Response to the House of Lords Inquiry on media convergence

Submission from Ofcom

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Contents

One page summary

Ofcom welcomes the opportunity to contribute to the Committee's inquiry on media convergence. Media convergence applies to a whole range of Ofcom's work and is at the heart of the regulatory and policy changes that the communications sector is currently facing.

This document sets out the major market developments that have driven or resulted from convergence in the communications sector. In particular, convergence has been possible through the adoption of common standards that allow content to be shared easily across devices. The rise of Internet Protocol as the standard for the internet has been central to this process.

This document is wide ranging, but we regard the following areas as priority areas for consideration:

- The boundaries between different types of media and how they are distributed are likely to blur. As a result, the current regulatory approaches and structures may not continue to give viewers the protections and assurances they have come to expect. There is an important debate to be had on the balance between personal responsibility and increased regulatory protection in a converged world (pp.13-15).

- Future developments may challenge the current relatively stable pattern of high levels of investment in UK content. It may be prudent to consider whether targeted amendments to the existing regulatory regime are necessary – in particular it may be necessary to reform the prominence regime for public service broadcasters (pp. 20-25).

- The competition regime should be capable of keeping pace with the changing competitive landscape. It is important that flexible ex-ante competition powers are available to take effective action if necessary (pp. 16-17).

- There needs to be greater symmetry in the regulation of the individual services which make up the converged 'bundles' now widely available (telephony, broadband and payTV) to avoid the risk of distorting competition (pp. 17-18).

- The challenge of regulating in a global environment is increasing. Of particular concern is jurisdiction in relation to protection of minors. Regulation needs to be proportionate and realistic, but needs to be able to deal with the most serious cases of harm (pp.26-28).

Section 1

Introduction

1.1 Ofcom welcomes this opportunity to submit evidence to the House of Lords Communications Committee's inquiry into media convergence and its public policy impact. As the United Kingdom's independent regulator for the communications sector, Ofcom's principal duty in carrying out our functions (set out in section 3(1) of the Communications Act 2003) is:

a) to further the interests of citizens in relation to communications matters; and

b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

1.2 Ofcom has a significant number of statutory duties and powers relevant to the Committee's questions. In particular, in meeting those duties, Ofcom:

- is required to secure the availability throughout the UK of a wide range of electronic communications services;
- is required to secure the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
- is required to have regard to the desirability of promoting competition in relevant markets; and
- is required to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

1.3 Media convergence is a broad term that is applied to several phenomena within the communications sector. In 2007 Ofcom defined convergence as *the ability of consumers to obtain more services on a single platform or device – or obtain any given service on multiple platforms or devices*.

1.4 Convergence is driven by many different factors, including technological advances, more open technical standards, increased economies of scale as markets become global, and the adoption by consumers of always-on digital technologies such as smartphones and broadband.[1] This definition continues to be relevant as more platforms and services become multi-functional and consumers have access to ever greater sources of content and services.

1.5 The Committee's questions touch upon some of the main challenges for Ofcom regulating in the communications sector. Ofcom has carefully considered the trends and effects of media convergence across the last decade. Specifically Ofcom conducts extensive research in order to support its regulatory goal to research markets constantly and to remain at the forefront of technological understanding. Much of the research and analysis Ofcom carries out informs our strategic direction, set out in our Annual Plans, on which we consult at the beginning of each year.

[1] http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-plans/annual-plan-2007-08/

1.6 This response sets out some of the major market developments and consumer trends we have observed in the communications sector over the past decade. It then goes on to set out some of the regulatory challenges that arise, focusing specifically on the areas of interest identified in the Committee's call for evidence. We have carefully considered some of the implications for the current regulatory framework and have highlighted areas the Committee might like to consider further.

Regulation and convergence

1.7 Ofcom is a converged regulator allowing it to look broadly across communications markets and consider market trends and interdependencies between sector specific issues. This ensures regulatory interventions and deregulatory initiatives are well targeted and efficient.

1.8 But while Ofcom takes this converged approach, the overall legal framework remains sector specific. In the first instance, there remain strong reasons why this should be so – the economic, cultural and social purposes underpinning, for example broadcasting and telecoms regulation remain different.

1.9 In the second instance, European law governs significant parts of the regulatory landscape, affecting the UK's ability to take a different approach on convergence issues. The Common Regulatory Framework establishes a harmonised framework for the regulation of electronic communications networks and electronic communications services by EU Member States. The applicable rules are contained in a package of Directives, in force since 2002 and revised in November 2009.

1.10 Together, the Directives establish a pan-European system of regulation with the aim of developing a better-functioning internal market for electronic communication networks and services. This covers all forms of transmissions networks and services, including fixed and wireless telecoms, data transmission and broadcasting. Notably, the Common Regulatory Framework does not extend to the regulation of the content carried by such services. In the UK the Common Regulatory Framework has been implemented principally by the Communications Act 2003.

1.11 The AVMS Directive applies to the regulation of TV (but not radio) and includes 'TV-like' services delivered over the internet and including 'video on demand' services (i.e. programming selected by individual users rather than broadcast for general reception). Provisions in the AVMS directive were transposed in the Communications Act to set out a number of duties which Ofcom must act upon in order to fulfil the UK's obligations under the European framework.

Principles of effective regulation

1.12 When considering the regulatory frameworks for a converged communications sector the principles of effective regulation Ofcom set out in its response to the Leveson Inquiry in April 2012 may be helpful. The experience we have in regulating a number of sectors and working with a variety of statutory, co-regulatory and self regulatory bodies suggests there are some core principles shared by all effective regulation.[2]

1.13 Any future regulatory framework should include a wide range of mechanisms to secure positive outcomes for citizens and consumers. Given the pace of change and the complexity of many of the challenges addressed in this document, in principle self-regulatory models and a greater focus on industry-led initiatives could be

[2] These principles are set out in detail in the annex to this document.

required to play a greater role in delivering desirable public policy outcomes. However, the increasing complexity of business models and more complicated business value chains in an IP environment could also lead to more complicated requirements on self regulation and industry-led approaches. The challenge for industry will be to develop self regulatory approaches which are credible and effective. This is most likely to occur where there is strong alignment between the incentives of industry participants and the wider public interest.

Section 2

Market developments and consumer trends

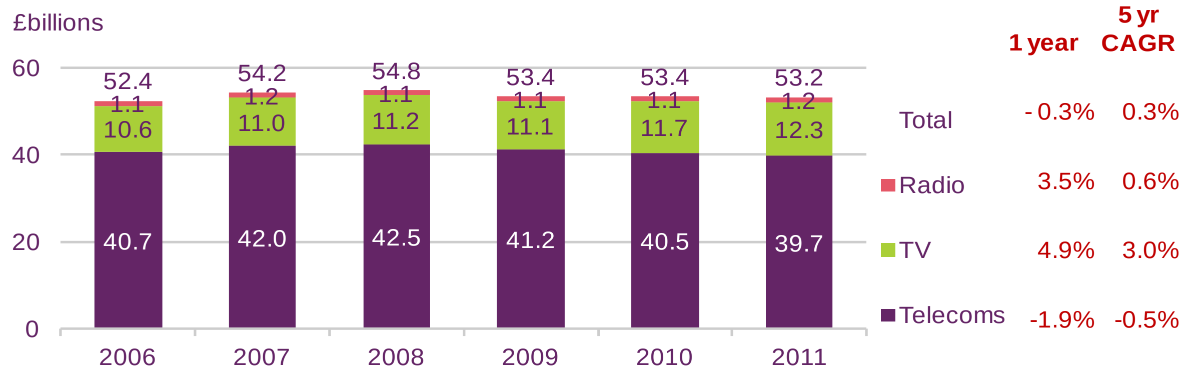
2.1 The communications sector is changing, driven by a mix of technological development, evolving industry services and business models, changing consumer preferences and behaviours. At the centre of all of these changes is the internet. Convergence in technology has meant the move to Internet Protocol (IP) across a range of networks, services and devices. For industry, convergence means a change to the underlying economics of distribution for many services and the launch of new services. For consumers, it means accessing content, services and applications in new ways and on new devices.

2.2 This section provides a brief overview of Ofcom's observations of how consumers and industry engage with media convergence. Ofcom holds a significant body of consumer and industry related information on convergence and would be pleased to provide a deeper and wider ranging discussion of our evidence base should the Committee require it.

The UK communications market is a large and important part of the UK economy

2.3 In 2011 the total UK communications industry revenue was £53.3bn, down 0.3% year on year from revenues of £53.4bn (Figure 1.1). Within this total both radio and television revenues rose year on year by 3.5% and 4.9% respectively. The TV market was driven by growth in subscription revenues and increasing advertising revenues. Telecoms revenues fell by 1.9% year on year. This was mainly the result of reductions in fixed call and access revenues and operator reported wholesale revenues.

Figure 1.1 Communications industry revenues: 2006 to 2011



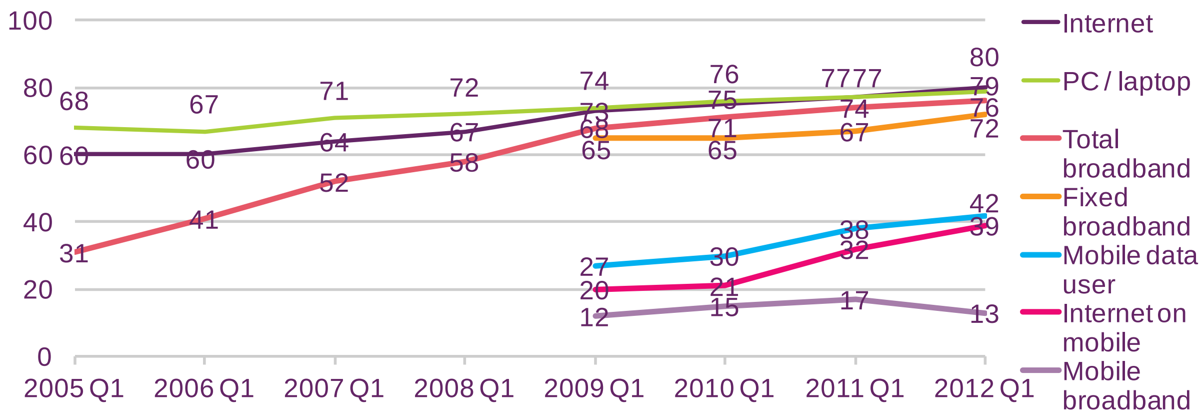
Source: Ofcom/Operators. Note: Includes licence fee allocation for radio and TV. Figures expressed in nominal terms.

The internet plays a key role that cuts across all sectors of the communications market

2.4 Convergence has been possible through the adoption of common standards that allow content to be shared easily across devices. Of particular note is the rise of Internet Protocol (IP) as the standard for the internet. IP allows data to be decoupled from the mechanism by which data is physically moved from one place to another. In simple terms, this allows you to view text, audio, and audio-visual content on the internet, as you would on a traditional device, but on any device which can use IP such as a smartphone, tablet, smart TV, PC or laptop. In theory, these devices could all receive the same content; however, in reality there are often differences between the networks over which the device connects and the software and hardware design of each device which changes the internet experience and type of content available.

2.5 Household internet access rose to 80% in Q1 2012, up from 60% in Q1 2005 (Figure 1.2). 76% of households now have broadband internet access, compared to 31% in 2005. There have also been significant increases in the proportions of adults using mobile data (via mobile broadband dongle or handset) and browsing the mobile internet since 2009.

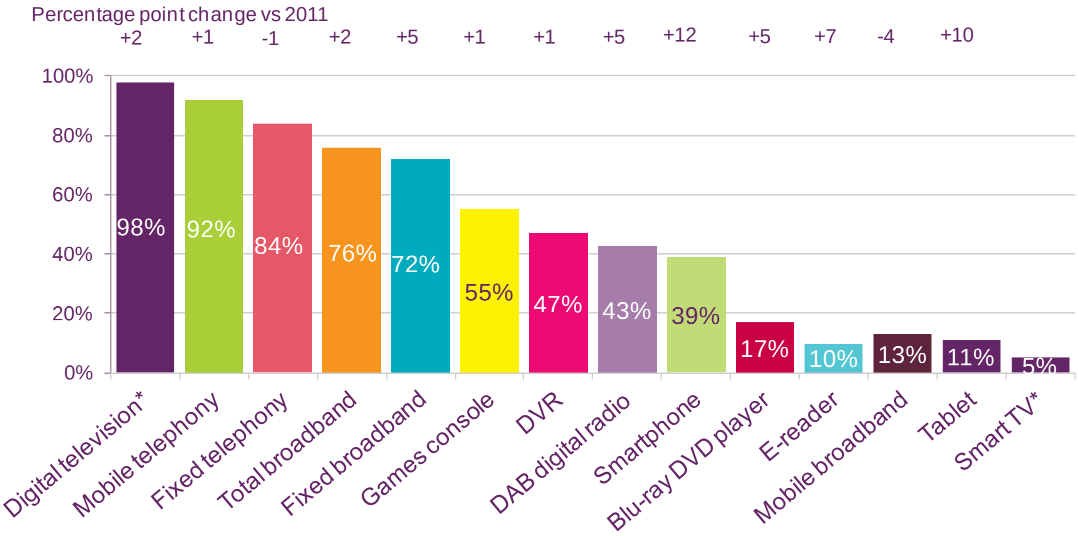
Figure 1.2 Internet take-up by platform: Q1 2005 to Q1 2012



Take-up of internet connected devices is increasing but traditional services remain popular

2.6 Consumers now own more devices that can connect to the internet. Figure 1.3 demonstrates the rapid growth of devices that allow consumers to access digital content easily. Nearly 4 out of 10 households now own a smartphone, and just over 1 in 10 households own a tablet, up from around 1 in a 100 households in 2011. However, it is important to recognise that traditional services such as digital television and fixed telephony remain hugely popular and are still the most widely adopted services.

Figure 1.3 Take-up of digital communications services and devices: Q1 2012

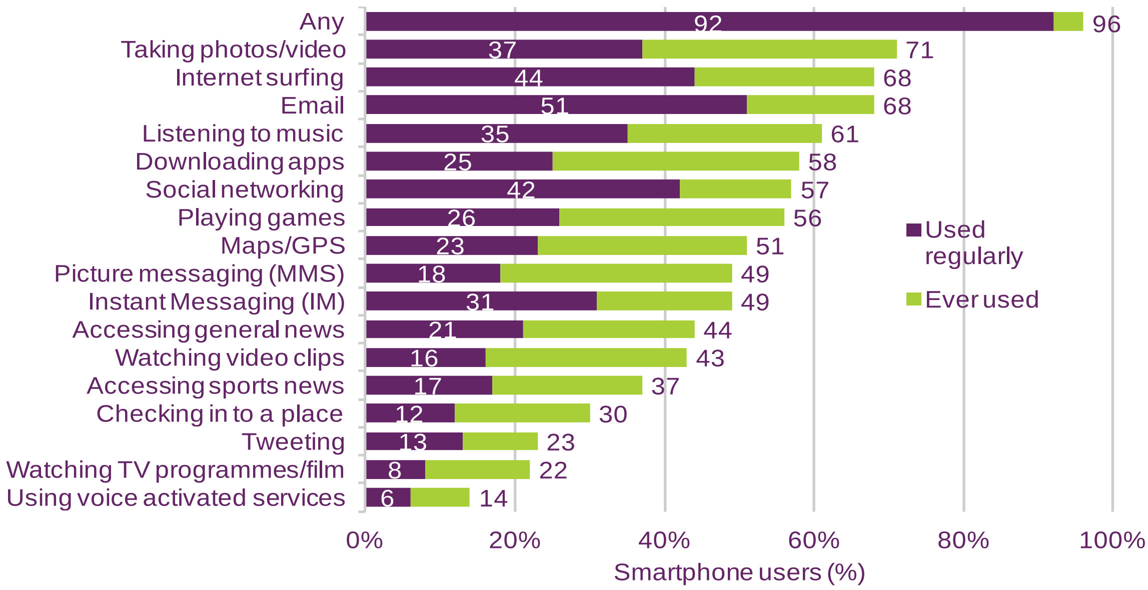


Source: Ofcom. DAB take-up from RAJAR Q1 2012. Base: All adults aged 16+ (n=3772). Base for DTV and Smart TV: Households with a TV (n=3713). Note: Mobile telephony, smartphone and e-reader figures refer to personal take-up, all other figures refer to household take-up.

Consumers are using their internet connected devices for a wide range of activities

2.7 Consumers who own and use devices that can connect to the internet use them for a variety of activities. Figure 1.4 shows some of the activities for which smartphone owners use their devices. The most popular activities are taking photos/videos (71%), surfing the internet (68%) and email (68%). However, the proportion of users who claimed to undertake many of these activities regularly is, in many cases, quite low.

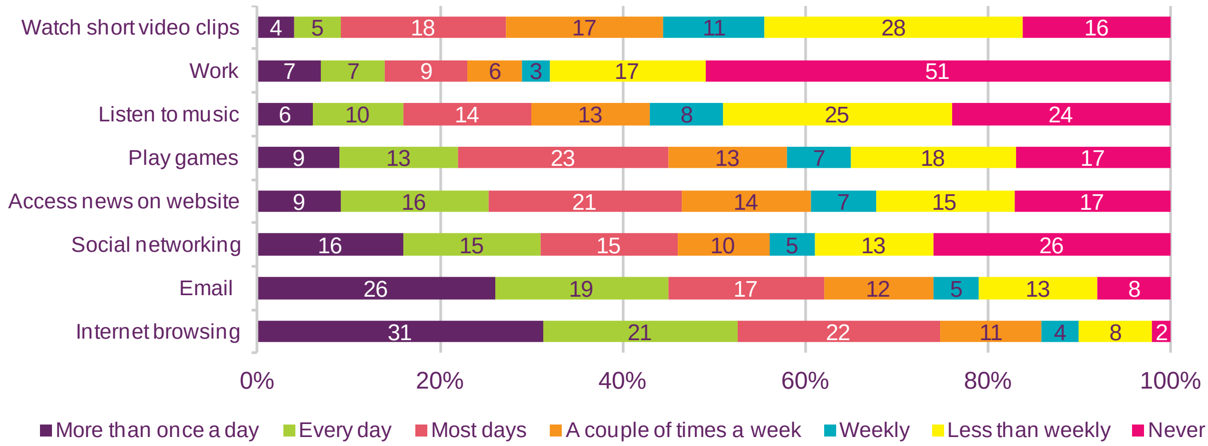
Figure 1.4 Activities conducted on a smartphone by UK adults



Source: Ofcom Omnibus Research

2.8 Tablet devices are often held up as true convergent devices, with a number of functions in addition to internet access. Although the proportion of tablet owners is small, the number of people who are purchasing them is growing rapidly (17% of households intend to buy one in the next year). Figure 1.5 shows how frequently owners of tablets use their device for different activities. Excluding work, at least three quarters of all tablet owners engage in a rich variety of activities. More than 60% are accessing news a couple of times a week or more and more than 80% of people are using their tablet to access the internet a couple of times a week or more.

Figure 1.5 Frequency of activities using a tablet



Source: Ofcom. Base: All respondents with a tablet computer (n=500).

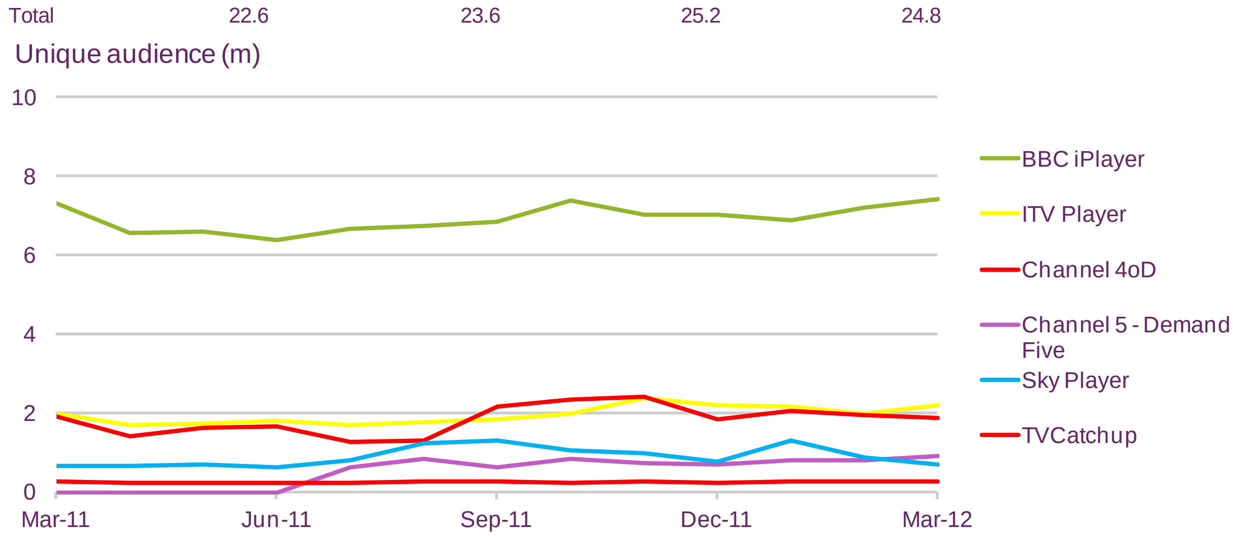
2.9 As consumer audio-visual devices have improved and condensed in size, so too has the capacity for consumers to watch, listen and read content whilst on the move. Many of the most recent consumer devices such as smartphones, e-readers, tablets, and netbooks are portable, and unlike more traditional and larger devices such as the desktop PC or television set, enable consumers to consume content outside of the home. Furthermore, 3G mobile networks and Wi-Fi hotspots enable devices to download or stream content when away from a home internet connection. However, our consumer research presents a mixed picture: despite 52% of tablet owners claiming portability as a reason for purchasing their device, 87% of owners claim they primarily use their tablet in the home. Similarly 53% of e-reader owners claim portability as a reason for purchase, despite two thirds (67%) of consumers primarily using their e-reader in the home.

The impact of convergence on traditional media businesses has varied

Linear television viewing is resilient alongside new catch-up TV services

2.10 Convergence is evident where traditional companies offer new services that provide benefits for consumers and different ways of accessing content. Figure 1.6 shows online catch up TV services on desktop and laptop computers in the last year. The BBC is the largest provider with around 7m unique users each month. The number of consumers using catch-up TV services has remained broadly flat with 24.8m viewers in March 2012, compared to 24.7m in March 2011.

Figure 1.6 Unique audiences to online catch-up TV services



Source: UKOM/Nielsen, home and work panel. Note: Demand Five trend data not available prior to March 2010 due to change in UKOM definitions.

2.11 Meanwhile traditional TV viewing (also referred to as live or linear viewing) remains strong. Viewing is broadly flat. On average in 2011 viewers watched 4 hours of TV per day. At present, linear viewing still dominates, with less than 10% of viewing being on-demand across all homes (Figure 1.7). Even homes with access to a multitude of on-demand content do not use these services as the main mechanism for watching TV.

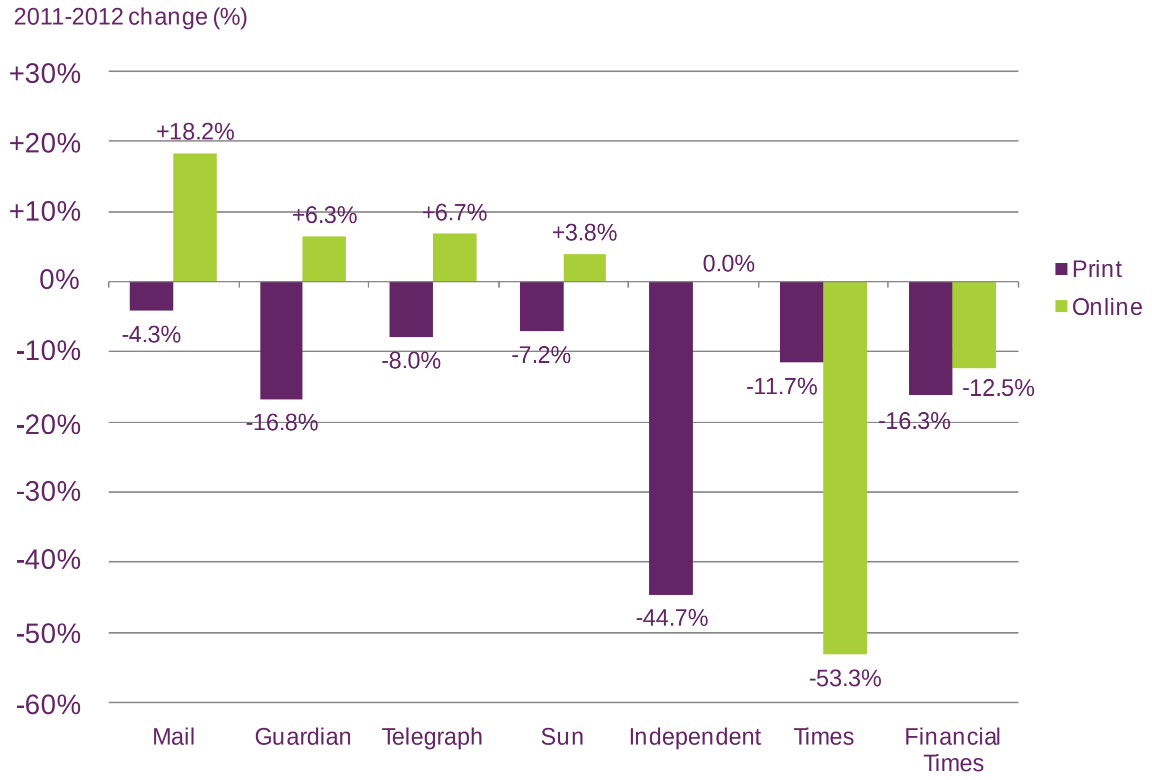
Figure 1.7 Average minutes of television viewing per day by type

Source: BARB / Enders / Infosys. Note: New BARB panel introduced in 2010. As a result, pre- and post-panel change data must be compared with caution.

Print newspaper sales have fallen as online models of distribution have emerged

2.12 A comparison between online and print versions of UK newspapers shows growth in online content, but a more significant decline in print circulation. The newspaper titles included in Figure 1.8 all reported year-on-year decreases in the headline circulation of their print versions, alongside varying degrees of success in growing the unique audience of their online versions. This is partly explained by the divide between free and paid-for models of online newspaper content consumption; although there is also a question as to whether the relationship between print and online is necessarily substitutional, or complementary.

Figure 1.8 Year-on-year changes in headline circulation of print versions and unique audiences of online versions of selected newspapers: March 2011 and March 2012

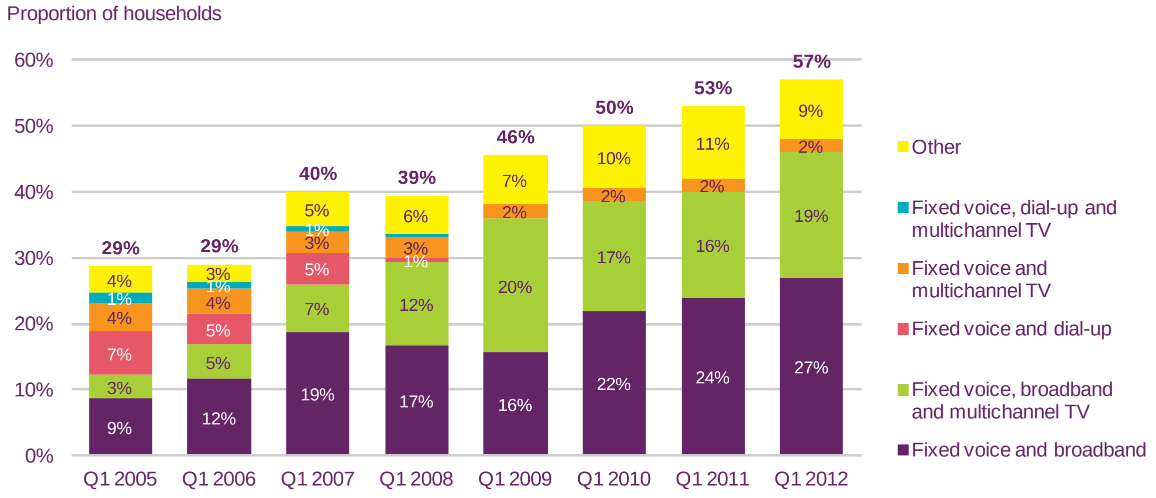


Source: ABC/ UKOM/Nielsen.

Consumers are purchasing more services in bundles

2.13 More consumers are purchasing communication services in bundles – i.e. buying more than one service from the same provider. Figure 1.9 shows that 57% of UK households purchase communication services in a bundle. This has grown steadily since 2008. The most popular type of bundle remains a dual fixed voice and broadband package, purchased by 27% of UK households in Q1 2012. Taking a triple play bundle of fixed voice, broadband and multichannel TV accounted for 19% of UK homes, up by 3% on the same period last year.

Figure 1.9 Take-up of bundled communications services over time: Q1 2012



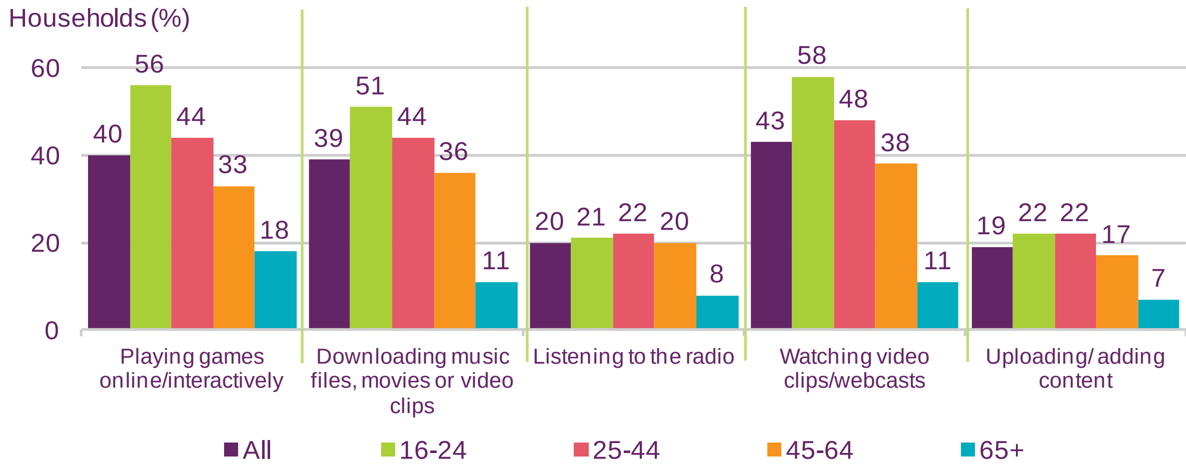
Source: Ofcom. Base: All adults aged 16+ (n=3772).

Younger people are more likely than older people to use the internet for activities related to converged media

2.14 Another trend we observe is a demographic split in use of the internet. Younger people undertake more media and communications activities in total than older people with a consistent downward trend in the older the demographics. Conversely younger people squeeze their media consumption into the smallest overall time, simultaneously accessing a range of devices.[3]

2.15 Figure 1.10 below shows the percentage of people who undertake different internet activities broken down by age. With the exception of radio where all groups are effectively the same there is a consistent drop off in rates of participation as age increases.

Figure 1.10 Household internet activities, by age: Q1 2012



Source: Ofcom. Base: All adults who have the internet at home (n=2823).

[3] http://stakeholders.ofcom.org.uk/binaries/research/811898/consumers-digital-day.pdf

Likely future trends

2.16 There is a breadth of data, demonstrating the changes and continuity in consumer behaviour, much of which is often tied to convergence. From our market and consumer research we can infer a number of broad trends about how the communications sector might develop over the next few years.

a) The consumer proposition has changed dramatically. Consumers now have access to more powerful network-agnostic devices with increased functionality. This has led to an introduction of OTT (over the top) services, which consumers can receive on multiple devices. One challenge that arises from this is in the regulatory protection afforded to consumers on television. Smart TVs and connected devices mean the audiovisual content delivered to a television set might be regulated under a number of different frameworks or not at all. These potential challenges are set out in Section 3 on content standards regulation and the challenge of regulating in a global marketplace is set out in Section 6.

b) Traditional mass-market services and devices are running alongside, ubiquitous, always-on connected devices. For example, traditional television viewing is fairly stable at present, with viewing habits only beginning to change at the margins. There are, however, more ways for viewers to access and consume content than ever before. The current model of investment in high quality public service content may begin to be threatened if mechanisms of accessing and viewing content begin to attract larger audiences than linear television. The challenges this presents are set out in Section 5 on convergence and content creation.

c) There is an increasing variety of distribution mechanisms and business models for content, media and services. The increasing use of internet protocol is a major driver of change in the industry; delivery of content services over IP networks changes the cost structure of distribution in comparison to traditional broadcast platforms and hence, in some cases, has the ability to deliver new services which were previously economically unviable.

   Major communications companies have also moved into adjacent markets. Sky offers broadband, Wi-Fi and telephony services in addition to satellite television, and BT offers television services in addition to fixed line phone and broadband products. Consumers are also increasingly buying bundles of communications services.

   Both of these trends pose a number of new competition questions and challenges, which are addressed in Section 4.

Section 3

Convergence and content standards regulation

3.1 This section sets out changing audiences' expectations of regulation in an age of interconnected devices and examines some of the implications for the current regulatory framework.

Protection, assurance and the public's view - Ofcom research

3.2 In February 2012, Ofcom published a deliberative research report entitled 'Protecting audiences in a converged world'.[4] The research looked at public attitudes within the context of convergence, in order to understand the public's expectations for protection and how content should be regulated in the future.

3.3 Our research indicates that audiences have continuing high expectations for the regulation of linear broadcasting and also may want more assurance for video on demand (VoD) services. Some of the key findings from the research include:

- Knowledge of current content regulation is currently high for broadcast services but lower for other services (such as catch-up and VoD);
- Viewers have high expectations of content regulation on broadcast television, and associated VoD and catch-up services. These expectations are highest for the public service broadcasters (PSBs);[5]
- Other online audio-visual content is seen to be different from broadcasting content and people have generally lower expectations about regulation in this area. Participants were also less concerned that the open internet should be regulated in the future;
- Converged or connected TVs, which incorporate broadcast, VoD and open internet services, are considered to be closer to a TV-like experience. Audiences therefore expected content over these devices to be regulated closer to the level for broadcast TV than internet content accessed through the open internet, such as PCs and laptops;
- Participants wanted more provision of information to help them understand the types of content they are accessing and the level of regulation it is subject to;
- Participants said that there is a supporting role – although not a full solution – in the provision of content controls and information to facilitate viewing choices;
- Protection of minors and protection from harm were seen as the most important parts of existing regulation. In a converged environment, the vast majority favoured regulation in these areas across more audio-visual services and platforms, at the same or a greater level than they see today on broadcast TV;

[4] http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf
[5] The public service broadcasters are the BBC, ITV1, Channel 4 Corporation and Channel 5 and S4C in Wales.

- Overall, most participants felt that regulation of content should be maintained or potentially increased in a converged world: particularly for broadcast television and VoD services. They felt that consistent regulatory standards should apply to broadcast television, VoD and catch-up services, and wanted a consistent level of regulation for the same branded services across these ways of accessing content.

3.4 Ofcom research *'UK audience attitudes to the broadcast media'*, published in August 2012, also looked at public attitudes towards current levels of regulation for broadcast TV programmes and the internet.[6] In summary, this research found that 89% of respondents stated that they thought TV programmes are regulated, and 74% felt that the current levels of TV regulation were 'about right'. By comparison, 41% of respondents stated that they thought the internet was regulated. In addition, 44% felt that current levels of internet regulation were 'too little' (increasing to 51% when asking parents), 23% said 'about right' and 32% said that they 'did not know'.

3.5 Our research also identified that 73% of respondents were aware that it is possible to watch/download programmes online. Among those respondents, 58% thought that the content is regulated and 10% were not aware.

Response to the challenges and changes of convergence

3.6 The changing digital media environment will present a number of challenges to media regulation in the future. This is an area Ofcom has recently addressed in both our Chief Executive's speech to the Oxford Media Convention in January 2012,[7] and our submission to the Leveson Inquiry on the future of press regulation, dated 2 April 2012.[8]

3.7 In summary, Ofcom has proposed that the current regulatory structure may not give viewers the protections and assurances they expect in a converged world. We have suggested; however, four main areas to think about in the future:

a) We should avoid changing the established regulation around broadcast TV. It is respected and trusted by the public, and understood by practitioners.

b) We should strive to preserve the spirit of the open internet. In light of the hundreds of thousands of services emanating from places well beyond the UK or even EU jurisdiction, it is also recognition of what is practical.

c) There is a task for the government, regulators and industry to provide clear information, education and a framework of personal responsibility through which individuals and families can exercise informed choice.

d) When something looks, feels and acts like TV, but is delivered as video on demand over the internet and into people's living rooms, we need a model of regulation that does not create unnecessary burdens on industry, but meets audiences' expectations and provides the right degree of reassurance (as supported by our research).

3.8 A single cross media regulator would almost certainly be undesirable. However, in the context of blurring boundaries between content and distribution, there may be an

[6] http://stakeholders.ofcom.org.uk/binaries/research/tv-research/UK-Audience-attitudes.pdf
[7] http://media.ofcom.org.uk/2012/01/25/speech-to-the-oxford-media-convention/
[8] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Ofcom.pdf

opportunity to establish a core set of principles and aims which are held in common across a diverse media landscape with different regulatory frameworks. Such a set of core principles could be established between the regulators that emerge from the current debate, with the aim to make regulation more coherent and clear for both consumers and industry.

Online protection

3.9 Convergence presents specific challenges for children and parents and protection of children online is one of the critical challenges facing the current regulatory framework. In 2012 91% of children aged 5-15 live in a household with access to the internet through a PC, laptop or netbook, and Ofcom's research shows that children's patterns of media consumption are changing. Children are also increasing likely to use a wide range of portable and personal devices, particularly smartphones and tablets. The ability of parents to monitor what their children are doing online is becoming more difficult, when compared to internet access limited to a fixed point in the heart of the family home.

3.10 Section 11 of the Communications Act 2003 places a responsibility on Ofcom regarding the promotion of media literacy. We fulfil this duty through the publication of Media Literacy research into adults' and children/parents' media use and attitudes. Ofcom also has a seat on the Executive Board of the UK Council for Child Internet Safety (UKCCIS) which brings together over 180 organisations to help keep children and young people safe online.

3.11 Over the last 18 months parental controls have become a key area of focus for the government and UKCCIS. Parental controls are filtering tools that make it possible to block or limit children's access to online content that parents may not want them to see. However these products are not a silver bullet and do not mitigate the need for other strategies to help protect children (such as supervision and education).

3.12 Ofcom's research shows that 46% of parents of children aged 5-15 say that they use technical parental controls packages for desktop PCs, laptops and netbooks. Uptake of controls for television is slightly higher at 50%, while uptake for controls on mobile/fixed games consoles and mobiles is lower. Parents generally view controls as an extra tool to supplement rather than a replacement for parental mediation (rules, monitoring and talking to children). Whilst a significant majority of parents using controls express satisfaction with the solutions, a minority agree that parental controls get in the way of what they want to view online and some disable the tools as a result.

3.13 This presents a particular challenge for industry and the government. The government is currently consulting on various models for delivering parental controls in discussion with industry.

Section 4

Convergence and competition

Introduction

4.1 The following section addresses the Committee's questions around the definition and development of markets, the packaging of services, and the institutional and regulatory structures as they currently stand. We have set out the challenges faced in the communications sector, and explicitly where this raises questions for competition or the competition regime. We have not attempted to set out firm policy positions.

Convergence and technological change

4.2 Technological innovation and convergence is changing consumer behaviour, with evidence to suggest that take-up of new technology services may be accelerating.[9] New services and innovation offer clear benefits to consumers; for example, with the development of on-demand services and more data-capable mobile networks, consumers increasingly want the ability to watch content services not just in the living room determined by a broadcast schedule, but at anytime, and anywhere. In terms of competition, many of these services are still relatively new. At this stage it is unclear whether proliferation of services and devices will lead to a sustainable, dynamic and competitive ecology or, alternatively, whether there will be critical inputs that act as bottlenecks, coupled with increasing network effects, which lead to entrenched incumbent positions or the creation of new ones. There are a number of potential implications for competition policy.

4.3 Convergence may mean greater interdependence between companies when meeting consumer needs. Convergence may also result in the potential for innovation and competition being focused more towards the service level rather than the infrastructure level. For example, there may be a trend towards device ecosystems which integrate consumer devices with operating systems and aggregated services, and in some cases the supply of content, with the aim of delivering a better, more unified, consumer experience. If this is the case, ensuring that consumers are adequately informed and can easily switch services, and content, between providers may become increasingly important.

4.4 New technology enables new services to come to market which compete with traditional, established services but may not themselves be subject to the same regulations, which may lead to competitive distortions. For example, video on-demand (VoD) services may deliver the same content to a living room TV as traditional, licensed linear broadcast channels, but are not subject to the same regulatory requirements in terms of fair and effective competition.

4.5 As consumers increasingly use new media services, this may be at the expense of traditional media services. For example, the growth of online music services, or internet classified advertising, may contribute to the challenges facing traditional local radio stations and local newspapers. Ensuring that consumers benefit from a broad range of media services may involve traditional businesses evolving and restructuring to ensure sustainability. To enable this, the competition regime needs to be capable of keeping pace with the changing competitive landscape.

[9] For example, see Figure 1.23 of Ofcom's Communications Market Report 2011.

4.6 In fast moving dynamic markets it is impossible to predict exactly how these issues will play out. Equally, the risk of consumer detriment resulting from delays to the introduction of new services, or from an inability to reverse competitive distortion after the event, may be very significant. While uncertainty suggests the need for caution before intervening, this observation supports the need to retain flexible ex-ante competition powers to be able to take effective action if and when necessary.

4.7 The pace of technological change also suggests that the regime needs to be capable of acting promptly and effectively when the need arises. In particular, under the current regime, drawn-out litigation involving a root-and-branch review of regulatory decisions is increasingly a feature of competitive rivalry which has rather less beneficial effects for consumers than competition in the marketplace.

Convergence and packaging of retail services

4.8 The UK has a well regarded competition regime, with general competition law applying to all sectors of the economy. Ex-post competition law investigations are typically complex requiring detailed information gathering and analysis, for example to determine whether a dominant firm has engaged in abusive conduct. In addition, the existing legislation has recognised that there are some sectors where consumer interests are not served sufficiently by ex-post competition law, and it is appropriate for these powers to be complemented by ex-ante competition powers. For example, this is the case in both telecoms markets (the EU regulatory framework) and broadcasting markets (sections 316-318 of the Communications Act). As convergence results in previously distinct services being brought together – either due to use of common distribution and devices, or through bundling of packages of services – the greater inter-dependence between these sectors calls for greater scrutiny of their competition regimes (which were designed to operate in distinct sectors) to ensure that they are still fit for purpose.

4.9 The ex-ante telecoms competition regime (determined by EU legislation) requires specified markets to be reviewed every three years, and requires the regulator to impose remedies in response to a finding of market power in order to promote competition (there is no requirement to find the dominant party guilty of an abusive practice before taking action). The ex-ante broadcasting competition regime is different in many respects. For example, the legislation includes provision for the regulator to take action when a licence holder engages in a “practice” which would be “prejudicial to fair and effective competition”. In the context of convergence, there is potential for different treatment of competition issues in the broadcasting sector compared to telecoms, with the effects of any asymmetry in the two competition regimes being amplified and felt across a broader set of services if consumers increasingly purchase them in bundles together.

4.10 To illustrate, convergence, with content services such as Netflix or LoveFilm delivered ‘over-the-top’ of broadband services, is likely to be a positive development for competition in distribution of content services. However, there are areas which are more likely to remain enduring bottlenecks: in particular, access to fixed telecoms infrastructure and access to compelling content. These are key inputs into retail bundles of services for a significant proportion of consumers: in Q1 2012, 19% of UK homes purchased ‘triple-play’ bundles of fixed voice, broadband and TV services, up from 3% in 2005. If the ability to act effectively in terms of these inputs differs between the two regimes then this may risk distorting competition for these retail bundles of services.

4.11 In addition, asymmetries currently exist between the regulatory treatment of different components of service bundles. For example, this means that requirements for consumer protection in relation to the provision of Alternative Dispute Resolution and switching between providers apply to some but not all bundled services.

Convergence and plurality

4.12 The Committee also asks a number of important questions regarding plurality of media providers in the converged world. In June 2012 we published advice to the Secretary of State for Culture, Olympics, Media and Sport and the Leveson Inquiry on measuring media plurality. This report may provide some useful context for the Committee in its deliberations.[10]

4.13 It is important to note that competition regulation and plurality regulation have fundamentally different purposes. Competition is about prices, choice and innovation. Plurality is about the diversity of viewpoints available and consumed across and within media enterprises and whether any one media owner or voice has too much influence over public opinion and the political agenda.

4.14 In our report we argued that it is important to ensure the regulatory approach to plurality remains fit for purpose in the face of a media market that is increasingly converged, with distinctions between platforms blurring, and online growing in importance. We were mindful in making our recommendations that traditional platforms remain important today as a potential means of influencing public opinion. But the report also recognised the growing influence of online as a destination for news and as the main driver of innovative convergent media products.

4.15 In summary, in our advice:

a) We defined plurality as i) ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and ii) preventing any one media owner or voice having too much influence over public opinion and the political agenda. We said plurality needs to be considered both within organisations (i.e. internal plurality) and between organisations (i.e. external plurality).

b) We recommended that there should be a periodic review of plurality every four or five years to complement the existing public interest tests for media mergers. We were not asked to measure plurality itself, neither at a UK-wide nor nation specific level. In terms of scope, a review of plurality should be limited to news and current affairs but these genres should be considered across television, radio, the press and online.

c) We recommended a periodic review every four or five years should be an additional trigger to the existing merger process. We concluded that online and the BBC should be included in any plurality review. Given the dynamic nature of the news market, the metrics framework itself should be assessed – particularly around online - during each review to ensure its continuing efficacy and relevance.

d) We did not recommend introducing a prohibition on news market share. We noted that the only prohibited transactions currently are those subject to the

[10] http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/statement

"20/20" rule.[11] The case for retaining or removing that rule needs to balance the benefits of clarity and certainty on the one hand versus flexibility on the other. We said it is for Parliament to decide where this balance should be set.

e) Finally, we said a review of plurality needs to consider what level of plurality is sufficient. We noted that it will be for Parliament to consider whether it can provide any further guidance on how sufficiency should be defined. Absent such guidance, this may have to be left to the discretion of the body empowered by Parliament to undertake any plurality reviews.

4.16 We have now been asked a number of supplementary questions, and to provide our advice by the end of September.[12] The nature of this supplementary advice is different from that provided in June. Some answers are higher-level in places, setting out the main issues and choices that we have concluded the government may face and wish to explore further as part of their ongoing deliberations around the new Communications Bill.

[11] This prevents an organisation with more than 20% of national newspaper circulation from holding a share of 20% or more in a Channel 3 licence or licensee.
[12] http://www.culture.gov.uk/images/publications/SoS_letter-to-Ofcom-18-June-2012.pdf

Section 5

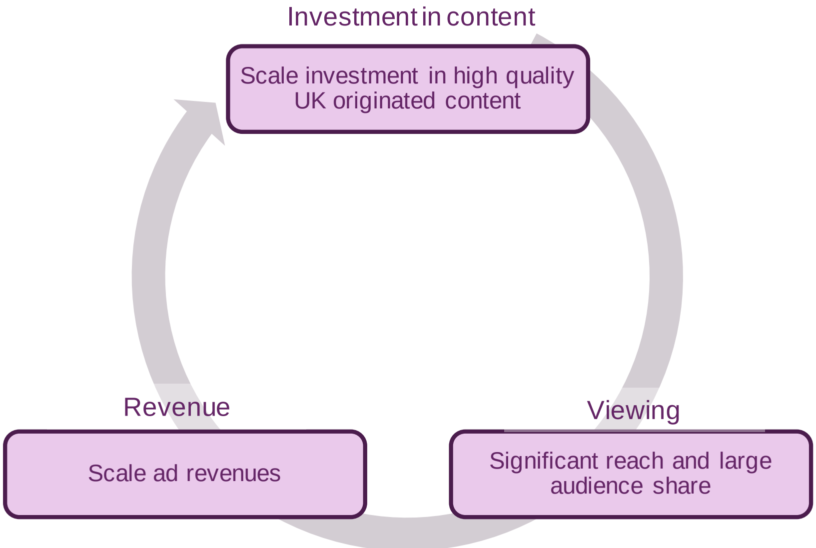
Convergence and content creation

5.1 The Committee has asked a series of questions that the communications sector is considering at the moment. We have focused our response around the TV content industries, as this is the area where we have direct regulatory experience.

5.2 The UK has a successful content sector, delivering a mixed ecology of public service and commercial output. The regulatory regime continues to provide important interventions to secure desirable public service content and there are increasing global opportunities for UK companies to exploit UK content, building on the strength of UK brands and a healthy and thriving production sector. Convergence presents both challenges and opportunities to the key players in this sector.

5.3 To understand the impact that convergence has and may have on the creation of UK content, it is worth exploring how the system has historically operated. Incentives to invest in content are based on a 'virtuous circle' that was originally rooted in an analogue environment. In the past, significant reach and large audience share drove scale advertising revenue which in turn produced scale investment in high quality UK content.

Figure 1.11 Virtuous circle of content investment



5.4 The success of the current content system continues to be a result of these three interlinking factors. However, future developments in the industry – including the impact of convergence – may challenge different aspects of this virtuous circle.

Key drivers of change

Changes in consumption

5.5 On average in 2011 viewers watched four hours of TV per day, which has remained stable year-on-year. At present, linear viewing still dominates, with less than 10% of viewing being on-demand across all homes. Even homes with access to a multitude of on-demand content do not use these services as the main mechanism for watching TV. However, a move by viewers towards different methods of consumption (i.e. time-shifted, on-demand viewing) might disrupt the current content ecosystem. If viewing becomes more fragmented, then consequential revenue streams and investment for current broadcasters could drop.

5.6 New types of technology are now available which allow content services to be consumed and sold to audiences in different ways. From new ‘over-the-top’ services like Netflix and LoveFilm to connected platforms such as YouView, there are more ways for viewers to access the content they want to watch. The take-up and use of these technologies varies, as does their growth in share of viewing, but consumption of non-linear content is likely to grow as suitable devices become ubiquitous, and take-up of broadband services increases.

5.7 Timeshifted viewing represents the majority of non-linear viewing, and is mostly done through digital video recorders (DVRs). Catch-up services are the next biggest and fastest growing form of non-linear consumption, but these are still small in relation to DVR use. Smart TVs – which mix several different types of functionality – are an emerging market.

5.8 Despite these trends, there may be good reasons to believe that linear viewing will remain the mainstream method of consuming content in the medium term at least.

5.9 Certain factors that drive linear viewing currently will continue to be relevant during this period, even as non-linear delivery becomes more mainstream and available. These factors include:

- *The ‘water-cooler’ effect*: Discussing TV shows with friends and colleagues relies on a linear TV schedule. This is reflected by the fact that 50% of timeshifted viewing actually takes place on the same day as the live broadcast. Services such as social networks which enable instant communication have the potential to reinforce further the importance of live linear viewing.

- *Event TV*: Some TV programmes (such as sport, entertainment show finals and events of national importance) will always be predominantly viewed live. New methods of distribution might actually expand the number of event broadcasts – for example, either through more extensive coverage of high-profile events (such as the additional services offered by the BBC during the London 2012 Olympic Games), or content from new providers who have experimented with live broadcasts online (such as the Royal Opera House).

- *‘Lean back’ consumption*: Accessing on-demand content has often required users to make active choices (either to record a programme in the first place, or to search for the content they want to watch). The linear TV schedule will continue to prove popular with consumers who want a more passive viewing experience.

5.10 The technology which enables non-linear viewing has been available for a number of years (for example, Sky+ was launched in 2001) and households that have adopted these technologies do not appear to have markedly changed their behaviour, with linear viewing still the predominant method of consumption.

5.11 It is possible; therefore, that linear TV will remain the primary method of consuming content for the foreseeable future, with only incremental shifts towards non-linear viewing as penetration of devices and services continues to increase.

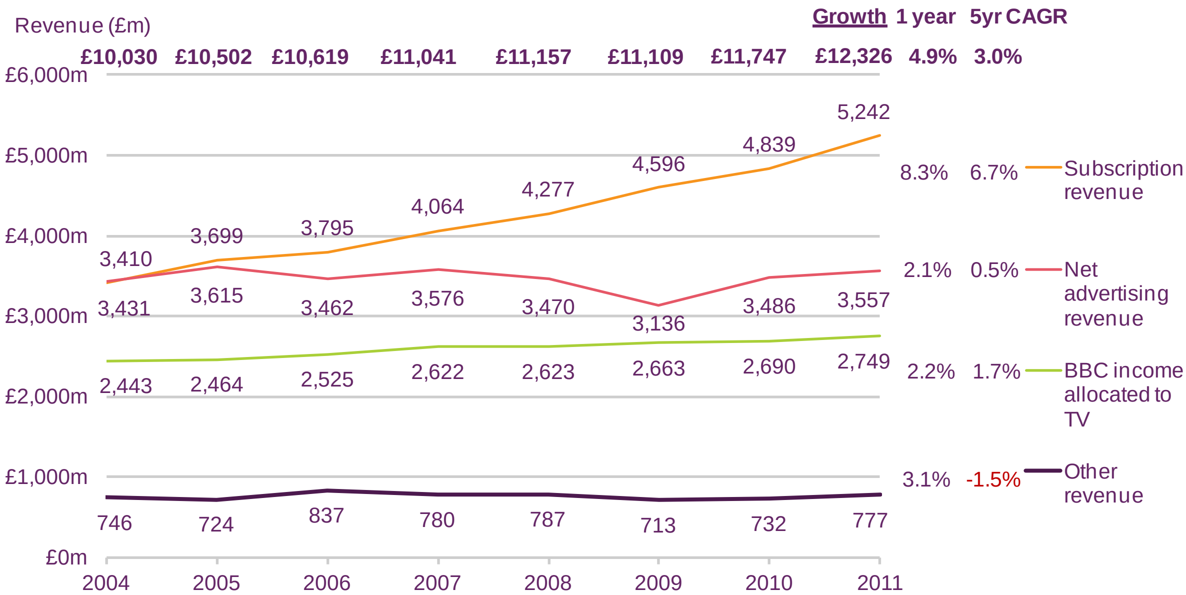
5.12 The biggest consumption change is likely to be in how consumers discover content. To date, DVR devices such as Sky+ and Virgin Media's previous offerings have tied timeshifted viewing of recordings to linear discovery and linear distribution. Users select the programmes or series they wish to record from the same electronic programme guide (EPG) that they use to navigate live linear TV schedules.

5.13 However, as devices and services evolve, this linear way of consuming content may not continue to be the default. Alternative methods of navigation could develop which differ markedly from existing linear EPGs. If consumers do begin to discover content in different ways *en masse*, the consequential fragmentation of audience could in turn impact on the prominence of UK content and the virtuous circle of commercial content investment.

Changes in revenue

5.14 The TV sector as a whole continues to grow, driven in the main by an increase in pay-TV subscription alongside stable advertising revenue and public funding.

Figure 1.12 Total TV industry revenue, by source



Source: Ofcom CMR – Ofcom/broadcasters. Note: Figures expressed in nominal terms

5.15 The rise of the internet has had a profound effect on the UK advertising market. This change has come at the expense of existing media. But the effect on TV has been less marked. TV's share of total UK advertising spend in 2011 (29%) is at a similar level to 2005 (30%).[13] This suggests that the key strengths of TV advertising such as the mass reach it delivers are viewed by advertisers as unique, and not at present replicable by more targeted online offerings. However, the ability to deliver reach as audiences continue to fragment will be central to TV's future appeal to advertisers.

5.16 Changes in technology, regulation and distribution have also enabled a range of new models to generate income from content exploitation (including VOD, pay-per-viewVoD, PPV, TV shopping, sponsorship etc). However, they remain small relative to advertising, subscription and the licence fee and are complementary to these

[13] Advertising Association

sources rather than representing a viable alternative income stream. Any significant change in the major sources of revenue would have a clear impact on the traditional model of content investment.

Changes in content investment and production

5.17 Currently, spend on UK TV programmes is increasing, but the relative mix of spend and funding is changing. Whereas historically the PSBs were almost entirely responsible for all expenditure on UK originations, the multichannel sector and independent producers now play a much more significant role.

5.18 The PSBs have had to deal with pressures on their content spend. In real terms, total PSB spending has declined since 2004, while in nominal terms, PSB investment in content over the last 8 years has been fairly flat. The story is broadly similar in terms of first-run originations. After a rapid increase in investment between 1998 and 2004, content spend in this area was broadly flat in nominal terms until being affected by the recession. Absent significant changes to the viewing of PSBs and their portfolios or material shifts in revenue, this trend is likely to continue.

5.19 The independent production sector is continuing to grow, despite declines in PSB commissioning revenue. To make up this shortfall, indies have increasingly contributed additional avenues of funding themselves for content beyond that provided by PSBs. This is comprised of gap finance (where the primary commission is less than the direct costs of the programme), co-production (where a foreign broadcaster jointly funds production) and R&D (where investment is received to generate ideas and proposals for programmes).

5.20 This effectively spreads the risk of commissioning or producing new creative content across multiple parties. Independent producers may take on greater financial risk in return for the ability to sell the secondary rights, or the PSBs could look to spread the costs of production with foreign broadcasters.

5.21 The flexibility to secure alternative sources of funding has enabled more investment to flow into the content on UK screens despite cyclical pressures on advertising revenue and the flat licence fee. The ability of the independent production sector to exploit new sources of revenue could be fundamental to encouraging growth in the TV content industries.

5.22 Growth in non-PSB spend is also encouraging and in recent years, Sky has differentiated itself by increasing its investment both in US acquisitions and UK originations. It has committed to increasing UK production spend to £600m by 2014. This excludes sports rights, but includes production on sports programming as well as Sky Arts and other Sky originations.

Implications for the regulatory framework

5.23 With these changes in mind, we have given consideration as to whether the legislative and regulatory framework in place at present presents opportunities for growth in the sector, whilst continuing to deliver the content consumers want.

5.24 The current regulatory system is focused predominantly on PSBs. This approach creates institutions with scale and mass market reach that have the delivery of PSB programming as a key objective. The present system has supported a growing content ecosystem with good levels of funding flowing into content creation.

5.25 There are certain areas where the regulatory framework might struggle as a result of changing consumer and industry trends.

EPG prominence

5.26 One of the benefits PSBs receive is ‘appropriate prominence’ on Electronic Programme Guides (‘EPGs’). Being placed on the first page of the EPG means that the licensees’ PSB channels are easily accessible to viewers. As such, there may be a significant benefit associated with this right since without EPG prominence fewer viewers may watch the programmes on prominent channels.

5.27 But as noted, an evolution could occur in the way that content is:

a) discovered, as more EPGs offer multiple routes, social media is used to promote content and links to content are provided outside EPGs;

b) consumed, as on-demand services become more popular, viewing on user-generated content grows, and content delivered by OTT services becomes easier to access.

5.28 Given these potential changes, the prominence regime as currently constructed may not continue to deliver the public policy aims it was designed to achieve. If viewers move towards different methods of consumption and navigation, then the public policy goal of ensuring that public service content can be easily discovered and accessed by viewers may be at risk. This will impact, potentially significantly, on the ability of PSBs to provide continued high levels of funding for UK content.

5.29 If securing prominence for public service content remains a public policy objective, it could be necessary to adapt the current regime, possibly by extending it to the various different ways of discovering content increasingly made available within EPGs, and to content made available on-demand. Otherwise, the value of EPG prominence to PSBs may decline, and the legislation will fail in its intention to ensure that this content is prominent for viewers.

5.30 Consideration will also need to be given to which platforms a new regime would apply to. To help drive innovation, one option would be to apply any new regime only to those platforms responsible for a significant amount of viewing, therefore allowing flexibility in nascent content delivery markets.

5.31 Reform of the prominence regime in this manner would be unlikely to deliver *more* value to PSBs than they currently enjoy unless it resulted in an increase in the PSB share of viewing by consumers. Rather, it would seek to retain the existing level of value which the PSBs currently enjoy as a result of this benefit against prevailing trends that may erode it.

Conditions of carriage consent for broadcasters and on broadcast platforms

5.32 There is currently an active debate concerning the balance of payments made between the PSBs and the platforms over which their channels are distributed. The arrangements governing these payments, often generically referred to as “retransmission fees”, in principle encompasses two types of payments:

- Payments from platforms to broadcasters for the right to carry their content (“retransmission fees”); and

- Payments made by broadcasters to platforms as a contribution to platform service costs (for example, providing listings in an EPG, or regionalisation of services which ensure that viewers receive the appropriate version of the channel for their geographic region).

5.33 In addition to commercial considerations, there are specific obligations on PSBs and platforms which may have a bearing on these payments:

- Must-offer requirements on PSBs (and in addition to this, the BBC's public purposes requiring universality).

- Sky's charges for technical platform services, which are subject to regulation requiring these charges to be set at on a cost-recovery basis and be fair, reasonable and non-discriminatory.

5.34 There is merit in considering whether these arrangements are still appropriate given the convergent trends we have identified. In particular the scope of 'must-offer' of PSB channels warrants consideration, with the original policy intention of the intervention being interrogated. Is the aim to ensure that public service content is available in all homes, or rather on all platforms and devices? Given technological advances, the two objectives may no longer be fully aligned, and the latter has the potential to land PSBs with greater costs.

5.35 Similarly, it is worth considering whether and how any future must-offer regulation should take account of possible trends towards mainstream consumption of on-demand content. The availability of PSB VoD services is more varied than linear channels. But most of the major broadcast platforms that are able to serve VoD content are making efforts to add PSB content/services of their own accord.

5.36 It is worth remembering that the must-offer and must-carry requirements have, for the most part, remained unused. Arguably, this is because incentives are usually aligned between platform operators and broadcasters, both of whom want high quality content to be made available on consumer devices and services.

Section 6

Convergence and globalisation

6.1 Many of the themes discussed in this document relate to the conception of media convergence as a global phenomenon. The Committee asks for views on the extent to which a national framework can function in an increasingly digital world. In this section we have set out some of the challenges of regulating in a global environment both now and in the future.

There are both political and technological drivers in considering the emerging jurisdictional landscape

6.2 Technology changes have brought new ways to deliver services across borders, particularly over the internet. The emergence of IP networks have led to the possibility and creation of globally focused companies and business models which transcend national boundaries. Companies such as Google and Facebook have brought huge economic and social benefits, but their models of operation are very different to more traditional nationally based media companies.

6.3 Simultaneously, consumer behaviours and expectations are evolving as consumers seek to take advantage of the opportunity to access international content and services. This means that communications services can increasingly be delivered into the UK from beyond the EU/EEA, beyond the reach of the EU regulatory framework and national frameworks.

6.4 Both the European Commission and the UK government see the continued promotion of a digital single market as an opportunity for wider economic growth. The internet economy is central to this, and, for example, the Commission has said that it wants to double its share in EU GDP by 2015.

6.5 However, the opportunity of digital markets is contrasted by potential concerns about the ability of national frameworks to deliver their own public policy goals. One such area of potential concern that has already emerged is in relation to protection of minors online.

6.6 There are a number of areas where potential challenges could arise. In particular we would cite:

a) the ability to promote effective and sustainable ex ante competition regulation in a national context in an environment where services could increasingly be based outside the UK. Due to factors such as economies of scale and network effects, successful device manufacturers such as Apple and Samsung, or service providers such as Netflix or Spotify, are typically present in multiple countries and increasingly, these market participants may be non-UK based companies;

b) the ability of national or EU regulatory authorities to protect consumers from harmful content as services are increasingly delivered from outside of the EU/EEA. This is particularly important in relation to the protection of minors; and

c) the global operation of the internet may also enable the operation of unlawful services, for example those which facilitate online copyright infringement. It may also lead to potential consumer detriment arising from cross border fraud and misuse.

6.7 These potential challenges all suggest the need for greater coordination amongst authorities in different jurisdictions. Although national action to address these unlawful activities will play a role, some of these challenges are likely to require multinational or global collaboration.

A particular area of concern is jurisdiction in relation to content standards

6.8 The increasing pace of convergence creates challenges around the regulation of cross-border AV services. New distribution methods coupled with mainstream devices that mix IP and broadcast delivery mean that services from all over the world can now be easily received on the TV screens of UK viewers. This has the potential to raise new issues around audience protection.

6.9 A jurisdictional challenge to AV content regulation is not a new phenomenon – indeed it is at the heart of European broadcast content regulation. The use of satellites (with multi-national footprints) for broadcasting has long enabled services to be provided to a country's audiences from outside national borders. The challenges of content or EPGs received from outside UK regulation can and do arise.

6.10 The existence of minimum European standards (in areas such as protection of minors, hate speech, harm and offence, accuracy and impartiality, and fairness and privacy) is intended to provide European audiences with a basic level of protection wherever (within the EU) the broadcaster is licensed.

6.11 But concerns around audience protection have come more sharply into focus as the methods of content distribution have become increasingly varied and complex. With a proliferation of media platforms, devices and content, consumers are increasingly able to access media which is not subject to regulation in their home country.

6.12 The AVMS Directive establishment criteria give regulators a mechanism to determine who has jurisdiction over services (including certain internet-delivered services such as live streaming, webcasting and online VOD services). Jurisdiction is primarily determined by where a service is based, either editorially or by other measures. If a service has no presence in the EU then secondary technical criteria are used to determine jurisdiction. However, these secondary criteria only focus on satellite services (e.g. uplink location, nationality of satellite) and are not applicable to online services.

6.13 In an online environment, it is therefore more likely that unlicensed/unregulated services could be receivable in the UK, with no obvious jurisdiction for Ofcom to prevent the transmission of harmful content. The development of new device ecosystems such as connected TVs might exacerbate these challenges (for example, interfaces designed outside the UK may undermine some of the signposting protections provided by EPGs).

6.14 Other internet-delivered services may not fall within the scope of AVMS at all (e.g. user-generated content, and audiovisual content that is not 'television-like' or subject to editorial control, but that viewers can access on-demand and watch for entertainment). These services are subject to the general law (and targeted self-regulatory action, e.g., through the Internet Watch Foundation to remove child abuse images), but are generally not within sector-specific regulatory oversight.

6.15 There are no easy answers in this area and ultimately any solution is likely to combine an approach which builds a framework of personal responsibility alongside proportionate regulation focused on the most serious problems faced.

6.16 The role of effective self regulation will also be critical and in the first instance it must be hoped that industry players across the value chain can come together to build effective models of self regulation, not least because of the potential practical difficulties of building new models of national regulation which effectively meet the demands of global content provision.

6.17 Finally, it is important to remember that whilst these challenges are real, the reality is that for many years to come a significant proportion of content consumed by UK citizens will be provided by UK companies who have broadcast as well as other operations. Therefore, whilst these challenges should not be underestimated, neither should they be overstated.

Annex

Principles of effective regulation

A1.1 Ofcom's experience in regulating a number of sectors and working with a variety of statutory, co-regulatory and self regulatory bodies suggests there are some core principles shared by all effective regulation.

A1.2 These principles can be divided into two categories:

- principles which relate to the governance and accountability of the regulatory body; and

- principles which relate to the operational independence and capability of the regulatory body.

Principles which relate to the governance and accountability of the regulatory body

A1.3 These principles are important because they establish independence and ensure safeguards against undue influence. They are an essential part of the credibility of the organisation. They are:

- **Independent governance and decision making**, ensuring that decisions are taken free from industry or political interference, consistent with principles of good corporate governance. Governance arrangements would need to ensure that there is no inappropriate influence over decision making by third parties and that these arrangements create a governing body which is independent, responsible and publicly accountable for the effective functioning of the regulator.

- **Clear public accountability**, to ensure that the regulator is held to account in delivering against its public purposes. This could be delivered by independent oversight of the regulator's activity on a periodic basis, to ensure that the governance, operation, processes and decisions of the regulator are regularly scrutinised and that the results of this scrutiny are transparent.

- **Clear regulatory objectives** set out in a Code which allows industry and the public to see the nature and scope of the regulation. This allows the regulator to set out the rules against which it would operate, to provide focus to its activities and to ensure that regulated parties understand clearly the standards they must meet, allowing them to develop their compliance programmes accordingly.

- **Clear and transparent processes**, to ensure that it is clear how regulatory investigations are conducted and that relevant parties can appropriately engage with those processes. Typically this would mean consulting on and publishing processes for complainants, processes for submissions by regulated parties, rights of third parties and rights of appeal. These processes need to find an appropriate balance between timeliness and principles of natural justice.

Principles which relate to the operational independence and capability of the regulatory body

A1.4 These ensure public confidence, credibility and, over time, help to build public trust. They are:

- **Workable membership incentives/obligations**, ensuring the regulator has all relevant parties within its scope in order to produce a fair and consistent regulatory framework across the industry. This means developing incentives or obligations for membership or introducing mechanisms which set out who the regulated parties are. We say more about this crucial issue below.

- **Independent funding and budget control**, to ensure the regulator can deliver its public purposes with sufficient resources and without fear of interference from industry or the government. Typically this should mean budgets are agreed for a significant period, such as four years. During this period the regulator should be required to manage within these budget limits (excluding exceptional events), but that it would also have security in relation to this funding and not be subject to financial pressure that would be inconsistent with the ability to act independently.

- **Accessibility,** to ensure that individual financial circumstances are not a pre-requisite to securing redress, essentially requiring the system of regulation to be free at the point of use. This would mean setting up appropriate complaints handling mechanisms (e.g. phone, email and website) and securing a funding model to ensure that complaints are logged and investigated at no cost to the complainant.

- **Genuine powers of investigation**, to ensure that regulated parties cannot prevent effective investigation where wrongdoing is alleged. These are typically powers to seek and access information, powers to undertake own initiative investigations (i.e. without a complaint) and powers to impose meaningful penalties for failure to cooperate.

- **Effective powers of enforcement and sanction**, ensuring that regulatory action is a genuine deterrent both to the party being punished and as a warning to other regulated parties. These would give the regulator the power to levy proportionate sanctions on regulated parties to punish breaches of rules and to act as a deterrent to other parties in relation to future behaviour.