



**Mobile Broadband Group**  
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**Mobile Broadband Group (MBG) – Comments on principal issues relating to the review of the Television without Frontiers Directive and in particular the issues papers for Liverpool's Audiovisual Conference.**

The Mobile Broadband Group (whose members are the UK operations of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to comment on the Commission's issues papers relating to the review of the Television without Frontiers Directive (TVwF). Our comments below are not exhaustive but focus on the critical and fundamental issues of purpose and scope.

**Purpose of the Directive**

The MBG supports the principle that potentially obsolescent regulation should be reviewed. However, in carrying out such a review it is absolutely necessary to be clear about the specific purpose of the review, to identify the problems that are being addressed and to demonstrate that the benefits of intervention objectively outweigh the costs.

Not only is this a matter of required regulatory practice, it is critical to the cultural and economic wellbeing of the European Union and its member states.

The TVwF Directive establishes the legal frame of reference for the free movement of television broadcasting services in the Union in order to promote the development of a European market in broadcasting and related activities, such as television advertising and the production of audiovisual programmes.

The Commission explains in the issues papers that its purpose is to modernise the Directive in preparation for digital convergence. The MBG fully supports ensuring any regulation is "fit for purpose". However, we believe the papers leap ahead assuming modernisation is necessary – without clearly articulating what perceived "problems" the proposed regulations are seeking to address. This is a very incomplete basis on which to undertake the review.

The revision of the Directive is a serious undertaking that will have profound effects on the future development of the audio-visual industries in the EU.

It is incumbent on the Commission to identify clear objectives for a new Directive and to show that they are addressing properly identified problems that can only be addressed through the mechanism of a new or revised Directive.

## Proposals to extend the scope of the Directive

In seeking to extend the scope of regulation beyond the well-established broadcast TV, the MBG is concerned that the Commission risks regulation that will hold back European investment and innovation in new products and services or, perhaps worse, displace it to economic areas outside the European Union. Manufacturing industries have already experienced the EU's competitiveness being eroded by emerging countries in Asia. The digital media are strategically important to our future well-being and we can ill afford for the same to happen.

## Need for a thorough, evidence based, Regulatory Impact Assessment

Before extending regulation, say, to services delivered through mobile phones, the Commission must justify such intervention with a thorough impact assessment. The Mobile industry has had recent experience with the E-Money Directive, where its potential impact on the development of value added services for pre-paid mobile phone users was not properly assessed. While this issue is likely now to be resolved, it has caused regulatory uncertainty and held back investment in this area for at least three years. We do not want a similar problem to re-occur so soon.

The Commission is seeking to regulate for 'convergence' that, in the scheme of things, is still in its infancy. It is far from clear that content provided over the Internet or another platform, such as a mobile phone, fulfils the same market need as traditional TV. The papers fail to consider whether the historic issues which TV regulation have sought to address will in fact still be relevant in a multi platform, multi player and multi choice world. We are not convinced they all will be. The Commission needs to clearly and robustly consider the justification and proportionality of seeking to extend the scope of regulation – which is designed to address a TV industry that has been established for half a century – to developing markets. Indeed, far from extending regulation we believe that the Commission should be considering a more deregulatory approach. Will the issues of yesteryear really be present to the same degree (if at all) in 2010? We believe not.

Television has traditionally been regulated to reflect the 'public service element' of its function and *'the paramount importance and the unparalleled impact...on our society, through the effect it has on the way people form their opinion'*. Broadcast television has been strictly supervised since its inception by the Government and regulators and because of this high level of control, an expectation has been set among consumers as to what sort of content may be viewed over broadcast TV.

Telecommunications and the Internet, on the other hand have grown up in a completely different environment. Consumption of content is completely controlled by the user, they are used differently and serve a different market. These are competitive markets offering commercial services and in the case of mobile communications, operators have made unprecedented levels of investment – in infrastructure and spectrum. Europe has experienced increased productivity and consumers have benefited from many new services.

Furthermore, the objectives of the TVwF Directive (the free movement of television broadcasting services in the Union in order to promote the development of a European market) have been achieved with content delivered over the Internet without artificial methods such as quotas or, indeed, **without the need for a Directive at all**. The measures on quotas and advertising are unnecessary, very onerous to check and probably all but meaningless for content delivered over the

Internet or via mobile phones. With respect to the protection of minors, the EU already has measures in place or in hand that cover which, we feel, would just be duplicated if they were to appear in this Directive.

## **Summary**

***Before introducing any additional regulation for Internet content and for non linear services the Commission must:***

- *Clarify the objectives for the review. 'Modernising' the TVwF Directive is a very weak basis on which to base this work.*
- *Show that extending the scope to Internet content and mobile phones etc. would enhance the objectives of the TVwF Directive (or develop new objectives that are equally valid).*
- *Undertake a full regulatory impact assessment that shows there are real problems that can only be addressed through the very heavy duty mechanism of a Directive and that benefits of regulation would exceed the potential negative impacts.*
- *Propose regulation that is practical to enforce and that will not just result in displacement of investment outside the EU and impair innovation.*
- *Demonstrate that proposed measures do not duplicate existing measures (such as for the protection of minors) and can be tailored to the characteristics of services/ consumer experiences.*
- *Propose regulation that is proportionate (bearing in mind many Internet and mobile services remain embryonic and that the business models are by no means fully developed).*

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