

NEW LEGISLATION FOR TELECOMS

On 7 May 2002 the Communications Bill was jointly published jointly by the Secretary of State for Trade and Industry and the Secretary of State for Culture, Media and Sport, but it wasn't introduced to the House of Commons until 19 November 2002. In summary, the bill is designed to introduce a new regulatory regime for UK telecommunications, broadcasting and the internet.

The new legislation, if adopted, will govern the converging media and telecommunications sectors. The legislation seeks to strike a balance between the provision of dynamic and competitive communications services and the establishment of a safe and reliable public service.

In July 2002, Lord Putnam, chairman of the joint committee on the draft Communications Bill, announced in a press statement that the "Communications Bill is concerned with issues that affect all of our lives every day of the week: the service from our phone company; the way we use the internet; the quality of the television programmes that we watch, the variety of radio stations we tune into."

Much has been made of the bill's application for quality control of television and radio broadcasting, but the bill encompasses a much wider scope for e-business under the remit of recently-created "super-regulator" for the communications industry, Ofcom.

The aim of Ofcom is to develop and maintain new rules for the communications and media sectors, in line with a single set of objectives and in light of a changing market environment. Industry players will benefit from dealing with one organisation instead of the five previous regulators. It's also hoped that by dealing with all communications industry issues the new regulator will bring a coherent and joined up approach to regulation in the sector compared to the existing piecemeal system.

Ofcom's role

Under the bill Ofcom will have to:

- administer the new EU regulatory framework for electronic communications networks and services
- have concurrent powers with the OFT to enforce competition law in this sector
- apply a more consistent scheme for regulating public service broadcasters – including establishing a 'Content Board' that will monitor the nature and quality of TV and radio programmes on the public's behalf
- regulate spectrum trading to allow for more efficient use of available spectrum
- inherit Oftel's consumer-facing functions but with the creation of an advisory 'Consumer Panel' covering policy arising from the delivery of communications services.

In carrying out these functions Ofcom must take account of general duties to:

- further customer interests
- promote competition in the provision of communication services and facilities encourage optimal use of the radio spectrum.

Telecoms deregulation

One of the wishes of Lord Currie (chairman of Ofcom) is to promote deregulation of the telecoms sector. As an Ofcom report, *Regulatory Creep and Regulatory Withdrawal*, which was written in May 2002 by Lord Currie states: "Careful consideration should be given to the separation of BT... There's a contrast between what has happened in gas and electricity and what has happened in

telecoms... where no clean withdrawal has occurred.

"This highlights the importance of separating ownership of the telecoms network from supply of telecoms services, entailing the splitting up of BT in its current form," the report continues.

A BT spokesperson told *Financial Director's* sister title *Computing* in September 2002: "The concern of the report is to promote deregulation, and we endorse that. But we do not agree with the proposal for achieving this."

The bill also abolishes the criminal offence of running a telecommunications system without a licence. Companies will be able to provide a communications network or services provided that Ofcom is notified.

Other business implications

The Communications White Paper of December 2000 indicated that the new regulatory framework did not intend to apply to internet content. However, as the distinction between what is traditionally seen as broadcasting and the use of the web to deliver information blurs, it's not obvious whether activities such as "webcasting" (broadcasting via the internet – eg, interactive results presentations) are excluded from regulation by Ofcom.

According to law firm Berwin Leighton Paisner the government is quite adamant to interpret the bill in a way that excludes any type of content delivered via the web from the regulatory provisions of the bill. In essence it depends whether

content falls under the scope of "television licensable content service" and "available for reception by members of the public" – the latter encompasses webcasting.

Clause 227 of the bill sets out the services that are to be excluded from the definition of a television licensable content service. A service will be excluded if it's a two-way service provided by means of an electronic communications network. The aim of this exemption is to maintain licensing obligations in respect of services which are or equate to broadcasting, while excluding internet services such as websites or webcasting, from Ofcom's regulatory powers. In essence companies can publish results and hold investor meetings over the internet without being subject to extra regulation.

Tom Berry.

www.financialdirector.co.uk/briefing

Useful links

- The homepage for the communications bill is www.communicationbill.gov.uk. It includes downloadable version of the bill impact assessments and consultation papers.
- Specialist legal commentary on the bill is available from Eversheds Davidcomrie@eversheds.com
- or Berwin Leighton Paisner eduardo.ustaran@blplaw.com