be considered insufficient in order to draw conclusions on whether or not the desired promotional effects to the benefit of European works have been reached.

Nevertheless, a combination of requirements relating to promotional activities with the imposition of financing obligations already establishes a rather high level of burdens for different kind of operators. Specifically, but not exclusively, in such cases, a multiplied obligation for a single operator which results from tying financial contributions to different roles – which adds up when exercised simultaneously – should be avoided.

Besides, a general problem seems to lie in a lack of contribution to either the promotion or the financing of European works by some operators which have a significant market presence in a considerable number of EU Member States. Such situation might be aggravated by an uneven transposition and/or application of Art. 13 AVMSD across the EU.

(5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

It has already been pointed out that to date the aspect of content financing in relation to non-linear services differs from established patterns in the field of linear audiovisual media. In the latter case, ideally income from exploitation that takes place subsequent to the initial release in theatres (payTV, DVD, free TV) will be regarded a substantial part of the overall production budget. Following this approach, a logic is applied which emphasises the importance of the “home-market-first” model, considering theatrical release as a necessary pre-condition for success in subsequent windows. There is therefore little room, according to the approach
sketched-out so far, for enabling a rather immediate access of consumers from other EU Member States. Where awareness of attractive content having come to the market in one European country has been raised with users in other Member States, the necessity of offering legal ways to access such content increases in importance, not least for the sake of avoiding that recourse is being had to illegal platforms offering such content. “Day-and-date” release patterns for on-demand exploitation models might therefore overall prove more beneficial for the European audiovisual market. In any event, media chronology (exploitation windows) should in its (their) entirety become a matter of commercial transaction, rather than being tied to the provision of means from cinematographic funds or equivalent support schemes.

(6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

Deutsche Telekom supports actively industry led initiatives to standardise, but opposes any perpetuation or extension of regulatory intervention with regard to interoperability irrespective of the type of platform.

The European Commission should refrain from mandating any standard, which has not proven to be widely accepted by the market in terms of market share and sales figures. Mandating standards can hinder further innovation in this area. In the long run interoperability for media services may be reached - far from today’s solutions - by distributing media services in a manner which is based on a pure “browser logic” and which uses existing browser standards. However, the promotion of standards via bodies like ETSI could foster market penetration of standards on a voluntary basis and thereby help to achieve more interoperability.

(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

In general there are two major categories of audiovisual content: linear and non-linear content. Linear content is mainly provided according to a predefined schedule. No interaction with the customer is needed. The major application for linear content is broadcasting. Non-linear content will be provided to the consumer on its individual request and today mainly in a unicast connection. The customer decides when to receive what content. This requires an interaction between the customer and the content or platform provider.

The individual platforms mentioned are all capable in delivering audiovisual content to the customers but they are different in a number of terms such as coverage, quality and availability and also in their ability to directly interact with the customer.

Satellite broadcast networks are covering a number of countries, terrestrial broadcast and mobile broadband networks provide more or less nation wide coverage whereas wired broadband and cable networks are usually limited to certain areas.

The technology used in all of these networks differ and thus the capabilities of them for providing audiovisual data. Satellite broadcast and terrestrial broadcast networks are suited to provide linear content to a high number of customers they don’t need a backward channel to allow the customer to interact with the provider or to make their choice on individual content. Wired and mobile broadband networks and cable networks are suited to allow
interaction of the customer and the content provider but there are difference how to make that happen. In mobile and IPTV networks the content delivery is realised by one service the customer has to subscribe. This usually includes applications enabling seamless switching between linear and non-linear content provision. Cable networks are in principle also ready for two-way communication but for this the customer usually has to subscribe to a separate broadband proposition in addition to the TV service.

When it comes to the used technology in the networks it can be observed that in particular terrestrial broadcast networks are not capable to keep pace with the development of the customer demand. The state of the art quality of TV programs today is HD; more advanced features like 3DTV or even UHDTV are just evolving or are under development. Satellite and IPTV networks are ready to adapt new trends quite quick but the terrestrial broadcast networks are lagging behind. Even cable networks are not flexible enough to adapt new development quick enough. Beside the used technology the regulatory framework often prevents providers from introducing new programs or technologies. Although the number of TV minutes consumed is quite stable or even slightly increasing over the years the amount of non-linear content is increasing rapidly. OTT players like Google or YouTube are driving this development massively. The delivery of individual content requires a unicast connection to the individual user. Such a unicast connection can’t be provided by terrestrial and satellite broadcast networks but by mobile and wired broadband networks.

The public interest obligations are historically referring to specific broadcasting networks for providing content to people living in a certain territory. Although a number of new distribution channels and in addition a high number of new commercial and pay TV providers have entered the relevant markets, these obligations have almost not been reviewed or changed. All mentioned platforms can principally comply with the public interest obligations but for some of them huge investments would be needed to do so. Public interest obligations should, firstly, be formulated in a way which is proportionate to the functionalities of the distribution channel and, secondly, get in accordance with the principle of proportionality, in particular by more stringently focussing on content which really fulfils the “public-interest” criterion. As a principle, only one conveyance infrastructure should be subject to the obligation to fulfil the public interest obligations and Member States should positively decide on the criteria to apply when defining the level of compensation which should be afforded for providing the relevant infrastructure service.

(8)
What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

For providing a reliable high quality wireless broadband proposition an exclusive access to spectrum resources is inevitable. In particular for the coverage of rural areas frequencies below 1 GHz are a precondition for an economical viable deployment. The 700 MHz band will contribute to the target of providing every European with high quality and high speed internet access. The development of the broadcast service depends on its capability to serve the customers needs in terms of HD programs and mobile access. This is not only a question of spectrum but also of technology, network structure and the right choice of program formats. The introduction of DVB-T2 combined with more dense broadcast networks offers the chance to deploy wide area Single Frequency Networks (SFN) which improve the efficiency of use of the UHF spectrum and leaves enough room for the distribution of high definition TV programs.
In general there are two way of sharing models:

- The entire UHF band will be used for an integrated Broadcast/Broadband system capable of providing both linear and non-linear content via terrestrial channel to the customers. Such as system will most probably be based on the LTE standard. Since such a converged system would fully utilise the entire spectrum on a permanently basis other applications should be moved to other frequency ranges.

- Coexistence of both broadcast and mobile service but in separate bands. The 700 MHz will be exclusively allocated to the mobile service whereas at least parts of the spectrum below will be used for broadcasting. In that case convergence will take place in the User Equipment only. Where spectrum continues to be used for broadcasting so as today the other application can be operated in channels not used by broadcasting.

(9) What specific research needs with regard to spectrum have to be addressed to facilitate such development?

For the introduction of a new converged integrated system capable proving both broadcast and mobile broadband it is necessary to adapt the current standards in particular the LTE standard to realize the required functionalities. For that purpose it is essential to evaluate the requirements of a terrestrial broadcast content distribution including the number of transmitted programs, the required quality and further requirements such as reliability or coverage. Since such an approach can only be realized economically on a European wide harmonised basis respective research activities would be needed.

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

Five and a half years after the introduction, at EU level, of the regulatory differentiation between linear and non-linear services it is still premature to deliver any fact-based evidence for market distortions between these services, not least given late transposition and implementation of the relevant legal frameworks at national level. It is rather in the medium term, that the technical differences will be increasingly reduced and the take-up of services and the blurring of boundaries from a consumer perspective might lead to a situation, where market distortions could occur.

Irrespective of the question with regard to market distortions, the differentiation made between the forms of audiovisual media services might be challenged as such by technological development and usage patterns. This might necessitate a complete paradigm shift in the way in which services covered today by the AVMSD are described. Besides, the scope ratione materiae of a linear audiovisual media service as currently defined should be interpreted with a view to the potential character as a “service of general (public) interest”. This would include services with a high socio-political impact, which is translated into their relevance for opinion-forming. In its Green Paper opening up the present consultation, the Commission has signalled that general interest content is in the focus of regulatory attention, bearing in mind its importance for media freedom and diversity. The EP has also put forward this idea in its resolution on connected TV adopted just recently. This criterion would limit the more stringent regulation of linear content to those (relatively) few services, which are of particular importance due to the nature of the transmitted content, as for instance news, and
which additionally have a significant audience due to their market share. This understanding would be more future proof and could limit eventual market distortions.

(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

Deutsche Telekom strongly believes that in a future regulatory regime services which are functionally substitutable and have a similar impact on society should be treated equally in terms of regulation, irrespective of the service provider's position in the value chain or its prior regulatory status.

Nowadays the boundary between services falling under scope of the AVMSD and other audiovisual services are more and more blurred. Many new players have emerged in the EU market or have gained in importance also thanks to connected TV services and devices. OTT services or applications in connected TVs today increasingly control the selection and access to audiovisual media services without themselves necessarily fulfilling all the criteria of an audiovisual media service, e.g. because it may not form their principal purpose to provide AVMS. However, their relevance for both the market development and the pursuit of general interest objectives at a European or national level must not be underestimated, particularly given the overabundance of content available to the public and the adjacent need for support in orientation.

Search engines for audiovisual content and EPG's can be named as relevant examples. In case these services "exercise" editorial control they may be seen to raise the same kind of concerns as those services already covered by the provisions of the AVMSD to which the former services may provide links. In essence, providers of such services which allow for aggregation and even offer functionalities which come close to programming activities (as traditionally pursued by broadcasters) can hardly be distinguished from the role of a media service provider as currently defined in the AVMSD. OTT services with editorial responsibility controlling selection and access to audiovisual media services should therefore be treated in the same way as audiovisual media services covered by the AVMSD today. Hence, where protection of minors' concerns may be brought up through the inclusion of trailers or clips in more sophisticated EPGs, the same stipulations should apply as for the service covered by the audiovisual media services.

Another example for services which may cause a similar impact with regard to the general interests objectives of the AVMSD are services enabling users to upload and view single programmes produced or copied/mashed-up by a user (user generated content - UGC) have obtained a relevant, increasing share of the media consumption in Europe since the adoption of the AVMSD in 2007. Its scope rationed personae is however restricted to media service providers which exercise editorial responsibility; this criterion being "translated" into the effective control over both the selection of offers and the organisation of the manner in which the audiovisual content is presented - in the case of non-linear services in the form of catalogues. In view of UGC platforms and their presently prevailing functionalities, to date there has been considerable hesitation to regard the aforementioned definition criteria to be fulfilled.

As already stated Deutsche Telekom strongly believes that in a future regulatory regime services which are functionally substitutable should be treated equally in terms of regulation, irrespective of the service provider's position in the value chain or its prior regulatory status. In order to establish the right conditions for a competitive EU digital market, a comprehensive evaluation of the current regulatory regime should be carried out by assessing, by means of
empirical studies, the impact of different audiovisual services on society and the risk they may pose to the main objectives of the AVMSD (freedom of information, media pluralism, protection of minors, consumer protection). These studies should take into account the users’ ability to exercise control over these services and ask for possible consequences of this fact in terms of expectations vis-a-vis the media regulation. Such an evaluation should be carried out in a technologically neutral manner and regardless of the current classification of services as linear or non-linear or as other audiovisual services, which are not covered by the Directive today.

Some services which are per today not covered by AVMSD might have a similar or even greater impact on society, which implies a comparable impact on the regulatory objectives of media regulation.

At the same time one can question whether and to what extent the current form of regulation is still appropriate and proportionate in the current global context and in light of regulatory objectives enshrined in the AVMSD. Taking into account increasing transmission capacities, more competitive market circumstances and increased user control, the current form of media regulation might no longer be the most adequate tool to address those objectives. Lighter regimes in terms of regulation should be considered for services that may have a lower societal impact, implying a lower risk for regulatory objectives and/or which offer users a high degree of autonomy.

When deciding on the kind of instrument to adopt (statutory regulation, co-regulation or self-regulation) the respective potential benefits and disadvantages of the solution favoured must always be borne in mind. For example, state regulation may show greater advantages in terms of clearly defining the content and boundaries of obligations which service providers have to observe and of providing for an adequate system which secures monitoring and enforcement. Where appropriate, self-regulation may be seen preferential in order to close gaps in the exhaustive pursuit of policies; if and to the extent that the states’ scope of jurisdiction would not allow for reaching the desired effect, e.g. the lack of feasibility to include players which are highly relevant in view of the public interest objective concerned, but are outside the regulatory reach. In any event, incentives for establishing a self- and/or co-regulatory system must be ensured, in particular flexibility, predictability of inherent burdens and the ability to further develop general guidelines (possibly formulated upfront by the legislator) with more concrete provisions and procedures.

(12)
What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

The country-of-origin principle with regard to audiovisual media services should continue to ensure an internal market for media services, which as the Green Paper reiterates has been the main rationale for the regulation of audiovisual media services at EU level in the first place.

As the European Commission further states the AVMSD does not apply to providers which do not come under the jurisdiction of a Member State and does thereby not cover content delivered over the internet from countries outside of the EU. This fact challenges the maintenance of the set of values, which the provisions of the AVMSD seeks to ensure, in the case of providers which are clearly addressing the users of a EU Member State with their services, while being registered or established in a third country. This situation can lead to competitive distortions for European companies abiding to the European legislation. In order to ensure a level-playing field, we share the opinion of the European Parliament in its Resolution regarding Connected TV that this situation needs to be addressed.
Only for those services, clearly targeting the users in an EU Member State from outside the EU, the application of the country-of-destination principle remains necessary in order to ensure a coherent level of protection and safeguard the shared values throughout the European Union as well as to avoid competitive disadvantages.

(13) Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

Other audiovisual services, which currently do not fall into the scope of the AVMSD, as for example user generated services, will typically be subject to the eCommerce Directive if provided on demand. The latter Directive provides rules for measures possibly to be taken in view of illegal content, but does not specify any rules with regard to the protection of minors, the promotion and/or financial contribution to the production of European works or more substantial rules with regard to commercial communications. While both directives are Internal Market instruments and function on the basis of the country-of-origin principle, the named examples show that the level of harmonisation differs quite considerably. (However, if further directives are also taken into account, e. g. on tobacco advertising and sponsorship or on unfair commercial practices, the gap in harmonisation might be narrowed down for some of the relevant issues.) As already stated in response to question 11 some of these audiovisual services do have a similar impact with regard to the protection of minors and should therefore be treated equally with other services, which are subject to the stricter rules provided by the AVMSD today.

This does, however, not necessitate any change of the eCommerce Directive, as the delicate balance achieved with regard to the liability provisions within this Directive continues to be appropriate for eCommerce services.

It should be pointed out that besides the material perspective presented so far, also the issue of implementation (application, i. e. in particular monitoring and enforcement, of national rules transposing the respective European Union acquis) might show relevant divergences between services subject to the AVMSD and those covered by the eCommerce Directive as well as by additional instruments. In the latter case, feasibility of regulatory supervision and enforcement encounters limitations which are due to the inherent features of the services concerned. Also in this respect, the benefits of having recourse to co- and/or self-regulation should be borne in mind.

(14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

Regarding the improvement of minors’ media literacy, there is already a broad variety of initiatives established. Within the self-regulatory framework of the “ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU”, companies commit to voluntarily further education and awareness regarding internet usage. This refers to the responsible usage of specific services, as well as to the support of teachers’ and parents’ crucial role to guide children on how to use the internet safely.

Measures to further media literacy have to take into account national differences and specific needs. Therefore, such measures genuinely have to differ across Europe and there is no one-size-fits-all approach. However, in some cases a cross-boarder coordination, e.g. on EU level, may leverage synergies and best-practice-sharing.

Where funding should be provided by European institutions, attention should be drawn to the fact that not only content providers but also platform operators may be in a well-placed
position to communicate with users and particularly inform on awareness-raising measures and furtheron their individual engagement in such schemes.

(15)
Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

As already stated in response to question to 11 Deutsche Telekom is of the opinion that OTT services with editorial responsibility controlling selection and access to audiovisual media services should be treated equally as non-linear services covered by the AVMSD today.

(16)
What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy ‘general interest content’?

As already stated in view of question 3 Deutsche Telekom is of the opinion that there is no need to expand the scope of existing access regulation in view of convergence. However, the scope should be rearranged in a service-oriented manner in situations where new market players exercise similar or equivalent functions as a provider of a hardware-based platform but are not subject to the applicable rules.

In the same way must-carry rules should not be extended to additional infrastructure/platforms; the national application and particularly review of imposed obligations should be assessed more stringently to focus the obligations to content of general interest, and at the European level this should continue to be monitored carefully. In addition, extension of related obligations to other forms of media services than specific linear audiovisual media services is not regarded necessary. Especially scarcity considerations cannot be applied to those platforms that are relevant in the case of access to on-demand services, particularly not when there are different infrastructures among which the user can choose.

(17)
Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

Currently the regulatory regime for commercial communications differs between linear and non linear services. The introduction of a less stringent regime for on-demand services was justified at the time by the difference in terms of choice and user control. This justification remains valid today.

In any case it is of utmost importance to avoid regulatory divergence when it comes to obligations with regard to commercial communications. Any potential review of the AVMSD should ensure coherence with other legal instruments such as the Directive on Unfair Commercial Practices or the Consumer Right Directive.
What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

It is true that, especially in the online world, advertising techniques are changing rapidly. The European regulation process is lengthy and thereby takes the risk to be outdated soon after adoption. As a consequence any regulation in this area should be rather generic and leave room for self-regulatory approaches as for example DOW (Deutscher Datenschutzrat Online Werbung), which is providing a self-regulatory framework for online behavioural advertisement.

In order to ensure the effectiveness of such self-regulatory instruments it is absolutely key to ensure a broad participation of market players of the whole ecosystem along the entire value chain.

Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Overlays are today constant practice of providers of audiovisual media services themselves, particularly when content is “on air”. In these cases, apparently the interests of authors and rightsholders (as referred to in a specific context of the AVMSD’s rules) are not seen to be prejudiced. The red-button technology, already discussed in the past at several occasions, was intended to lead the viewer away from the linear offer (either content or TV advertising) presented on screen towards a different, on-demand-like environment; the television broadcaster had interest in securing that he remained in control over what was presented in this environment (specifically in a walled-garden setting).

A rather well-known example of a (at the time of introduction) novel technique is split-screen, practiced also by the media service providers.

Therefore, it appears necessary to identify, on a case-by-case basis, whether and, in the affirmative, what kind of recognised interest in restricting access to new technologies is to be protected. In the end, no regulation should be seriously considered which would allow a specific party to exclusively define whether and what kind of approach is regarded permissible and which would exclude that new business models are developed that could favour the interests of the viewer. In the latter case, the idea of mutual obligations to keep processes transparent might be taken into consideration.

Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

Convergence facilitates that the same content (categories) in linear, non-linear and other audiovisual media can be viewed on the same (mobile) device, while being subject to different legal requirements for the protection of minors under the AVMSD. The current graduated legal approach sets out that content that might seriously impair minors is not admissible in linear media, pursuant to Art. 27 para. 1 AVMSD. In non-linear media “only made available in such a way as to ensure that minors will not normally hear or see such”, according to Art. 12. For other content, such as user-generated content, these rules remain less clear. For content which might only impair minors, broadcast services in adherence to Art. 27 para. 2 have to consider broadcasting times or other technical measures to protect minors. No such requirement applies to non-linear content.

This graduated regulatory regime is still appropriate based on technological differences and feasibilities to allow users, esp. parents and carers, to apply protective measures in the field of non-linear media which do not exist for broadcasting services. In contrast to linear
audiovisual content, access to non-linear can be easily restricted through the provider of the content or platform most of all through age verification systems regarding to content which might seriously impair minors, such as pornography. Moreover, electronic communications providers as well as the software market as such provide an abundance of software tools effectively allowing parents and carers to protect minors from inappropriate content. Such self-administration tools for filtering for different age groups, limiting online time and education. It is in parents’ responsibility to apply such tools to protect their children. These technical solutions can be supplemented by awareness raising measures, connected to non-linear and other audiovisual content. Warning signs, reporting tools and clear terms of use provide guidance and advice to parents and children.

Deutsche Telekom Group, in context of the wider information and communications industry has established effective self-regulatory frameworks, providing such safeguards, for example the “ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU”\(^3\), GSMA Europe’s “European Framework for safer mobile use by younger teenagers and children”\(^4\) or GSMA's 'Mobile Alliance Against Child Sexual Abuse Content'\(^5\).

Given the rising number of providers of non-linear and of other AV content over the Internet a more harmonized approach on clearer rules regarding the protection of minors from seriously impairing content could be beneficial for legal certainty of businesses as well as the protection of minors. The sometimes extremely different standards of appropriateness of content for different age-groups throughout the Union are an obstacle for the safe cross-border provision of content which only might impair minors. An EU-wide age-rating and classification system would provide protection and legal security.

(21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

Deutsche Telekom aims to provide a safe and trusted environment for our customers and users – including minors. Throughout the Union we provide parental control tools for mobile and fixed devices empowering parents to let their children safely use linear and non-linear services. This also includes a convenient and intuitive usability of these tools. Besides this, a pre-condition for any take-up of parental control tools is that parents and carers are aware of potential risks in the web. Therefore, raising awareness is an essential measure in that context for us vis-à-vis our customers.

The market provides an abundance of such tools – both for mobile and fixed devices. Deutsche Telekom believes that the suppliers for operating systems and terminal devices are in a key position to build-in such features into their products. Standardisation could further facilitate the provision of parental control tools.

(22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

The AVMSD already provides for age verification systems in Art. 12 and 27 para. 2 – though without explicitly requiring them. This has led to very different transposition of these rules throughout the Union. To facilitate the internal market appropriateness of age verification systems may be clarified. Due to the fast technological environment detailed rules put down on formal law would, however, soon be outdated.

\(^3\) http://www.ictcoalition.eu/
When developing guidelines for requirements it is of key importance to understand that no such system can provide for absolute safety. Requirements for effectiveness have to be balanced with the usability of any of such age verification systems. For example, face-to-face requirements and PIN codes may lead to higher effectiveness but as well come at the downside with lower usability for the user. And this might seriously hamper the take-up of such systems and lead to increasing usage of circumvention techniques or an alternative, not always legal, provision of adult content.

(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

A more harmonised classification of content and age-groups would facilitate cross-border content provision.

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

Deutsche Telekom, in line with other responsible content and access providers, provides for complaint mechanisms built-in in its services, where needed. The kind of complaint mechanism offered and the way in which complaints are effectively dealt with vary between the wide range of products and services. They should be transparent and easy to use.

Responsibility to offer complaint mechanisms must refer to own services which might potentially present risks to minors. User generated content, which is not controlled prior to being uploaded and shared with other users, appears as potential risk if minors can access it easily. Therefore, reporting mechanisms are particularly important in social media.

The definition of what kind of content should be considered as inappropriate differs between cultures and Member States. Anyway, inappropriate content needs to be clearly distinguished from illegal content. For the latter, the eCommerce Directive provides rules for take down.

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

Harmful content and illegal content clearly have to be distinguished, since they are subject to different regulations and demand different consequences. Particularly, the definition of harmful content differs between cultures and Member States. For illegal content law enforcement authorities are responsible to prosecute. Private entities, such as EU-wide networks with support of the industry can help but must not be charged with prosecution. The European Commission should continue funding the EU-wide INHOPE network6, which is currently under threat of budget constraints, to ensure its important and independent work.

Individual companies’ responsibilities to offer reporting mechanisms refer to their own services. If a provider offers feedback to those users who send a report, the user must not

6 http://www.inhope.org/gns/home.aspx
stay anonymous but needs to provide contact data. Depending on the number of received reports, individual feedback is not feasible. Transparent information on the handling of reports should be easily accessible.

(27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

It is doubtful if incentives for innovative services bring an added value to people with disabilities. In the past services specially designed for the needs of the disabled have proven to fail take-up by this group, e.g. voice and video relay services. Such services come at high operational cost while innovations in the audiovisual media sector, especially in the mobile environment, have shown innovative paths to ensure effective inclusion of disabled persons.
GREEN PAPER FROM THE COMMISSION
PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD: GROWTH, CREATION AND VALUES

Ericsson submission
European Commission
Directorate- General for Communications Networks, Content and Technology
Unit G1
Office BU25 05/181
B- 1049 –Brussels

Electronic submission via: CNECT-CONVERGENCE-AV@ec.europa.eu

Re: GREEN PAPER- Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

Ericsson welcomes the opportunity to contribute to the Commission’s GREEN PAPER and is pleased to be able to participate in this very important discussion regarding media convergence in the context of growth creativity, innovation and values.

Some key Ericsson facts:

- Ericsson is the world’s largest telecom infrastructure and services company with net sales revenue in 2012 amounting to SEK 227.8 billion (USD 33.8 billion). Today, more than 40 percent of the world’s mobile traffic passes through networks provided by Ericsson. Ericsson’s is global market share leader in mobile network equipment (GSM/GPRS/EDGE, WCDMA/HSPA and LTE).

- Ericsson is the world’s number one mobile network, real-time charging and billing, and telecom services provider. More than 1.4 billion consumers are charged and billed through Ericsson’s solutions.

- Ericsson reached a milestone in May 2013, providing managed services to networks that serve more than 1 billion subscribers and Ericsson has signed more than 300 contracts worldwide.

- Ericsson is world market leader in Multi-screen TV solutions, IPTV and media compression technologies.

- Ericsson is the pioneer of LTE-Broadcasting technologies.

- As the world’s leading technology provider, Ericsson plays a key role in the development of standards in fixed and mobile voice, data (IP) and TV/video technologies, and hence is a key actor in the digital economy by enabling and empowering innovation with technological means and solutions.

- Ericsson employs over 110,000 staff worldwide and over 20% or 24,000 of those are dedicated to R&D. Ericsson invested SEK 32.8 billion (USD 4.9 billion) in R&D in 2012.

- Ericsson holds over 33,000 patents, with 16 new patents sought each day and is the number one holder of GSM/GPRS/EDGE, WCDMA/HSPA and LTE essential patents.
1 ECONOMIC IMPACT

Increased use of ICT and broadband enhances productivity in virtually all sectors of the economy and hence is a key input source to economic growth, job creation, and new business creation. Understanding the transformative impact of general purpose technologies such as ICT and broadband on overall economy is crucial. This sort of economic impact is more significant than for example the impact on economy from increased expenditure of consumer goods. This is because increased expenditures on ICT transforms economies by putting them on to new and long lasting growth trajectories. Some important economic effects caused by ICT and broadband that have been identified are1:

- Building knowledge society by improving human capital. Increased ICT intensity creates demand for higher skilled labor.
- Driver of multifactor productivity growth, which includes the impact of intangible investments and innovation such as organizational changes, new distribution and production processes, and new methods of doing business due to the increased adoption of ICT technology.
- For every 10 percentage point increase in broadband penetration the isolated economic effect on GDP growth is around 1% of GDP, with estimates varying between 0.5% - 2%.
- For every 1,000 additional broadband users, around 80 jobs are created, with estimates varying between 20 and 130.
- Doubling the average attained broadband speed for an economy increases GDP by 0.3% points.

A vital link exists between the economic impact of broadband described above and the availability of digital content such as audiovisual works (see figure 1). Availability of digital content and services are factors that stimulate the mass adoption2 of ubiquitous high-speed broadband services. Supply side broadband policies that promote availability of high-speed broadband rollout are necessary but insufficient since mass adoption of broadband is also dependent upon additional factors, see figure1.

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2 In addition see New Zealand’s Commerce Commission Demand Study: http://www.comcom.govt.nz/media-releases/detail/2012/commerce-commission-releases-final-issue-paper-on-high-speed-broadband-demand-side-study/ (see also footnotes 3 and 4)
Consequently, sound demand-side broadband drivers such as the availability of on-demand European audiovisual works (see figure 2) need to be in place to stimulate uptake of high-speed broadband services and consequently realize the economic impact. These demand side drivers include:

- Increasing economies of scope by increasing the availability of digital on-demand content; i.e. expanding trade in goods and services including digital creative works,
- Increasing the scale of economies by creating a single digital market; i.e. maximizing the geographic size of a EU borderless digital market,
- Lowering transaction costs, such as due to market fragmentation or outdated regulatory regimes (rights clearing, differentiated VAT-rates etc.)
- Increasing the level of mass-personalization of services according to individual preferences and purchasing power, in this case increasing the availability of on-demand content
Recognizing that film and audiovisual works are both economic and cultural goods, the economic dimension is however much broader than traditionally considered, e.g. not only limited to the film/audiovisual sectors. As explained above the socioeconomic impact of broadband is dependent upon adoption of high-speed broadband services, where availability of digital content is a key driver.

In this context the convergence green paper needs to consider the broader economic impact of audiovisual sector on the EU DSM, where Europe could gain 4% GDP by stimulating faster development of DSM by 2020. This corresponds to €500 billion or more than €1,000 for every citizen. DSM has similar impact as the 1992 Single Market Programme.3

2 MEDIA CONVERGENCE

Ithiel del Sola Pool, the “prophet” of convergence would most likely agree that media convergence is not just about technology. It is about new services for consumers, new ways of doing business, new types of media products and new ways of interacting with end users. As Jon Sinclair argues in his book (In to the Post Broadcast Era), "in a post-TV world I no longer need to watch television that is "not for me" one can conclude safely that personalization, customization and individualization constitutes the key points of differentiation from broadcast" appointment viewing” type television.

3 http://www.epc.eu/dsm/2/Study_by_Copenhagen.pdf
Convergence is a technologically driven process; digitization acting as the prime driver whiles the network as the prime enabler. Convergence changes markets by transforming industry sectors, blurring historical market boundaries, changing the composition and range of possible market offerings and challenging the robustness of previously successful business strategies. From a policy perspective, convergence enables increased demand-side and supply-side substitution by lowering entry barriers that ultimately facilitates more consumer-choice, lower prices, more competition and new innovation. Ultimately, this is the outcome at stake in the hands of policy makers, e.g. how much a society can gain from the convergence process.

The profound changes that are taking place in the audiovisual sectors as a result of convergence can be captured by looking at the changes taking place in the value chains of affected sectors. From a value-chain perspective, the following changes are taking place:

- **Disintermediation and/or unbundling** occurs when technological advances create new ways to distribute and receive content. This reduces barriers to entry, creating an entry opportunity for new types of businesses that concentrate on specific stages of the value chain. Content aggregators of all types, for example Voddler, Magine and Netflix, are examples of businesses that have become possible through the disintermediation of the value chain as a result of technological advance.

- **Fragmentation of the value chain** occurs when stand-alone, single stages break up into a number of discrete activities. If we consider the traditional stage of content generation, television broadcasters originally produced all content in-house. Now, while some is still produced in-house, much additional content is also sourced from external suppliers, as finished productions, or bought-in formats, which are then produced in-house, or as joint ventures with other players.

- Fragmentation inevitably leads to **value-chain extension**. This is particularly apparent at the end-user stages of value chains. Thus, thanks to convergence, a newspaper will now deliver its content in its traditional print form, as an online product, and as a mobile product. Similarly, a television series can be distributed traditionally via television or cable networks, as a DVD, via catch-up TV services, and via OTT services on internet-connected or mobile devices.

Consequently, one of the most problematic and pressing issue today is the changing power relationship between players in the content, programming, distribution and device value chain. Distribution platforms are proliferating due to the new entry of IPTV, internet TV, mobile TV and hybrid TV platforms, and as a result the power relationship between content creators, programmers and distributors is changing. Vertically integrated players active in content creation, aggregation and distribution, and the monopolies that arise as a result of exclusive licensing, potentially enable companies to leverage their vertical

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integration or exclusive assets to the detriment of players whose activities are limited to distribution.

From a policy perspective, convergence puts a range of very different regulatory traditions and philosophies on a collision course:

- Telecommunications regulation, which has been concerned with operation of the physical network and access
- The film and video industry, where control has been exercised through classification and censorship
- Broadcasting, where licensing has provided the basis for regulation on political and cultural criteria
- Publishing, which has been shaped by principles of a free press, libel and copyright
- The computing industry (including the internet), which has been left to develop largely unregulated, apart from general competition law.

While convergence is forcing the industries to move towards more coherent policy and regulation, as well as the integration of regulators, reconciling the different regulatory traditions and philosophies involved is no trivial task. In this process, “the central question is not how to regulate convergence, but how regulation should (and must) change in the face of convergence”.

This non-trivial exercise requires that policy frameworks are revised, key policy goals and outcomes are harmonized and that remedies are applied equally across converging sectors, such as:

- Establishing cross-sector over-arching long-term policy goals regarding; market freedom, innovation, competition, affordability and availability, including the formulation of lowest-common-denominator standards.
- Ensuring a balance between investment protection and consumer interest, e.g. including the balancing of consumer protection and investor protection against long-term market viability. This balance should be given equal treatment across all converging sectors.
- As far as possible, harmonize and align the desired objectives of economic policy with those of public interest policy. Minimum economic distortion principle (both in terms of magnitude and symmetry) should apply where public interest policy objectives are justified to surpass economic policy goals.

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Public interest policy such as elements of key media-policy (Film, Cinema, and Broadcasting) regulation should be applied in a technology-neutral way. In a converging and multi-platform environment, the same rules/standards should apply to all technologies and distribution platforms. This should not be interpreted as one-way street option e.g. increasing regulation of new platforms but also considering de-regulating incumbent platforms.

Specific rules governing public interests such as those concerning the use of state aid and national subsidies (e.g. Public Service Broadcasting, Cinema and Film subsidies, application of VAT rates etc.) should minimize distortions in the market. Once again, a technology- and platform-neutral approach should be one of the key governing principles.

The above mentioned reconciliation process of different (sector specific) regulatory traditions in an ongoing industrial and technical convergence necessitates that a new policy framework not only assumes a more holistic perspective across all relevant sub sectors and value chain activities that are converging, but also adopts a horizontal policy framework approach.

Furthermore, in a converging business environment, the issue of symmetry and asymmetry of regulatory interventions should be carefully evaluated. Where such interventions are justified, no longer should they be limited to one vertical sector or a particular technology. This is because monopoly, de-facto monopoly, dominance, essential facilities, network effect, other technical, economical or administrative (regulatory) barriers that can lead to market distortions, ineffective competition or abuse of dominance can potentially arise anywhere in a converged value chain and definitely not only at the infrastructure level or access network level (see figure 3 below).

FIGURE 3: CONCEPTUAL ILLUSTRATION OF A HORIZONTAL FRAMEWORK APPROACH
This is essential consideration because, the positive impact of convergence on demand and supply side substitution effect can be limited by barriers anywhere in a converged value chain and affect any or all actors in the value chain. Hence, a more holistic cross-sector and value chain focused framework is needed; the regulator should pursue its future tasks without prejudice to any particular value chain activity, sector and on technology neutral terms.

3 QUESTIONS & ANSWERS

Ericsson has made a selective contribution to a subset of questions raised in the green paper.

1 What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

Some selected factors affecting the success of US companies in the audiovisual sector:

- Attractive content offerings addressing global audiences that transcend national/cultural barriers.
- Effective control over necessary rights that can be cleared across a fragmented EU market, which decreases transaction costs relative EU companies who lack similar level of control across the EU frontier.
- Language, lower translation costs as dubbing from English to a small EU language area is less costly than translating a film in a small EU language area to another small language area.

Some selected factors affecting the absence of success of EU companies in the audiovisual sector:

- “EU has become one of the largest producers of films in the world. The EU cinema industry produced 1,285 feature films in 2011 compared to 817 in the US, or 1274 in India (2010)\(^8\)
- However, looking at the 2011 market share of the world’s largest film producer in its own home market, that is the internal EU market; a mere market share of only 28.5\(^9\) reflects not only a major economic failure but also is a reflection of:
  - the territorial fragmentation,
  - absence of a single digital market for audiovisual works,
  - high transaction cost (rights clearing, translation costs),

\(^8\) COMMUNICATION FROM THE COMMISSION ON STATE AID FOR FILMS AND OTHER AUDIOVISUAL WORKS 2012.
\(^9\) [http://www.obs.coe.int/about/oea/pr/mif2012_cinema.html](http://www.obs.coe.int/about/oea/pr/mif2012_cinema.html)
the complete absence of legal digital alternatives in the first release window and
Limited availability of on-demand digital content\(^10\) and copyright law unfit for the digital age\(^\text{11}\).

2 What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

See question 3.

3 Are there obstacles, which require regulatory action on access to platforms?

- Technology neutral funding schemes of audiovisual productions, allowing complementary first window distribution platforms to emerge.
- Abolishing statutory windowing provisions in member states and references to such practice in AVMSD (see question four).
- Limiting the length of exclusive first release windows and prohibiting the use of exclusive windows for films with less than 100 copies in the theatres.\(^\text{12}\)
- The growing practice of Hold Back Practices, some distributors can obtain from right holders the holding back of VOD rights during the whole TV exploitation. Holdback periods are currently not regulated and hence depend on contractual negotiations, alone which have important drawbacks for VOD aggregators, as it hollows out the breadth and depth of a VOD content library.
- Evaluate the proper balance of the use of exclusive licensing, especially in combination with other factors such as market dominance in the value chain (device, aggregation and/or distribution).
- A harmonized VAT-rate for audiovisual services and products across the EU frontier should apply regardless of distribution channel or platform used to distribute the content and payment model in use e.g. transaction, subscription, pre-paid/post-paid billing.
- A more holistic value chain approach is necessary in future regulatory frameworks (section two) since monopoly, de-facto monopoly, dominance, essential facilities, network effect and other technical barriers that can lead to market distortions can arise anywhere in a converged value chain.

\(^{11}\) http://www.ericsson.com/news/130122-the-tide-is-turning_244129229_c
\(^{12}\) http://www.culturecommunication.gouv.fr/var/culture/storage/culture_mag/rapport_lescure/index.htm#/
4 Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

While the AVMSD establishes a framework with minimum requirements, it gives great discretion to Member States to implement a lighter or more onerous a scheme than the minimum established. This lack of harmonization has an impact on the European audiovisual market and as such, a debate on whether this discretion should be eliminated should be launched. However such review should equally consider that a maximalist approach taken by some Member States in the implementation of AVMSD is by no means to be considered as the future EU norm but rather principles illustrated in section two above should be part of such review.

Article 73 in AVMSD should be clarified and made sure that use of film production schemes e.g. public funding should be made without limitations to physical platforms in the first release window. Premium digital windows should be allowed to emerge and increase consumers’ choice without administrative distortions.

Article 76 and 77 in AVMSD is more or less an explicit reference to widowung which should be completely removed from of the directive. This is an example where current regulation creates artificial and unnecessary barriers for innovation in the market such as premium VOD e.g. digital first window releases. Even more an outright ban against statutory market limitations such as windowing in member states should be enacted. Europe must not fall behind other regions pushing forward with the increasing online distribution of premium theatrical content, which would trigger further BB uptake, increase right holders / creators’ revenues as well as reduce the cultural divide based on geography, opportunity and other reasons.

5 How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

Consumers are obviously the ultimate funding source of content, although the mechanisms are varied such as transaction or subscription fees, advertising mark-ups on consumer goods covering for producers TV-advertising spending or fees/taxes collected to finance public service TV and film subsidies. Hence it is vital that any future policy financing discussion must keep track of this fact. Any new future interventions cannot disregard consumers’ needs and preferences, and any successful future public interest intervention must take into account principles identified in section two.

Furthermore, consumers’ willingness to pay for on-demand content is growing

(see figure 4) which is a reflection of consumers’ increased spent time watching on-demand content.

FIGURE 4 GROWING CONSUMER HABIT TO PAY FOR ON-DEMAND CONTENT

In addition, there has been a trend of advertising spending migrating toward on-line/on-demand platforms. Aside from the immediate competitive impact this migration has both on advertising markets and audiovisual markets i.e. potential calls for revisiting the regulation of linear and on-demand content (advertising quotas, content quotas etc.), it is necessary to understand the GDP impact of those commercial activities that undertake these advertising investment decisions i.e. the GDP impact of on-line vs. traditional advertising. A McKinsey analysis, see figure 5 found that digital advertising was more effective which increased the productivity of marketing campaigns and consequently the commercial rewards for advertisers. Increase commercial success consequently meant that budgets increased for more or new product launches.
Consumers increased willingness to pay for on-demand content, brand owners economic incentives to grow digital advertising budget (and hence digital content) and the proliferation of new platforms, aggregators and devices delivering is also driving further the change of content financing. As showed in figure 6, in the case of Korea, the regulator KCA has been able to establish the there is a growing proliferation and significance of new content financing source in Korea\textsuperscript{14}.

\textsuperscript{14} http://paidcontent.org/2013/09/03/vimeo-starts-funding-indie-films-to-broaden-its-on-demand-platform/?utm_source=General+Users&utm_campaign=fb1c9eb18a-c%3Amed+d%3A09-03&utm_medium=email&utm_term=0_1dd83065c6-fb1c9eb18a-99152125
FIGURE 6 EMERGING SOURCES OF CONTENT FINANCING IN KOREA

SOURCE: KOREA COMMUNICATION AGENCY 2012
6 Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

The industry has demonstrated the validity of the paradigm of favoring voluntary and market-driven standards in an excellent way towards the converged audiovisual world. The HbbTV standard is a prime example of this as it has enabled the industry to avoid potential fragmentation across borders and to provide devices that work with services across national borders in horizontal markets, without discriminating against the coexistence of equally valid vertical markets that do not use this standard. This in turn has enabled consumers from mass-market driven price benefits of volume scale for devices accessing horizontal-market services. It should also be noted that the HbbTV specification itself is created through references to specifications from other consortia with global reach and worldwide industry participation such as the Open IPTV Forum (OIPF), the Motion Picture Experts Group (MPEG) and the World Wide Web Consortium (W3C). Thus, the platform it implements has a truly global, standardized technology foundation, which has led to gradual move favoring its reuse in other regions of the world outside the EU.

Concerning the second part of question, Ericsson believes that the basic standards enablers for the converged audiovisual market are in place today. There will be a continuous need to improve and update them, to further improve harmonization of those standards across the EU and to enable improved and richer services over time. To this end, a voluntary market-driven standardization will continue to best cater for those needs.

7 How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

New internet protocol (IP) based media services are being developed, refined and made accessible over fixed and mobile broadband networks. These services are providing both traditional and a new variety of content to consumers, which is also including social media, texting and chatting that is engaging and entertaining a growing audience further. Particularly the younger and middle-aged consumers groups are establishing these new behaviors where media content, in addition to the living room based television set, is also consumed on desktop computers, laptops, tablets or smartphones. Whatever the case may be in terms of future consumption, access to radio and television based content over broadband networks is an essential requirement.

While still covering a significant consumer base, as well as large geographical areas, the current analogue or digital terrestrial broadcasting technologies are the primary, or the only, means of delivering television services to living room based
sets using a fixed rooftop antenna, in numerous countries in Europe. It is certainly understood that it therefore would be exceptionally demanding to substitute these technologies, for the purpose of modernization and adaption to the new behavior of consumers and the new variety of content provisions. Of course the progress of EU 2020 broadband targets is an essential variable that will define the potency of mobile and fixed broadband networks to substitute terrestrial broadcasting. Hence timely release of new spectrum for mobile use is essential as well as promotion of fixed broadband rollout.

Otherwise, the possibility of new IP based technology to be rolled out, may neither be available in sparsely populated areas for a considerable period of time, nor may the radio frequency spectrum be available in sufficient amount to provide for a possible transition. It is therefore expected that the current terrestrial broadcasting technologies will remain vital for years to come, both for broadcasting radio and television services. However, it is anticipated that the end of life time period for the current broadcasting radio and television platforms, irrespective of analogue or digital systems, will eventually be phased out within a foreseeable time period.

Notably, in some countries in Europe the increase of the viewing time is now becoming more flat, or even having a somewhat negative trend with regard to linear television viewing, particularly with regard to the younger consumers. The European societies have already entered a new era in television; on-demand and other offerings are being embraced by the consumers, new technologies, applications and services not only improve viewing experiences – they also change the fundamental ways in which the consumers approach multimedia.
Currently, consumers are beginning to move away from viewing purely linear television and slide into new on-demand behavior (see figure 7). As consumer expectations of television and video change, fresh opportunities are being created. The average home entertainment setup is moving away from using separate screens in each room. A growing number of households instead use a large main screen, supplemented by a number of mobile devices that provide access to services from all over the home. The so called “tablets” and “smartphones”, in particular, have grown to become a popular mobile device for viewing content in the home, despite the fact that the technology is relatively new. This is partly due to the favorable conditions for mobile viewing both within home environments as well as in public locations. Another reason is that many consumers are looking to modernize their viewing experience, yet are unwilling to invest in more than one new television set, or add set-top boxes to their old television sets, in order to access new services.

The impact of smartphones and other mobile devices that facilitate on-demand interactive media consumption leads to a changing pattern of a typical TV-day versus traditional viewing see figure 8. Mobile devices are distributing TV/video viewing more evenly over the whole day, meaning that TV/video viewing is becoming a 24-hour activity rather than an evening event only. The trend with an increasing mix of private and professional life both at work and at home also strengthens this type of consumption behavior.
An essential question to consider when satisfying the new demands of media consumers is how to provide access to linear and non-linear content while using different devices and different sized screens:

- broadcasting television networks are suitable for linear content, typically large screens (non-portable) and receivers are now being equipped with broadband access.
- fixed and mobile broadband networks are suitable for linear and non-linear content with interactive use, and the devices are highly flexible with regard to usage and mobility as well as being interactive, though not equipped with terrestrial broadcasting television receivers.

Finally, there is a synergetic opportunity for EC to seize. As noted earlier the realization of the transformative economic impact of broadband and ICT is preconditioned by supply-side broadband policies e.g. the roll-out of broadband and availability of mobile spectrum. In this context, the EU broadband targets and spectrum policy is essential. However, to reap the benefits of EU Digital agenda, adoption of broadband services is required, mere rollout is not enough! Increasing the availability of digital content is the key to stimulate consumers’ demand for high-speed broadband services and hence is an essential consideration for this paper. But even more, increased availability of broadband, audiovisual works will also result in decreased cultural gap in the EU as high-speed broadband networks and digital content can tear down current cultural divides between urban and rural EU citizen.\(^\text{15}\)

8 What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

Current television broadcasting media networks are using “high-power” and “high-tower” structures, whereas the mobile broadband networks are based on a “low-power” and “low-tower” infrastructure. The technical properties of the “high-power” and “high-tower” structure carry the significance that the inter site distance between the broadcasting stations are significant and are in some countries of the order of 100 km. In comparison to the cellular mobile broadband infrastructure may use an inter site distance of the order of 1 km. The emerging mobile concepts under consideration for future deployment have taken into account the technical aspect of sharing the television UHF spectrum in the range of 600 MHz where small mobile broadband cells are interleaved between the large broadcasting areas as to provide an underlay seamless coverage infrastructure. With the aim of minimizing interference and maximizing the spectrum efficiency, the underlay mobile broadband network needs to be carefully planned in the frequency domain as to avoid the broadcasting television frequencies used in a particular geographical area. Due to a potential risk of interference between transmitting mobile devices in the vicinity of a television receiver set e.g. in a living room environment, downlink only usage is considered for the mobile broadband in the band 600 MHz with an uplink anchor frequency in any other existing band used by a service provider of a mobile network service. Also a significant degree of transmitter power management would be required for the downlink only mobile broadband base station as well as other mitigation techniques. However, the mobile broadband transmitter power could be increased when a site is established closer to a television station site, while the transmitter power would have to be reduced in communities that are receiving television signals at the cell border of a television station. The technology considered is a standard Long Term Evolution (LTE) broadcasting system largely in accordance with 3GPP specifications, although for the frequency band 600 MHz.

The described concept above also foresees a possible cooperation between broadcasting and mobile broadband service providers on a technical, business and/or operational level to benefit from the combined properties of both technologies in a cooperative manner.

Mobile broadband networks also provide interesting opportunities for program making in the domain of electronic newsgathering and outside broadcasting (ENG/OB) for program making. LTE networks enable transmission of high definition (HD) video streams from live cameras with the low latency and high quality required for studio feeds. This has been demonstrated in several events, for example:

- the Swedish Crown Princess' Royal Wedding in 2010, where Swedish TV companies broadcasted live from the celebrations in Stockholm
- the Japanese Nippon TV reporting from the Nobel press conference in Stockholm 2010
• the Danish public service TV station reporting from the country’s national parliamentary election night in 2011

Compared to using satellite uplinks for ENG/OB, LTE networks incur lower setup overhead and expenses. The LTE quality of service framework ensures priority for the ENG/OB services above other types of traffic in the LTE network, thereby providing carrier-grade performance.

For these reasons, a suggestion to address further the opportunity of new advanced IP based mobile broadband radio communication technologies to offer a complement to the current terrestrial broadcasting technologies with the aim of improving the consumer experience, while minimizing any interruption of broadcasting radio and television service is provided. This also implies the sharing of the same range in the 600 MHz spectrum in an efficient manner, while taking the full advantage of the combined properties of both technologies in a cooperative manner.

9 What specific research needs with regard to spectrum have to be addressed to facilitate such development?

The potential risk of interference between transmitting mobile devices in the vicinity of a television receiver set in e.g. the living room environment may require further investigation. A significant degree of transmitter power management would be required for the downlink only mobile broadband base station as well as other mitigation techniques; however, the mobile broadband transmitter power could be increased when a site is established closer to a television station site, while the transmitter power would have to be reduced in communities that are receiving television signals at the cell border of a television station, this may require further investigation.

With regard to a possible business case in relation to potential collaboration between broadcasting and mobile broadband service providers on a technical, business and/or operational level to benefit from the combined properties of both technologies in a cooperative manner would certainly need further investigation.

10 Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

One potential approach to promote European values in the AVMSD and at the same time minimize the negative impact that being the distortions caused by the former on commercial markets, is to target the public interest policy objectives alone at the public service broadcasters. In other words the public service remit should become the key vehicle to deliver such public interest values. On other hand commercial actors be it EU or non-EU broadcasters or on-demand aggregators would be relieved from such public service obligations. In other words increased targeting of the European values in the
AVMSD at the public service providers would limit any currently perceived distortions in the commercial audiovisual market.

11 Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

Current definition of AVMS provider in the directive has stood the proof of time. The whole intention of the directive to assume a technology neutral and horizontal approach toward what previously has been defined as broadcast service etc. is not only pioneering from an EU perspective but also globally. Other non EU-territories have benchmarked this very concept and have subsequently included similar notions in national legislation.

Furthermore, in addition to the definition of the AVMS provider following key policy concept inventions have advanced the EU media policy framework;

- the definition of AVMS
- establishing the link between AVMS and AVMS provider
- graduated approach
- opening up for self/co-regulation

One can of course debate endlessly the scope of AVMS provider obligations and the very important AVMS requirements. At this point however, the significance of effective targeting of such obligations and requirements should be investigated further. That being the possibility to target European public interest related obligations and requirements solely at the public service AVMS providers. This would be then treated as an additional step in the graduated approach of the directed that currently only distinguishes between linear and non-linear services.

It goes without saying that certain requirements in the AVMSD such as those regarding the standards of current affairs reporting, protection of minors etc. would apply to both commercial and public undertakings. It is also implied that AVMS providers exercising editorial control over AVMS regardless of distribution platform put in use should fall under the AVMSD.

Audiovisual media regulation is and should continue to focus on the issue of how to systematically regulate the different types of professionally produced content classes in a converged environment: entertainment, current affairs reporting and cultural works. In this case the issue of editorial responsibility of a professional media publisher is of main concern. While Internet content regulation is of outmost importance it is fundamentally about free speech and the level of legitimate limitations to free speech which is concerned with regulation at the individual level. In other words, these two important regulatory concepts should be kept separate. Hence there should be no expansion of
AVMS that potentially covers audiovisual expression of individuals or by entities acting on non-commercial or limited commercial scale.

12 What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market? A further but a major step away from creating a European single audiovisual market.

13 Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

As noted above other audio-visual-like services, which currently do not fall into the scope of the AVMSD, as for example UGC, should continue to be subject to the eCommerce Directive if provided on demand. The latter Directive provides rules for measures possibly to be taken in view of illegal content, but does not specify any rules with regard to the protection of minors, the promotion and/or financial contribution to the production of European works or more substantial rules with regard to commercial communications.

The eCommerce Directive strikes a delicate balance with regard to the immunity and liability provisions and continues to be appropriate for eCommerce services and is acknowledged as such by the European Commission. There have been many attempts by rights holder to challenge this balance, seeking to outsource enforcement to selectively targeted commercial actors. Increasingly there is a growing acceptance that “free” illegal access to content can be displaced with legal alternatives, see figure 9.

FIGURE 9 THE INVERSE RELATIONSHIP BETWEEN ILLEGAL AND LEGAL ACCESS

SOURCE: ERICSSON CONSUMERLAG 2013 TV AND VIDEO STUDY
What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content’?

Please refer to section two.

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Executive Summary

Satellite operators consider that convergence is, inter alia, about making sure users can access a maximum of high quality audio-visual content on all devices at the same time no matter where they are located.

Satellite technology is directly relevant to this objective for different reasons:

1. Broadcasting is what satellite does best; it is without doubt the most cost and spectrum efficient means of transmitting everywhere in the EU and to everyone such a quantity (in SD) as well as such a high quality (in HD/ 3D/ UHD) of audiovisual linear services from content creation centers to distribution hubs, in feeding local distribution networks with content from all over the world and in delivering this content directly to end-users.

2. Satellites can proficiently be part of a hybrid network configuration, consisting in a mix of broadcast infrastructures (DTT, satellite) and broadband infrastructures (cable, fiber, wireless) managed in such a way that it brings, seamlessly and immediately, converged services to all end-users in the EU.

3. When used in a hybrid network, the satellite broadcasting strength can facilitate convergence for the delivery of non-linear services e.g. by ‘pushing’ quality data-heavy content to the edge of networks, closer to users, for subsequent distribution via terrestrial means (fixed or wireless including WiFi), in order to contribute to improve ICT overall cost and spectrum efficiency.

4. This use of satellite technology will therefore:

   (i) Drive a virtuous circle which could promote short-term growth and value in the EU: the early provision of Connected TV will result in a growing demand for bandwidth, calling for enhancement of the infrastructure components, which will in turn enable new converged services, having in the end a positive effect on the whole media value chain.

   (ii) Optimise investments by reducing transmission capacity requirements in the terrestrial backbone;

   (iii) Reduce spectrum requirements for 3G/ LTE services as satellite, as well as WiFi, can off-load mobile traffic.
This is a major step forward in understanding convergence as it has largely been assumed that bi-directional, fully meshed and interactive, symmetrical Next Generation Networks, which require a wide-scale, long-lasting and expensive upgrade of terrestrial networks, were the only infrastructures able to support the provision of converged audiovisual services. This is not truth, and on the other side:

(i) In a period of budgetary restrictions, governments need to focus their investments on solutions which are the most cost-effective, and that create immediate growth and values by being available today, and

(ii) No matter how large the terrestrial pipe, it will always get filled up and there will always be bottlenecks that cause delays and diminish consumer choice and experience.

⇒ As such the European Commission’s convergence initiative is invited to address the infrastructure question alongside, if not before the other issues that convergence raises.
QUESTIONS FOR PUBLIC CONSULTATION

(1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

N/A

(2) What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

N/A

(3) Are there obstacles which require regulatory action on access to platforms?

N/A

(4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

N/A

(5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

The consumers of converged audiovisual services, such as the Connected TV, will access to a mix of:

- linear audiovisual content, i.e. linear TV;
- non linear, real time, audiovisual content, through on demand services (e.g. VoD);
- non linear, non real time (possibly locally stored) audiovisual content (e.g. push VoD).

The managed combination of these services will enhance the consumer experience and increase its demand for content. This will result in a business growth and value creation, the economic benefits of which will be redistributed all along the value chain. This will therefore create financing opportunities for content creation because of the maximisation of the audience and of the content consumption.

It is thus important to establish an environment in which these new services can arise and develop. In this respect, any fixed extra-cost (tax) imposed on services and relevant equipment would indeed be an obstacle to the adoption of Connected TV by a large number of European households. More specifically, the increasing convergence of linear and non-linear, real time and non real time content raises issues regarding the taxation of the customer premises equipment (CPE).

Following the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, user equipments for the consumption of audiovisual contents are submitted to specific taxes. For
example, in France, hard disks, MP3 players, blank CD or DVD, as well as Set-Top Boxes (STBs), are submitted to a tax called RCP (*Remuneration for Private Copying*).

ESOA considers that no tax should be raised on STBs (or others CPEs with similar functions) which are network termination units of the architecture supporting the delivery of converged services, controlled by the network operator or the rights’ owner (e.g. via sophisticated Digital Right Management, DRM), and are not end-user equipment. Namely, no tax should be raised on their capability to store content at the customers’ premises and to manage the user’s access to this content, in particular in order to support the development of services providing non-linear content with non-real-time solutions, like for instance push VOD.

(6) *Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?*

It is worth noting at the outset that no technical obstacle exists in TV distribution across borders within EU single market: there is 100% geographical coverage to all households.

Next and as a preliminary remark, ESOA would like to question the Green Paper position that standards be limited to manufacturers within the Smart TV alliance or to the HbbTV debate. In fact, interoperability is a wider issue which questions the entire value chain and which does not allow the identification of which particular standards should be supported. There is not one universal standard but multiple standards for multiple interfaces (at the level of content, devices, networks), throughout the delivery chain of convergence / connected TV.

Convergence leads to “broadcast - broadband” hybridization - HbbTV is one example. Convergence leads to making audiovisual content on all devices - SAT>IP is another example.

The Green paper also states: "Convergence reopens the question which approach should be taken towards standardisation, bearing in mind both its advantages (allowing scale economies and interoperability) and its drawbacks (risk of freezing innovation)."

This qualification of standardisation doesn’t seem to reflect the reality at least in Europe. Standardisation can result from an essentially market-led, innovative approach which does not unduly constrain European actors vis-à-vis the rest of the world.

In an environment of multiple standards and specifications, the approach pursued by DVB in collaboration with ETSI or by CENELEC can lead to the best common denominator in order to be beneficial to as many industry actors as possible.

There are several examples of successful standardisation processes:

- Some market-led standards can become reference, open standards thanks to excellent efforts for trans-border co-operation being made within ETSI and DVB - this is the case of several DVB transmission standards or HbbTV.
- Another illustration is with SAT>IP, a CENELEC open standard born in the industry, which use is irrespective of the technology (satellite or terrestrial) or type of devices.

At the present stage of early development of Connected TV, it would be wise to accept the coexistence of a plurality of solutions in order to guarantee innovation and competitiveness. ESOA recommends however that standards that are open, voluntary and possibly representative of a
wide range of stakeholders are supported, and that in the long term a single standard in Europe is sought if the market forces have not mitigated the risk of a durable fragmentation. Evolving towards a single standard also leads to simplify the development of new hardware, devices or applications, therefore stimulating itself competition (and innovation) in associated economies.

Experience with enforcement of unique standards within Europe and elsewhere (e.g. with HD-Mac, MHP or DVB-H) were not all conclusive. However, ESOA insists on seeking for interoperability of all services and solutions that can support the delivery of converged services.

(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

When it comes to broadcasting satellite is a unique platform delivering (i) the largest variety (ii) the highest quality (iii) maximum reach (100% coverage & already delivering TV & radio to more than 50% of European TV households directly and even more indirectly when including cable feeds) (iv) ultimate efficiency (in terms of cost and spectrum). This is a massive differentiator which is very relevant as the ultimate goal of convergence must be a fantastic user experience which demands variety, quality, reach and low cost.

Since satellite has a unique ability to broadcast audiovisual services from one single point to everywhere, it can be used to deliver high quality content to network edges in combination with other wireless or wireline technologies. This is relevant whether for linear services, which still represents the bulk of TV consumption, or for non-linear services (e.g. by pushing content to enable a near-VOD type experience).

It is ESOA's conviction that, in order to meet tomorrow's bandwidth or accessibility challenge, there is no need to rely only on a bi-directional, fully meshed and interactive, Internet-based network alone but rather to look at how to make best and combined use of existing infrastructures that have already proven to be highly efficient. One fundamental question to address is: 'What is the best mix of infrastructures to develop convergence / connected TV in the quickest, widest and most cost- and resource-efficient way possible?' ESOA believes the answer very much relies on satellite. As said, this infrastructure question is one of the first questions that must be addressed.

Except for some urban fibre network operators, a 100% delivery of high definition TV over the bi-directional, fully meshed and interactive, broadband infrastructure (OTT consumption model) or through LTE would be unsustainable. As OTT scales to mass market with a huge demands on broadband networks, its delivery costs will skyrocket: "To serve the viewing needs of a mass-market audience, the content delivery network … costs for OTT streaming services would have to drop by a factor of as much as 25,000 just to reach party with the most efficient broadcast technologies." MediaPost, September 2012, reporting on IHS Screen Digest report.

Indeed, as shown in the scheme below, delivering Ultra-HD content through terrestrial infrastructure during about 4 hours per day (corresponding to the European average TV viewing time) would correspond to providing 750 Gbytes of data to each household every month, while the EU average stands today at 12 Gbytes per month.
A good example is with tablets that are currently the main cellular consumption drivers and already implement screen resolutions beyond HD: using tablets as HD TV screens fed by cellular networks would multiply the current forecasts by another 100x to serve a video segment which actually corresponds to a very low revenue per Gbyte traffic for the mobile networks operators; a challenge that cannot be met cost effectively.

These issues call for hybrid infrastructure network configuration where one makes Connected TV sustainable and addresses the ‘reach’ issue by combining the best of two worlds, i.e. wireline or wireless/WiFi terrestrial for non-linear services plus satellite for high-volume live and anticipated video data broadcast.

Satellite communications are therefore going to be required alongside terrestrial infrastructure to make converged and increasing demand for consumers’ services possible. Commercial cases already apply this optimised model, such as in DT-Entertain-Sat in Germany, and Orange-TV in France.

The Sat>IP standard introduced in 2012 which transforms DVB signals (live and push content) received over a satellite dish into an IP format so they can be via retransmitted via WiFi and viewed on multiple devices is an illustration of how satellite is relevant to the future.

The regulatory framework must not hinder this evolution, and accompany future growth in already successful & innovative business models such as satellite communications.

(8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?
The need to deliver the ultimate user experience within the constraints of cost and spectrum efficiency necessitates relying on satellite broadcasting. The DTH business model has flourished on the basis of small terminal dishes that are license exempted. Hundreds of millions of such dishes exist in Europe to receive signals from satellites.

It’s been already demonstrated (in several ITU and CEPT studies) that space-to-earth transmissions (downlinks) are highly susceptible to interference from terrestrial transmitters in all frequency bands. This makes spectrum sharing between small-power receive-only dishes and high-power mobile broadband equipment highly challenging if not totally impossible.

(9) What specific research needs with regard to spectrum have to be addressed to facilitate such development?

The ultimate user experience ought to be delivered within the constraints of cost and spectrum efficiency. This is a matter of fact and necessity and supports the following statement: satellite has a unique ability to broadcast / multicast audiovisual services from one single point to everywhere. It can therefore be used to deliver high quality content to network edges.

When data needs to be distributed simultaneously to multiple users, sometimes it’s necessary to use different channels over the same frequency bands (spectrum re-use); in this case satellite communications provide the most efficient use of spectrum. To play this fundamental role, satellite needs certainty in accessing radio spectrum, as stipulated in Article 7 of the Radio Spectrum Policy Programme (“ensuring there is sufficient spectrum available for satellite and terrestrial provision of innovative audiovisual media services”).

Preserving existing satellite spectrum is needed for all forms of video content delivery, whether directly to consumers in DTH (Direct-To-Home) or to bring content to other platforms such as feeding in DTC (Direct-To-Cable) or for hybrid platforms with DTT (e.g. TNTSat or FRANSAT in France, FreeSat in the UK). This access should not be endangered by the priority given to terrestrial wireless broadband, which, as we have explained above, needs to be put into perspective given the role of other technologies.

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

The AVMSD has proven to be effective in providing a stable regulatory environment for years to TV broadcasters and media content providers. ESOA has not seen evidence of market distortion caused by the regulatory differences between linear and non-linear at the level of infrastructure operations, as satellite operators are not involved into the content provision or content edition business. However, this differentiation makes our customers (whether traditional TV players, interactive TV, ISPs, telcos or other media players) subject to different obligations although the satellite operators equally provide them transmission services with a high degree of quality & security.

(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

N/A
(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

The Green paper states what follows:

“The AVMSD applies only to providers under EU jurisdiction. When delivered via satellite, audiovisual media services fall under the jurisdiction of a Member State if the satellite up-link is located in the Member State or the satellite capacity used is ‘appertaining to that Member State’. Those rules do not extend to content delivered over the internet from countries outside the EU, but targeting the EU.

With media services from outside the EU increasingly accessible via the internet and satellite, efforts to establish jurisdiction over those services would imply an assessment of the need to address overlapping jurisdiction. Similar issues are under discussion in the field of data protection.”

ESOA believes that:

- First, almost all main EU broadcasters are transported and received within the EU via satellite, and in these many instances, the AVMSD applies to them. If delivered via satellite, audiovisual media services very often fall under the jurisdiction of another Member State (as the place of uplink or capacity).

- Second, all technologies, including satellite, provide access to the Internet. Therefore all technologies play a role in the distribution of non-EU audiovisual content to European households, not only satellite. Any regulatory reform should apply the same rules to all infrastructure operators, following the technology neutrality principle.

- Third, it is critical to preserve the application of the country of origin principle, which is a fundamental element of the EU Single Market. In trying to better address jurisdiction issues for non-EU services, it would be important to establish a dialogue and try setting up agreements with outside countries to agree on a common approach.

(13) Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

The Green Paper states:

“The provision of non-linear services is also subject to the E-Commerce Directive. In a converging environment the relationship of this Directive with the AVMSD becomes more visible.”

Both Directives are based on the fundamental country of origin principle and complement each other. Both Directives also makes clear the distinction between infrastructure operators and content providers in terms of roles and responsibilities in the value chain. It is essential to maintain such overall regulatory architecture and consistency.

(14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

N/A

(15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?
N/A

(16) What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

N/A

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

N/A

(20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

(21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

(22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/ responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

(26) Do you think that additional standardisation efforts are needed in this field?

N/A

(27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

N/A

CONCLUSION

There are vibrant media & broadcasting industries in Europe. The existing regulations have accompanied their dynamism and diffusion.
In a Smart(er) TV environment, consumers expect a better service along the following lines:
- An enriched broadcast experience - possibly by leveraging the existing TV / audiovisual industry
- Presence on all screens
- The highest quality content & picture, in all houses (no quality or reach compromise)

Satellite does enrich the end-user experience by (1) offering more content at cost-effective solution (2) increasing flexibility, (3) benefiting established European media actors, and (4) focusing on top quality TV delivery (HD, Ultra HD, 3D), and above all provide this experience to every EU citizen.

Satellite can be easily integrated in a hybrid infrastructure configuration (with Telcos / MNOs) and contribute to off-load video traffic from the terrestrial networks in future connected-TV communications.

**Satellite’s expanded role in the video chain**

ESOA therefore believes that any future TV regulation should:

- Promote the emergence of hybrid broadcast / broadband network configurations which represent the most cost- and resource-efficient mix of infrastructures to support Connected TV provision to every EU citizen, immediately and with high-quality video services.

- Concentrate public investments in the early provision of converged services to favour the creation of growth, jobs and additional value for the EU.

- Stimulate creativity & innovation: balancing between protecting EU players & encouraging the emergence of new business models. Ensuring fair and transparent access to connected TV services by both content providers and consumers (at both ends of the chain) is the only important issue.
Be non-discriminatory / technology neutral: the current AVMS Directive makes a distinction between linear broadcasters & non-linear Internet / on-demand players, which needs to be addressed.

(i) Accept in the short term the coexistence of a variety of standards; (ii) support the emergence of standards that are open, voluntary and possibly representative of a wide range of stakeholders; and (iii) seek in the long term a single standard in Europe.

Ensure enough spectrum is available to satellite to meet modern TV bandwidth needs.
ANNEX

ESOA concurs with the EP’s statement, according to which “the advent of connected TV has shaken up the traditional value chain and makes it necessary to draw up a new strategy.”

The evolution towards converged services will indeed result in a new composition of the media value chain. In this context, it is important to identify the various market players and their role in this evolving audiovisual media landscape.

Many different market players are listed in the Green Paper (although precise definitions are not provided), such as:

- Equipment manufacturers
- Technology developers
- Network operators
- Content providers
- Platform operators
- Media-service providers
- Content creators
- Broadcasters
- Market players (e.g. pay TV operators, free to air public service and commercial broadcasters, VoD distributors and device manufacturers)
- Providers of products and services

ESOA believes that the complexity of the sector calls for necessary clarifications in the role of the various market players before any regulatory and other policy intervention, to guarantee consistency and avoid ambiguities and misinterpretations.

Therefore, in order to provide a consistent reference to its response to the consultation, ESOA would like to submit to the Commission’s attention a scheme of the media value chain in Connected TV, highlighting among others the role of satellite operators.

For a good understanding of this scheme, you should note that the term “Service” designates the audiovisual media services; and the term “Network operators” refers to the operations of providing these services to the end-user (e.g. Orange-TV or CanalSat in France).

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Media value chain in Connected TV
Introduction

ETNO welcomes the European Commission’s Green Paper ‘Preparation for a Fully Converged Audiovisual World: Growth, Creation and Values’ as a timely initiative aimed at better understanding the current developments in the audio-visual sector and the likely trends. ETNO thanks the Commission for the opportunity to contribute to the public consultation and the debate launched by DG Connect on the right way forward, in particular in relation to the eventual need to revise the current regulatory landscape in order to better adapt to new and innovative products/services.

ETNO notes that the current Green Paper seems particularly focused on the changes and challenges that Internet-based services are bringing to the traditional broadcasting sector and devotes less attention to the impact that the dramatic increase in traffic growth is registering on broadband networks. The Internet ecosystem is undergoing huge change due to the increase of video traffic on broadband networks (a number of studies report that by 2016, video traffic will amount to 55% of total Internet consumption), which raises questions about current capacity levels. New players have emerged in the Internet value chain and, in particular, ‘Over the Top’ players (OTTs) who come from unregulated sectors or different regions of the world but who compete in the same market as European telecoms operators. These OTTs have the flexibility to provide similar services, often for free or at significantly lower tariffs, as they do not contribute to the underlying networks and so the playing field is not level.

The ongoing migration towards an all-IP environment correlates with the shift of value from telcos to OTTs. Between 2008 and 2012, European telcos lost nearly €70 billion in aggregate market capitalization while OTT digital service providers, device manufacturers and cable companies gained more than €200 billion. This process was accompanied by a substantial value migration from European to foreign players\(^1\). Additionally, revenues are decreasing sharply and are expected to continue to contract over the next decade by up to 2 percent a

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year, representing a cumulative decline of €70 billion to €190 billion. This leads to a loss in telcos’ competitiveness and investment capacity in high speed networks and innovative services. In this asymmetric market context, European network operators are still called upon by the European institutions to heavily invest in broadband network deployment and upgrades, in order to support the video traffic increase requested by users and to meet the ambitious EU Digital Agenda goals. If one wants to meet users’ expectations (users require new service features such as interactivity, ubiquity and multi-device use), the market structure with its newly shaped value chain needs to be reconsidered. We need to rethink the traditional paradigms which were developed when the Internet was still in its infancy and symmetric data flows were a feature.

There is general agreement about the need to guarantee a sustainable Internet ecosystem. However, there are still opposing views on how best to achieve this goal. We strongly believe that if we wish to pursue the European Digital Agenda goals, the needs of those European players that contribute the most to EU growth should be heeded. As such, ETNO believes that the European Commission should take a much more holistic approach when considering the impact of convergence on EU competitiveness and consider in its analysis the following areas (beyond the specific and most directly related legislation, such as the AVMS Directive):

- The IP interconnection field. Operators must have the freedom to be able to explore new relationships with those players who send large amounts of traffic into the network. The volume and sometimes network sensitive nature of these services may require a reassessment of the commercial realities in these relationships.
- Privacy and data protection. Telcos are regulated through a binding EU Directive while digital services players are not and yet both are providing functionally equivalent services. The particular nature of the digital services (provided by global operators active in a cross-border market) requires the establishment of a level playing field among players also at geographical levels. The current proposal of EU regulation on data protection goes in the right direction to address this need.
- Switching and data portability. Again, these areas are regulated for telcos, not for OTT players.
- Taxes. As new entrants, OTTs often have more flexibility than telcos to maximize tax savings by choosing where to have their European headquarter operations.
- Identification and safety-related measures. Telcos are subject to strict, country-specific rules for electronic communication services that do not apply to OTT providers offering services that represent reasonable alternatives from the consumer’s point of view.

ETNO believes that the Commission should seize any occasion to re-balance the strength of the EU industry and to re-establish its competitiveness. ETNO has recently voiced its position in the context of the public consultation on the EU-US Trade Agreement, stating that in the context of ICT services, it is of particular importance for European companies that the Transatlantic Trade and Investment Partnership (TTIP) ensures a level playing field, providing for equal access of EU service companies to the US market and at the same time ensuring that service providers from the US have to respect the same rules applicable to EU

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1 BCG/ETNO Study: Reforming Europe’s Telecoms Regulation to Enable the Digital Single Market  
companies when providing services in Europe or to European customers. Different regulatory regimes have put European companies at a disadvantage, leading to unhealthy asymmetries in the EU-US relationship. In particular, this situation has led to the dominance of OTTs in the digital economy value chain, leading to imbalances that need to be addressed. In conclusion, we believe that the EU Commission should take a holistic view when addressing the digital single market issue, starting from a full understanding of the market dynamics and looking at all relevant aspects of convergence.

Specific Responses

Market Considerations

(1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

The establishment of US companies in the European market is not a novelty for audio-visual media services. Many US TV Channels have already settled in European countries and these audio-visual media services compete directly with European TV channels.

US presence in the EU territory takes a number of forms. First, the US industry enters through its content production. In general, so-called Hollywood majors (dominating US production studios together with their distribution and marketing branches) benefit from securing financing of their products (particularly films [“blockbusters”] and series) in their home market. Exportation of these productions to EU markets is considered an “add-on”, perhaps not even requiring adaptation to local languages in those cases where audiences in Member States either speak the same language (UK, Ireland) or are not requesting costly translation. The marketing of US productions has a competitive advantage due to the fact that European audiences – through prior reporting on US premiers – have already acquired awareness. In cases where adaptation to local language requirements (translation, subtitling, dubbing) is needed, the necessary costs will more likely be easily covered from exploitation revenues because the latter do not have to contribute to the financing of the initial production budget. Output deals concluded (even when upfront production has been finished) between US majors and European TV broadcasters add to the overall income – a source of financing that is rarely available for production companies based in the EU which mainly or exclusively target a single national market. As regards making content available, to date US companies have not placed a major emphasis on exclusivity, monitoring market developments in Europe or offering different business models in the area of VoD services. Any additional income generated in this sector again adds to the overall revenues without clearly involving either related specific costs or any genuine risk-taking.

The entry of US players into the EU territory is increasingly done via the OTT channel, i.e. distribution platforms of content, be they digital or physical. If we focus on the digital content side, the US industry entry has been facilitated not only by its natural capacity to build its services on a universally known language but also by the use of proprietary content and technical/commercial standards that have allowed them to leverage their market power held in those markets and naturally expand on neighbouring markets also outside their domestic territory. If we consider the content industry, while the US industry considers
distribution in the EU territory as a natural target, things are substantially different for the EU content industry in respect of distribution in the US territory.

Also, the US industry establishment strategy in the EU territory depends on regulatory asymmetries within the EU. These are due to a number of factors, among which are the a) un-harmonised implementation of the Audiovisual Media Services Directive (AVMSD) throughout Europe b) the Data Protection Directive rules, which are currently under revision, whose application within the EU territory creates competitive advantages for foreign players and c) the application by different Member States of different tax regimes.

Such a fragmented situation allows US players to provide audio-visual media services from the Member States where the rules are the most advantageous amongst the EU countries. In addition to this, there are no technical restrictions for the provision of services, since the distributor, within the new Internet context, no longer needs to have a local presence to provide TV services as no local infrastructure is needed for the reception of audio-visual media services.

More in particular, today it is evident that certain EU countries are more attractive countries for US companies, including OTT. The current tax system is an obstacle to an efficient and competitive development of the media services industry in the EU because of the application by different Member States of different tax regimes. This generates difficulties for the countries of destination for US audio-visual media services, which, in most cases, are unable to levy a tax on those companies. Following the OECD model for tax treaties, the country of destination cannot claim withholding taxes on OTT-players’ income for local sales of their products in the countries of destination. Indeed, in practical terms a Member State can levy a tax on a company turnover only if its distributor is established in its territory (alternative methods for ensuring local taxation are not always easily enforceable). US companies can escape high tax obligations by distributing audio-visual media services from other Member States where the rules are more liberal. This phenomenon, which is part of the wider discussion - what is known as the Base Erosion Profit Shifting (BEPS) - grants a substantial economic and competitive advantage to non-EU companies providing services and goods in Europe.

In general, we can say that EU companies cannot benefit from the same flexibility as US companies as most of them are submitted to more stringent rules. To overcome such a difficulty, the only solution for a national editor is to establish an undertaking in each country of destination of the service, which is costly and not workable in practice.

In consideration of the negative impact that this phenomenon produces on the economy, the OECD has recently published its Action Plan on BEPS where it recognises that “the spread of the digital economy also poses challenges for international taxation” and that “it is important to examine closely how enterprises of the digital economy add value and make their profits in order to determine whether and to what extent it may be necessary to adapt the current rules in order to take into account the specific features of that industry and to prevent BEPS”. 
**Additional tax considerations**

The issue of the different applicable tax rates and the subsequent unbalances among players has been partially addressed by Council VAT Directive n.2008/08/EC, which provides (from 2015 onwards) that the VAT place of supply and (accordingly) rate, even in Business to Consumer transactions, should be set by the place of consumption, making irrelevant the place of the provider’s country of establishment. The implementation of the European principle of taxation in the country of consumption from 2015 will be a first important step to improve the situation. In addition to the 2015 place of supply VAT rules, the implementation of a harmonised European VAT for online content would reduce the costs of managing cross-border trade.

The current tax system is also an obstacle to the development of online content offers due to different VAT levels applicable to different goods and services, in particular online and offline products. By way of example in Italy, while the paper version of a newspaper is subject to a VAT rate of 4%, the VAT applied to the digital version amounts to 21% (the current VAT rate applied in Italy).

It is ETNO’s view that today the application of two different VAT rates, the standard one and the reduced one, to products which are fundamentally the same but are delivered, as a result of technological development, to the customer in different ways, i.e. on a physical support vs. electronic means, has a distorting effect on competition. The principle of neutrality implies that the same rate (i.e. the reduced rate), when applicable to the off-line product, should be applied to products that serve the same customer’s needs, regardless of the physical means of support.

This is also consistent with the guiding principle identified by the Communication on the future of VAT (COM (2011) 851), under which: “Similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed”.

ETNO believes that a reduced VAT rate should be applicable to any kind of supply of audio-visual services through an electronic communication network irrespective of the technological platform in order to fully apply the technological neutrality principle and achieve the same VAT treatment for traditional broadcasting and online broadcasting.

Specifically, ETNO believes that a reduced VAT rate should be allowed not only for on-line radio and for Internet-protocol TV (quite comparable to “traditional” broadcasting), but also for video-on-demand as well, since this last alternative represents a new opportunity for the enjoyment of video content (from this same perspective, the presence of a programme schedule does not seem to be so relevant, with reference to the determination of an appropriate, fair level of VAT)\(^3\).

\(^3\)For further details about ETNO position on this matter, please see the ETNO-GSMA Tax Policy Committee’s contribution on the European Commission’s consultation on Review of existing legislation on VAT reduced rates.
ETNO therefore supports the opportunity to apply a harmonized reduced VAT rate to the online and physical versions of the same content as well as to linear and non-linear services.

(2) What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

The availability of premium content is key to ensure the attractiveness of audio-visual media services, which in turn is critical to facilitate the development of the digital market. However, so far, new and convergent platforms face difficulties to access premium content at affordable conditions and with a reasonable delay.

Availability of premium content is affected by some practices that, applied within an analogic context, no longer have a raison d’être in a digital environment, where new and convergent platforms represent a huge opportunity in terms of business. Acquiring licences from rights-holders (producers) may become difficult for newcomers or economically less strong competitors and wholesale access to channels delivering premium content may prove difficult for service providers attempting to establish a new platform either on an infrastructure which is already used for the distribution of relevant services (Pay TV on cable networks, for instance) or by using a competing infrastructure (e.g. DSL versus terrestrial and/or satellite TV networks). In principle, competition law instruments provide adequate remedies in a number of related situations; however, disadvantages related to a preference for behavioural over structural remedies in some Member States have recently come to the fore. Often these practices are the result of protectionist intentions of some traditional players both in the field of content production and distribution, who consider broadband and Internet in general as a big threat to their business.

This fear is felt primarily by the content industry. In this respect, it is important to stress again that ETNO fully supports the need for the rights-holders to receive a fair compensation for their works. However, when it takes the form of protection of premium content, it should be balanced with the need and right to conduct a business.

Often the content industry and the majors in particular have a high bargaining power and unilaterally impose conditions for the availability of premium content: minimum guarantees, upfront fees, windows, limited catalogues, mandatory providers for security issues, licenses for fragmented territories and technologies, imposition of geo-blocking practices (making almost impossible the provision of pan-European services) and exclusivity clauses. These clauses result in the foreclosure of access to premium and quasi-premium content by providers of innovative (mainly on-demand) services, with the consequence that consumers are often deprived of the possibility to access that content on converging platforms. In some cases, in particular with regards to quasi-premium content, consumers are completely foreclosed from accessing that content. Also, the marketing strategies for the majors’ film releases influence the development of new business since the major studios focus 100% of their marketing budgets in the first window associated with the theatre/cinema showing.

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4 By way of example, the publication of an App on the Apple Apps Store or on Smart TV Samsung is conditional upon the certification of the App by the platform provider, on the basis of criteria defined by the platform provider, which may include minors protection, privacy protection, but also the prohibition to realise functionalities that may compete with the ones offered by the platform provider.
It is also the case for the release windows\(^5\), which undermine editors and distributors’ capacities to offer premium content. In most member countries, the windows length is too long when it comes to traditional platforms and distribution channels, while windows for online on-demand distribution are delayed and restricted. This results in an unfair and disproportionate penalisation of online channels and the subsequent un-availability of the related content opens the door to digital piracy.

With holdback practices, broadcasters can obtain from rights-holders the holding back of VOD rights during TV exploitation. Generally, holdback periods are not regulated and depend on contractual negotiations (this is a usual practice both in Pay TV Channels and Free TV Channels) which have important drawbacks for VoD editors, as it strongly impacts the availability of premium content.

In France for example, holdback practices oblige VoD editors to withdraw movies from VOD platforms during lengthy periods of time (1 year during the Pay TV exploitation; 18 months to 36 months during the Free TV exploitation, and sometimes longer when the movie is bought to be distributed by another network distributing for free). In some member countries, a worsening in the practice of holdback periods can be seen: holdbacks periods used to be restricted to co-producers players (Free TV channels who had put money in the film prior to the production), but today Free TV broadcasters tend to demand holdbacks for their affiliated TV channels (i.e. the new channels of Digital Terrestrial Television) even though such channels have not participated in the production of the movie. This may lead to holdback periods that may also last a maximum of 5-years (Pay + Dree tv holdbacks), during which no chance to access that content is allowed to other interested players, with a subsequent lack of revenues. The French Government created a Commission to launch a debate on culture in the digital age. The resultant “Lescure Report”\(^6\) was released on the 13th of May 2013 with some recommendations on release windows. ETNO supports in particular the following recommendations:

- VoD editors should be allowed to offer audio-visual works on their platforms three months after the theatre release (instead of the four months applied today);
- the introduction of shifting release windows for films with less than 100 copies in the theatres;
- the prohibition or limitation of “holdback practices” during the free TV exploitation.

The opportunities offered by the new online platforms represent a threat also for the traditional distributors, who try to keep exclusive relationships with the dominant content rights owners, thus distorting fair competition in the retail market.

This is particularly apparent in the case of cable operators who have historically strong links with the content industry, but it can also happen when a dominant pay TV operator becomes an important player in the retail triple play access market as a result of unbundling.

A further element that may negatively impact on the emergence of new convergent audio-visual services is the situation regarding collecting societies. Even though the issue is not addressed within the context of the current Green Paper and consultation, we believe that the lack of competition amongst collecting societies, the lack of clarity about the licensable rights and the related conditions and the lack of transparency and accountability creates serious obstacles to the realisation of a digital single market. In summary, ETNO believes

\(^{5}\) Release windows were created to maximise the revenues of films and to prevent the different exploitations of a movie from competing with each other, allowing the movie to take advantage of different markets (cinema, home video, TV, etc.) at different time.

\(^{6}\)http://www.culturecommunication.gouv.fr/var/culture/storage/culture_mag/rapport_lescure/index.htm#/
that real competition between collecting societies must be introduced as well as multi-territory, multi-repertoire licence (on a “one-stop-blanket-licence” basis), which could significantly simplify the current clearance system.

(3) Are there obstacles which require regulatory action on access to platforms?
Distribution platforms have always had a strategic role for audio-visual media service providers. They represent a great tool to reach and develop the audience. The issue of access is still relevant for nonlinear services and has increased since the take-up of worldwide platforms and Connected TV.

However, access to platforms by content providers has been not regulated at EU level and ETNO considers there is no objective justification for any additional regulatory intervention. Access to platforms takes place in the context of a two-sided market. One the one hand, the broadcasters need access to platforms and on the other hand, distributors need access to content. Precisely because of this dual character of the market, access regulation risks to be disproportionate.

In addition, the number of access platforms is proliferating as TV becomes smart. The evolution of mobile handsets and available broadband speeds favour new distribution channels for content throughout the Internal Market. This implies that (Home) TV at some point in time will no longer be the main (or only) device to consume audio-visual media content. New devices (e.g. Set-Top-Boxes, Gaming Consoles), the evolution of existing devices (smart OS-run TV) and “software TV” (Apps) have led and will further lead to a wide variety of receiving paths. In particular, the smartphone will become more important as the prices for smart handsets fall and the deployment of high-speed wireless broadband services continues.

In this respect, ETNO considers that a recent legislative initiative of the Flemish Community in Belgium, more precisely the decree on signal integrity adopted in July by the Flemish Parliament, raises i.a. fundamental issues of proportionality. The text foresees that, among others, distributors of TV signals have to obtain prior approval from each broadcaster in the Flemish Community in respect of each “functionality, which allows watching linear TV programs in a way that is delayed, shortened or altered.”

This shift in the commercial balance between players, to the advantage of the broadcasters and to the disadvantage of the distributors, may negatively affect the potential of innovative services and induce higher costs for end users.

We believe that the freedom to choose which content provider can access platforms is a fundamental basis of audiovisual media services distribution activity. It grants platforms the possibility to create their own content offers and to introduce elements of differentiation compared to their competitors. The freedom to choose content is an important tool for efficient competition between players in the market. Indeed, according to articles 101 and 102 TUE, agreements and the abuse of dominant positions are sanctioned in cases where there is a restriction of competition.

In addition, creating an “a priori” right of access to platforms would be detrimental for EU players as it would distort competition in the EU market. EU providers of audiovisual media services would have no means of differentiation compared to US players. Conversely, the access of US players to national markets would be facilitated when applying the liberal rules
of the country where they are established. This would directly compete with EU players on an unfair basis.

While ETNO thus considers that there is no objective justification for any future ex-ante regulatory intervention of platform access for content providers, any right of access should be granted on a case-by-case basis, once competition aspects are carefully assessed, in particular when specific platforms are to be considered as dominant in the provision of content, as the case may be within the Internet context. In this case, fair and non-discriminatory conditions to access the dominant platforms should be guaranteed, both at economic (ex. the revenue sharing mechanisms) and technical level (in terms of “discoverability” of the related content through appropriate search and discovery solutions).

Generally speaking, we believe that non-discriminatory access to content, hardware and software will allow innovative platforms to develop. However, we strongly believe that fair competition between these platforms will make the regulation of access to those platforms unnecessary.

Commission intervention should also focus on a close monitoring of market developments to avoid new bottlenecks in the value chain. Given the context of device diversity, the “front-end-layer” or user interface will become significantly important for controlling the content / services delivered, as well as the way they are received by the user. Built-in operating systems – independent from the device - will determine the display and choice of the content which is presented by (self-designed, maybe proprietary) interaction layers (e.g. OS for mobiles\(^7\) or gaming consoles). These layers will provide for control of the content delivered to the user. While usually these layers are adaptable by the user to some extent, market distortions can arise out of proprietary or “closed” interaction-layers directly or indirectly blocking or hindering services to be delivered to the customer.

As mentioned before, once the dominant distribution platforms reach a critical mass and popularity, they are in the position to define unilaterally the business models and associated revenue mechanisms, such as revenue sharing models. Often the global platforms providers are vertically integrated. This characteristic, which is often considered as a potential source of competition restrictions when it comes to telco operators, allows other platform providers to control the different layers of the value chain. This may represent a competitive risk in the market for the service provision to the end customers since they may be tempted to favour their services/content.

In consideration of the above, the Commission should ensure that EU distribution platforms are not jeopardized by anti-competitive behaviours of other dominant players in the market. In conclusion, we believe that when considering access to platforms by content providers and to content by platform operators, the principle of fair competition should be followed. The emergence of undue competitive advantages should be prevented in situations where new market players exercise similar or equivalent functions as a provider of a (technical and/or marketing) platform but are not subject to the applicable rules simply because their role is less service-oriented but rather hardware (terminal equipment) based.

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\(^7\)For example, according to the International Data Center (IDC) the market share of only two competitors in the market of mobile operating systems accumulated to 91,1 % in the fourth Quarter of 2012 (http://www.idc.com/getdoc.jsp?containerId=prUS23946013).
Financing Models

(4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

The goal of fostering European works is important and remains valid despite technological changes. However, it remains to be seen whether the means to achieve this goal should not be reviewed due to changing circumstances and the evolving technology environment. ETNO believes that more appropriate forms of promoting European content creation should be fostered so that a level playing field is defined and European players do not face disadvantages towards non-EU players. These financing forms should aim at guaranteeing the development and launch of innovative services and should not allow any external and artificial support for specific industries by other sectors.

Promotion of European audio-visual works is one of the main objectives of the AVMSD. National authorities have huge discretion in defining financing schemes. By way of example, the recently proposed Flemish Decree on signal integrity foresees that revenues received by broadcasters (as result of their ‘approval right’ with regard to any functionalities offered by distributors to their end users in relation to TV services), need to be spent (entirely) on Dutch spoken European productions. This approach is not necessarily followed in all countries.

Taking into account the current scenario and current trends, ETNO believes that the Commission should look for other ways to promote European works based more on market forces and competition. Audiovisual media providers will be willing to promote those European works from which they obtain benefits. At the same time, this will have a positive impact on content creators because being interested in receiving support and so they will strive to create high quality European content.

(5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

ETNO members are seeing a big change in consumer behaviour and consumption patterns. As more players emerge (portals, device manufacturers, operating systems, application stores etc), responsibilities are diluted and shifting across the value chain. All new entrants desire to have a share of the business but are not necessarily contributing to financing of the industry.

It has already been pointed out that to date, content financing in relation to non-linear services differs from established patterns in the field of linear audio-visual media. In the latter case, ideally income from exploitation that takes place subsequent to the initial release in theatres (Pay TV, DVD, Free TV) will be regarded a substantial part of the overall production budget. Following this approach, a logic is applied which emphasises the importance of the “home-market-first” model, considering theatrical release as a necessary pre-condition for success in subsequent windows. There is therefore little room, according to the approach taken so far, for enabling immediate access of consumers from other EU Member States.
The necessity of offering legal ways to access such content increases in importance, not least for the sake of avoiding that recourse is being had to illegal platforms offering such content. “Day-and-date”^8 release patterns for on-demand exploitation models might therefore overall prove more beneficial for the European audio-visual market. In any event, media chronology (exploitation windows) should in its (their) entirety become a matter of commercial transaction, rather than being tied to the provision of means from cinematographic funds or equivalent support schemes.

The rapidly changing environment with the development of media services by OTT players will inevitably lead to changing viewing behaviours of the TV audience. These new habits will lead to a reduction of traditional advertising income for established broadcasters. However, broadcasters have opportunities to adapt to this new environment and by doing so to search for new revenue sources, for example by launching TV services over the Internet in an OTT-like way or by entering into partnerships with such OTT players, with telco operators, etc. Commercial market forces should drive this process and not legislation.

(6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

ETNO advocates for open standards versus proprietary or non-standardized solutions. Today there is an immediate need for Europe to promote open and interoperable standards also for the convergence business. This being said, the European Commission should refrain from mandating any standard which has not proven to be widely accepted by the market in terms of market share and sales figures. Mandating standards can hinder further innovation in this area. However, the promotion of standards via bodies such as ETSI could foster market penetration of standards on a voluntary basis and thereby help to achieve more interoperability.

Infrastructure and Spectrum

(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

New Internet protocol (IP) based media services are being developed, refined and made accessible over fixed and mobile broadband networks. These services are providing both traditional and a new variety of content to consumers, which is also including social media, texting and chatting which is engaging and entertaining a growing audience. Particularly the younger and middle-aged consumers groups are establishing these new behaviours where media content, in addition to the living room based television set, is also consumed on desktop computers, laptops, tablets or smartphones. Whatever the case may be in terms of future consumption, access to radio and television based content over broadband networks is an essential requirement.

While still covering a significant consumer base, as well as large geographical areas, the current analogue or digital terrestrial broadcasting technologies are still the primary means of delivering television services to living room based sets using a fixed rooftop antenna in

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^8Films are released both in theatres and VOD (video-on-demand) on the same day.
numerous countries in Europe. It is certainly understood that it therefore would be exceptionally demanding to substitute these technologies for the purpose of modernization and adaptation to the new behavior of consumers and the new variety of content provisions. Progress towards reaching the EU 2020 broadband targets is essential to allow mobile and fixed broadband networks to cater for the growing consumer demand for on-demand audiovisual content. Hence, policies that effectively allow investment in fixed broadband development and the timely release of new spectrum for mobile use are essential.

Otherwise, the possibility of new IP-based technology to be rolled out may neither be available in sparsely populated areas for a considerable period of time, nor may the radio frequency spectrum be available in sufficient amount to provide for a possible transition. It is therefore expected that the current terrestrial broadcasting technologies will remain vital for years to come, both for broadcasting radio and television services.

Notably, in some countries in Europe the increase of viewing time is now becoming more flat, or even having a somewhat negative trend with regard to linear television viewing, particularly with regard to the younger consumers. The European societies have already entered a new era in television; on-demand and other offerings are being embraced by the consumers, new technologies, applications and services not only improve viewing experiences, they also change the fundamental ways in which the consumers approach multimedia.

**FIGURE 7 AVERAGE NUMBERS OF HOURS SPEND WATCHING AUDIOVISUAL CONTENT PER DEVICE AND WEEK**

![Average Numbers of Hours Spend Watching Audiovisual Content per Device and Week](image)

SOURCE: ERICSSON CONSUMERLAG 2013 TV AND VIDEO STUDY

Currently, consumers are beginning to move away from viewing purely linear television and slide into new on-demand behaviour (see figure 7). As consumer expectations of television and video change, fresh opportunities are being created. The average home entertainment setup is moving away from using separate screens in each room. A growing number of households instead use a large main screen, supplemented by a number of mobile devices that provide access to services from all over the home. The so-called “tablets” and “smartphones” in particular, have grown to become a popular mobile device for viewing content in the home, despite the fact that the technology is relatively new. This is partly due
to the favourable conditions for mobile viewing both within home environments as well as in public locations. Another reason is that many consumers are looking to modernize their viewing experience, yet are unwilling to invest in more than one new television set or add set-top boxes to their old television sets in order to access new services.

The impact of smartphones and other mobile devices that facilitate on-demand interactive media consumption leads to a changing pattern of a typical TV-day versus traditional viewing (see figure 8). Mobile devices are distributing TV/video viewing more evenly over the whole day, meaning that TV/video viewing is becoming a 24-hour activity rather than an evening event only. The trend, with an increasing mix of private and professional life both at work and at home, also strengthens this type of consumption behavior.

FIGURE 8 CHANGING DISTRIBUTION OF TV AND VIDEO VIEWING

An essential question to consider when satisfying the new demands of media consumers is how to provide access to linear and non-linear content while using different devices and different sized screens:

- broadcasting television networks are suitable for linear content, typically large screens (non-portable) and receivers are now being equipped with broadband access, thus already shifting towards a converged fixed broadband/broadcasting access to TV/media.
- fixed and mobile broadband networks are suitable for linear and non-linear content with interactive use, and the devices are highly flexible with regard to usage and mobility as well as being interactive, though not equipped with terrestrial broadcasting television receivers.

Finally, there is a synergetic opportunity for the Commission to seize. As noted earlier, the realization of the transformative economic impact of broadband and ICT is pre-conditioned by supply-side broadband policies e.g. the roll-out of broadband and availability of mobile spectrum. In this context, the EU broadband targets and spectrum policy are essential. However, to reap the benefits of the EU Digital Agenda, the adoption of broadband services required as well as mere rollout is not enough. Increasing the availability of digital content is the key to stimulate consumers’ demand for high-speed broadband services and hence is an essential consideration for this paper. But even more, the increased availability of broadband and audiovisual works will also result in a decreased cultural gap in the EU as high-speed broadband networks and digital content can tear down current cultural divides between urban and rural EU citizen.9

(8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

Current television broadcasting media networks are using “high-power” and “high-tower” structures, whereas the mobile broadband networks are based on a “low-power” and “low-tower” infrastructure. The technical properties of the “high-power” and “high-tower” structure are such that the inter-site distance between the broadcasting stations is significant and is in some countries in the order of 100 km. In comparison to the cellular mobile broadband infrastructure, it may use an inter-site distance in the order of 1 km. Studies performed so far in the CEPT and ITU-R have demonstrated that these two architecture models cannot coexist in the same geographical area in the same frequency band. This conclusion has led to the regulatory provisions allowing the introduction of mobile broadband networks in the upper part of the UHF band. Similar conclusions are envisaged for the rest of the band as the technical characteristics are the same.

Mobile broadband networks provide interesting opportunities for programme-making in the domain of electronic newsgathering and outside broadcasting (ENG/OB) for programme-making. LTE networks enable transmission of high definition (HD) video streams from live cameras with the low latency and high quality required for studio feeds. This has been demonstrated in several events, for example:

- the Swedish Crown Princess’ Royal Wedding in 2010, where Swedish TV companies broadcasted live from the celebrations in Stockholm
- the Japanese Nippon TV reporting from the Nobel press conference in Stockholm 2010
- the Danish public service TV station reporting from the country’s national parliamentary election night in 2011

Compared to using satellite uplinks for ENG/OB, LTE networks incur a lower setup overhead and expenses. The LTE quality of service framework ensures priority for the ENG/OB services above other types of traffic in the LTE network, thereby providing carrier-grade performance.

(9) What specific research needs with regard to spectrum have to be addressed to facilitate such development?

The studies referred to in the previous answers show that the possibilities of co-existence in the same frequency band are very small, as the potential risk of interference between transmitting mobile devices in the vicinity of a television receiver is high.

Regulatory Framework

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?
There are still good reasons for the regulatory differentiation between linear and non-linear services: as a matter of fact the two different categories of services are still not substitutable due to the substantial difference in the user’s ability of choice.

Five and a half years after the introduction at EU level of the regulatory differentiation between linear and non-linear services, it is still premature to deliver any fact-based evidence for market distortions between these services, not least given the late transposition and implementation of the relevant legal frameworks at national level. It is rather in the medium term that the technical differences will be increasingly reduced and the take-up of services and the blurring of boundaries from a consumer perspective might lead to a situation where market distortions could occur. What is clear is that there is growing convergence between linear audio-visual media and non-linear services.

Irrespective of the question regarding market distortions, the differentiation made between the forms of audio-visual media services might be challenged by technological development and usage patterns. This might lead to a paradigm shift in the way in which services covered today by the AVMSD are described.

In its Green Paper, the Commission has signalled that general interest content is in the focus of regulatory attention, bearing in mind its importance for media freedom and diversity. The European Parliament has also put forward this idea in its Resolution on Connected TV adopted recently. This criterion would limit the more stringent regulation of linear content to those (relatively) few services, which are of particular importance due to the nature of the transmitted content, as for instance news, and which additionally have a significant audience due to their market share. This understanding would be more future-proof and could limit eventual market distortions.

Therefore, ETNO believes that the country of origin principle should remain the fundamental basis for ruling the internal market (since it guarantees the application of one precise legal framework) and the application of the country-of-destination principle remains necessary only for those services clearly targeting users in an EU Member State from outside the EU, in order to ensure a coherent level of protection and to safeguard the shared values throughout the European Union as well as to avoid competitive disadvantages.10

(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

As mentioned above, many new players have emerged in the EU market also thanks to Connected TV services and devices. In order to establish the right conditions for a competitive EU digital market, a comprehensive evaluation of the current regulatory regime should be carried out by assessing, by means of empirical studies, the impact of different audio-visual services on society and the risk they may pose to the main objectives of the AVMSD (freedom of information, media pluralism, protection of minors, consumer protection), taking into account the users’ ability to exercise control over these services. Such an evaluation should be carried out in a technologically neutral manner and regardless

10 Orange is in favor of the country-of-destination model which it sees as being the only regime granting a truly level playing field today at national level
of the current classification of services as linear or non-linear and regardless of whether the audio-visual service is covered by the Directive today.

ETNO is of the opinion that a forward-looking analysis should evaluate whether and to what extent the current form of regulation is still appropriate and proportionate in the current global context and in light of regulatory objectives enshrined in the AVMSD. Taking into account increasing transmission capacities, more competitive market circumstances and increased user control over the service provided, the current form of media regulation might no longer be the most adequate tool to address those objectives. ETNO therefore believes that an eventual rethinking of the obligations imposed on EU players by the AVMSD needs to be grounded on the consideration of the emergence of other services that are found to be functionally substitutable, have a similar or even greater impact on society and which may pose comparable or even greater risks for regulatory objectives. ETNO strongly believes that the services should be treated equally in terms of regulation, irrespective of the service provider’s position in the value chain or its prior regulatory status. Lighter regulatory instruments should be applied with regard to services that are provided by a number of competitive players and may have a lower societal impact, implying a lower risk for regulatory objectives and/or which offer users a higher degree of autonomy.

To ensure this level playing field between audio-visual services, it is furthermore necessary that non-EU based audio-visual service providers providing services to European citizens are subject to the same rules as EU providers in order to ensure fair competition in the EU and the same standard of protection to EU users. Moreover, enforcement of the AVMSD provisions to all players in the value chain is crucial for ensuring a level playing field amongst EU and non EU players.

ETNO is convinced that self and co-regulation can generally be an effective regulatory option for a variety of areas (e.g. marketing obligations, protection of minors) and should therefore be extended further. In particular, self-regulatory initiatives in the area of minor protection should be further encouraged.

When deciding on the kind of instrument to adopt (statutory regulation, co-regulation or self-regulation), the respective potential benefits and disadvantages of the solution favoured must always be borne in mind. For example, statutory regulation may show greater advantages in terms of clearly defining the content and boundaries of obligations which service providers have to observe and of providing for an adequate system which secures monitoring and enforcement. Self-regulation has its merits in flexibility and ability to adapt more rapidly to technological and market developments compared to a legislative processes. Self-regulation guarantees the response of the solutions to market needs and their effective implementation and they may also be seen as preferential in order to close gaps in the exhaustive pursuit of policies. Moreover, it would allow for the inclusion of players which are highly relevant in view of the public interest objective concerned, but who are outside of regulatory reach. ETNO believes that in any event, incentives for establishing a self and/or co-regulatory system must be ensured, since these solutions may guarantee flexibility and predictability of inherent burdens, while providing the possibility to further develop general guidelines.
(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

From an Internal Market perspective, the country-of-origin is the core principle of the AVMS Directive and, according to the majority of ETNO members\(^\text{11}\), should continue to ensure an internal market for audio-visual media services, in line with the original objective of the legislation.

However, as the European Commission states, the AVMSD does not apply to providers who do not come under the jurisdiction of a Member State and does thereby not cover content delivered over the Internet from countries outside of the EU. This situation can lead to competitive distortions for European companies abiding by European legislation. In order to ensure a level-playing field, we share the opinion of the European Parliament in its Resolution regarding Connected TV that this situation needs to be addressed.

(13) Does increased convergence in the audiovisual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

ETNO believes that the scope of the two Directives is clearly defined by their respective provisions and that so far the increased convergence among services has not tested the relationship between their provisions, which, if they are correctly interpreted and applied, do not imply any overlap or confusion. ETNO fully supports the Commission’s decision not to open up the e-Commerce Directive. As already stated under question 11, and keeping the e-commerce Directive provisions unchanged, ETNO believes that a lighter regulatory approach would be suitable which also takes into account the impact on society of the different audio-visual media services.

(14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

ETNO members are involved in many related initiatives aimed at improving ICT literacy. Regarding the improvement of minors’ media literacy, there is already a broad variety of initiatives established. Also, within the self-regulatory framework of the “ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU”, companies commit to voluntarily further education and awareness regarding Internet usage. Similarly, within the CEO Coalition, the industry and the Commission are evaluating voluntary measures to improve collaboration with teachers and the schools.

Measures to further media literacy have to take into account national differences and specific needs. Therefore, such measures genuinely have to differ across Europe and there is no one-size-fits-all approach. This being said, in some cases cross-border coordination may leverage synergies and best-practice-sharing.

Where funding should be provided by European Institutions, attention should be drawn to the fact that not only content providers but also platform operators may be well-placed to communicate with users and implement awareness-raising measures.

\(^{11}\) Orange is in favor of the country-of-destination model which it sees as being the only regime granting a truly level playing field today at national level
Media Freedom and Pluralism

(15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

As noted above, ETNO is of the opinion that OTT services with editorial responsibility controlling selection and access to audio-visual media services could also be covered by the AVMSD. Other than that, we believe that no additional obligations are necessary.

In order to protect freedom of access to information and cultural diversity, it should be enough to apply ex-post current competition rules in such cases in which an Internet player has a dominant position in the search or filter mechanism markets.

It is important to promote service innovation. In that respect, we criticize the above-quoted legislative initiative of the Flemish community (“Flemish decree on signal integrity”) to restrict the freedom of distributors to offer functionalities in relation to broadcasting services to their end-users by subjecting this to the approval of the broadcasters.

(16) What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

ETNO believes that there is no need to expand the scope of existing platform access regulation by content providers in view of media convergence. We believe that convergence will lead to a greater service offer: traditional broadcasters may start providing linear or non-linear TV services over the Internet (as if they were OTTs), OTT players will also start providing linear or non-linear TV services (type "Netflix"), and traditional distributors may re-distribute their signals on a broadband circuit in addition to a TV circuit. In this context, increasing access obligations seems over-conservative, certainly at a point in time when most stakeholders recognize that the traditional telecoms package should be reduced rather than extended.

Instead, ETNO believes that regulators should limit their activity to creating a level playing field by promoting competition and subjecting all services to the same regulatory obligations, particularly concerning “gate keepers”. Concretely, the rules could be rearranged in a service-oriented manner in situations where new market players exercise similar or equivalent functions as a provider of a hardware-based platform but are not subject to the applicable rules.

In the same way, must-carry rules should not be extended to additional infrastructure/platforms; the national application and particularly the review of imposed obligations should be assessed more stringently to focus the obligations on content of general interest, and at the European level this should continue to be monitored carefully. In addition, an extension of related obligations to forms of media services other than specific linear audio-visual media services is not regarded as necessary. In particular, scarcity considerations cannot be applied to those platforms that are relevant in the case of access to on-demand services, particularly not when there are different infrastructures among which the user can choose.
Commercial Communications

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

Currently the regulatory regime for commercial communications differs between linear and non-linear services. The introduction of a less stringent regime for on-demand services was justified at the time by the difference in terms of choice and user control and this justification remains valid today.

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

The European regulation process is lengthy and therefore, in a very rapidly changing environment, runs the risk of being outdated soon after adoption. As a consequence, ETNO believes that any regulation in this area should focus on high level principles and leave room for self-regulatory approaches spanning the entire value chain.

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

As suggested by the Commission, advertising techniques are dynamic. It is therefore crucial not to impose any rules that would prevent the development of new business models that could favour the interests of the viewer. As ETNO, we believe that self-regulation is the best way to address the rapid changing nature of advertising techniques and to ensure a quick update of the applicable rules. Players of the sector have already successfully chosen this option with the adoption of the Online Behavioural Advertising Framework (OBA) by Interactive Advertising Bureau (IAB).

In practice, we see that traditional distributors generally and largely respect the decision right of the end-users with regard to commercial overlays. This is, again, in sharp contrast with OTT players whose business models are built on revenues from advertising, and who exploit this, very often without free choice of the end users. Not surprisingly, ETNO pleads strongly for fully equivalent treatment between traditional distributors on the one hand and OTTs on the other.

Protection of Minors

(20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

Convergence can lead to a situation where linear, non-linear and other audio-visual content can be viewed simultaneously on the same screen, although they are not subject to the same regulation with regards to the protection of minors. However, the graduated regulatory regime remains justified due to the remaining difference concerning possible user control between on-demand content and traditional television.
In contrast to linear audio-visual content, access to non-linear can be easily restricted through the provider of the content or platform (e.g. through age verification systems. According to art. 12 of the AVMS Directive, such measures have to be undertaken through the provider in order to ensure that minors do not normally have access to content which might seriously impair their health.

Additionally, there is a broad range of available parental control tools for non-linear and other audio-visual content, which are voluntarily offered by the providers of content or platforms and also by third parties. These tools include filtering solutions (software, apps, optional network based filtering) which are voluntarily provided by e.g. Internet access providers or manufacturers. It is the parents’ responsibility to activate such tools to protect their children.

These technical solutions can be supplemented by awareness raising measures, connected to non-linear and other audio-visual content. Warning signs, reporting tools and clear terms of use provide guidance and advice to parents and children.

The Information and Communication industry has effectively established self-regulatory frameworks, in which they commit to provide such safeguards. Besides GSME’s “European Framework for safer mobile use by younger teenagers and children”, ETNO members are committed to the “ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU”. Signatories of this self-regulatory framework commit to further child online safety in a broad range of areas, including safety content, reporting of misuse, parental controls, fighting illegal content, privacy and awareness raising. The compliance of signatories is regularly reviewed. Also, as recognised by the Green Paper, the Commission launched the CEO Coalition to make the Internet a better place for kids. In this initiative, a number of ETNO members agreed on several concrete steps for child online safety.

We believe that in consideration of the continuing additional efforts that the main players are voluntarily implementing in order to effectively improve minors’ protection, the rules of the AVMS Directive remain valid also in an increasingly converged media context and do require any revision.

(21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

Users’ trust and confidence is in the main interest of all ETNO members, which, each in their respective products and services, offer parental control tools and support the adoption by users. Usually, they provide their customers with a number of parental control solutions, both within the fixed and mobile environment, enabling parents to control and eventually block access to inappropriate content and in particular to block specific inappropriate sites for children, such as e-commerce, pornographic material, online gaming sites, etc. According to the AVMS Directive, Italy has adopted national rules aimed at guaranteeing the protection of minors, in particular preventing them from viewing content which can be potentially or seriously harmful (Leg. Decree n. 177/2005 (as modified in 2012). By a co-regulation process, AGCOM has recently adopted measures (Order n. 51/13/CSP and n.52/13/CSP) on the classification of TV programmes which might seriously impair the physical, mental or moral development of minors, and technical measures that on-demand
audiovisual media services have to adopt – independently from the network or platform of access to that content – to prevent minors from viewing such content. The obligation on non-linear audiovisual media service providers requires the adoption of a technical mechanism which requires a secret code to be composed at each access stage to the service or upon each purchase by the customer. For that content, a parental control system based on a PIN code must therefore be provided for by providers. The information related to the use and functioning of this PIN code is specified in the general conditions of the contract and, in case of specific services (such as IPTV) personally explained by Telecom Italia’s technicians at the customer’s premise. A parental control system that requires the use of a PIN code for the viewing of free content is available within a catalogue (VOD, catch-up TV), and for paid content (VOD, PPV, SVOD) has already been implemented for all types of services and content distribution platforms (such as IPTV, Cubovision, Web TV, Cubovision device, Connected TV,...). Also, in other EU-markets providers have established similar pin-code solutions for IPTV which effectively restrict minors’ access to inappropriate content.

In Belgium, the implementation of the French Community Media Decree also foresees a range of measures to protect minors against programmes that might hurt their physical, mental or moral development (rating system and parental control with 2 PIN codes). Furthermore, a new amendment to the French Media Decree (March 2013) imposes on the distributor two strong communication obligations, by introducing a warning message before accessing channels dedicated to children under 3 years old and generally on all the communication tools of the provider. Belgacom TV is thus provided by default with parental control which the user can adapt according to its own preferences. In this way, the parents may choose which types of films and programmes their child can watch. Moreover, the user always has to enter a PIN code when renting a film on demand. This code is different to the parental-control code and is activated by default.

Today, hardware and software manufacturers as well as service providers and infrastructure operators offer numerous possibilities to exercise parental control. For example, appropriate freeware tools for parental control are available for different operating systems. In addition, all operating systems today possess elaborate features to limit access to content for minors. Parental control tools can be promoted and provided in a number of ways, both off- or on-line – e.g. in shops, for download on the web or pre-installed on devices. The variety of channels provides a wide and dynamically changing range of possibilities for effectively promoting parental control tools. As also recognised in industry discussions with the European Commission and NGOs within the ICT-Coalition or even the CEO Coalition process, there is no one-size-fits-all approach in relation to the adoption of parental control tools, since, by way of example, it makes a difference who provides such tools. A vendor of a parental control tool has a commercial interest to reach as many potential customers as possible. Other companies might consider parental control tools first of all as a service to their own customer base and effectively promote them through the already established customer relationships.

As generally recognised, a necessary pre-condition for any take-up of parental control tools is that users (i.e. parents, teachers, guardians) are duly informed about the modalities and tools available to face the potential risks existing in the web. Therefore, awareness raising campaigns aimed at educating parents and other guardians about their responsibility are an essential element to guarantee a fair and safe use of the technology.
(22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

The AVMS Directive already provides for age verification systems in Arts. 12 and 27 para. 2 although without explicitly requiring such systems. Regardless of the transposition of this rule throughout the Union, it is important that reliable age verification mechanisms are put in place. In some member countries, there are age verification systems already implemented. In Italy, by way of example, the law provides that when offering an audiovisual media service, a PIN code for access to the adult content is addressed directly and individually to the subscriber (which must be of majority age). Moreover, a further control layer has been implemented through the “acquisition PIN” for which the operator’s technicians verify the client’s age and explain how to use the PIN, which has to be inserted at the moment of the first registration to the service. Other equally effective age verification systems are established in many more EU Member States. However, due to the fast-changing technological environment, detailed rules set out formally in law would soon be outdated.

When dealing with this matter, it is of key importance to understand that any specific system cannot provide for absolute safety. Requirements for effectiveness have to be balanced with the usability of any such age verification systems. For example, face-to-face requirements and PIN codes may lead to higher effectiveness but may lead to lower usability for the user. Whatever mechanism is put in place by players, attention is to be paid to the increasing usage of circumvention techniques or an alternative, not always legal, provision of adult content.

(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

A more harmonised classification of content and age-groups would facilitate cross-border content provision. There are a number of self-voluntary initiatives dealing with this issue.

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

ETNO members are working on the minor protection policies to be implemented in all countries in which they operate. Most countries have well-established notice mechanisms where users can complain about content distributed and accessed through their services. The kind of complaint mechanism offered and the way in which complaints are effectively dealt with vary between the wide range of products and services and amongst members. Generally, they are transparent and easy to use. It is to be noted that in the framework of the commitments that members have voluntarily taken, in particular within the ICT Coalition but also within the CEO Coalition, they are also developing and/or updating the current systems in order to make them more efficient.

One open issue relating to user generated content which is not controlled prior to being uploaded and shared with other users, is the potential risk of minors accessing such content easily. Therefore, reporting mechanisms are particularly important in social media. The debate, however, must take into account that the definition of which kind of content should
be considered as inappropriate differs between cultures and Member States and that in any case, inappropriate content needs to be clearly distinguished from illegal content. For the latter, the e-Commerce Directive provides rules for take-down mechanisms. In general terms, we encourage a fruitful cooperation framework between regulators and industry representatives, to discuss possible actions and exchanges of best practices in order to achieve a comparable and effective level of protection of minors and human dignity in general.

Finally, a close relationship with INHOPE Hotlines and InSafe has been established and there are awareness nodes in all Member States. Internet service providers strongly support the work of these institutions by integrating links and buttons that refer to their service. A great variety of customer information from companies, NGOs and Hotlines empower the user in the EU to find support, if it is required.

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO’s and providers of products and services in making sure that adequate feedback is properly delivered to people reporting harmful or illegal content and complaints?

Harmful or inappropriate content must be clearly distinguished from illegal content, since they have different consequences and must be treated differently. For illegal content (the identification of which is provided by the law), law enforcement authorities are responsible for prosecution. Private entities, such as EU-wide networks with the support of the industry, can help but must not be charged with prosecution. In particular, the definition of harmful content differs between cultures and Member States. In this context, INHOPE guarantees an important and independent work. The European Commission should continue funding the EU-wide INHOPE network12, which is currently under threat of budget constraints.

Concerning the handling of complaints and the possibility to provide feedback to the complainant, this is treated differently in the different ETNO member countries (in some member countries, the operator deals with the complaint, while in others the operator has just to inform the competent authority which has the obligation to treat the case). Generally speaking, we believe that if a provider is to give feedback to the notice provider, the user must not stay anonymous and needs to provide contact data. Evidence that the notice has been correctly received is generally given. In some countries, where in particular it is the judicial authority that is the only body empowered to treat the case, no specific and regular feedback can be given by the operator. Moreover, depending on the number of received reports, individual feedback is not feasible.

In this matter, the Commission is considering the possibility to adopt a measure on Notice and Action. We will provide the Commission with other relevant considerations when/if the proposal is published.

Concerning the complaints of inappropriate or harmful content, there are specific proceedings in place at national level. In Spain, the processing and feedback system of complaints in the INHOPE network turned out to be very efficient and effective. The national

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12 http://www.inhope.org/gns/home.aspx
hotlines are very well linked with the ICT industry and even receive funding from ICT companies. The Commission should ensure that future public funding for INHOPE and national hotlines is made available after the expiration of the Safer Internet program. The successful development of compliant offices for child abuse content and child endangering content should be continued in the future.

**Accessibility for Persons with Disabilities**

*(26) Do you think that additional standardisation efforts are needed in this field?*

The digital world is constantly innovating. For example, speech recognition software (e.g. Apple Siri) has been made a standard part of any operating system for computers and mobile phones in the past months. The same has been true for text-to-speech applications, which have been available, mostly at no additional cost, for some years now. Some video-streaming platforms have already introduced automatic subtitles.

Any effort to standardize is unnecessary and might even impede technological evolution and limit solutions.

*(27) What incentives could be offered to encourage investment in innovative services for people with disabilities?*

ETNO members consider disabled people as actual or potential customers to be protected and helped. Therefore, they are already taking a number of initiatives (often in collaboration with Public Administrations and associations of disabled people) with the aim of meeting their needs with terminals, products and services adapted to their specific requirements, quite in the same way as they do with all other customer segments. These initiatives are proving favourable for all parties: companies in the industry are increasing their customer bases and stimulating their innovation skills, and many disabled people are obtaining services that facilitate their integration in the Information Society.

However, it is doubtful if incentives for innovative services bring an added value to people with disabilities. In the past, services specially designed for the needs of the disabled have resulted in low take-up by this group, e.g. voice and video relay services. Such services come at high operational cost while innovations in the audio-visual media sector, especially in the mobile environment, have provided innovative paths to ensure the effective inclusion of disabled persons.

Therefore, we believe the active involvement of Government is essential through subsidies, tax incentives or similar measures. In this sense, it is interesting to note the initiatives that exist in other countries such as Sweden, Finland or Switzerland where through government budget improvements in accessibility to services are being made.

Governments should rethink their efforts on behalf of people with disabilities in the light of technological evolution. The best incentive would be not to restrict the ability of platforms to innovate. In the few cases where the market still does not provide solutions, the possibility to publicly finance services for people with disabilities should be considered.
Eutelsat’s contribution to the EC consultation on the Green Paper

Preparing for a Fully Converged Audiovisual World:
Growth, Creation and Values

22 August 2013

1. Introduction

Eutelsat is one of the world’s leading satellite operators, with capacity commercialised on 31 satellites delivering reach of Europe, the Middle East, Africa, Asia, significant parts of the Americas and the Asia-Pacific. As of 30 June 2013, Eutelsat’s satellites were broadcasting more than 4,600 television channels to over 200 million cable and satellite homes in Europe, the Middle East and Africa. The Group’s satellites also provide a wide range of services for TV contribution, corporate networks and fixed and mobile broadband markets.

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As a provider of satellite services to traditional broadcasters, internet and telecommunications services providers, Eutelsat is fully impacted by the convergence of linear and non-linear services and is particularly eager to carefully monitor evolutions occurring in the European audiovisual media landscape.

Therefore Eutelsat warmly welcomes the European Commission’s initiative to open a consultation on “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values” and would like to take advantage of this opportunity to provide valuable inputs on the role of satellite in the success of the emerging connected usages.

In particular, Eutelsat is convinced that satellites will play a decisive role in fostering the take-up and adoption of the new converged services namely through its contribution to hybrid broadcast/broadband network configurations. When based on satellite broadcast infrastructures, these configurations provide end users with decisive advantages such as universality and immediate availability of the services, and efficient use of the available resources.

In the following contribution, Eutelsat submits to the EC:

- General views on the converged audiovisual world (see chapter 2, page 2)
- Answers to specific questions listed in the Green Paper (see chapter 3, page 5)
2. General views on the converged audiovisual world

2.1. The transformation of the audiovisual media landscape

Eutelsat concurs with the EC on the fact that "the progressive merge of traditional broadcast services and the internet" will quickly blur the lines "between the familiar twentieth-century consumption patterns of linear broadcasting received by TV sets versus on-demand services delivered to computers".¹

The changes triggered in the audiovisual media landscape will more particularly have an impact on (a) content consumption and viewing behaviours, (b) equipment and devices and (c) the number and role of market players. For instance:

a) the converged services will further increase the user’s requirement to have access to audiovisual content in an "ATAWADAC"² way.

b) This transformation goes along with a transformation of the equipments and devices, addressing all screens of the connected home and even outdoor.

c) The convergence between TV and internet contents also leads to a multiplication of players and offerings: new actors coming from the internet are increasingly playing a role among other TV actors, whereas traditional broadcasters have to adapt themselves to this new environment.

2.2. The evolution of the media value chain

Eutelsat concurs with the EP’s statement, according to which "the advent of connected TV has shaken up the traditional value chain and makes it necessary to draw up a new strategy"³.

The evolution towards converged services will indeed result in a new composition of the media value chain. In this context, it is important to identify the various market players and their role in this evolving audiovisual media landscape.

Many different market players are listed in the Green Paper, such as:

- Equipment manufacturers
- Network operators
- Platform operators
- Content creators
- Providers of products and services
- Technology developers
- Content providers
- Media-service providers
- Broadcasters
- Market players (e.g. pay-TV operators, free-to-air public service and commercial broadcasters, VoD distributors and device manufacturers)

Eutelsat believes that the complexity of the sector call for necessary clarifications of the role of the various market players before any regulatory and other policy intervention, to guarantee consistency and avoid ambiguities and misinterpretations.

¹ European Commission, Green Paper preparing a fully converged audiovisual world, page 3.
² AТАWADAC: Any Time, Any Where, Any Device, Any Content
Therefore, in order to provide a consistent reference to its response to the consultation, Eutelsat would like to propose to the Commission a media value chain in the Connected TV context.

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2.3. The emergence of new converged services and the completion of the EU digital single market

Eutelsat shares the EC position according to which the convergence of the audiovisual world will generate new opportunities of business and as such could be beneficial to each market player of the value chain.

In particular, as far as the infrastructure component of converged services is concerned, Eutelsat strongly believes that Connected TV in Europe will trigger a virtuous circle. The early provision of Connected TV will result in a growing demand for bandwidth, calling for enhancement of the infrastructure components, which will in turn enable new converged services, having in the end a positive effect on the whole media value chain.

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The take-up of this virtuous circle requires three conditions:

1. Connected TV has to be universal and to reach the largest possible audience;

2. Connected TV has to be made available to users as soon as possible, to immediately answer the already identified users' demand and the yet unexpressed demand for new converged services.

3. The infrastructure supporting converged services has to be effective and cost-efficient. Eutelsat would like to highlight the fact that, in a context of budgetary restrictions, investments in infrastructures should be engaged when they are or become economically viable.

The current common seen assumption is that the infrastructure which will deliver the linear and non-linear components of Connected TV will be a very high-speed broadband infrastructure. However, a fully-meshed broadband network might not fit the pre-conditions mentioned above since:
- A large share of users (more than 30% in most countries) do not have access to sufficient bandwidth for high-quality video and will not in the short term. In this scenario, many end-consumers would be deprived of proper Connected TV services.

- When delivering high-quality video to a mass market, terrestrial broadband networks may suffer from congestions at peak hours and as such be confronted to insufficient QoS, at least in a short-term perspective.

Conversely, a smart use of a mix of broadcast and broadband infrastructures to provide Connected TV in a hybrid network configuration\(^4\) responds to the requirements quoted above.

Moreover, the necessary broadcast and the broadband infrastructures are already available and active all over the EU, which means that the need for early investment in new infrastructures to immediately provide a universal coverage with hi-quality services is limited. Therefore, investments in new infrastructures can be focused on a number of selected, specific cases.

\[\text{[cf. Part 2.4 of the Green Paper]}\]

Therefore Eutelsat recommends the implementation of hybrid broadcast / broadband solutions to support the Connected TV provision in a universal, immediate, effective and cost-efficient way, thus favouring its adoption by a large number of EU citizens.

When enjoying these new audiovisual services, the final user will seamlessly benefit of the best of both infrastructures, broadcast and broadband.

\[\text{2.4. The advantages of a satellite network for high quality broadcast in a hybrid network configuration}\]

In view of the paramount role of satellites in high-quality TV broadcasting, Eutelsat believes that satellite broadcast is a pillar in hybrid networks configuration intended to support the development of Connected TV anywhere in the EU.

Its key features are:

- Satellite broadcast is ubiquitous and efficient: one satellite carries thousands of channels and directly reaches millions of viewers over a whole continent, thus making a truly efficient use of bandwidth / spectrum resources.

- Satellite broadcast has always been a pioneer in massive adoption of new broadcasting quality standards (for example, from analog to digital television, from MPEG-2 to MPEG-4, etc.) and today offers the highest TV standards: 3D, 4K, ...

\[\text{Therefore, satellite broadcast infrastructure combined with broadband infrastructure\(^5\) in a hybrid network configuration is one of the most relevant and efficient ways to support Connected TV provisioning:}\]

- to every European citizen, even in white areas;
- immediately (no real need for new infrastructures);
- in a cost and resource efficient way;
- with high-quality video services.

\(^4\) Eutelsat considers a hybrid network configuration as a mix of broadcast infrastructures (DTT, cable and/or satellite) and broadband infrastructures managed in such a way it brings converged services seamlessly to the end-users.

\(^5\) When terrestrial broadband solutions are not available or economically viable, broadband access via satellite can be envisaged, like the Tooway\(^\text{TM}\) service provided by Eutelsat on its KA-SAT satellite.
3. Answers to specific questions

Note: Answers are provided only to questions which are considered applicable / relevant to Eutelsat.

Question 5: “How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?”

The consumers of converged audiovisual services, such as the Connected TV, will access to a mix of:

- linear audiovisual content, i.e. linear TV
- non-linear, real-time, audiovisual content, through on-demand services (e.g. VoD);
- non-linear, non real-time (possibly locally stored) audiovisual content (e.g. push-VoD).

The managed combination of these services will enhance the user experience and increases the user demand for content. This will result in a business growth and value creation, the economic benefits of which will be redistributed all along the value chain. This will therefore create financing opportunities for content creation because of the maximisation of the audience and of the content consumption.

It is thus important to create an environment in which these new services can arise and develop. In that respect, any fixed extra-cost (tax) imposed on services and relevant equipment would indeed be an obstacle to the adoption of Connected TV by a large number of European households.

More specifically, the increasing convergence of linear and non-linear, real-time and non real-time content raises specific issues regarding the taxation of the customer premises equipments.

Following the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, user equipments for the consumption of audiovisual contents are submitted to specific taxes. For example, in France, hard disks, MP3 players, blank CD or DVD, as well as Set-Top Boxes (STBs), are submitted to a tax called RCP⁶.

Eutelsat considers that no tax should be raised on STBs (or others CPEs with similar functions), which are network termination units of the architecture supporting the delivery of converged services, controlled by the network operator or the rights’ owner (e.g. via sophisticated Digital Right Management, DRM), and are not user equipments.

Namely, no tax should be raised on their capability to store content at the customers’ premises and to manage the user’s access to this content, in particular in order to support the development of services providing non-linear content with non-real-time solutions, like for instance push-VOD.

⁶ Remuneration for Private Copying.
Question 6: “Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?”

As to interoperability across borders, Eutelsat operates transnational infrastructures which provide extensive coverage of all European countries, among others. In this respect, Eutelsat will favourably welcome any regulatory and other policy initiative which will open borders and lead to more simplification into the currently fragmented EU market.

As to potential need for standards, Eutelsat believes that the various interfaces at each level of the media value chain have to be taken into account.

The emergence of standards aiming at harmonising the broadcast and broadband delivery of services to the end-consumer through connected screens and STBs is likely to facilitate the development of converged services.

Indeed several standards have emerged in different countries (HbbTV, MHP, Youview...) in parallel to proprietary systems designed by the TV-set manufacturers.

At the present stage of early development of Connected TV, it would be wise to accept the coexistence of a plurality of solutions in order to guarantee for innovation and competitiveness.

Eutelsat’s view is that standards that are open, that are voluntary and that are representative of a wide range of stakeholders are the ones that are most likely to succeed.

Eutelsat recommends that in the long term a single standard in Europe is sought if the market forces had not mitigated the risk of a durable fragmentation and the “survival of the fittest” had not prevailed yet.

Eutelsat recommends:

1. In the short term, enforcing the implementation of at least one open and voluntary standard in any connected device (in parallel or in replacement of the manufacturer proprietary systems); in the long term, favouring the convergence of the different standards.
2. The EC to prevent that the market is dominated by a proprietary de facto standard.
3. The EC to support the selection of a single open standard if the market doesn’t select one in due time.

In order to facilitate the adoption of connected TV services, the user interface has to be simplified. Initiatives (e.g. Consumer Electronic Control, CEC) have attempted to pilot the different devices in the living-room (TV, STB, Blu-Ray players) with a single remote control.

However, manufacturers have developed on this project their own system which are not compatible with others. In practice, the interoperability is guaranteed only between equipment’s of the same manufacturer.

Eutelsat would welcome any initiative pushing for the real convergence of the remote controls in the TV environment, including STBs.

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Satellite technology not only delivers an efficient high-quality broadcast experience to the final user but can also support near VoD experience. The only requirement is the ability to store the broadcast content at the users’ premises and to manage the user’s access to this content.

The development of such access calls for the mass production of STBs and similar CPEs with large storage capability, with adequate remote control or other Man/Machine interfaces and with Digital Rights Management (DRM).

Eutelsat recommends taking these needs into account when issuing standards towards the manufacturers for mass production of STBs and similar CPEs which are network termination units of the architecture supporting the delivery of converged services, controlled by the network operator or the right owner.

Question 7 “How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?”

As to the consumer experience, the use of satellite broadcast infrastructures in hybrid broadcast / broadband network configurations will ensure a great converged-service experience. Indeed, satellite broadcast is one of the most cost- and spectrum-efficient network infrastructures to deliver high-quality, linear video to final user.

Its key features are:

- Satellite broadcast is ubiquitous and efficient: one satellite carries thousands of channels and directly reaches millions of viewers over a whole continent, thus making a truly efficient use of bandwidth / spectrum resources.
- Satellite broadcast has always been a pioneer in massive adoption of new broadcasting quality standards (from analog television to digital or from MPEG-2 to MPEG-4 for example) and today offers the highest TV standards: 3D, 4K...

Therefore, satellite broadcast infrastructure combined with broadband infrastructure in a hybrid network configuration is one of the most relevant and efficient ways to support Connected TV provisioning:

- to every European citizen, even in white areas;
- immediately (no real need for new infrastructures);
- in a cost and resource efficient way;
- with high-quality video services.

As to the public interest obligations, satellite broadcast is by nature a transnational service. In a hybrid configuration, the satellite infrastructure enables the early delivery of Connected TV experience to every European household.
In this respect, Eutelsat satellites with pan-European coverage are enabling tools that can ideally support "the provision of specified channels" with "general interest objectives", and the promotion of transnational audiovisual services.

Therefore, hybrid solutions based on broadcast satellites with pan-European coverage can proficiently support the early provision of general-interest audiovisual content to every European household.

Question 8: “What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?”

Eutelsat concurs with the EC statement according to which the radiofrequency spectrum is a limited "valuable public resource" which needs to be used efficiently.

Eutelsat, along with other satellite operators, already makes an efficient use of spectrum when providing broadcasting services to citizens in the EU and beyond. For instance,

- Satellites have highly supported the market for switchover from analogue to digital transmission, specifically in television and radio services, thus multiplying the number of channels and programs made available with the same amount of spectrum.

- Satellite operators with different orbital positions share or reuse the same frequencies between each other over the same footprint under International regulation. The total capacity of each system is increased without increasing the allocated bandwidth.

- The same frequency bands can now be used by more signal amplifiers (called 'transponders') resulting in increased transmission capacity.

While spectrum sharing amongst different satellite systems is successfully achieved, it is more difficult for satellites to share with terrestrial technologies. Interference occurs when incompatible technologies and services attempt to use the same frequency bands in the same area. This imposes technical limitations to ensure that harmful interference does not degrade the satellite signal, which attenuates on its 36,000km path to earth down to picowatt (pW), many units of magnitude lower than the high-power terrestrial mobile signals.

In order to manage such activities, the use of frequencies is controlled at a governmental level through the regulation of radiocomms and licensing of wireless operators’ activities.

Eutelsat recommends that, considering frequency allocation and sharing models, the following elements are taken into account:

- the efficient use of spectrum made by satellite broadcast;
- the technical limitation which makes challenging - or sometimes prevents - spectrum sharing for satellite services.
- the unique ability of satellite to deliver TV and media content to specific remote areas.

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8 European Commission, Green Paper preparing a fully converged audiovisual world: growth, creation and values, Page 13.
9 Eutelsat is an infrastructure operator carrying audiovisual content. In any case, the content provided to the final users is selected by Eutelsat’s customers, which use Eutelsat’s satellite capacity to distribute the content to their final users.
10 European Commission, Green Paper preparing a fully converged audiovisual world: growth, creation and values, page 10

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Question 25: “What should be the respective roles / responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?”

As far as the use of satellite as an infrastructure to carry audiovisual content in Europe is concerned, European satellite operators are already subject to strict regulations from the EU and the member States, when they are competent.

As to Eutelsat, it is subject to the French regulator (CSA) and European regulators.

Eutelsat has no proper power to manage or control the content but has to comply with principles and norms from the 2007 Audiovisual Media Services Directive – AVMSD (for instance, concerning the absence of "any incitement to hatred based on race, sex, religion or nationality." - article 6) and the French 1986 amended Act on freedom of communications (for instance, concerning "the respect for human dignity [...] or “the protection of children and young people, the safeguarding of public order [...]" - article 1)

The AVMSD sets up the basis of channel regulation and the principle of competent regulator determination.

The competent regulatory body for content is either that of the EU Member State on the territory where the channel producer is established; or, in the case of a non-EU channel, that of the Member State from whose territory the uplink to the satellite is provided or finally, if the uplink is provided outside the EU, that of the Member State responsible for the satellite capacity used.

For instance, when the competent regulator is the CSA, and pursuant to the French Act on freedom of audiovisual communications, CSA may require Eutelsat to provide all necessary information to identify the television service provider (article 19). Furthermore, it may give formal notice to Eutelsat to remind the channel of the regime which is applicable to said channel (article 42). At last, it may give formal notice to Eutelsat to stop broadcasting a given channel (article 42).

In view of the above, Eutelsat considers that the current regulations about content delivery via satellite properly covers the issues raised by the questions, and their principles should be preserved in the case of any evolutions of the regulatory framework.