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**SUMMARY OF THE RESULTS OF THE PUBLIC CONSULTATION
ON THE GREEN PAPER ON THE CONVERGENCE OF THE
TELECOMMUNICATIONS, MEDIA AND INFORMATION TECHNOLOGY
SECTORS;
AREAS FOR FURTHER REFLECTION**

Preface

The purpose of this Working Document is to two-fold. Firstly, it summarises the comments received during the public consultation period which followed the Commission's Green Paper on the Convergence of the telecommunications, media and information technology sectors. Secondly, it identifies areas where further reflection is needed and poses additional questions in these areas.

While the Commission' does not necessarily endorse the views that are contained in the summary, it does acknowledge with thanks the interest shown in the Convergence Green Paper, the many comments received, and the significant work of individuals and companies from the sectors involved.

The Working Document is the first part of a two-stage process which will be completed towards the end of 1998 with a Commission Communication containing further analysis and policy proposals. Preparation of the Communication will take account of the opinion of the European Parliament, expected in October 1998.

Many commentators offered views on matters, which, while relevant to the convergence issue, were outside the scope of the Green Paper itself. Such comments have been forwarded to the Commission services working on these matters.

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PART A: SUMMARY OF COMMENTS ON THE GREEN PAPER

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INTRODUCTION : THE CONSULTATION PROCESS

This part of the Working Document presents an overview of the results of the 5-month public consultation carried out by the European Commission following publication of the Convergence Green Paper in December 1997. The Green Paper attracted considerable attention. By the middle of June, 270 written comments had been received from Member State governments, national regulatory authorities, broadcasters, telecommunications operators, equipment manufacturers, industry associations, consumer and user representatives, members of the creative community and trade unions. Annex 2 provides a breakdown of the types and geographical distribution of organisations which responded to the consultation.

Orientation debates took place within the Telecommunications Council and Audiovisual/Culture Council, and a formal opinion was given by the Economic and Social Committee. The European Parliament and the Committee of the Regions are expected to adopt their opinions on the Green Paper in the autumn this year.

Three hearings on the Green Paper were held during March and April 1998 for (i) national and European associations and representative groups, (ii) individual companies and (iii) Member State and EEA authorities. These hearings not only provided an opportunity for the Commission to identify the central issues in the ongoing debate on the convergence phenomenon, but also allowed the different sectors and players concerned to hear and respond to each others' views.

In addition, there have been more than 80,000 visits to the Green Paper's Web page on the Commission's Web Server,¹ where the Commission posted the Green Paper and related studies, as well as comments sent to the Commission in electronic form.

In parallel with the hearings and the debate at European level, most Member States started a process of consultation at national level.

Part A starts by identifying the main themes brought out during the public consultation. It then continues with a summary of the key issues raised and the views offered on them by commentators.

A more detailed review of the comments received on each of the Green Paper's nine questions is set out in Annex 1.

This Working Document presents the views expressed by commentators. It does not take a position on those views, nor attempt at this stage to respond to the arguments raised.

¹ <http://www.ispo.cec.be>

The initial analysis of both the hearings and the written comments received during the public consultation on the Green Paper has revealed a number of common themes.

- (1) There is agreement on the reality of technological convergence, but different views as to the speed and scope of its impact on markets and services.
- (2) Most commentators preferred an evolutionary rather than revolutionary approach and many of those expressed a preference for Option 1 in the Green Paper (building on existing structures).
- (3) There is general recognition of the continuing role of sector specific rules to assist in securing certain general interest objectives, in particular within the audiovisual sector, even if those rules or the way they are applied may need to be modified to take account of the impact of new technology. Such sector specific rules will co-exist with (i) the application of competition rules and (ii) increasing reliance on industry self-regulation.
- (4) A number of potential barriers and key regulatory issues have been highlighted. The issue of access to set top boxes, Electronic Programme Guides (EPGs) and Application Programming Interfaces (APIs) has been presented as one area requiring attention in the near future.
- (5) The question of the right approach to spectrum issues (in particular allocation and fees) attracted much attention, with agreement on the need to promote more efficient use of available spectrum, but different views as to how that can best be achieved.
- (6) There appears to be substantial support for a more horizontal approach to regulation (i.e. same rules for networks / access issues, but with a vertical or sector specific approach for regulating aspects of the provision of services such as, for example, the content of audiovisual programming). This approach should be viewed in the context of responses on the Options.

In addition, individual sector interests were evident from many of the comments. For example:

- (1) There are strong calls within the telecommunications and IT sectors for less burdensome sector-specific regulation or rules with a lighter touch in response to (i) increasing levels of competition (e.g. telecommunications liberalisation) and (ii) rapid pace of change (driven by technology / short product life-cycles).
- (2) Consumer organisations claimed that the approach taken in the Green Paper was unduly biased towards technology and the supply side, with insufficient emphasis on evaluating the potential demand for convergent services and addressing the needs of consumers.
- (3) There is an active discussion within the audiovisual sector about whether there should be national or EU timetables for the switch-off of analogue

broadcasting, and of the relationship between regulation and content-support initiatives.

- (4) There was agreement that demand for high quality content, particularly in the audiovisual sector, would increase, and that measures to foster European production should therefore be considered.

3 SUMMARY OF COMMENTS ON THE ISSUES RAISED IN THE GREEN PAPER

The Commission's initiative to start a far reaching and open consultation on future regulatory development and the nature and impact of convergence in the different sectors involved was broadly welcomed.

3.1 The nature and pace of convergence

The Green Paper was seen to have raised many of the right issues, although some comments suggested that it was unclear exactly what the term convergence represents. For others, convergence defied definition. Yet others predicted a degree of divergence in terms of the range of content and services offered. While many accepted the working definitions of convergence offered by the Commission, views on the pace of developments were more cautious. There was wide recognition of the reality of convergence at the level of technology and network infrastructures. But most agreed that this did not mean that convergence of either markets (in terms of the players involved) or services would automatically follow. Convergence was seen as an evolutionary rather than a revolutionary process.

There were clear differences between sectors as to their perception of the extent and speed of these developments, but there was the broad acknowledgement that convergence, however defined, was at an early stage and characterised by uncertainty, in particular about the level of demand there might be for such services. These differences were also reflected in the many of the examples offered as to how converging technologies are influencing both the business world and our everyday lives, many of them based on the growing popularity of the Internet. One important feature in this context was the degree to which new services offered users the possibility to customise and control the information and services received.

An important distinction between developments in the work environment and the home was recognised. Many considered that developments at work would be driven by the Internet, electronic commerce and PC-based activities, and would have an impact on home-use. On the other hand, and despite the increasing take up of computers in the home, digital television, offering entertainment and information, was seen by some as the predominant platform in the home for the foreseeable future.

3.2 The economic and social impact of convergence

In commenting on the broader social context of these developments, the Internet was considered by some as playing a crucial role in the democratic and social process by allowing the citizen to act as both a consumer and producer of information. The

fundamental role of broadcasting within society for ensuring pluralism, diversity and a sharing of cultures was also highlighted.

Comments on the impact of convergence on growth and employment tended to reflect optimism about the benefits to the broad economy of many aspects of convergence, despite misgivings about the short-term effects of rationalisation and new technologies. Electronic commerce was seen as a positive factor for economic growth.

Many commentators stressed the importance of equipping both young people and the current workforce with appropriate skills. Apart from their increasing demand in business, these skills were also becoming central to many of the content and creative industries.

From the comments, it was clear that convergence is perceived as offering both opportunities and risks for the less developed regions within the Union. Geographical constraints could be overcome by harnessing new technologies and services, but they could also delay the roll-out of such services.

Markets for broadcasting were expected to remain fragmented along national and regional lines for cultural and linguistic reasons but also because of the geographical scope of certain aspects of the business. Concerns were expressed about the lack of European content on the Internet as a limiting factor in its wider take up. Specific projects for inclusion in Community research and development programmes were identified as one possible avenue of support for the European audiovisual sector.

3.3 Barriers to convergence

There was general agreement that most of the issues raised in the Green Paper represented at least potential barriers. Greatest attention focused on regulatory uncertainty, availability of content, IPR protection, consumer protection, access issues (including access to set top boxes), pricing, radio spectrum and the manner in which public interest objectives could be achieved.

However, a number of contributions from players in the audiovisual sector and from consumer organisations objected to the description of a range ways of implementing of public interest objectives as barriers at all. In their view, this tended to assess public interest rules only in an economic context, ignoring their underlying public, social or political purpose, and calling into question the essential role of Member States in determining the manner of their application.

It was generally agreed that the potential benefits of converging technologies would not be realised without a rich and diverse supply of content and information. Public service broadcasters stressed the importance of European content and the role they played in its production. They also suggested that in future, regulatory attention should shift from the current time-based quotas to investment-related incentives.

Two additional barriers were identified in contributions received. These were the need to overcome "technophobia", by developing user friendly access new services, and the need to avoid new fiscal barriers in the form of new taxes on information or services.

3.4

The future approach to regulation

Most commentators agreed with the Green Paper's assertion that convergence does not call into question the objectives that underpin sector specific regulation, but may call for a review of the manner in which these objectives are achieved. However, many felt that any new rules should take account of the way in which new services and technologies empower the consumer and the citizen, enabling them to make more informed choices about the services and information they receive.

A wide variety of views were expressed about the extent to which convergence would or should have an impact on the approach to the regulation of telecommunications, IT and the media. Issues included:

- the balance between competition rules and sector-specific regulation,
- the extent to which the Internet and other on-line services should be subject to detailed (or additional) regulation, and
- the areas on which competition rules might focus.

There was general agreement that future regulation should be technology and platform-neutral, and that existing rules would need to be adjusted where this was not the case. Some commentators took the publishing model as their example, suggesting, along with others, that future regulation should be competition-based, with no *a priori* assumption that all services should be regulated. Many commentators considered that certain public interest objectives could not be achieved by the simple application of competition rules, and that regulatory intervention to achieve such objectives would always be needed. Others saw a continuing role which balanced competition rules with sector-specific regulation designed to foster competition, deliver social and consumer goals, and oversee certain aspects of content provision.

Others stressed that the application of competition law should recognise the very large investments needed in the face of uncertain demand. Still others focused variously on the need for competition rules to be applied against discriminatory behaviour by existing network operators; on the commercial activities of publicly funded broadcasters, and on the risk of unfair cross-subsidies of new service activities by large telecommunications operators.

There were a number of comments expressing concerns about the risks of extending existing regulation to areas currently unregulated, and of applying audiovisual content rules inappropriately to the on-line environment. Some contributors argued that the Internet did not require additional regulation, and that the problems in respect of regulating on-line activities would be those of enforcement, where solutions combining industry self-regulation with consumer control would be important.

There was a large measure of agreement on the need to ensure a consistent approach on the way in which networks and transmission services were treated, leading many to support a move away from current vertical regulatory divisions to a more horizontal approach to them. This would ensure a consistent approach to

infrastructure, and at the same time allow rules governing content provision to continue to reflect the specific nature of the services concerned.

There was general agreement that all the sectors affected by convergence required a clear and predictable regulatory framework to facilitate investment decisions, and that regulation should be proportional to the nature of the service or activity concerned. Among several criteria suggested for defining the type of regulation that should be applied, many argued that the distinction between public and private communications should be considered to be one of the more fundamental. At the same time there was general recognition of the need to avoid inconsistent regulatory treatment of essentially similar services, although some were sceptical of claims that current definitions were inadequate.

3.5 Comments on specific regulatory issues raised in the Green Paper

3.5.1 *Market entry and licensing*

Relatively few commentators identified licensing or current licensing procedures as a major barrier within the market today, although some stressed the need for independent licensing authorities and the use of open and transparent procedures. On the other hand, a clear message from industry, from IT players and from the publishing/press sector was that for many service-based activities licensing should be the exception rather than the rule.

There were also relatively few comments on restrictions on the use of networks. Those that were made expressed concerns that such restrictions opposed the trend towards converging platforms and that they unnecessarily limited investment, innovation (in terms of combined service packages) and consumer choice. Others accepted that temporary restrictions might be needed, where they were focused on promoting local loop competition, or on providing certain guarantees for consumers. The current lack of bandwidth / capacity within the local loop network was seen by many as a particular handicap for the short-term take up of the Internet and other on-line services.

Comments were received from all sectors about the need to safeguard against abuses of market power by vertically integrated companies. While such vertical integration was a trend which technological convergence was seen as accelerating, it was felt by a number of commentators that competition rules provided an adequate solution.

3.5.2 *Access issues*

There was general agreement that in a digital environment, access to networks and to customers would be among the key regulatory issues.

There appeared to be broad support for a continuing framework to guarantee interconnection between public networks. It was generally recognised that there would continue to be a limited number of routes to individual users, leading some to call for open access requirements to be applied to local loop infrastructures, as a way of stimulating effective service-based competition. Some comments also focused on the need to ensure access by content providers to the available distribution channels.

A major issue of concern for many commentators was that of access to customers through conditional access, navigation and operating systems. Discussion centred on the rules which might apply to set-top boxes, Electronic Programme Guides (EPGs) and Application Programming Interfaces (APIs). Some considered that open access was needed not only for reasons of fair competition but also to ensure plurality and consumer choice.

Many of the commentators supported the principles underpinning Directive 95/47/EC, which provides for non-discriminatory access by operators to digital television platforms and considered that these principles should apply to access systems in general. Others felt that access issues could best be resolved in the context of the Treaty competition rules, perhaps building on current concepts of "essential facilities".

Additionally, a range of comments pointed to the role of such gateways in relation to all digital services and not just with regard to encrypted broadcasting services. Therefore many commentators called for a consistent set of rules to be applied to digital gateways, irrespective of the nature of the services to which they gave access.

3.5.3 *Frequency Spectrum*

There was general agreement on the increasing demand for radio spectrum from new digital services, on the need for it to be used efficiently, and need for early decisions regarding its allocation. Most commentators considered that spectrum would continue to be a scarce resource for the foreseeable future.

There were widespread concerns about the possible auctioning of spectrum, accompanied by assertions that this would raise market entry barriers and lead to increased prices for consumers. Others pointed out the risk of discrimination either by favouring incumbents or by treating sectors differently.

The issue of whether dates should be set or co-ordinated at a European level for the switching off of analogue broadcast services attracted considerable comment from broadcasters, equipment manufacturers, consumer groups and Member States. Opinion was split between those who saw any transition from analogue to digital broadcasting as being market-led, and not requiring Government or EU level intervention; and those who considered that a deadline set at a national level would be a useful stimulus to the development of digital broadcasting in the EU.

3.5.4 *Standards*

There was widespread agreement that standardisation should be voluntary, industry-led and market driven. It should also continue to be based on open procedures, though some comments suggested a need for greater representation of consumer, user and local Community needs.

3.5.5 *Pricing*

There was wide recognition that on-line and other new services would only succeed if the overall cost of using them were considered reasonable by a significant part of the population. Most concern focused on the current relatively high charges for local telephone calls and on potential risks to competition associated with the bundling of

on-line access and special "Internet" telephone rates by incumbent telecommunications operators.

3.5.6 *Consumer interests*

Comments received from consumer organisations and others called for consumer interests to be placed at the top of the regulatory agenda. Consumer organisations considered that there was a particular need to carry out an overall assessment of the impact of convergence on the consumer. The need for greater safeguards to ensure that consumer interests are protected was highlighted by many commentators, as well as the need to ensure consumer confidence through clear rules on electronic signatures, on liability in electronic commerce and other on-line services, on data protection and privacy and on the availability of effective encryption. In this context, the Commission's Electronic Commerce Communication and proposal for a Directive on digital signatures was widely supported(Directive 98/297/2/EC), since they were seen as helping to create the necessary degree of consumer confidence in new activities. Other consumer concerns specifically raised included the need for effective dispute resolution, for the involvement of consumers in drawing up standards and quality of service targets; and for protection against unwarranted bundling of services.

3.5.7 *Achieving public interest objectives*

The issue of regulation and public interest objectives attracted a considerable degree of comment. For many of those commenting, such obligations represented a strength rather than a barrier within society, particularly in the context of rules relating to audiovisual content or pluralism, given the specific role of television, radio and film in a democratic society, and it was considered that the objectives met by such regulation remained valid in the new on-line environment.

There was also recognition that convergence offered new ways of meeting public interest objectives (both directly and indirectly, as a result of the lower cost and greater flexibility). This might require a review of regulatory tools, but did not challenge the fundamental policy objectives underpinning such regulation.

Widespread political concern over the need to avoid an informational divide in society was confirmed in the comments received. Consumer organisations and others feared the demise of the universal service principle in a future regulatory environment, seeing it rather as an evolving concept aimed at ensuring that the new services of the Information society are available to all. Many Member States as well as public service broadcasters were particularly concerned that the universal service concept (as currently applied in the telecommunications sector) should not be confused with the much broader concept of the public service broadcasting mission.

The consultation confirmed general recognition of a continuing role for public service broadcasting. This led many public broadcasters to state that the public service mission conferred on them would continue to require both specific funding mechanisms as well as other regulatory measures to enable them to meet their obligations. Commercial operators and potential competitors expressed concerns about the potential distortion of the market place resulting from the benefits enjoyed by public sector broadcasters and called for greater transparency to ensure that their

