

Section 2

Our approach to regulation

- 2.1 Our overall approach to regulation is anchored in the statutory framework created primarily by the Communications Act 2003 ('the Act')¹ and will continue to be guided by our regulatory principles. We will operate with a bias against intervention, but will intervene firmly, promptly and effectively where required. The priorities we set will reflect the importance of encouraging further growth, competition and innovation, which will benefit citizens and consumers through new and improved products and services. But the public interest cannot be delivered entirely by markets, so as well as promoting competition, action will be needed in certain areas to protect citizens and consumers. To provide everyone with a greater understanding of how we see our role evolving, we are proposing a three year strategic approach, which sets out our broad direction of travel, and some key priorities for the next three years.

The statutory framework

- 2.2 The Act provides the framework within which Ofcom operates. In carrying out our functions, our principal duty is to further the interests of citizens and consumers, where appropriate by promoting competition.
- 2.3 The Act specifies certain things we must do to fulfil this duty. These fall into 6 main areas, which are shown in figure 2.1:

Figure 2.1 Communications Act requirements

Ensure the optimal use for the electro-magnetic spectrum

Ensure that a wide range of electronic communications services – including high speed data services – is available throughout the UK

Ensure a wide range of TV and radio services of high quality and wide appeal, throughout the UK

Maintain plurality in the provision of broadcasting

Provide audiences with adequate protection against offensive and harmful material

Provide audiences with adequate protection against unfairness or unwarranted infringements of privacy

¹ Ofcom is subject to a wide range of obligations in the Communications Act 2003 and other Acts such as the Northern Ireland Act 1998. In this draft Plan, Ofcom sets out what it plans to do in the forthcoming year, subject to the need to comply with such obligations when exercising its powers. In outlining our proposed programme of work for 2005/6 we do not necessarily make specific reference to the way in which our work will fulfil those obligations. However, in carrying out next year's programme, our published documents will refer specifically to the relevant statutory provisions and show how our obligations are being fulfilled.

Ofcom's regulatory principles

2.4 In carrying out our work we will continue to be guided by the regulatory principles which we published last year in one of our first public statements. This will help to ensure a coherent and predictable approach to regulation, which we recognise is very important to our stakeholders. These principles are set out in figure 2.2

Figure 2.2 Ofcom's regulatory principles

When we regulate	Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required.
	Ofcom will intervene where there is a specific statutory duty to work towards a public policy goal markets alone cannot achieve.
How we regulate	Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.
	Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
	Ofcom will regulate with a clearly articulated and publicly reviewed annual plan , with stated policy objectives.
How we support regulation	Ofcom will research markets constantly and will aim to remain at the forefront of technological understanding; and
	Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation on a market.

2.5 What our principles mean in practice is that:

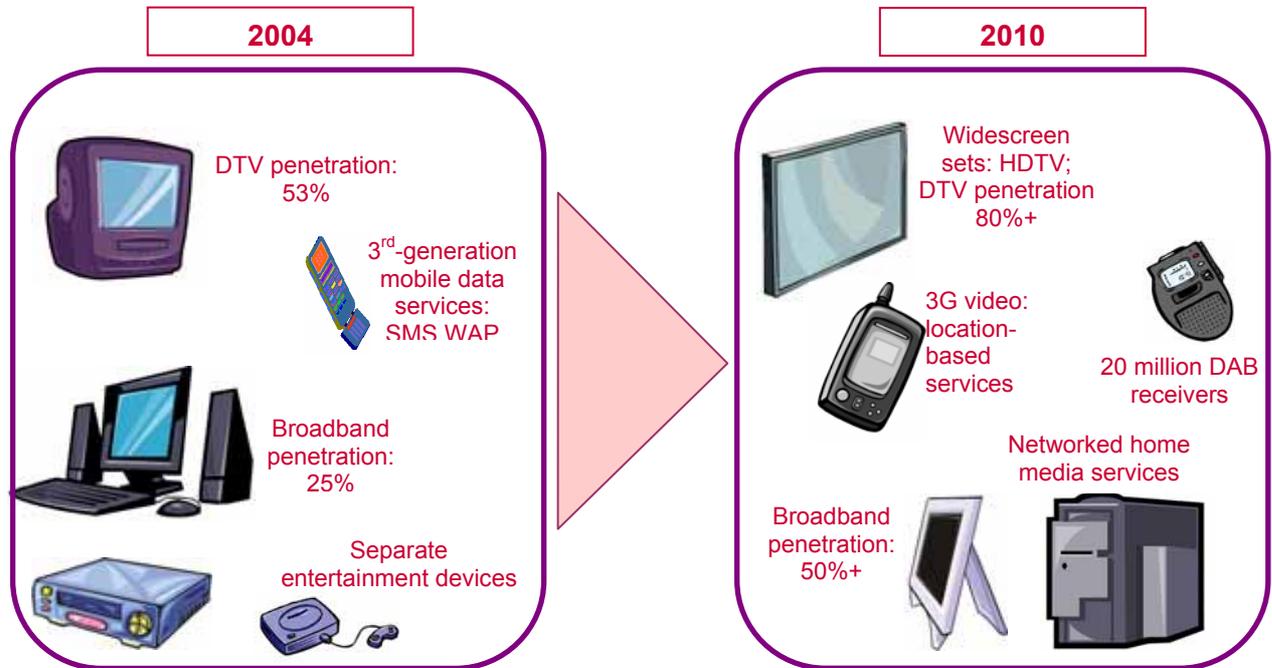
- We will intervene only if:
 - there is a specific statutory duty;
 - markets alone will not address the issue; and
 - there is clearly a citizen or consumer interest we can address.
- Our bias against intervention means that a high standard of proof must be satisfied. In other words, there must be a clear case for intervention, and the prospective benefits must exceed the costs of any action.
- If a case for intervention can be made, we will choose the least intrusive means of achieving our objective.

The role of markets

2.6 We must exercise our responsibilities against a background of dynamic change in the communications sector. In a rapidly changing world, the benefits for citizens and consumers are potentially largest where markets are open, new entrants can compete against incumbents, investment is encouraged and innovation flourishes. Not only do more open and competitive markets bring existing services that are faster, cheaper and more widely available, they also create the best environment for new services, enabled by new technologies and business models.

2.7 All our research suggests that we are at a critical moment in the development of the communications sector, as figure 2.3 illustrates. The potential for further consumer benefit is great, and there are significant opportunities for the sector to grow and prosper, provided we have the right regulatory environment.

Figure 2.3 The communications sector in transition – possible developments



2.8 Internationally the UK's position is generally strong, though there are still areas where there is some catching up to do. The position in key sectors is set out below:

- The UK continues to be ahead of other European countries on take-up of digital TV and radio.
- Mobile penetration is high, and, although there has been little movement in mobile prices over the last year, UK consumers remain satisfied with their overall level of service.
- Access to broadband and take-up of services have increased rapidly, and prices have fallen – but the UK's penetration still remains below some major competitor economies. While service provider competition is relatively strong, take-up of Local Loop Unbundling is comparatively low.
- The UK's telecoms markets are generally more competitive than other European countries, but there remain areas where competition is not yet well-established.

2.9 A clear priority for Ofcom, therefore, is to continue to encourage and promote dynamic, open and flexible communications markets. This means:

- Encouraging an environment which supports investment and innovation in the future, not just lower prices for existing services now.

- A firm intention to pull back from detailed regulation where the prospects of competition are clearly emerging.
- An emphasis on helping markets work better, for example, through the provision of better information to consumers, rather than substituting regulation for the market.

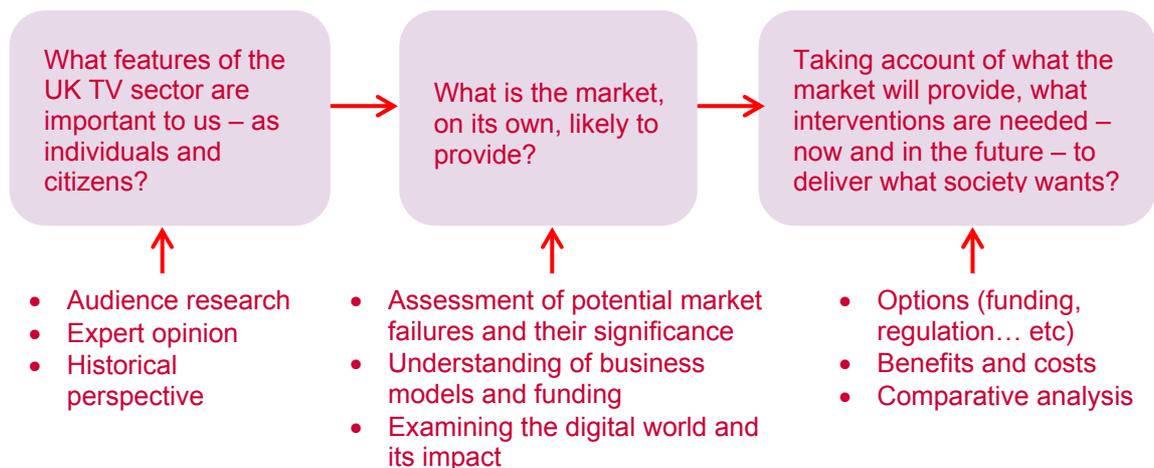
2.10 Phase 2 of our strategic review of telecoms, published in November 2004, contained proposals in all three of these areas:

- real equality of access for BT's competitors, although the means of achieving this remains to be determined;
- withdrawal of layers of regulation from wholesale and retail markets where equality of access is delivered; and
- improving consumer information and simplifying the process of switching suppliers for consumers.

Protecting citizens and consumers

2.11 In some cases, markets alone will be unable to deliver all the outcomes society would like. Figure 2.4 shows the framework used in our strategic review of public service television broadcasting (PSB) to consider the extent to which the market would meet viewers' demands and what regulatory interventions would be needed.

Figure 2.4 Framework for the PSB review



2.12 We will continue to take steps to protect the interests of citizens and consumers, where such action is needed. This will mean:

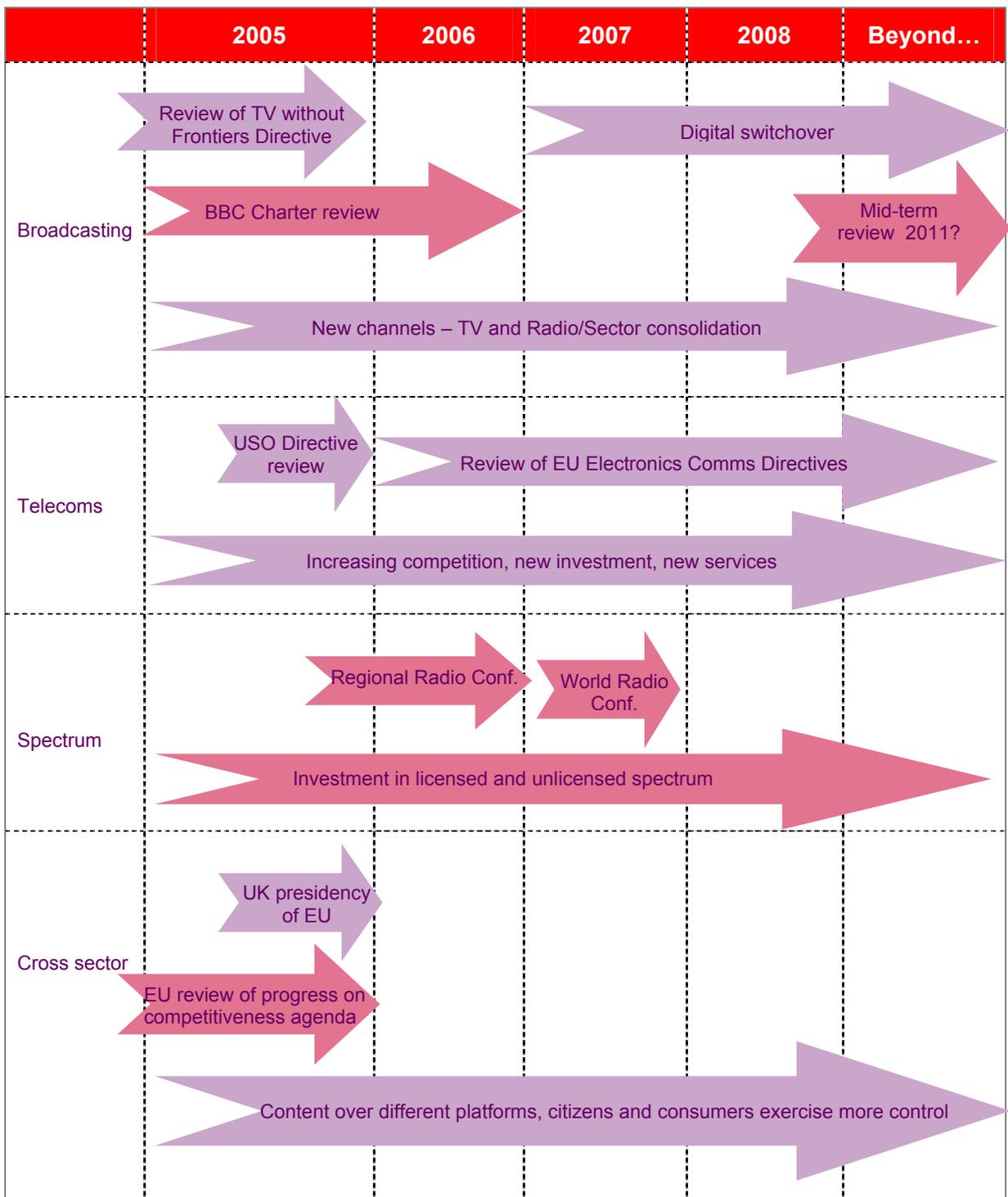
- Measured but decisive action where the public interest is clear. For example we will:
 - require universal access to a prescribed set of communications services and public service content;
 - protect the most vulnerable, especially children, from harmful or offensive broadcast content;
 - take action to deal with unfair or misleading sales practices.

- A presumption that over time well informed adult individuals should exercise more responsibility and choice in determining the content they consume, or the communications services they choose to buy.
- Careful and continuing research into changing public attitudes and expectations about the desired level of regulatory intervention across all media and communications platforms – recognising that the scale and scope of any intervention is likely to change and possibly reduce over time.

A three-year strategic approach

- 2.13 In 2004/5 we focused on establishing Ofcom, carrying forward work started by our predecessors, fulfilling our obligations under the Act to revise significant parts of the regulatory framework and conducting reviews of telecoms, spectrum and public service broadcasting to determine our future strategic direction.
- 2.14 Ofcom's Annual Report will provide a comprehensive account of our activities during 2004/5, but it is important to signal in our plan for next year how the nature of our work will shift, with the launch of a three-year programme to implement the strategic reviews carried out in our first year of operation.
- 2.15 Section 3 provides more detail about this programme of implementation and our other priorities for 2005/6. Through implementation of the three strategic reviews and other initiatives, we will actively search for ways to reduce regulation over time and will continue to improve the efficiency and effectiveness of our operations. We will also look forward by conducting a review of digital, multi-media platforms. We hope this will facilitate a wide-ranging public debate about whether content, including internet content, could or should be regulated in a more converged world, and if so, how. We will also conduct reviews of broadcasting content production and the second generation of broadband networks and services.
- 2.16 Ofcom also needs to contribute to the way the legislative framework develops. It will be particularly important for us to understand and engage more fully with the evolution of the EU regulatory framework. Figure 2.5 sets out some of the key external factors and events Ofcom will need to engage with.

Figure 2.5 External factors and events



2.17 We therefore propose a three-year work programme, which will mark a period of significant regulatory change, renewal and – in some key areas – withdrawal:

- In 2005/6 we will begin a three-year programme of delivery, focusing on implementing the strategic reviews and opening up markets.
- In 2006/7 we will sustain progress, working to embed the conclusions of our reviews and establish a benchmark for 'best practice' regulation.
- In 2007/8 we will review and refocus our work through testing and evaluating the impact of our new policies, and assessing the further scope for reducing regulation across the sector.

2.18 Figure 2.6 summarises how Ofcom's focus has developed and will evolve over the next three years.

Figure 2.6 Ofcom's changing focus over the next three years



2.19 By the end of 2007/8, our aim is to have encouraged the development of an environment in which:

- There is much more competition and innovation in broadband networks and services.
- There is a thriving commercial media sector, with a strong public service contribution, using new technologies as well as conventional broadcast channels.
- Citizens and consumers are better informed and have the option, via new technologies, labelling and price/quality information, to make effective choices about the content and services they use.
- There is widespread access to new digital/broadband services, to all citizens and consumers, throughout the UK.
- The TV digital switchover process has started and is on track.
- Ofcom costs less and does less.

