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**STANDING COMMITTEE**  
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**SUBCOMMITTEE II ON**  
**FREE MOVEMENT OF CAPITAL AND SERVICES**

**EFTA COMMENT ON THE GREEN PAPER ON**  
**THE CONVERGENCE OF THE TELECOMMUNICATIONS,**  
**MEDIA AND INFORMATION TECHNOLOGY SECTORS,**  
**AND THE IMPLICATIONS FOR REGULATION**  
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**I INTRODUCTION**

1. The EFTA States welcome the Green Paper which has stimulated discussions on a number of important and complex societal and regulatory issues raised by the dynamic process of convergence. The process already challenges the traditional "vertical" regulatory approach to the affected sectors. The regulatory challenge is to create a framework which ensures the beneficial effects of new technologies while maintaining the overall goals of society and thereby ensuring that no new social differences are created. The EFTA States look forward to taking an active part in the forthcoming discussions on the follow-up to the Green Paper. A basic premise for the EFTA States is that all regulatory measures must pay due respect to the principle of subsidiarity.

2. The EFTA comment put forward will start by discussing in paragraphs 4 to 8 the five general principles for future regulatory policy as put forward in Chapter V of the Green Paper. Second, the role of public services broadcasters in a converged environment will be considered. Third, there are special comments on the market oriented aspects on the one hand and the socio-economic and cultural aspects on the other hand to the convergence phenomenon. Fourth, issues linked to convergence that fall outside the scope of the Green Paper will be commented on. Finally, there are some more general remarks on regulatory aspects.

**II PRINCIPLES AND OPTIONS FOR THE FUTURE REGULATORY POLICY**

3. The EFTA States endorse the principle that regulation should be limited to what is strictly necessary (first principle). Political authorities should avoid approaches which may lead to over-regulation. However, measures that can be considered to be "strictly necessary" and "clearly identified objectives" have to be qualified and will vary in the

various countries. Given the speed and dynamism of the convergence process, political authorities should strive to develop a flexible, but at the same time, a predictable regulatory framework.

4. It is not only necessary that future regulatory approaches should respond to the needs of the users (second principle). In fact, it is presumably a pre-requisite for the take-off of new services that these services are founded on public interest in such a way that the public find them useful. Furthermore, full participation of the citizens (fourth principle) is an additional and complementary pre-requisite for the use of new products and services.

5. As a point of departure, it is clear that a clear and predictable regulatory framework is important (third principle), not least for the economic operators involved in the affected industries, in particular when taking into account the large investments needed. However, as referred to in our previous comments with regard to the first principle, this principle to some extent has to be qualified according to requirements clarified in a national context.

6. Support can be given to the necessity to ensure full participation of the citizen (fourth principle) as an overriding principle for the future regulatory solutions. This calls for a dynamic approach to the concept of universal service obligations which has traditionally applied within the telecommunications sector. The benefit of including new services in these obligations must be evaluated with respect to fair competition, as well as the increased costs imposed on market actors and thus on consumers.

7. There is a need to consider possible institutional implications of convergence (fifth principle). Extensive considerations are however necessary before any type of conclusions can be drawn. On the one hand, it might appear desirable that regulators are made independent of the political authorities, e.g. in cases where the authorities hold different and possibly conflicting positions as, for example, owners, regulators or buyers. On the other hand, there might also be obvious and legitimate reasons for keeping regulators under the instructional powers of the political authorities. The starting point of a review of the institutional aspects of convergence should be that the relationship between regulators and political authorities should be designed by taking into consideration the specific characteristics of the regulatory tasks of each regulatory body, rather than relying on general assumptions of the relevance of different institutional models.

### **III THE ROLE OF PUBLIC SERVICE BROADCASTERS IN A CONVERGED ENVIRONMENT**

8. The EFTA States would like to stress the importance of focusing on the qualitative aspects of content made available on the different technological platforms. One important implication of the evolution of new technologies is that a broader offer of audiovisual services made available to the general public could be expected, most of which will be provided by commercial "broadcasters". At the same time one may experience, as pointed out in the Green Paper, that there will be a shortage of adequate content in the medium term. This development may call for a reassessment of the means

of meeting public service requirements in the new broadcasting environment. Specific attention should be paid to what extent some of the traditional public service aims could be met by commercial broadcasters.

9. Although commercial broadcasters may meet some of the public service aims, there will be a continued need for the traditional public service broadcasters, i.e. programme providers offering universally accessible services, who (at least to a certain extent) are independent of commercial interests and have a requirement to reflect all needs, interests and groups in the society.

10. Public service broadcasters will remain important instruments for the realisation of vital cultural and social aims. The process of convergence will lead to increased competitive and financial pressure on public service broadcasters, and the overall implication for the public service broadcasters might turn out to be higher operating costs and lower audience shares. This necessitates a reassessment of both the cultural role to be played by the public service broadcasters as well as the economic funding of such broadcasters. Provided there is transparency concerning their operations, necessary flexibility must be ensured for the public service broadcasters in this new environment. In more general terms, the authorities must address the issue of how to make sure that "public service content" is made available to the general public in the future converged environment.

#### **IV MARKET ORIENTED ASPECTS**

11. There are a few issues of a technical nature covering the range from network transmission methods to user equipment that are outstanding. Standardisation is thus an important tool to meet the general policy objective of full participation by the citizen in the information society. It is important that regulatory frameworks are designed to promote the development of non-proprietary standards and solutions in order to ensure the citizens' access to and use of information infrastructures and equipment. Chapter III of the Green Paper, which contains the list of existing and potential barriers to convergence, should have included a reference to proprietary standards for set-top boxes, even if this fact is mentioned in other parts of the Green Paper. Such proprietary standards could limit the choice for the citizens and the opportunities for alternative service providers in situations where there is misuse of dominant position. On the other hand, the negative effects of limited competition in the local network could be offset by adopting interconnection regulation.

12. Furthermore, as an objective of standardisation, interconnection and interoperability of services and networks are essential in order to secure overall public interest. Interconnection and interoperability of services and networks are also pre-requisites for sustainable competition. It may be assumed that the most important issues for the citizen are conditional access technologies and the development of user-friendly terminals.

13. There could be a risk that new monopolies could be created in a converged environment. The replacement of the former state monopolies by de facto monopolies may be avoided by appropriate regulatory measures.

## V ASPECTS OF A SOCIO-ECONOMIC AND CULTURAL NATURE

14. The Commission should give priority at this stage at studying the potential impact of the convergence process on vital cultural and economic aims of society since these considerations constitute an important and fundamental basis for existing and future regulation.

15. There is a particular need to stress the importance of not creating new - or reproducing old - social differences with respect to access to the new information services raised by convergence must be at the forefront in the future considerations in the follow-up to the Green Paper.

16. The effects of convergence on employment will be twofold. New business opportunities will arise which will have positive effects on economic growth and the creation of jobs. The consolidation of services that may take place will however cause inevitable loss of traditional jobs in the sectors affected. In order to ensure that the balance of these changes will be positive and to safeguard high level of employment, it is important to adapt education and training to the new situation.-

17. As regards the equitable distribution of the benefits, convergence may bring potential advantages and the creation of workplaces for rural areas, e.g. new services such as tele-working, tele-education and electronic commerce will strengthen rural communities' possibilities of keeping the workforce and thus to some degree off-set the workforce being drawn to urban centres.

18. Respecting cultural and linguistic diversities as vital creative forces is of great importance, especially in small countries like the EFTA States. In order to enhance national language and audiovisual expression, due account must be taken of these aspects, not least because neglecting them could create serious market barriers to the services offered in the converged environment.

19. It is important to maintain the credibility of the media in the converged environment, especially in areas such as news reporting and current affairs programmes, as well as acknowledging that any regulation affecting freedom of expression should take due account of human rights.

## VI ISSUES LINKED TO CONVERGENCE THAT FALL OUTSIDE THE SCOPE OF THE GREEN PAPER

20. The Green Paper does not address intellectual property rights and the protection of minors and human dignity since these issues are addressed in other Community initiatives. It should nevertheless be stressed that the total fulfilment of the objectives of beneficial use of new services only will be achieved with a globally harmonised basic legal framework for copyright and related rights in the information society. At the same time, the increasingly open and widely available networks, that will be part of the

convergence process, make it necessary to adopt global measures aimed at protecting minors and human dignity.

21. In view of the global nature of the convergence phenomenon, and as already pointed out in several Commission initiatives, the measures taken at a national and regional level will require close international co-ordination and co-operation. Initiatives for rule setting, as they have been undertaken within international organisations such as WTO, Uncitral, OECD and WIPO, are therefore vital for the future development of the global information society.

## VII FINAL REMARKS

22. The issue of convergence raises a number of important and complex societal and regulatory issues. In order to ensure the beneficial effects of new technology and to reach identified objects in a changing environment, regulators must strive to adopt a flexible, predictable and open-minded approach to regulation in the sectors affected by convergence.

23. The EFTA States believe that the three alternative approaches outlined in the Green Paper with regard to regulatory development constitute an appropriate framework for discussions. However, the options should not necessarily be limited to these three and thus exclude alternative approaches. This is all the more important when taking into account the present differences in the regulatory situation for telecommunications, broadcasting and information technology, and there will also be a need to discuss the definition of broadcasting in a converged environment.

24. As a general point of view, the EFTA States consider it too premature at this stage to reach any conclusions on regulatory models before accomplishing thorough analysis of the requirements for adaptation of the existing regulatory approaches.

25. Some EFTA States would nevertheless like to point out one possible alternative approach for discussion. This would be to create an overlay type of regulation where separation of function would be horizontal across the three sectors rather than vertical, i.e. a horizontal model supplemented by vertical components. This could entail competition and economic issues being placed under the jurisdiction of one regulator that could deal with the provision of services (networks, access, user equipment etc.) whilst another regulator could deal with content issues, including intellectual property rights and harmful and illegal content. The overlay regulatory framework could then gradually replace the existing vertical regulation, with a period of overlap that should be as short as possible.

26. There will nevertheless be a need to analyse further the requirements for adaptation of existing regulatory approaches before reaching any firm conclusions on this issue. The EFTA States believe that the main task will be to develop a regulatory model that can be applied to the three sectors of telecommunications, audiovisual and information technology without placing obstacles in their present individual progress, whilst at the same time supporting the evolution of convergence.

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