

Converging Regulation to Regulate Convergence ?

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- **Is Convergence Relevant?**
- **Converging Regulations**
 - Evolution of Broadcasting Regulation
 - Is the Framework Appropriate?
- **Regulating Convergence**
 - Established Principles Applied Across the Board
 - Technological Neutrality, Market-Driven Policies

Is Communications Regulatory Policy Successfully Converging ?

- **Content Regulation**
 - TWWF Directive
 - Linguistic, Cultural, Social Concerns
 - Limited Scope for Economic Concerns
- **Infrastructure Regulation**
 - Shaped by Convergence
 - Mainly Based on Telecommunications Experience
 - Primarily Economic Concerns
- **Infrastructure Regulation is Key**

- **ATSD Directive (95/47/EC)**
 - Supporting Deployment of Innovative TV Services
 - Favouring Harmonisation of Standards
 - Laying Foundations for Regulation of Infrastructure
- **1998 Telecommunications Review**
 - Mid-90's Debate on Approach to Convergence
 - 1997 Green Paper on Convergence
 - Evolutionary rather than Revolutionary Approach
 - Building on Existing Regulation

- **Building on What?**
 - Existing Telecommunications Regulation
 - ONP Framework
 - Access, Interconnection and Universal Service Obligations
- **New Regulatory Framework for Electronic Communications**
 - Integration of Broadcasting Infrastructure and Telecommunications Regulation
 - Art 4 ATSD → Art 5 Access Directive
 - Other Technical Services: EPGs, APIs
 - Market 18: Broadcasting Transmission Services

- **Main Advantages of NRF...**
 - Based on Antitrust Principles and Approach
 - Market Analyses Using Antitrust Concept of Dominance
 - Flexible Responses to a Variety of Situations
 - Targeting Sources of Competition Problems rather than Symptoms
 - Technological Neutrality
- **... but:**
 - Built on Telecommunications Models of Competition !

- **Fundamentals Are Strikingly Different...**
 - Not Clear There Exists a Market Failure in Broadcasting
 - Absence of Formerly Public Monopolies Enjoying Super-Dominant Positions in Core Markets
 - Absence of Absolute Barriers to Entry
 - Absence of Absolute Sources of Market Power (Two-Way Access)
 - Market Power does not Derive from Infrastructure
- **... and the Economics Too**
 - Aim is Delivering Content to End User
 - Rolling Out a Multi-Purpose Platform not an Aim in Itself
 - Vertical Integration Can Ensure Quality and Innovation, but not a Must

- **Broadcasting is Still the Only Exception**
 - NRF Builds a Consistent Methodological Framework, but...
 - ... Broadcasting Still Considered an Exception
 - CA Regulation Applied Regardless of Degree of Market Power
 - Market 18 is Largely Interpreted as Analogue Terrestrial Transmission

- **Hence...**

**Converging Regulatory Policies are Appropriate,
However Consistency Must be Ensured Across all Markets**

How, Then, Do We Regulate Convergence ?

- **Convergence Too Often Used as a Catchall Word**
- **Media Companies Focus on Delivering Choice and Programmes to Viewers, not on Technological Processes**
- **Regulation Should Have Only Few Clear Objectives and Concerns**
 - **Lowering Absolute Barriers to Entry**
 - **Increasing Efficiency of Use of Resources**
 - **Creating Conditions for Enhancing Diversity and Plurality**
 - **Ensuring Level Playing Field**

- **Major Risks**
 - Being Unable to Seize Opportunities Offered by New Technologies
 - Example: DTT as a Perpetuation of Past Equilibria
 - Being Unable to Prevent Distortions of Competition by Major Incumbents in Related Markets
 - Example: Telecommunications Infrastructure Owners can Leverage their Market Power from Safe Core Businesses Where their Position is Largely Unchallenged
 - Being Technologically Non-Neutral
 - Markets (End Users) Should Drive Technological Choices

Current Broadcasting Regulatory Policy in Italy

- **Analogue Transmission Has a History of “Status Quo” Regulation**
- **DTT a Wasted Opportunity: Freed Resources Have Been Made Available Mainly to Incumbents**
- **Large Incumbents Use Their Privileged Position to Entrench Their Grip on Old and New Industries**
- **Technologically Non-Neutral Subsidies Are Distorting Competition**
- **Combined Effect of Government Approach and Undertakings Give Sky a Competitive Disadvantage**

- **But: Sky Is Still the Largest Digital TV Platform in Italy , Breathing Fresh and Much-Needed Air into the Stagnant Italian TV Industry**

Conclusions

- **Converging Regulations Do Not Guarantee Successful Convergence On Their Own**
 - Need to Take Account of Specificities of Different Markets
 - Need to be Technologically Neutral
 - Need to Focus on Distortions of Competition
 - Need to Adopt the End User Perspective

- **New Technologies Can Deliver Benefits for All Users...**
- **... but Regulation Must Be Designed Appropriately**

The Viewer is in Control, Not the Broadcaster !