## Section 3
# Priorities for 2005/6

3.1 2005/6 will see Ofcom focused on delivery and implementation. Our key priorities are set out in figure 3.1 and this section considers each of them in turn.

**Figure 3.1 Priorities for 2005/6**

| |
|---|
| Implementing the strategic reviews |
| Opening up markets and encouraging innovation |
| Addressing important citizen and consumer issues |
| International engagement |
| Taking opportunities to reduce regulation |
| Working effectively |
| Understanding future developments |

3.2 Annex 3 outlines the strands of work we will be undertaking, grouped into the seven priority areas. The final version of the plan, which we will publish following the consultation, will provide information about each area of work, including more information about the timing of outputs and details of who to contact for more information.

### Implementing the strategic reviews

3.3 Our first priority for 2005/6 is to take forward the proposals advanced in our major strategic reviews, subject, of course, to the final outcome of the current consultation processes.

**Telecoms**

3.4 Our strategic review of telecoms prepares the ground for a new regulatory framework as the market undergoes a move from analogue to digital; away from the switched-circuit fixed line networks of the past and towards next-generation networks based on internet protocol.

3.5 We have identified two key problems:

- An unstable market structure in fixed telecoms, dominated by BT and with alternative providers that are, in the main, fragmented and of limited scale.
- The continuance of a complex regulatory mesh, devised over twenty years of regulation and in many areas dependent upon intrusive micro-management to achieve its purposes.

3.6 In response, our Phase 2 report identified three options:

- De-regulation.
- Enterprise Act referral.
- Real equality of access to BT's network.

3.7 Removing the existing mesh of regulation and relying on competition law would reduce intervention, but would be unlikely to encourage the growth of greater competition.

3.8 Equality of access would mean

- BT would be required to offer competitors:
  - same or similar wholesale products and prices as are made available by BT to its own retail businesses;
  - same or similar transactional and development processes as are made available by BT for the use of its own retail businesses.

- The prospect of regulatory withdrawal, over time, in other areas – such as pricing for larger businesses, and retail price controls.

3.9 However, this option would require substantial organisational and behavioural change on the part of BT and whether this can be delivered in practice remains to be seen.

3.10 An alternative approach to promoting increased and sustainable competition may therefore be to carry out an Enterprise Act investigation followed potentially by a referral to the Competition Commission. Although this might be more disruptive in the short term, we will need to make a judgement about which option is most likely to secure our longer term strategic objectives.

3.11 Our consultation on the proposals set out in Phase 2 of the review ends on 3 February and which option we then choose will depend on how the main market players respond to our proposals. Figure 3.2 outlines some potential work streams for 2005/6, but once we have published our final conclusions in the spring, the work needed to implement the review will be clearer. Whichever is our chosen approach, however, a substantial amount of work will follow.

**Figure 3.2 Initial 2005/6 work streams to implement the telecoms strategic review**

The key components of our implementation work are likely to be:

- Work to:
  - develop a fit-for-purpose Wholesale Line Rental product;
  - clarify how BT's 21$^{st}$ Century network will be regulated;
  - consider our future approach to regulation of BT's broadband products;
  - develop our policy on the provision of consumer information.
- Preparatory work to achieve equivalence and behavioural change by BT, with further work being dependent on the final conclusions we reach.
- Preparatory work to inform a possible Enterprise Act investigation.

**Public service television broadcasting**

3.12 In Phase 2 of our review of public service broadcasting, we set out proposals to maintain and strengthen public service television in the digital age.

3.13 The framework we proposed had several key elements:

- The importance of a strong, independent, fully-funded, appropriately governed and public service focused BBC, funded through a licence-fee model, with a limit on its commercial activities and working effectively with the independent production sector.

- Channel 4 as a critical second provider of public service broadcasting, to remain a primarily not-for-profit free-to-air broadcaster, free to form alliances, joint ventures and partnerships with other organisations.

- ITV1 to play to its strengths in public service broadcasting, contributing high-quality, UK-originated production, investment in news, regional news and current affairs.

- Five committed to UK-originated programming and acting as a market-led public service broadcaster.

- A new concept to stimulate innovation and plurality: a competition to run a new Public Service Publisher (PSP) using new technologies and distribution systems to meet audience needs in the digital age.

- Proposals for PSB in Scotland, Wales and Northern Ireland still to be proposed and debated.

3.14 We will shortly be offering our final proposals after considering the responses to the consultation. For the moment, therefore, our assessment of the work that will be needed to implement those proposals is provisional. In 2005/6 we will implement those proposals which are our own direct responsibility, and continue to make the case for those which are outside Ofcom's statutory responsbilities. Figure 3.3 summarises the key areas of PSB work for 2005/6.

**Figure 3.3 Key work streams to implement our Public Service Broadcasting proposals (subject to the outcome of the current consultation)**

Key components of our implementation work will involve:

- settlement of the licence terms for Channels 3 and 5;
- remodelling of Tier 3 regulation to be consistent with our proposed public service values and purposes;
- proposals for the Nations and the English regions;
- continued dialogue with Channel 4;
- developing a new approach to the assessment of compliance with PSB requirements, including a new audience tracking survey;
- more detailed work on options for introducing local TV services post-switchover;
- a new review of electronic programme guides; and
- subject to the conclusions of the review, developing the Public Service Publisher proposal and managing the transition towards new requirements governing national and regional programming.

**Spectrum**

3.15 In our spectrum framework review, published in November 2004, we set out our strategy for securing the optimal use of the civilian radio spectrum. The proposals are designed to:

- Enable radio spectrum licence holders to make more efficient use of their spectrum allocation.

- Encourage innovation and investment in new and existing wireless communications services across the UK.

3.16 Spectrum has traditionally been centrally allocated and managed by the regulator. However, demand for spectrum has increased dramatically in recent years and centralised administration risks limiting innnovation and the development of higher-value services.

3.17 We set out four key recommendations to address this problem:

- Allow the market to decide the best use for new spectrum allocations.

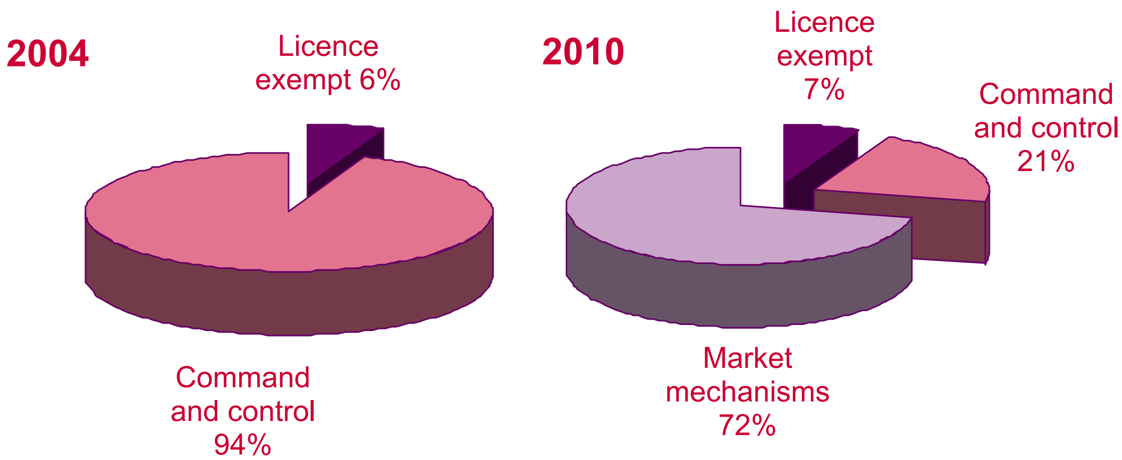
- Allow licence holders to trade spectrum in an open market and change the use they make of spectrum rights to develop new technologies and offer different services to customers (also known as liberalisation).

- Redefine the rights of spectrum users, giving them the confidence to plan for the future.

- Increase the amount of licence-exempt spectrum which allows businesses to develop and bring to market new technologies and services without the need for a licence.

3.18 Ofcom will, over time, apply this market-led approach to over 70% of the radio spectrum (0% at the start of December 2004). This is shown in figure 3.4. However, we will continue to maintain control over spectrum licences where:
- signals cross international boundaries;
- international mobility or safety is critical; or
- the UK has agreed to harmonise spectrum use in line with multi-national accords.

**Figure 3.4 Proposed changes to spectrum management**



3.19 The consultation on our proposals will end on 15 February and after considering the responses we expect to publish a further report in the summer. We are also publishing our spectrum implementation plan, which sets out details of our work to develop the evolving framework. Figure 3.5 shows some of the spectrum that is likely to be awarded in the next two years under this plan. The timings are indicative only and may change in the light of comments on the implementation plan and external factors.

3.20 In 2005/06 this work will include:

- Changing spectrum licences to allow more trading and more flexible use.
- Improving the spectrum licensing process, for example, by putting services online and deregulating where we can.
- Planning for the spectrum that will be released as a result of digital TV switchover to be allocated in a way which is as market driven as possible and consistent with the conclusions of the spectrum framework review. Related to this is the need to prepare for the Regional Radio Conference in 2006 which will influence how the spectrum released by switchover can be used.
- Reviewing power levels in licence-exempt bands in rural areas.
- Redefining spectrum usage rights.

**Figure 3.5 Spectrum below 3GHz to be awarded in the next two years and which is likely to be suitable for mobile-type services**

| Bands below 3GHz | 2005-2006 | 2006-2007 | 2007-2008 |
|---|---|---|---|
| 1781-1785 MHz/1876-1880 MHz (GSM/DECT guard bands) | • | | |
| 2290-2302 MHz | • | | |
| 2010-2025 MHz | • | | |
| 410-415 MHz/420-425 MHz, 872-876 MHz/917-921 MHz (Ex-Inquam bands) | • | | |
| 2500-2690 MHz | | • | |
| 1452 -1492 (L Band) | | • | |
| 1790-1798 MHz | | | • |

### Radio

3.21 Our review of radio, published in December, proposed a set of strategic aims for regulation in radio:

- Enhance choice, diversity and innovation for listeners at the UK, national, regional, local and community levels, for example, by licensing new analogue and digital services and encouraging the growth of digital radio.
- Secure the provision of radio designed to meet public purposes, for example, by encouraging the development of a thriving community radio sector.
- Subject to the above objectives, intervene in the market as little as possible, for example, focusing where possible on the range and quality of content available to listeners, rather than on methods of production.

3.22 The review also addresses two specific issues:

- Local material and locally-made programming on analogue commercial radio – we propose to put less emphasis on input regulation of local analogue commercial radio and more emphasis on the output – the services actually delivered to listeners – as well as more of an onus on stations to demonstrate what they have delivered.
- Digital radio – we support the further development of Digital Audio Broadcasting (DAB) and have proposed new spectrum capacity for local and national multiplexes.

3.23 The consultation on the first phase of the review ends on 12 March 2005 and we expect to publish a further report later in the spring. A more detailed implementation programme will be prepared for the final version of our Annual Plan.

## Opening up markets and encouraging innovation

3.24 The communications sector is changing rapidly and citizen and consumer benefits are potentially largest where markets are open, new entrants can compete against incumbents, investment is encouraged and innovation flourishes. Ofcom will therefore continue to encourage and promote dynamic, open and flexible communications markets.

3.25 In 2005/6, our work will include:

- The launch of an extensive programme of new spectrum release, with awards of a number of spectrum bands as detailed in our spectrum implementation plan.
- Pursuing the minimum level of harmonisation at EU level to facilitate the development of new and innovative services, such as Ultra Wide Band, while seeking the flexibility to maximise the benefits of spectrum trading and liberalisation.
- Continued improvements in spectrum licensing.

- Continued active support for digital switchover in television, including:
  - providing support for an industry body, Switchco, to ensure the mechanisms are in place to achieve digital switchover in the period 2007 to 2012;
  - completion of the licence terms review process for ITV and Five; and
  - further detailed frequency planning work to facilitate the regional switch-off plan.

- Awards of approximately 15 new analogue commercial radio licences and the first community radio licences.

3.26 Alongside the above, we will take further targeted action to promote competition. There will be:

- A review of competition in broadcasting markets to develop an overall strategic framework which will guide our regulatory decisions over the following two to three years. The review will involve:
  - research into trends in technology, consumer demand and market structures;
  - analysis of the economics of the broadcasting sector;
  - identification of emerging gateways;
  - an assessment of the competitive environment in pay TV, free to air TV, radio, internet, content production and premium content;
  - examination of rights issues; and will
  - take account of the rules on State Aid.

- In telecoms there will be a number of initiatives to promote further competition. Alongside the telecoms strategic review implementation programme, we will:
  - continue to support the work of the Telecoms Adjudicator in achieving effective Local Loop Unbundling;
  - begin further work in the mobile telephony market – in particular, we will carry out a further review of mobile call termination charges; and
  - continue our work on telephone number allocation and on developing telephone number policy to ensure that sufficient numbers are available to support competition.

3.27 In addition, we will continue to stimulate competition in the supply of communications networks and services by resolving disputes between communications providers and investigating serious complaints of anti-competitive behaviour, subject to the threshold we have successfully established in 2004/5.

## Addressing important citizen and consumer issues

3.28 All of Ofcom's work is ultimately focused on furthering the interests of citizens and consumers. In some cases, however, Ofcom needs to intervene directly to protect or serve citizen or consumer interests. While these actions cover a wide range of areas, for 2005/6 there are four priority areas to highlight in particular:

- A review of universal service in telecoms.

- Setting the media literacy agenda.

- Protection of children from harmful content.

- Consumer protection and information.

3.29 Universal service ensures basic telephony services are available to everybody upon reasonable request and at affordable prices – fixed telephony services and narrowband internet access are currently covered. Ofcom will review the policy basis for universal service following our strategic review of telecoms in 2004/5 and feed this into the EU review of universal service in 2005/6.

3.30 In setting the agenda for media literacy we will complete a major research programme and seek to identify areas of concern relating to emerging communications technology and services particularly relating to fixed and mobile internet content. We will encourage public debate and engagement on key issues such as labelling.

3.31 In 2004/5 Ofcom contributed to the development of thinking on the key citizen issue of the impact of TV food advertising on children's health. This work will be taken forward in 2005/6 in reviewing the appropriate set of rules for broadcast advertising in conjunction with other relevant bodies. More generally, we will continue work to understand and assess options for protecting children from harmful content – in broadcast and other media.

3.32 A significant emerging issue in 2004/5 has been the adverse impact on consumers of mis-selling and other unfair sales practices. An important element of our 2005/6 work plan will be further action in this area to improve consumer information and awareness and examine options for tackling the problem at its source.

3.33 There is a range of other activities that Ofcom will pursue under the heading of important citizen or consumer issues – from dealing with complaints in the Ofcom contact centre to consumer protection – details of which are included in Annex 3. Ofcom's Content Board will continue to play a key role in protecting the interests of citizens where content and standards issues are involved – ranging from media literacy to the effective implementation of our proposed public service broadcasting purposes and values.

## International engagement

3.34 The framework within which Ofcom regulates is to a significant extent determined at supra-national level and we need to understand and help inform this legislative agenda. Ofcom intends to engage more actively with Europe in 2005/6 and beyond.

3.35 Our strategic priorities for Ofcom's international activity are to:

- Implement the proposals of the telecoms and PSB reviews.

- Implement spectrum flexibility by ensuring the spectrum framework review's proposals for a more market-based approach can be implemented. In particular, we will be seeking to influence European decisions in relation to the 2500-2690 MHz band and Ultra-Wide Band.

- Prepare for the future by ensuring there is sufficiently flexibility under the revised EU content regulation (e.g. Television Without Frontiers Directive) to implement a more converged approach.

- Encourage the development throughout Europe of a coherent market-based approach to regulation, consistent with our overall regulatory aims and principles. In relation to telecoms, the principal means of achieving this objective will be through our involvement with the European Regulators' Group, which includes all Member States' telecoms regulators and the Commission.

- Support the UK Presidency of the EU.

3.36 Figure 3.6 below identifies some of the international work that Ofcom will undertake in 2005/6 to promote flexible use of spectrum.

**Figure 3.6 International work to promote flexible use of spectrum**

| | |
|---|---|
| Spectrum trading and flexibility | Seeking to influence activities of the ITU[1], CEPT[2] and EU in a way that is consistent with Ofcom policy. |
| Ultra Wide Band | Promoting a common European approach to Ultra Wide Band which is consistent with the UK position. |
| 2500-2690 MHz band | Seeking to persuade the Commission and other countries that this spectrum should be made available in a technology neutral way. |

## Taking opportunities to reduce regulation

### Reduced regulation in 2004/5

3.37 In 2004/5 we have already reduced regulation in some key areas. Figure 3.7 gives ten examples of areas where we have withdrawn or reduced regulation, resisted the introduction of new regulation or introduced co-regulation.

[1] International Telecommunications Union
[2] European Conference on Posts and Telecommunications

**Figure 3.7 Areas where Ofcom has reduced regulation during 2004/5**

- Introduced spectrum trading, allowing licence holders to trade spectrum in an open market.
- Removed the rules prohibiting the joint selling of airtime by the large TV sales houses.
- Issued commercial television broadcasters with Digital Replacement Licences that had fewer content-related licence conditions than the licences they replaced.
- Contracted-out advertising regulation, with the Advertising Standards Authority now providing a one-stop shop for consumer complaints.
- Streamlined the process for the licensing of commercial radio.
- Removed the charge control governing the charges made by BT to other providers to facilitate number portability.
- In relation to a number of markets, removed obligations on BT and Kingston, which had been carried over from the previous regulator, such as the prohibition on undue discrimination and the obligation to publish prices.
- Removed the regulation of higher bandwidth retail leased lines which had been carried over from the previous regulator.
- Raised the threshold for accepting competition complaints and disputes, thereby placing less of a burden on stakeholders who are the subjects of complaints.
- Removed the charge control on BT's wholesale charges to other providers who handle emergency calls.

### Reducing the burden in 2005/6

3.38 We will continue in 2005/6 to look for opportunities to reduce the burden of regulation on stakeholders and employ innovative approaches, such as co-regulation. In particular, we will:

- Examine whether existing regulation is needed or can be removed.
- Take forward new market-based approaches e.g. spectrum liberalisation, which will eventually reduce the need for Ofcom's involvement.
- Develop our approach to addressing the interests of consumers, for example, increasing their opportunities to exercise control and choice themselves by facilitating the provision of consumer information.

- Report, in our Annual Report, on where we have reduced or removed regulation during the course of the year.

3.39 Underpinning this work is the requirement in the Act to avoid imposing or maintaining regulatory burdens which are unnecessary.

3.40 Where we have taken action to place greater responsibility on stakeholders to self or co-regulate – as is the case with broadcast advertising complaints – we will monitor how this is working. Through such action we can learn from our successes and identify areas where there is room for improvement.

3.41 We will ensure that we carry out more Impact Assessments in relation to our policy decisions, and that those assessments incorporate consideration of a range of regulatory options, including not regulating. When introducing regulation we will also consider how the impact of regulation should be measured, when it will be appropriate to review whether the regulation is still needed, and identify an exit path from regulation in each case. Ofcom is publishing guidelines "Better policy-making: Ofcom's approach to Impact Assessment" and will be seeking stakeholders' views in the first part of 2005.

## Working effectively

3.42 We will aim to improve the effectiveness of a wide range of our functions:

- Pursue a best practice approach to policy-making, ensuring that our decisions are robust, consistent and based on sound evidence, utilising market research and technology research as appropriate.

- Improve our communication with stakeholders, with an improved website, and a renewed emphasis on ensuring we explain our policies and initiatives to citizens and consumers, as well as to businesses and other stakeholders.

- Review our approach to consultation to ensure we do not impose unnecessary cost burdens on our stakeholders.

- Continue to publish the results of our comprehensive research programme including quarterly Communications Market Reports and a range of technology reports. (See Figure 3.8 for examples of the research and technology programme outputs planned for 2005/6).

- We will complete a Welsh Language Scheme (to be agreed with the Welsh Language Board) and an equality scheme under the Northern Ireland Act.

3.43 In addition, we will complete our internal programme of cross-group working and organisational development. We are still a new organisation, with colleagues both from our predecessor regulators and who joined from elsewhere. The completion of our ambitious programme of work will require effective collaboration across the whole organisation and the mobilising of the skills and experience of all colleagues.

**Figure 3.8 Provisional technology and market research programme for 2005/6**

| Market research | Technology |
|---|---|
| Annual communications market report | Research and development programme report |
| Media literacy report | Research and development symposium |
| Report on the digital consumer | Report on Ofcom's role in stimulating technology innovation |
| Report on the digital Small & Medium Sized Enterprise | Spectrum Efficiency Scheme project outputs |
| Audit of the Nations and Regions | Report on digital rights management |

## Understanding future developments

3.44 Alongside our major implementation programme, in 2005/6 we will undertake further analysis of evolving markets so that we can anticipate and respond to the changing environment. This work will cover three areas:

- digital multi-media platforms;
- second generation broadband;
- broadcasting content production.

3.45 Each review will result in published research and proposals for consultation and will focus, in particular, on the scope for helping markets to develop and opportunities to reduce regulation.

### Digital multi-media platforms

3.46 New technologies are transforming the communications landscape and we face a potentially very different and more converged future, with wide implications for consumers, industry players and Ofcom. Figure 3.9 provides some examples of how convergence is occurring and how the blurring of distinctions between platforms may lead to the more flexible and interchangeable use of electronic technology by consumers.

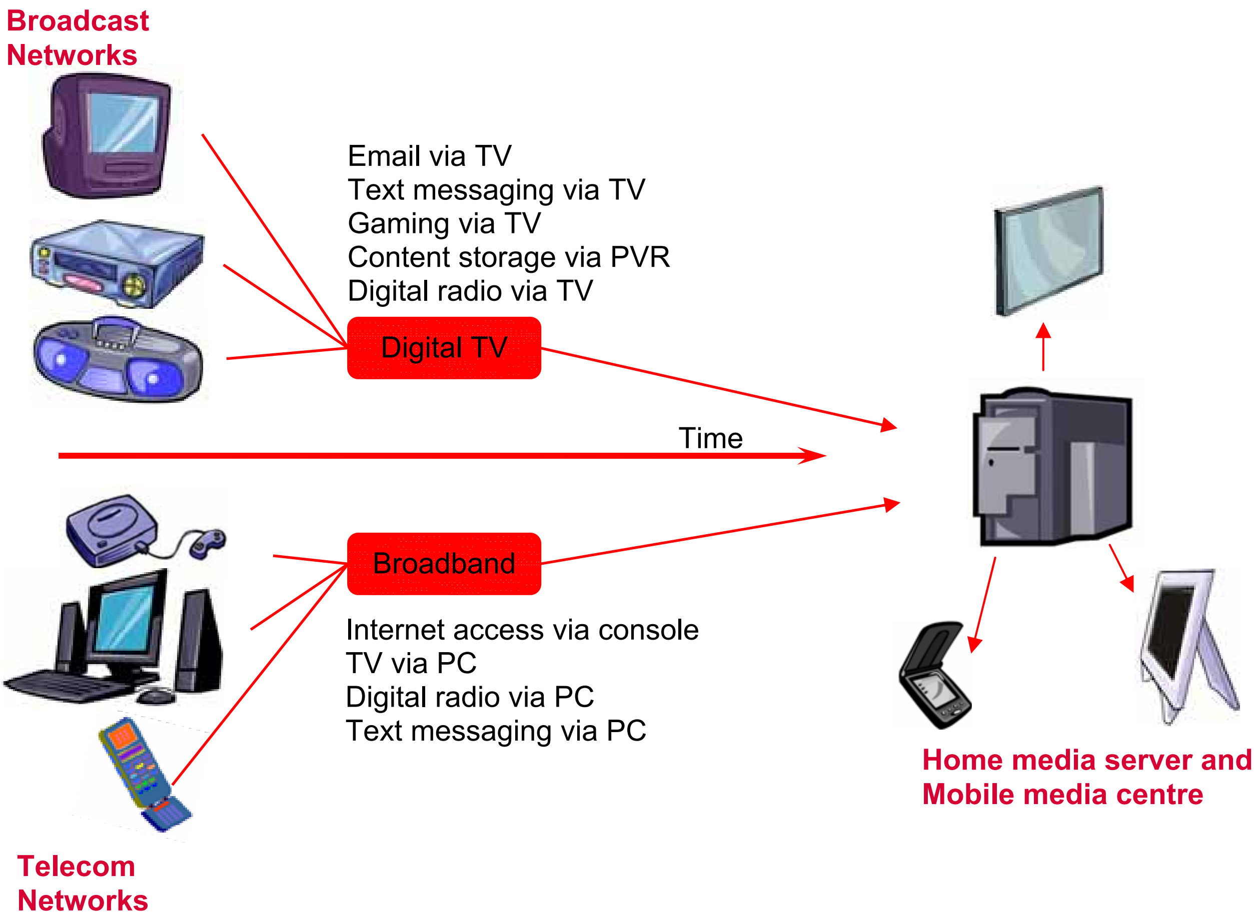
3.47 We will carry out a review of digital platforms that will address the regulatory issues associated with content becoming available via a range of different media. We will examine:

- technology trends and developments in relation to both platforms and consumer devices;
- how digital rights are managed and the impact on competition and adoption of new services;
- the perceptions and needs of citizens and consumers; and
- approaches taken elsewhere in Europe and internationally.

3.48 We hope this review will facilitate a wide-ranging public debate about the future development of content and the implications for regulation, if any. We will need to consider important questions such as:

- whether the current model of regulating broadcasting content is sustainable;
- whether a consistent or platform-neutral approach to content regulation – looking beyond traditional broadcasting – is desirable or indeed practicable;
- how consumer protection can be balanced against the need to protect the rights of others;
- the extent to which citizens and consumers will be able to control access to content themselves using tools such as parental controls;
- what is the role of Ofcom vis-à-vis Government and other regulatory bodies.

**Figure 3.9 Distinctions between different platforms are beginning to blur**




**Second generation broadband**

3.49 Our telecoms strategic review has identified measures to promote competition in current generation broadband, but the economic and social potential of further broadband development in the UK could be immense. This review will identify the incentives and barriers associated with the roll-out in the UK of second generation broadband and map out the implications for Ofcom in supporting broadband development. In particular, we will look at the:

- business climate for investment in new networks;
- content drivers for take-up of second generation services, such as video-on-demand and on-line gaming, drawing on experience in other countries;

- the impact of different regulatory approaches on the early deployment of second generation access networks;
- factors which may deter adoption of second generation services by consumers.

## Broadcasting content production

3.50 The content production sector is a significant UK economic and cultural presence, but there is potential for funding difficulties and competitive failures. We will undertake a strategic review of the content production sector in the UK, including an assessment of:

- the market for production in the UK, how it has evolved, its structure, value and levels of growth;
- the likely future direction of the market and its interaction with regulation at a UK, EU and international level;
- the impact of digital platforms in terms of changing methods of distribution of content, new business models for paying for content and the implications this may have for regulation in the future;
- the overall regulatory framework, including a review of the existing codes of practice.