Synopsis of Industry Seminar Organized by the Broadcasting Authority and Telecommunications Authority

Background

Technological and market convergence is blurring the boundary between telecommunications, broadcasting and information technology. In response to changes in the market structure, the UK and Australia have restructured their regulatory institutional framework by merging the regulatory authorities for broadcasting and telecommunications sectors to form a unified regulatory body to oversee the entire electronic communications sector.

2.	To provide local broadcasting and telecommunications industries an opportunity to have a better understanding of the abovementioned institutional changes in the UK and Australia, the Broadcasting Authority and the Telecommunications Authority jointly organized a one-day industry seminar on "Regulation in a Convergent Environment" on 29 August 2005.	Mr Richard Hooper, the then Deputy Chairman and Chairman of Content Board of the Office of Communications (Ofcom) of the UK, and Mr Chris Cheah, the Acting Deputy Chairman of the Australian Communications and Media Authority (ACMA) were invited to speak and share their respective experience. About 150 participants attended the event.

Experience in the UK

3.	Mr Hooper of Ofcom first spoke on the UK's experience of regulation in a convergent environment.

4.	In December 2003, Ofcom officially took over the duties of the five separate regulators, namely, the Independent Television Commission, the Broadcasting Standards Commission, the Office of Telecommunications, the Radio Authority and the Radiocommunications Agency.	The two main reasons for the establishment of Ofcom were:

(a)	to respond to convergence in the communications industries, and

(b)	to achieve better efficiency and cost savings when five regulators were merged into one.

5.   The governing body of Ofcom was a board comprising of a non-executive chairman, five non-executive directors and three executive directors including the chief executive officer. Mr Hooper commented that the combination of a non-executive chairman and a chief executive, which was now the model of corporate governance in the UK for all listed companies, worked well for Ofcom.

6.   In relation to content regulation, Ofcom delegated its powers on broadcast content regulation (including harm and offence, accuracy and impartiality, etc) and media literacy to its Content Board. The Content Board also advised Ofcom on broadcast issues which had both a content/cultural dimension and an economic/industry dimension. Mr Hooper commented that the Content Board had handled the content regulatory issues well, enabling Ofcom to focus on other priority matters for the industry.

7.   Mr Hooper further explained that there were two dimensions of convergence to Ofcom. First, the establishment of Ofcom represented the regulatory convergence in response to the world of network, device and corporate convergence stemming from digitization. Second, since Ofcom's statutory duties focused on the interests of both consumers and citizens, Ofcom was a convergent regulator bringing together both economic regulation and cultural regulation in one place.

8.   In terms of efficiency savings, as at August 2005, Ofcom had 32% fewer staff than the five separate regulators, and the operating costs were 10% lower on a like for like basis.

9.   Mr Hooper acknowledged a few success factors of Ofcom's establishment at its early stage. These included:

   (a)   getting the people right and getting the right people – Ofcom had introduced a strong process of performance management, performance appraisal, performance-based pay, etc;

   (b)   adopting a convergent organizational structure – Ofcom had its 550 colleagues from the five old regulators and 250 new colleagues distributed widely throughout a new organization structure, which did not look anything like the past;

   (c)   upholding the regulatory principles of evidence-based and bias against intervention – Ofcom allocated much resource to thoroughly researching the topics that it was required to

regulate, e.g., in formulation of its new Broadcasting Code, Ofcom relied on a combination of research and some 900 responses to the consultation; and in spectrum allocation, Ofcom was moving away from the old command-and-control policy towards a market-based system of spectrum trading and pricing; and

(d)   keeping its independence from all stakeholders including the Government while fully consulting all of them.

10.   Mr Hooper also identified five key challenges ahead:

(a)   keeping the organization young – Ofcom must not lose the sense of inventing the future as it was moving into its third year of inception, and Ofcom would need to give existing people new challenges and open doors to new recruits at senior level to refresh the organization;

(b)   getting the consumer policy right – One of the Ofcom's major tasks was to create and sustain competitive markets in order to bring maximum consumer benefit;

(c)   liberalizing the spectrum allocation policy – The policy towards spectrum allocation from command and control to market liberalization would cut across the interests of incumbent operators in telecommunications and broadcasting;

(d)   executing telecommunications strategic review – This would require major organizational and behavioural changes within British Telecom (BT), e.g., on the provision of BT's wholesale products (such as local loops) to its retail arm; and

(e)   regulating content in the multiplatform mutlichannel digital age – please see paragraphs 11 to 15 below.

11.   On content regulation in the digital era, Mr Hooper considered that there were three main reasons for broadcast media in the UK to be licensed and content regulated:

(a)   monopolies;
(b)   spectrum scarcity; and
(c)   intrusiveness into home.

The intrusiveness reason – i.e., influence, harm and offence – had now become the dominant reason.

12.   Commenting on the coverage of content regulation under the UK legislation, Mr Hooper said that while Ofcom had clear statutory duties over television broadcast content, it would appear to have no statutory powers over content distributed via the Internet or 3G mobile phones. Under the Communications Act 2003, television service was defined not to include any "two-way service". Video streaming over the Internet, a two-way service, would therefore be exempted from the regulation of television broadcast content. On the other hand, it remained an open question as to whether mobile television via 3G should be classified as a type of broadcast television in future.

13.   Mr Hooper acknowledged that although the regulation of communications should aspire to be technology- and platform-neutral, it would be very difficult to achieve so in practice. The European Television Without Frontiers Directive, currently under review, specifically excluded on-demand services and thus audio-visual content on the public Internet from its scope.

14.   There were three options to address this regulatory asymmetry:

(a)   doing nothing – One of Ofcom's key regulatory principles was "bias against intervention". However, there were legitimate citizen and consumer concerns. Ofcom had statutory duties to further the interests of citizens and consumers under the Communications Act;

(b)   rolling out sectoral content regulation on to the Internet – This appeared to be the option that the European Commission would likely favour, but could result in over-regulation; or

(c)   rolling back sectoral broadcast regulation to allow for equal treatment with Internet broadcasting – This was in fact happening, e.g., content regulation had been moving from pre-transmission to post-transmission regulation.

15.   Ofcom had not yet given its view on these options, but would approach the issue according to four principles:

(a)   be evidence-based – if more protection was going to be introduced, evidence would be needed that the current level of protection was inadequate;

(b)   produce a net benefit – a regulatory impact assessment must be conducted, and changes would be introduced only if they could yield a net benefit to consumers and citizens;

(c)   be proportionate – a key regulatory principle in the UK and Europe was to impose regulatory interventions proportionately; and

(d)   be enforceable using self and co-regulation.

Experience in Australia

16.   Mr Cheah of ACMA shared with the participants the experience in Australia.   ACMA was created in July 2005, and the enabling legislation was intended to be a "policy neutral" merger of the two regulators, i.e., the Australian Broadcasting Authority (ABA) and the Australian Communications Authority (ACA).   ACMA continued to oversee the previous telecommunications, broadcasting and radiocommunications laws which were not amended unless necessary to effect the merger.   ACMA comprised of seven members, three full-time members including the Chair and Deputy Chair, and four part-time members.

17.   In particular, ACMA had the following functions: spectrum planning and management; technical standards; licence allocation and renewal; regulation of media (excluding print); monitoring, compliance and enforcement; consumer protection and education; arbitral role in some circumstances; advice to the Minister and Government; and research.   ACMA was not responsible for competition policy (a matter for the Australian Competition and Consumer Commission) and legislation (a matter for the Department of Communications, Information Technology and the Arts, the Minister and the Parliament).

18.   Mr Cheah then talked about ACMA's high-level responses to challenges brought by convergence: upholding technology neutrality (as far as possible); encouraging industry-based solutions; separating policy and regulation, and sound resource management on spectrum and numbering.

19.	Although ACMA was only in the first month of inception, Mr Cheah identified some immediate benefits of ACMA being a unified regulator in the convergent environment, including:

(a)	providing a holistic response to convergence;
(b)	achieving greater efficiencies via a single structure;
(c)	adopting a spectrum-wide approach to spectrum management;
(d)	fostering better stakeholder relationships;
(e)	having the capacity of formulating better policy and decisions; and
(f)	having more targeted enforcement powers.

20.	Mr Cheah also identified some issues that required ACMA's attention:

(a)	the integration of ABA and ACA;
(b)	content on mobile devices;
(c)	Voice over the Internet (i.e. telephony services provided on the Internet);
(d)	services in regional Australia;
(e)	usage and quality of broadband services;
(f)	information security;
(g)	digital broadcasting;
(h)	ownership and control in media; and
(i)	the future of spectrum allocation and management.

Panel Discussions

21.	There were panel discussions among representatives of local communication industries after the speeches of the overseas speakers.

22.	The panelists generally agreed that a unified regulator for the electronic communications sector in Hong Kong was necessary in order to cope with the challenges brought by technological and market convergence. They also suggested some principles be adopted by the unified regulator, e.g., –

(a)	maintaining a level playing field and promoting fair competition;
(b)	adopting a light-handed regulatory approach and removing unnecessary regulatory burden, e.g., keeping prescriptive rules to the minimum in the convergent environment;
(c)	streamlining procedures for timely decisions;

(d) taking into account international best practice and also special local circumstances when making decisions;

(e) keeping track of the development of the industry and being responsive to market changes;

(f) promoting industry self-regulation in content issues; and

(g) providing sufficient safeguards for consumers.

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