Intra-institutional rivalry and policy entrepreneurship in the European Union

The politics of information and communications technology convergence

Seamus Simpson
Manchester Metropolitan University,

Abstract

The topic of information and communications technology (ICT) convergence is now of primary interest to policy makers in industry and government at the national and international level, as well as the academic community. In 1997, the European Commission published a Green Paper on the matter, and subsequently launched a consultation process which resulted in a series of re-regulatory proposals as part of the 1999 Communications Review. In recent years, there has been considerable evidence of Commission pro-activity and agenda setting in telecommunications and broadcasting. This article argues that ICT convergence policy is an interesting case of both policy entrepreneurship and intra-institutional rivalry within the Commission. Here, the ambitious initial proposals of interests in the Commission in favour of creating a uniform, light-touch regulatory ICT regime at EU level were significantly modified in the light of opposition from the Commission’s own quarters, other EU institutions, the national political level and the broadcasting sector. As a
result, it appears that in the immediate future there will be only limited, though still very significant, development of a convergent approach to ICT regulation, in the form of measures dealing with infrastructure and associated services.

Key words
convergence • European Commission • information and communications technology • policy entrepreneur • regulation

INTRODUCTION
Over the course of the last 30–40 years, the historically separate sectors of broadcasting, information technology (IT), and telecommunications have come closer together in number of ways. Indeed, so significant has this process been, that it is now commonplace to speak of a new hybrid sector – information and communications technologies (ICTs), though, at present, there is no standard agreed definition of ICT convergence. New service possibilities have created considerable expectations of a brave new world, promising the availability of a panorama of sophisticated, interactive and affordable services for all. As a consequence, terms such as multimedia, integrated broadband communications, the information superhighway and the information society have become part of common parlance.

In the midst of this technological and commercial flux, the existing regulatory arrangements governing each part of ICTs have been questioned. The OECD (1997: 50) has argued that:

Since it will become increasingly difficult to have technical or practical separation between broadcasting or telecommunications markets, and given the dynamics of the convergence of infrastructures and services, a review of the existing regulations, and the maintenance of distinct administrative bodies and procedures should be considered.

Historically, national telecommunications and broadcasting sectors of the European Union have been tightly regulated, government-owned and run, and very uncompetitive. These arrangements were justified in the case of telecommunications by the desire to achieve universal service goals (Steinfield et al., 1994) and, in broadcasting, to fulfil a public service remit aimed at protecting moral values, cultural traditions, pluralism and democracy (Humphreys, 1996). By contrast, the IT sector was relatively unregulated but nonetheless the subject of government intervention in public procurement, R&D and competition policy (Gannon, 1997).

In December 1997, the European Commission published what may turn out to be a landmark Green Paper on ICT convergence, marking the start
of a discussion period in which a variety of interested parties from the public and private sector reflected on its proposals. Launching this kind of exercise has become one of the Commission’s favoured political tactics – most notably it was successfully used to drive forward the re-regulation and liberalization of telecommunications at EU level (European Commission, 1992). In its Green Paper, the Commission undertook a survey of the state of convergence in ICT technologies and services and presented three possible alternative regulatory policy routes for the EU:

- the separate evolution of current regulatory structures in broadcasting, IT, publishing and telecommunications, possibly reinforced by some form of European co-ordination to guard against fragmentation;
- the creation of a separate horizontal battery of legislation to cater for new convergent services in tandem with existing separate structures;
- the development of a new comprehensive common horizontal regulatory model for all ICT services.

POLICY DIVERGENCE WITHIN THE EUROPEAN COMMISSION ON ICT CONVERGENCE.

As has become customary in the ICT policy field in recent years, the Commission, in distinctly proactive fashion, used ‘stick and carrot’ tactics, arguing that successfully embracing convergence could bring benefits in terms of employment, consumer choice and cultural diversity, yet failure to do so brought the risk of being outflanked by the EU’s major global competitors (European Commission, 1997a: 36). The motivation and ability of the Commission to shape the EU policy-making agenda, particularly in emergent policy domains, has been underlined by a number of writers (see Laffan, 1997; Symrl, 1998). Moreover, its perceived leadership qualities have lead it to be termed a ‘policy entrepreneur’ (Sandholtz and Zysman, 1989: 96) and a ‘purposeful opportunist’ (Cram, 1994: 201).

However, the Commission is a complex and diverse organization with considerable cultural differences and rivalries which can make obtaining agreement between its different Directorates-General (DG) difficult to achieve (Christiansen, 1997; Nugent, 1995) and blunt any attempted policy entrepreneurship or dynamism. Fuchs (1994: 183), for example, has found conflict between DG’s IV (Competition Policy) and XIII (Telecommunications, Information and Exploitation of Research – now Information Society) on telecommunications policy issues. Furthermore, the interests and agendas of the Commission have resulted in different DGs establishing important relationships with certain sectoral actors, notably business (see Coen, 1997; Cram, 1994, 1997), something clearly evident in ICTs where DGXIII’s policy has been characterized by the development of a strong relationship with large companies in IT and telecommunications,
contributing to its largely pro-market liberalization sympathies. It is also a DG which has shown itself unafraid to be associated with controversy, especially in the telecommunications policy-making domain of the late 1980s (Humphreys and Simpson, 1996). By contrast, DGX of the Commission (Information, Communication, Culture and Audiovisual Media) is motivated by a rather different set of interests and influences. Issues such as national cultural independence, the promotion of diversity and pluralism, and protection of ethical and moral standards – enshrined in the concept of public service broadcasting – have shaped the sector wherein its remit lies (see Collins, 1994). Aside from these two DGs, ICT convergence issues touch the work of a number of other parts of the Commission, notably the powerful, pro-market, DG IV (Competition Policy), the less powerful and more socially oriented DGV (Employment, Industrial Relations and Social Affairs) and DGXV (Internal Market).

It is not surprising, therefore, that DGXIII and DGIV, which took the lead in initiating the Commission’s Green Paper, liaised closely with ‘players they knew best such as telecommunications companies, manufacturers and national officials from the Ministries of telecommunications and industry rather than officials of national ministries of culture or national heritage’ (Levy, 1997: 35). As a result, conflicts of interest between, in particular, DGXIII and DGX soon emerged. The final version of the Green Paper was published in December 1997, but was preceded by a draft version produced in September. There are a number of important differences between the two documents. The latter, written by DGXIII, affords much greater emphasis to the economic and industrial implications of convergence, many of its arguments being both economically and technologically determinist in nature. It forthrightly argues that regulatory structures need to alter in order to accommodate the effects of technological convergence in ICTs, and that there is an economic imperative attached to the process whereby it is essential that market forces are allowed to flourish. There is little mention of the social consequences of convergence or the fact that it is being shaped by a series of social, as well as technological and economic factors. It also argues that:

> The rapidity of change poses a serious challenge to policy-makers, as developments in the market outpace their capacity to establish an appropriate regulatory framework and adapt it in a timely manner to changing circumstances. . . . It is clear, therefore, that classical regulatory frameworks must be reviewed in the light of convergence. (European Commission, 1997b: iii)

By contrast, the introduction to the final (December) version of the Green Paper, altered after a period of intra-institutional political conflict within the Commission resulting in the inclusion of significant inputs from DGX, acknowledges that there are differing views on the inevitability and, equally
important, the desirability, of ICT convergence. Clear reference is made to
its potential impact on European citizens in cultural terms. Regarding
regulation, it is argued that ‘there is no assumption that convergence in
technologies, industries, services and/or markets will necessarily imply a need
for a uniform regulatory environment’ (European Commission, 1997a: iv).

There are also clear differences in relation to the three options for future
regulatory structures put forward by the Commission. The September
version declares that the least radical option ‘would do little to ensure a
genuine single market for communications’ (European Commission, 1997b:
24), whereas in the December version, it is suggested that, on the contrary,
the approach ‘could be effective in providing a predictable regulatory
framework for investment while avoiding the creation of unjustified barriers
within the internal market’ (European Commission, 1997a: 34). Regarding
the second option, it is argued in the September version that ‘Inevitable
definitional boundaries will distort the marketplace and be difficult to
police’ (European Commission, 1997b: 24), whereas, in the final version, a
softer line is taken on the issue, the Commission noting that the ‘principle
(sic) difficulty in such an approach is determining the boundaries of what
may be part of a lightly regulated new service world and what remains
subject to traditional regulation’ (European Commission, 1997a: 35). Finally,
in the concluding section of the September version, it is argued that ‘In
effect, a new approach to regulation will be required to implement and
sustain the Information Society’ (European Commission, 1997b: 25;
emphasis added). This is omitted from the December version. The upshot of
this internally fractious process of drafting the Green Paper was that a more
balanced, though less incisive and clear-cut document was produced.

THE AFTERMATH OF THE GREEN PAPER
It seems clear that those elements of the Commission responsible for
telecommunications policy were confident that, as a result of the
consultation exercise, the Commission would be able to quickly proceed
with activity aimed at shaping the regulatory parameters of a converging
ICT sector to the EU level. The Green Paper’s proposed timetable for
action stipulated that, by the end of 1998, a Convergence Action Plan
would be produced by the Commission, though this projection proved to
be rather naive. From the eclectic range of respondents to the Green Paper,
it was clear that the majority of submissions were in favour of, at most, a
very modest set of regulatory changes.1 As Levy (1999: 119–21) points out,
the approaches of politically crucial EU member state governments such
as the UK, France and Germany to convergence were much less radical
than the strategies proposed by the Commission in the Green Paper. In
Germany anyway, the federal political structure militated against convergence
so strongly as to make it impossible, while the French showed no
willingness to create a common ICT regulatory framework. The UK government did specifically address the convergence issue by way of its own Green Paper several months after the Commission's document. This clearly expressed a preference for adoption of an evolutionary approach, criticizing polar positions on convergence. It also endorsed the special position of public service broadcasting and, very significantly, stated that the UK’s principal regulators on convergence issues (the Office of Fair Trading, the Office of Telecommunications and the Independent Television Commission) would co-operate more closely, thus signalling a lack of enthusiasm for the EU regulatory context (UK Department of Trade and Industry, 1998: 4–5).

The Commission’s proposals also received a rather frosty reception from certain elements in the European Parliament (EP). The MEP Carol Tongue (1998: 1) was particularly critical of the way in which DGXIII had ignored the views of DGX in the first instance, maintaining that ‘the new text [i.e. the December version] still predominantly reflects the initial views of DGXIII and, as such, contains major weaknesses’. A Draft Opinion of the EP’s Committee on Culture, Youth, Education and the Media called for a balance to be struck between market forces and social interest regulation and underlined its support for public service broadcasting (Kuhne, 1998). Since the adoption of the co-decision procedure as part of the Maastricht Treaty, the EP has assumed an increasingly important role in the EU decision-making process, with an effective right of veto on proposals to which it is opposed. For example, legal measures, such as directives aimed at re-regulating for ICT convergence, would be subject to this procedure and it is thus highly desirable for the Commission to have the EP ‘on board’ in these instances.

A clear and important cleavage was also apparent between service providers and other ICT commercial interests on the convergence issue. As might be expected, telecommunications and IT companies were largely in favour of a more horizontal model characterized by uniform treatment of ICT infrastructure and content and went even further, arguing for minimal regulation to be practised. The UK company British Telecom, called for light-touch regulation made up of a combination of competition law, industry self-regulation and ‘applicable national laws to allow for cultural diversity’ (British Telecommunications, 1998: 2–4). In a similar vein, the IT software giant, Microsoft, extolled the virtues of self-regulation, citing the internet as a key example of convergence, and somewhat predictably arguing that its success was due to the fact that ‘regulators have allowed the market for internet services to operate without interference’ (Microsoft, 1998: 7). Yet again, the European IT Industry Roundtable called for a phasing out of sector-specific legislation accompanied by increased reliance on competition law, though it was critical of its often protracted and inefficient application at EU level (EITRT, 1998: 3).
These viewpoints stood in stark contrast to the reaction of broadcasters. The UK public service broadcaster, the BBC, emphasized the continued relevance of public interest issues in a more convergent environment, going as far as to argue that ‘the free availability of high quality content to all – especially news and information – is a vital aspiration for the European regulatory framework’ (BBC, 1998: 1). Likewise, the European Broadcasting Union, made up predominantly, though not exclusively, of public service broadcasters, argued that there should be separate treatment of ICT content and infrastructure issues. In terms of the former, the inadequacies of relying purely on market forces were highlighted and it was contended that in an increasingly competitive and global ICT industry, the place and role of public service broadcasting would be more, not less, important (EBU, 1998: 1–2).

**EMERGENCE OF RE-REGULATORY PROPOSALS FOR ICT CONVERGENCE**

Aware of the controversial debate which its Green Paper had stimulated, the European Commission unexpectedly re-launched the consultation exercise, with a request for further opinions on three crucial areas: access to networks and digital gateways; the creation of an appropriate framework for investment in and development of the European ICT content industry; and, rather vaguely, the development of a balanced approach to regulation (European Commission, 1998a). In fact, an indication of how much the Commission’s policy ambitions seemed to have been reined in was its contention that, as a result of this further consultation process, it would aim to work on a communication which would discuss whether any further policy proposals for convergence were necessary (European Commission, 1998a: 11).

Nonetheless, in something of a surprise move, the Commission, in summarizing the results of this second consultative phase, declared its intention to put forward proposals introducing horizontal regulation of all ICT infrastructure and associated services. These were to be accompanied by what were loosely described as ‘flanking actions’ in content and infrastructure areas, such as verification of the transposition and application of directives on television programming and transmission standards, and infrastructure initiatives in audiovisual content creation, promotion and distribution (European Commission, 1999a: 1). Subsequently, towards the end of 1999, the Commission launched its Communications Review document, again spearheaded by DGXIII. Despite a title which suggested an eclectic coverage of the range of policy issues which emerged from the convergence debate, the proposals were much more modest in nature and covered only ICT infrastructures and associated services – issues of ICT service and content regulation were excluded (European Commission,
Thus, it appears that any future EU policy measures relating to the crucial areas of broadcasting and internet content will be dealt with outside of any convergent regulatory apparatus to be devised for ICTs.

In many respects, however, current Commission proposals are far-reaching. The proposed new common regulatory framework for convergence is underpinned by the five principles of clarity, minimalism, legal certainty, technological neutrality and appropriate geographical application. If accepted by member states, the number of legal measures will be reduced from 20 to 6 as a result of the introduction of a new Framework Directive dealing with what are described as general and specific policy objectives (for example, ensuring consumer rights and detailing the responsibilities of National Regulatory Authorities), as well as four new directives on licensing, access and interconnection, universal service and privacy and data protection. The new common framework will also be underpinned by a series of measures of a self-regulatory nature such as recommendations, guidelines and codes of conduct. Finally, the Commission has proposed that greater reliance will be placed on competition policy, where a gradual dissolution of specific regulatory measures is envisaged as effective competition is deemed to have taken hold (European Commission, 1999b: 12–16). Overall, these proposed measures have the aim of moving towards a looser, more neo-liberal, policy regime for communications infrastructure and services whose implementation would raise a number of important issues.

RE-REGULATION, COMPETITION POLICY AND ICT CONVERGENCE.

One of the key features of the convergence debate, with both commercial and consumer interest regulatory considerations at its heart, concerns future access to both ICT networks and the content services which are delivered over them. On the commercial side, Mansell (1997: 87–90) shows that there is evidence of a number of large ICT players developing dominant positions in evolving markets which, if not properly regulated, will allow them to behave in an anti-competitive fashion regarding access to networks, control of access to customers and control of access to market information. There is a danger that vertically and horizontally integrated companies can indulge in practices such as unfair bundling of services and content, predatory pricing and cross-subsidization. From a consumer interest perspective, a key issue is the ability of the customer to have access to new convergent services at affordable prices. This is of particular concern in relation to the emergence of features such as pay-per-view and proprietary navigation systems.

The results of both phases of the Convergence Consultation Exercise motivated the European Commission to make several significant proposals in this area in the 1999 Communications Review and this seems likely to be
one important area in which a convergent policy response may emerge at EU level. Here, any commercial company which either owns communications infrastructure or provides services associated with access to it, would be under no obligation to commercially negotiate access and interconnection arrangements with another party in a situation where neither company had market power. However, for access providers of one kind or another with what is defined as significant market power (more than a 25 percent share of any particular market) there would be an obligation to negotiate such access, apart from in newly emerging niche areas. Furthermore, for access providers with a dominant position in any market, there would be an obligation to grant all requests for access and interconnection which were deemed to be reasonable. The Commission proposes that a framework of general access principles be created at EU level with the detailed decision making left to the National Regulatory Authority (NRA) in each member state (European Commission, 1999b: 27–9).

Clearly, these principles have evolved from the telecommunications policy domain, in particular the 1997 Interconnection Directive (European Parliament and European Council of Ministers, 1997). However, the new proposed access arrangements, if adopted, have significance for broadcasting infrastructures. In its proposals, the Commission has argued that it would not be appropriate to require access to be made available to cable TV networks, except in a situation of significant market power, where the NRA should ensure that such access is negotiated for the delivery of broadband services. Even though the Communications Review explicitly did not deal with issues of content, the Commission has also called for a reassessment of ‘must carry’ rules across broadcast networks, arguing that any rules related to content should be ‘justified and proportionate’ (European Commission, 1999b: 30). Finally, the Communications Review made reference to the crucial issue of conditional access systems. Here, it was argued that the emergence of a series of incompatible Applications Program Interfaces (APIs), which operate Electronic Programme Guides (EPGs) and whose technical specifications can decide which EPGs can be installed in audiovisual reception equipment, was creating a situation of differential access to content services. As a consequence, it was recommended that standardization work be undertaken to ensure that either sufficient interoperability of APIs was secured or, better, to create new non-proprietary, open and common APIs (European Commission, 1999b: 31).

The spate of commercial realignments which has been a characteristic feature of ICT markets may eventually create a sector with a small number of powerful vertically integrated companies – leviathans, whose origins lie in media, IT or telecommunications – co-existing alongside a much greater number of smaller niche market operators (KPMG, 1996). Those in favour of light-touch or self-regulation regard this as an auspicious evolution. In
this economically determinist perspective, an unfettered and convergent ICT marketplace would produce a dynamic, innovative and competitive set of commercial outcomes. Its naiveté has been highlighted by Mansell (1993) as reflecting an *idealist* model of a future ICT sector. A more likely reality is expressed in the *strategic* model where the power of large commercial interests will require the evolution of a new set of regulatory criteria to guard against potential abuses of dominant position.

In the Communications Review, the Commission showed its support for the creation of ‘regulatory regimes which can be rolled back as competition strengthens, with the ultimate objective of controlling market power through the application of Community competition law’ (European Commission, 1999b: 49). Moreover, the primacy of competition policy was noted in the assertion that National Regulatory Authorities (NRAs) could only act within its boundaries. The Commission also noted the appropriateness of the Essential Facilities doctrine (where a company may be deemed to have a dominant position in the provision of facilities which are essential to other firms to supply goods or services, and where that company must allow access to those facilities) and the concepts of significant and dominant market power as indicators of the extent of competition in any market. Issues such as these have been especially controversial in broadcasting, not least because of its powerful social function. The European Commission tried unsuccessfully to develop a directive on media concentration in the mid-1990s, in the process providing another case of thwarted policy activism as a consequence of inter-DG rivalries within its ranks (see Harcourt, 1998).

**POLICY ACTIVISM AND PUBLIC SERVICE ISSUES IN EU ICT CONVERGENCE POLICY**

Recent years have witnessed a fundamental re-examination of the public interest aspects of information and communications technologies. Unsurprisingly, this has been evidenced first in European telecommunications, where gradual infusion of competition and re-regulation of the sector towards the EU level has drawn attention to the concept of universal service (European Commission, 1996; European Parliament and European Council of Ministers, 1997), debate centering on how it should be constituted, which organization should provide it and how it should be funded. As a consequence, the accepted EU definition includes the provision of voice telephony (ability to have access to national and international calls), fax, operator, directory, payphone and emergency services, as well as provision for users with disabilities and special social needs. Very importantly, it also includes the ability to access the internet (European Parliament and European Council of Ministers, 1998, articles 2 and 3).
With regard to broadcasting, Collins (1998: 51–2) argues that for a decade after 1982, European public service broadcasting (PSB) was significantly altered by the arrival of satellite technology and EU efforts to Europeanize the market for television services, consequently strengthening arguments in favour of a more marketized approach. Nonetheless, the adoption of the Amsterdam Protocol (Treaty of Amsterdam, 1997) by the EU seemed to attempt to allay the fears of supporters of PSB. It clearly recognized the legitimacy and importance of the underpinning principles of PSB and espoused the right of member states to fund public service broadcasting organizations as long as ‘such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest’. However, the convergence Green Paper (published shortly thereafter) and consultation exercise, has called forth a consideration of the public interest goals of broadcasting.

The OECD (1997: 40) has been unambiguous on this, stating that convergence ‘clearly has an impact on the way universal service should be conceived and organized. In particular, the identification of a particular service (for example voice telephony or TV broadcasting) with a particular access network and network provider (for example, the national incumbent telecommunications network, or national terrestrial transmission infrastructure) should be reviewed in the context of convergence’. The Commission’s Green Paper was characteristically more ambivalent on the issue, highlighting a disparity of views on the ability of market forces to fulfil public interest objectives (European Commission, 1997a: 19). The feedback which the Commission received from the Green Paper’s consultation exercise, indicated the widely held view that public service provision in telecommunications and broadcasting should be considered separately (European Commission, 1998b: 3).

However, shortly after the publication of the Green Paper, DGIV of the European Commission produced a controversial discussion document in which it raised the issue of the relationship between arrangements for PSB funding in the EU and anticompetitive state aids covered by article 92 of the EC Treaty. In particular, the legitimacy of public service broadcasters being allowed to fund their activities through a combination of state funding and advertising was questioned. Moreover, the need for member states to clearly define the public service broadcasting remit in legal terms was emphasized, and it was clearly stated that sports and entertainment shows would no longer be considered as public service broadcasting activities (Humphreys, 1999: 13–14). The paper marked the latest in a series of brushes between this powerful and activist DG and certain European public service broadcasters. Investors in the satellite sports channel, Screensport, in the late 1980s brought and won a case contending that it was placed at a competitive disadvantage vis-à-vis its main rival, Eurosport, because the
latter had a close relationship with the European Broadcasting Union (EBU), allowing it privileged access to sports rights which the EBU acquired for its members. In a subsequent conflict, the Commission made the EBU license programmes to non-member broadcasting organizations and, yet again, in 1992, in another conflict affecting Screensport and Eurosport, the EBU was forced to grant equal access rights to both companies, even though it had acquired exclusive rights of coverage. In 1995, the Portuguese broadcaster RTP was accused, but exonerated, of receiving unfair state aid, though the judgment in this case defined public service broadcasting activities as those that a commercial firm would not pursue (Collins, 1998: 161–3 and 56). In 1998, DGIV was petitioned by UK satellite broadcaster BSkyB about what it saw as the illegal use of state money by the UK government in funding the BBC’s ‘News 24’ channel which was to be provided as part of a digital package (Levy, 1999: 96).

While the subsequent 1999 Communications Services Review clearly stated that its terms of reference lay outside consideration of communications content and associated services, it nonetheless did, somewhat bizarrely, consider the concept of universal service. This may be because universal service is considered as a service associated with the provision of communications infrastructure, though the discussion contained in the review document on whether it should be expanded to include advanced broadband services would suggest not. More likely is the fact that this review has been driven by DGXIII of the Commission, imbuing it with a distinctly ‘telecommunications outlook’. Nonetheless, a completely neoliberalist stance was eschewed, the Commission going as far as to suggest that market forces would not achieve the fulfilment of universal service goals (European Commission, 1999b: 38). Shortly after the publication of the Communications Review document, the Commission produced a very important paper detailing principles and guidelines for future EU audiovisual policy. In this, it was clearly stated that, for the foreseeable future, broadcasting content and associated public service issues would be given separate treatment at EU level from other communications media. For example, the Commission was careful to point out that the potentially far-reaching 1998 directive on regulatory transparency (European Parliament and European Council of Ministers, 1998) covered audiovisual and information services other than those of broadcasting. Furthermore, it was made clear that responsibility for PSB matters would lie at member state level, EU law notwithstanding (European Commission, 1999c: 10–13) though the 1998 guidelines produced by DGX’s High Level Group on Audiovisual Policy may result in a more convergent conceptualization and treatment of PSB at national level. In any event, in a world of commercialized information-abundance, much of which is of both poor quality and of little use, there appears to be as great a need as ever for the
public provision of information services to a mass audience. Thus, while some of the technologies and services of broadcasting and telecommunications are coming closer together, it appears that there will be no policy convergence on ICT public interest regulatory matters.

THE COMMISSION AS A POLICY ENTREPRENEUR IN ICT CONVERGENCE POLICY
Throughout most of the 1980s and 1990s, DGXIII of the Commission, in tandem with DGIV, spearheaded the liberalization of telecommunications across the EU and played a significant part in transforming a nationally run series of uncompetitive sectors into a more uniform European-wide market with a new set of regulatory parameters framed at the EU level. The role of the Commission in this process has led it to be termed by some as a corporate actor (Schneider and Werle, 1990; Schneider et al., 1994) with its own independent goal vision, though it is perhaps more precisely the case that the relevant DG’s deserve this description. There is, however, not universal agreement on the Commission’s dynamism in IT and telecommunications policies. Schmidt (1998: 175) points out that it was able to benefit from exceptionally favourable technological and economic circumstances and in most cases had at least tacit support from the major national governments. More cynically, Esser and Noppe (1996: 555) argue that the Commission has only apparently exhibited leadership in the broader ICT field. On the contrary, in reality it has merely created an arena within which the most powerful private sector actors have determined policy. In the case of the landmark EU Information Society policy document, the Bangemann Report (1994), it is contended that the Commission’s role was merely that of bringing together the major international business players in ICTs to ‘participate in a complex consultation and advisory process . . . the actual measures themselves were stipulated primarily by the participants – first and foremost by economic actors of the respective functions’.

It is undoubtedly the case that the emergence of, in particular, IT and telecommunications as truly international, if not global, industries has influenced the development of EU policy agendas throughout the 1980s and 1990s in terms of research, development and production (see Peterson and Sharp, 1998: 223–5). Across the EU, telecommunications market liberalization has been (often reluctantly) accepted by member state governments as the inevitable price to be paid for entry into global markets (Simpson, 1999: 53). At this level, a ‘formidable and ambitious’ (Jackson, 1998: 103) trade accord has been signed in basic telecommunications services, as well as one in IT, though it has proved rather more difficult to secure agreement regarding audiovisual services (European Commission, 1999c: 22). Throughout the 1990s, the pro-market elements of the European Commission have been keen to point out the need to take action
quickly to gain a competitive position in global ICT markets. The Bangemann Report (1994: 7), epitomizing the sense of urgency, argued that:

... competitive suppliers of networks and services from outside Europe are increasingly active in our markets ... if Europe arrives late, our suppliers of technologies and services will lack the commercial muscle to win a share of the enormous global opportunities which lie ahead.

While the above analysis is of considerable value in relation to many aspects of ICT convergence policy developments, it cannot explain the ‘softer’ approach taken in the final version of the Green Paper (the result of DGX’s contribution), or, indeed, the fact that, as a result of the consultation exercise, a slow-track re-regulatory approach is most likely to be pursued (the interests of IT and telecommunications big business, in particular, did not prevail). Furthermore, it appears that those parties wishing to see the protection of broadcasting from any radical changes in the near future, which made their views heard to good effect during the Green Paper convergence consultation exercise, have prevailed. Thus, ‘technological change alone – even one as dramatic as digitalisation – seems unlikely to undermine the belief of politicians that the cultural and political impact of broadcasting must be decided according to priorities established in each member state’ (Levy, 1997: 38).

It could well be argued that this is a lesson that the Commission should have learned from its recent history. The ‘Television Without Frontiers’ saga bears many of the hallmarks of the blunted policy activism in evidence in ICT convergence policy developments. Here, in 1984, a Green Paper (European Commission, 1984) was published the aim of which was the creation of a European–wide market in audiovisual products. As Fraser (1996: 204–16) shows, firstly, the ‘Television Without Frontiers’ Green Paper was first written by the internal market and industrial affairs Directorate-General (DGIII): DGX of the Commission made little input. Second, as a consequence, a series of very hostile reactions to the proposals made emanated from interests within the broadcasting community. It was argued that the Commission, because of its fragmented nature, had relied too heavily on inputs from pro-market advertisers and had, in particular, underestimated the power of public broadcasting interests. Third, a proposed directive, produced from the Green Paper deliberations, proved controversial to such an extent that the Commission’s activism in this area was severely diluted to the role of a mediator between conflicting intergovernmentalist interests. According to Hills and Michalis (1999: 3), the ICT convergence debate at EU level has, somewhat ironically, resulted in the strengthening of national-level ICT regulators. Finally, as part of a compromise package, the ‘Television Without Frontiers’ directive was accompanied by measures to
subsidize the EU audiovisual production industry – similar actions have been proposed by the Commission as part of the watered down convergence initiative.

FUTURE PROSPECTS FOR EU-LEVEL REGULATION OF ICT

Thus, while it may well be true to say that international big business is shaping much of the activity in IT, telecommunications and to a lesser extent broadcasting, it is not necessarily the case that it is going to drive EU policy on ICT convergence in the immediate future. What will happen thereafter is harder to predict. Few, for example, would in the mid- to late 1980s have suggested that the whole of the EU telecommunications sector would be open to competition within 10 years. The international, if not truly global, nature of ICT markets may prove too powerful a lure for those governments and public sector companies (as it did in telecommunications) who wish present fragmentation to remain in place.

There are also undoubtedly strong arguments for creating some kind of policy apparatus to encourage the development and diffusion of new services, while at the same time guarding against the negative effects of the excesses of market forces on diversity, pluralism and the public interest in general. What shape, if any, this will take at EU level is very difficult to determine with accuracy at this stage, though the proposals of the 1999 Communications Review, if accepted by member states, will prove significant in this regard. In terms of regulation, there are a number of features which any efficient and effective regulatory organization must possess such as: independence, accountability, transparency, speed, clarity, simplicity, consistency, commitment, fairness, penalties, appeal mechanisms and periodic review (Doyle, 1996: 618).

Successfully creating an organization which is able to fulfil all these functions is an almost impossible task, given the nature of both the EU and the complexity of ICTs. However, in a situation where certain commercial players in this evolving sector are becoming more and more internationally powerful and where there will be, in the future, less justification – certainly on commercial grounds – for excluding them from audiovisual content markets in particular, it appears to be a nettle to be grasped. One possible option, a dual regulatory structure (Doyle, 1996: 623), suggested for the telecommunications sector, may have some relevance for ICTs as a whole. In this model, a set of National Regulatory Authorities would implement common competition policy rules – devised by some form of EU central authority – and deal predominantly with matters arising at the national level. At the EU level, the new organization might lie inside an existing body such as DGIV of the Commission. On the other hand, Melody (1997: 24–5) suggests that:
in a dynamic industry sector, what is needed is fewer, stronger, more independent regulators with responsibilities for a proactive and forward-looking approach to regulation. . . . Stronger regulation can minimise the risk of industry capture and political favouritism, and create confidence that regulatory decisions affecting market opportunities will be made on their merits and on criteria for achieving stated policy objectives.

Similar kinds of ideas to these have emerged as a result of the Commission’s 1999 Communications Review. It is important to stress again that the proposed new arrangements would not apply to broadcasting and internet content or any services associated with it. However, in terms of infrastructure and associated services the Commission has proposed the creation of two new EU-level regulatory organizations, a Communications Committee (COCOM) and a High Level Communications Group (HLCG). COCOM would act in an advisory capacity on proposals related to non-legally binding measures and, more importantly, in a regulatory capacity where voting would occur on draft proposals of a legally binding nature which might emerge from the HLCG. The HLCG itself would be legally established and made up of representatives of the member state NRAs, with the Commission in the role of Secretariat. Its tasks would include: obtaining agreement from the different NRAs on EU legislation; devising guidelines on market definition with regards to interconnection and access; endorsing codes of practice; cross-border dispute resolution; proposing solutions to problems raised by NRAs, member states, market players and users; and making suggestions for new EU measures.

The Commission proposals envisage that the new regulatory system will devolve all the detailed responsibility for regulation to the national level, with EU legislation being of a more general nature than up to now. It has argued that attention must be given to ensuring that regulatory inefficiencies at the national level are eradicated, such as in particular, political interference in the regulatory process, lack of coordination between organizations with responsibilities for different aspects of ICT regulation, and transparency and cooperation between regulatory and competition law authorities with a view to ensuring that EU competition law is adhered to (European Commission, 1999b: 53–4).

A number of question marks hang over this proposed regulatory structure. For example, the Commission has not specified which organization, COCOM or HLCG would have precedence on issues of conflict – indeed the precise nature of the relationship between the organizations is not made clear, though there is undoubtedly the potential for conflict. The voting mechanism in neither group is specified in the current proposals. This is particularly important in the case of the HLCG which, if agreed to by member states, may have to deal with many controversial issues. Finally, there is no clear specification of what the Commission’s role as secretariat
will entail, though it does appear that if these proposals are agreed, its role as policy manager will increase. In this regard, Laffan (1997) suggests that it has been more interested in, and motivated by, the pursuit of policy innovation than the less high-profile role of successful management of agreed policy, though this may be changing. It is also hampered by a lack of resources and a reliance on the national member state. However, in the global scenario which is increasingly characterizing ICT convergence, the Commission in the future could view its roles of negotiator, mediator and manager as increasingly important in political terms – its recent call for an International Charter on the Co-ordination of Global ICT policies (European Commission, 1998b) is noteworthy.

CONCLUSIONS

Deliberations on ICT convergence provide a clear illustration of the important proactive position which the European Commission can assume in the EU policy-making process. They also illustrate how the multi-organizational nature of the Commission produces intra-institutional jurisdiction turf wars. In two important ways, this may be viewed as inevitable. First, in any complex bureaucracy, a competition for policy territory tends to frequently emerge – a hybrid policy area, such as ICT, is a classic forum for such activity. Second, the Commission is in a crucial position when it plays its assigned role as the initiator of policy proposals. As shown above, it often acts as a voice for (and as a consequence receives support from) a range of different key sectoral interests. The high stakes of any change in the structure of ICT regulation across the EU, particularly in terms of the balance to be struck between market forces and public service provision, meant that proposals were likely to be both vigorously supported and resisted from different quarters.

The previous successes of two of the more powerful of the Commission’s DGs, XIII and IV (in both telecommunications and broadcasting in the latter case), led them to believe that their policy entrepreneurship would be immediately effective in setting in train a process resulting in EU broadcasting being subsumed under a regulatory umbrella characterized by the predominance of market forces and altered public interest provision. However, this made an inaccurate assessment of the power of DGX, as well as, more importantly, the lack of enthusiasm for such moves from crucial commercial and political actors at the national level. As Levy (1999: 168) points out the ‘conjunction of technological change, support from some sections of industry, and vigorous Commission policy entrepreneurship, could not transfer to broadcasting many of the lessons and policy successes established elsewhere in EU ICT and telecommunications policy’.

In certain ways, the ICT convergence debate can be viewed as ideological. The Green Paper was put forward by the European Commission
as part of the EU’s Information Society initiative and in important respects reflects opposing viewpoints on the role of ICT. Since the early 1990s, a number of EU policy proposals and action programmes have been considered and launched (see the European Union Information Society Project Office website). Within the European Commission, two opposing perspectives have been in evidence. On the one hand, the information society is viewed, rather deterministically, as an inevitable consequence of technological and economic change, emphasis falling primarily on business and commercial contexts and with deregulation and liberalization of markets prescribed as imperative for governments. This approach is evident in the Bangemann Report which assumes, at most, that societal benefits will automatically flow from this course of action. Thus, clearly, ‘the headlong rush into a bright new technological future offered by seamless digital information infrastructures does appear to have influenced the debate over policy choices’ (Cawson and Holmes, 1995: 666). Elsewhere within the European Commission, a different orientation has emerged which argues that policy action must be taken in a number of crucial areas to ensure that its benefits will fall in sufficient quantity, and with relative equity, across the EU – to leave the evolution of the information society in Europe to the market alone is neither desirable nor appropriate. DGV (Employment, Industrial Relations and Social Affairs) of the Commission was responsible for setting up, inter alia, the High Level Group on the Information Society which has contended that ICT ‘is neither good nor bad . . . it is the way in which any technology is used which determines both the nature and extent of its benefits . . . these benefits do not accrue automatically to all sections of society’ (European Commission, 1997c: 6).

While the ICT convergence issue may be regarded as a case of muddled policy entrepreneurship on the part of competition and telecommunications policy interests in the Commission, it would be inaccurate to suggest that such efforts have failed completely. The current proposals of the Communications Review, though avoiding content issues, if accepted by member states will create notable alterations to existing regulatory arrangements and may promote a more efficient ICT market in infrastructure and associated services, though as the telecommunications case is showing, implementation of agreed EU policy at the national level is prone to difficulties (Simpson, 1999: 58–9). Similarly, the recent Commission communication on audiovisual policy has acknowledged the potential usefulness of self-regulatory measures and codes of conduct (European Commission, 1999c: 13), which may signal a partial shift of DGX’s position. In the future, greater regulatory responsibility is also likely to be placed on the consumer of ICT services. Nonetheless, it is clear that responsibility for broadcasting regulation will remain very much a national
matter and that any alterations to current EU arrangements will be considered in the medium term only.\textsuperscript{4}

Acknowledgements
A previous version of this paper was presented at the European Consortium for Political Research Joint Sessions of Workshops, Workshop 24 ‘Regulating Communications in the Multimedia Age’, Mannheim, 26–31 March 1999.

Notes
1 Submissions to the consultation exercise were made by 274 parties: telecommunications operators (15%); broadcasters (11%); equipment manufacturers (4%); governments and regulators (12%); general industry associations (35%); trade unions (6%) and individuals (17%).
2 In keeping with the general approach advocated in the Review, once a sufficiently competitive market is in existence these specific regulations will be replaced by general competition law provisions.
3 This group is made up predominantly of academics and other public sector representatives.
4 A Report on the Application of the Television Without Frontiers Directive is planned for the end of 2000 and a study on the impact of articles 4 and 5 of this directive, which directly refer to content requirements, is planned for June 2000.

References


and Interoperability through Application of the Principles of Open Network Provision (ONP)’, OJ L199/32.


Seamus Simpson is lecturer in the Department of Information and Communications at Manchester Metropolitan University. His research interest lies broadly in the political and economic aspects of information and communications technologies (ICTs). He has written on EU telecommunications policy, ICT convergence and ICT policies for regional regeneration.

Address: Department of Information and Communications, Manchester Metropolitan University, Faculty of Humanities and Social Science, Manton Building, Rosamund St West (off Oxford Rd), Manchester, UK. [email: s.simpson@mmu.ac.uk]