

Consultation Paper on 2004 Digital 21 Strategy: Views Submitted by Dr John Ure,
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My submission is directed towards paragraph 25 of the Consultation Paper, specifically the sub-head: *The case for a unified regulatory body*. My comments are to question the merits of such a proposal, not to oppose it *per se* but to argue the case for it has not been made.

A. Unified Regulatory Body – Issues of Substance

The Consultation Paper points to trends overseas towards unifying regulatory authorities across the ICT sectors, in particular authorities responsible for the regulation of telecoms, radio spectrum allocations and assignments, and broadcast licensing. The Paper cites reasons from the UK and Australia that include the aim of greater simplicity and flexibility of regulation and responsiveness to developments of convergence within the industry. Although this sounds reasonable and desirable, no arguments are actually advanced to suggest these outcomes will be achieved, or that they cannot be achieved by existing or other arrangements.

It is useful to ask the question: what are the issues that need to be tackled and which a unification of regulatory authorities would answer? It is perhaps worth proposing a list that would include the following: licensing issues, spectrum issues, technology issues and policy issues.

Examples of Licensing Issues

1. Digital Terrestrial Transmission (DTT) - multiplex licences issued by OFTA will cover the introduction of digital terrestrial transmission while content will be separately licensed by the broadcasting authorities. If these two regulatory authorities were merged would anything change in reality? Would not the broadcasting regulations continue to be separate?

2. Television Content – currently webcasts over the Internet are not subject to content regulation whereas broadcasts over the airwaves and narrowcasts over cable and telephone wires are subject to content regulation. The arguments for regulation relate to the social impact of the content and this is influenced by how many people can access it and whether access is in private or public venues. This inevitably leads to asymmetric regulation and should not be subject to arguments about level playing fields between service providers who have purely commercial interests at heart. Judgments may change over time regarding the social impact of content delivered over different mediums, and the medium may itself become the message over time giving rise to concerns such as content available on the Internet and in web-based games arcades, but there would seem to be no obvious advantage in having these judgments made by a regulator that handles telecommunication issues.

3. Fixed-Mobile Convergence – the issuing of general all-purpose telecoms licences that give operators the option of using fixed and wireless technologies in any combination they deem to be commercially viable is a very possible future development. Content issues may arise as the types of value-added services associated with 3G and beyond increasingly involve the transmission of video. There may be some argument that the telecoms regulator is in the best position to regulate content issues in this case even though this would be something of a departure from traditional practice. If video phone devices (fixed or mobile) receive streamed web-casts and broadcasts as they now do in South Korea then the application of the regulations by a single authority could become significant, but only on the basis that the principles of content regulation remain unchanged. There is a danger that the basis of content regulation could shift from social impact to commercial interest and industrial policy issues.

Examples of Spectrum Issues

1. Allocations – the recommendations of the ITU's WRC and advances in technologies such as digital terrestrial transmission and wideband radio and wireless LAN (WLAN or WiFi) will give rise to a reallocation of spectrum to various usages and questions concerning whether it should be licensed or unlicensed. These are not just technical issues but also policy issues and require close coordination between regulators. The question is: is a unified regulatory body required to achieve the level of co-ordination required? The case is not clearly made, and OFTA already combines spectrum and telecoms regulation.

2. Assignments – spectrum allocation issues will be accompanied by questions of who gets the right to use the spectrum and under what conditions. Spectrum pricing, spectrum trading and the trading of licences are all burning topics in the EU and the USA right now. Related to spectrum trading and the trading of licences are questions of M&A regulation. As elements of the industry convergence the issue of who uses which frequencies to provide telecoms or content services will become more complex even if the tendency is towards market solutions. Regulation won't go away, but again the question arises in the case of Hong Kong whether a broadcast regulator primarily concerned with content issues needs to be heavily involved. It is likely these issues will become more policy issues than regulatory, for example whether to allow spectrum and licence trading and if so under what competitive and cross-ownership constraints. So perhaps the key question is whether policy advice is better coming from a unified regulator? This sounds more like an issue of professional expertise than an issue of regulation per se.

Examples of Technology Issues

1. Mobile Cellular Standards – in principle OFTA adopts a technology-neutral position with regard to which cellular technologies operators in Hong Kong can use. In practice the allocation of spectrum and its assignment to various operators limits what can be used. For example, currently there seems to be little opportunity to deploy the 3G CDMA2000 standard in Hong Kong unless under-utilized spectrum is re-assigned under a 'use it or lose it' principle. OFTA could also allocate additional spectrum to cellular

uses. These are controversial issues, but it is not obvious why a unified regulator would add anything to OFTA's existing authority in this area.

2. Digital Terrestrial Transmission Standards – Hong Kong has been persuaded by the broadcasting sector to await decisions made by Mainland China as to which standard to adopt. Now it seems that Mainland China will adopt the European standard while keeping the door open for its own standard when it is ready, and Hong Kong will go ahead for a 2006 roll out. What relevance would a unified regulator have in this situation?

Examples of Policy Issues

1. Digital 21 – the mission statement of Government “to drive Hong Kong's development as a leading digital city in the globally connected world” is a compilation of IT, telecoms and broadcasting issues, but it is also wider than this, including film and the creative media. Compiling Digital 21 clearly does not require a unified regulator, but does implementing it do so? The accomplishments of the first Digital 21 IT strategy were achieved without one, so has anything changed? Perhaps the real issue here is a conviction on the part of Government that promoting an IT strategy requires a higher profile regulatory body that includes IT and telecoms on the grounds that “in the globally connected world” IT needs telecoms. This could change the character of the regulator into something closer to a policy maker and planning body. If this is the case then it needs to be spelt out with greater clarity and examined in more detail.

2. Digital Trade and Transport Network (DTTN) – the DTTN does not come under the CITB which presumably explains why it receives only a couple of passing references in Digital 21 despite the importance of this initiative. This seems to be an interesting case of a promotional activity that as things stand would fall outside the scope of the unified regulatory body. This does not seem to make much sense of the idea mentioned above of the unified body acting as a more high profile planner of ICT development in Hong Kong.

Conclusion

1. Most of the issues raised above do not seem to require a unified regulatory body, although some may benefit if there is one, for example fixed-mobile convergence if and when it really happens.

2. If the role of a unified regulatory authority is to become a far more pro-active planner and promoter of ICTs in Hong Kong then a whole new set of issues arise that need to be thoroughly debated.

B: Unified Regulatory Body – Issues of Structure

1. Is there evidence that a unified regulatory body would be cost efficient? For example, can the expertise of accountants, economists, lawyers and engineers be used across all the regulated sectors? There are two models for this. One model is multi-sector regulation which involves utility industries that share network economics in common, such as gas, electricity, rail, telecoms, roads, water, etc. This does not apply in Hong Kong but has

been suggested as a possible model for low-income developing countries.¹ The other is the model of convergence regulation which is often a misnomer. Convergence can apply to the regulation itself, such as Hong Kong's decision to licence DTT separately from content, or to the idea of a unified regulatory body even if no convergence regulation exists. The essential difference with multi-sector regulation is that the economics of ICT industries have little in common. The idea that different content can transmit down the same cable says nothing about the economics of cable TV or about the economics of telecoms, although it may say a lot about opportunities to bundle services. With this in mind it is not at all clear how there could be dramatic cost savings in the employment of professional accountants, economists, lawyers and engineers.

2. Perhaps the only area in which cost savings and professional expert could go together is if a commissioner structure was introduced, as for example at the FCC. At the top level commissioners are required to review regulations and policies towards each of the sectors. This is not being proposed in the Consultation Paper, but it may be worth further thought.

3. Perhaps more important than a unified regulatory body would be reaching out into the community of professional expertise that already exists in Hong Kong in the private sector and in the universities. Short term contracts and secondments ranging from a few weeks to a couple of years would greatly widen the resources available to the Government and this would have the added advantage of spreading a better understanding of policy and regulatory issues within the community and industry. Certainly the Telecommunications Research Project (TRP) would welcome the opportunity to make a contribution.

¹ See Henten, Samarajiva and Melody (2003) 'Designing the Next Generation Telecom Regulation: ICT Convergence or Multisector Utility?' WDR Dialogue Theme 2003 (p.33) at: <http://www.regulateonline.org/pdf/wdr0206.pdf> and Schwartz and Satola (2000) 'Telecommunications legislation in transition and developing economies' *The World Bank Technical Paper # 489*, Washington DC. Not online.