

Contribution by OFCOM (Switzerland) for GSR09

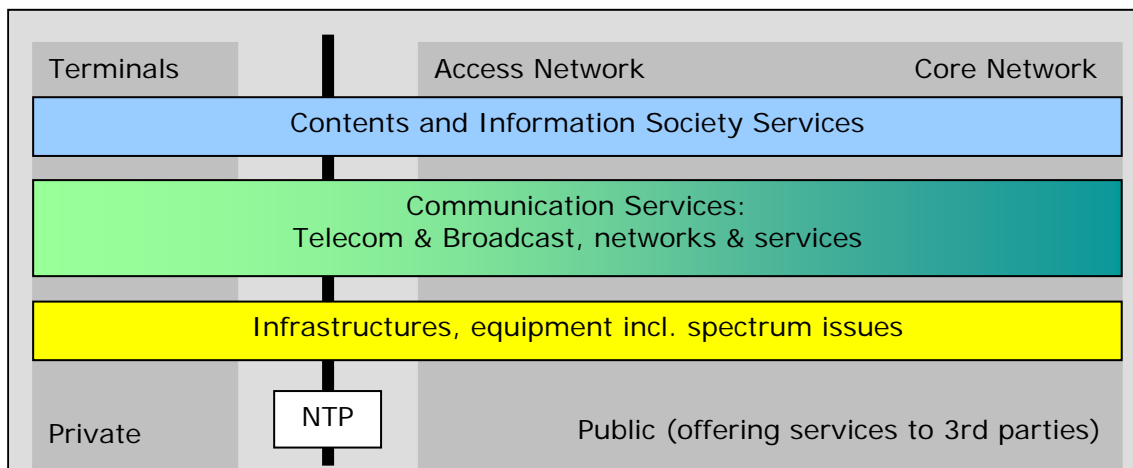
Hands on or hands off? Stimulating growth through effective ICT regulation

The principle of effective regulation is to regulate **only where necessary** to achieve the legitimate aims of lawmakers and national authorities. Regulation must therefore be kept to a minimum, and have objectives that are clear, precise and transparent for all players in the marketplace.

Regulatory measures have to be based on a **thoroughgoing analysis of the evolution of the telecommunication market**, technologies, and products and services offered. The effects of regulatory measures on those market segments targeted must be measurable. They must be kept under constant review so that any undesirable effects may be swiftly identified and remedied. Evaluation and analysis methods are the essential tools that make it possible to determine the relevance and effectiveness of regulatory measures.

To identify those areas in which regulation is needed, the whole of the ICT environment must be analysed, including the widest possible array of players (the private and public domains, infrastructure, communication services, media content and information society services). The figure below contains a highly simplified diagram of the main areas that need to be examined to identify, after in-depth study, at what levels and in what areas regulatory action is needed (justifiable).

The regulator should also be particularly attentive to vertical and horizontal integration and the implications of the revolution of the telecoms market on other sectors (health, education, justice, national security and so forth).



Promoting convergence to develop ICT markets and realize its benefits (what role for telecommunication regulators in promoting convergence?)

Convergence in the area of ICTs is being driven largely from the combination of **technological progress** (digitization, expansion of transmission capacity, networks based on IP protocol, etc.) and the need for operators to amortize quickly their network infrastructure costs and their investments in general (**economic rationalization**).

Communication services, hitherto offered over dedicated networks, can now be accessed using a growing number of platforms. Providers are branching out into new areas, and entering one another's traditional markets. Others are focusing on specific areas and offering additional high-value services. This market restructuring is proceeding naturally.

Convergence is taking place all by itself, driven on by the market, and does not need any encouragement from the authorities. However, the authorities do need to ensure that they derive maximum advantage from convergence in order to achieve their objectives, that is, to identify areas

of general policy in which they should intervene to encourage investment that will contribute to the overall well-being of society. Here, rather than promote convergence, the authorities need to **look closely at how the market is evolving and seize opportunities**: they need to promote, or more accurately to facilitate, investment in infrastructure and the development of innovative and accessible products and services that can help meet people's needs, while guaranteeing healthy competition amongst the various players.

This is why it is essential that lawmakers' legitimate objectives for ICT policy be clearly laid down in legislation and remain in force over an extended period (**legal certainty**). An approach that does not depend on the technology used (**technological neutrality**) is better able to meet this criterion even if the principle of technological neutrality becomes difficult to apply in regulatory texts (lower-level legislation).

When regulation does not focus on the technology used, provided it is not applied dogmatically, this also makes it possible to simplify and clarify legal requirements for bringing new products and services to market. This means that technological developments should be better able to take account of regulatory requirements right from the inception of new products and services. Similarly, the length of time needed to develop new products and services and bring them to market will be reduced. As a result, there is less risk for developers and manufacturers while creating a more attractive investment market. Another advantage is that competition is encouraged between different technologies offering equivalent services, which in the end means that the most effective technology for each particular situation can be identified.

Building effective regulatory institutions (converged regulator or cooperation amongst sector-specific regulators?)

At the national level

Often, the authorities responsible for regulating radio and television broadcasting are separate from those that regulate telecommunications. And the authority that administers radio frequencies is often another body separate from the first two, as is the competition regulator.

Today, however, convergence is seeing telecommunication infrastructure being used to broadcast radio and television, while radio and television broadcasting infrastructure is being used to provide telecommunication services such as telephony and Internet access. A single regulatory umbrella (as in the case of OFCOM in Switzerland), taking in all regulatory aspects relating to all ICTs as a whole, generally makes for greater synergy and stronger collaboration amongst experts in different fields.

It has to be recognized that **media policy** has very different needs from **communication policy**. Similarly, matters relating to communication infrastructure and matters relating to communication services may also be quite distinct. Nevertheless, good coordination between experts in these areas is essential. The common regulator of the ICT sector must include on its staff not only technical experts but also specialists in law, competition and market analysis to ensure that the relevance and effectiveness of the regulatory function is further strengthened.

It is also important not to overlook the **information society**, whose strategic and policy activities may also be integrated into the overall activities of the ICT regulator, whilst nevertheless leaving the responsibilities set out in sectoral legislation to each of the corresponding authorities (e-health to the health authorities, e-learning to the education authorities, e-government to central government authorities and so on).

At the international level

Generally speaking, products and services are already circulating freely worldwide, and the trend with new technologies and the WTO agreements is for this process to accelerate. Under the recognized principles of sovereignty, each State has its own administration and sets its own laws.

But international cooperation between national and regional authorities is essential for the consistent, effective deployment of the rules that have been established and to assure appropriate oversight of local, national and regional markets.

A "common regulator" cannot be justified for very high-level objectives unless the relationship amongst the States is compatible with a delegation of powers to a "common authority".

Using regulatory tools to stimulate investment in a converged world

The key point in stimulating investment, as presented, centres on **security and legal stability**. And a **technology-neutral approach** is an important factor in contributing towards that goal.

An **appropriate information society policy** will, in coordination with sector authorities, increase the demand for services, reduce costs and broaden the array of services available to users. This will unquestionably stimulate investment and productivity, and not only in the ICT sector.

Promoting and facilitating investment, particularly in infrastructure, is something that will have leveraging effects in other sectors.

In situations where there are **dominant players** holding significant market power, there may be a need for specific regulation. This is often the case of a traditional communication operator dealing with the infrastructure market, and tending to integrate infrastructure and services by means of **vertical integration**. In some cases, **horizontal integration** including network infrastructure and terminals (with proprietary interfaces such as set-top boxes or next-generation terminals) may also become a situation requiring intervention.

The **influence of telecoms players on other sectors** (health, media and culture, etc.) remains a delicate point on which a close watch must be kept to avert developments that might be damaging to society.

In this context, it is in the interests of a **dynamic, innovative market** that consumers should be guaranteed straightforward access to the services offered by all players in the market, with full transparency (clear listings of products on offer, with a description of the products and their performance), while limiting the possibility that customers may be locked in for excessively long periods of time. Regulation must in particular be concerned with situations in which there are barriers to switching providers, particularly where bundled services are concerned.

Stimulating growth in innovative applications and devices towards connecting the unconnected

The lowering of prices resulting from the sharing of common infrastructure costs and the more rational use of resources, as well as the broadening of the array of services available to users, will without doubt encourage investment and not only in the telecoms sector. Here, ICTs are to some degree having a leveraging effect on other sectors.