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Integrated Regulatory Bodies in the Age of Technological Convergence

Keywords: independent regulatory authority, electronic media, technological convergence, the European Union.

Abstract: The process of technological convergence has for many years been the symbol of deep and dynamic changes which can be observed at the junction of the media/telecommunication sectors and computer technologies. The results are visible in many aspects of modern media functioning and have an influence on the shaping of domestic institutional/legal regulation of the sector. In consequence, many countries have debated over the creation of integrated regulatory bodies incorporating the telecommunications and electronic media sectors.

The goal of the article is not to adjudicate but to make the readers familiar with the issue and to put into order the so far debate on this subject by outlining the key contentious issues, the dilemmas and arguments for and against. Moreover, it attempts to answer the question as to what degree the process of technological convergence has inspired the decision to create integrated regulatory bodies and whether other factors were influential as well. The goal of the article was to also analyse the interdependencies between the regulatory bodies and the process of technological convergence.

A comparative analysis of different countries media systems show that in most cases it was decided to create regulatory bodies active on the market of electronic media. Their shape, structure and level of independence as well as scope of competence differ depending on the political, legal and social structure of the countries as well as the size of the media market¹. The differences allow us to categorize the regulatory bodies according to various criteria. For example, there are countries where there are several market regulators (Switzerland, Sweden, Spain, Germany) due to the federal structure of the countries, as well as countries (Czech Republic, France, Canada, Poland, United States, Great Britain, Italy) where there is only one regulatory authority. Also we can classify the regulatory bodies according to the level of independence from politicians and other market influences as well as their scope of competences. Based on this, there are the so-called traditional market regulators which are active only on the electronic media market (responsible for concession policy, media pluralism, content monitoring) and integrated regulatory bodies which control the functioning of the telecommunications sectors (responsible for concession policy of different operators, frequency band resources, numeration). The first group of countries has two separate regulatory authorities, one for electronic media and one for the telecommunications sector. The other has one regulatory body responsible for both sectors. It should also be mentioned that in most cases integrated regulatory bodies have control over competition in both sectors². Moreover, they often also oversee frequency bands, regulate the Internet and postal services.

¹ More on regulatory body models in: P. Robillard, *Television in Europe: Regulatory Bodies. Status Functions and Powers in 35 European Countries*, the European Institute for the Media, Media Monograph No.19, 1995; Council of Europe, Directorate General of Human Rights, Media Division, *An overview of the rules governing broadcasting regulatory authorities in Europe*, September 2003, DH-MM(2003)007; P. Stępka, *Przegląd modeli ciał regulacyjnych na przykładzie wybranych państw. Opracowanie Departamentu Polityki Europejskiej i Współpracy z Zagranicą Biura KRRiT*, Warszawa December 2005, (http://www.krrit.gov.pl/dokumenty/dm/dm_opr_przegląd.pdf).

² See K. Jakubowicz, B. Jung, T. Kowalski, *Polityka państwa polskiego w dziedzinie mediów elektronicznych w kontekście europejskiej polityki audiowizualnej. Założenia strategiczne do nowej ustawy o mediach elektronicznych oraz nowelizacji innych ustaw*, Warszawa 2004, p. 75.

Integrated regulatory bodies function in Europe (Bosnia and Herzegovina, Finland, Slovenia, Italy, Great Britain) and outside of it (Australia, Canada, RSA, United States). The first of these types of structures were created in the US (1934)³ and Canada (1976)⁴. Regulatory bodies went through a renaissance phase in the late 1990s when many countries debated on the regulatory effects of technological convergence processes. This was coupled with an intensive growth of the Internet as well as other new technologies. As a result, some countries decided to establish integrated regulatory authorities (Australia⁵, Bosnia and Herzegovina⁶, RSA⁷, Italy⁸ and Great Britain⁹). The most revolutionary changes took place in Britain, in 2003, when the *Office of Communications* (OFCOM) was replaced by five separate regulatory bodies¹⁰. In other cases, the reform meant one new structure in place of two old ones (electronic media and telecommunications). However, despite the dynamic technological development, most countries still opt for traditional regulatory bodies. Among the 49 European regulatory bodies, associated by the *European Platform of Regulatory Authorities* (EPRA), there are only eight which are integrated¹¹. Outside of Europe, where integrated regulatory bodies are more popular, there are still many countries with traditional regulators, ie. South Korea (*The Korean Broadcasting Commission*) and New Zealand (*Broadcasting Standards Authority*).

Despite extensive literature on the subject, it is difficult to estimate whether integrated regulatory bodies are the right solution in the age of technological convergence. At this point, we can say that it will still take more time to estimate their effectiveness due to the fact the technological convergence is an active process. Therefore, the goal of this article is to make the readers familiar with the issue and to put into order the so far debate on this subject by outlining the key contentious issues, the dilemmas and arguments for and against. Moreover, it attempts to answer the question as to what degree the process of technological convergence has inspired the decision to create integrated regulatory bodies and whether other factors were influential as well. The goal of the article was to also analyse the interdependencies between the regulatory bodies and the process of technological convergence.

³ Federal Communications Committee (FCC) was established based on the Communications Act from 1934. It replaced the *Federal Radio Commission* (FRC) created in 1927.

⁴ Canadian CRTC in 1976 replaced the *Canadian Radio-television Commission* (CRTC) created in 1968.

⁵ *The Australian Communications and Media Authority* - ACMA was created on July 1, 2005 as a result of a merger of electronic media regulator (*Australia Broadcasting Authority* - ABA) and communication (*Australian Communications Authority* - ACA).

⁶ The integrated RAK regulator was established on March 2, 2001. It combined electronic media and telecommunications regulatory authorities. A new communications law went into effect on October 21, 2001 which defined RAK competences.

⁷ ICASA was established in July 2000 based on the *Independent Communications Authority of South Africa Act No.13 of 2000*. The new regulator took over the competences of the old regulatory bodies SATRA (telecommunications) and IBA (electronic media).

⁸ Italia AGCOM was established based on a law from 1997 (Law n° 249 of 31 July 1997). It began its activity in 1998.

⁹ *The Office of Communications* (OFCOM) was created based on the *Office of Communications Act 2002*, its competences and final shape were delineated by the *Communications Act* from 2003.

¹⁰ OFCOM replaced *Broadcasting Standards Commission, Independent Television Commission, Oftel, Radio Authority and Radiocommunications Agency*.

¹¹ Among EPRA members, there were six countries which established integrated regulatory authorities: Bosnia and Herzegovina, Finland, Slovenia, Switzerland, Great Britain, Italy as well as autonomous Gibraltar government (British Commonwealth) and Man Islands (dependent on the British Crown). See European Platform of Regulatory Authorities, (www.epra.org).

Technological convergence as a factor of regulatory changes

The phrase technological convergence was defined in the 1990s. It was used to describe the mutual infiltration of technologies and services characteristic to the electronic media sector, the telecommunications sector and new technologies sectors. These processes were first noticed in the late 1970s and were more fragmentary in character. Literature from that time period uses phrases such as *compunications* and *telematique*, which meant the combination of computer and telecommunication technologies. The philosopher Nicholas Negroponte predicted, at that time, the greatest advancements in the mutual permeation of computer technologies, the printed and electronic media¹². Later, it was the development of digital technologies that delineated the concept of technological convergence as we know today¹³.

Literature of the 1990s includes many examples of definitions describing the multi-aspect and dynamic character of the process¹⁴. What was focused on was the gradual integration of the previously separate technologies and markets, the electronic, the telecommunications, the Internet and the printed media markets. The integration took place in terms of infrastructure, equipment and media content.

The phenomenon of technological convergence was analysed by the European Committee in a document, the “*Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Towards an Information Society Approach*”, which was published in 1997.¹⁵ Although it was an EU document, its analyses and conclusions can be considered universal. It points out two basic meanings of technological convergence:

- a group of characteristics of various network platforms which enables the carrying out of various types of services;
- consumer equipment compatibility such as the telephone, the TV set and the PC¹⁶

There is, on the one hand, the creation of infrastructure which enables the distribution of various services, and, on the other, changes in consumer equipment which allow the reception of many new services. This way converging are platforms, services and equipment. Aside from the multi-level homogenisation process, technological convergence leads to the creation of entirely new services, unknown before, such as IPTV or mobile TV.

According to K. Jakubowicz, the process of technological convergence is, “something more than can be described as a technological phenomenon, it is a technological fundament of information society, and, at the same time, a driving force of civilization change”¹⁷. The consequences of this process go beyond the technological sphere and are visible in culture, social relations and, most of all, the economy. Various sectors of the economy are integrating which means that new expansion possibilities are opening up, and multimedia groups are being created, active in various different sectors. The power of technological change is

¹² See M. L. Mueller, *Digital Convergence and its Consequences* (in:) “The Public/Javnost”, Vol.6, 1999, 3, p.12.

¹³ See P. A. Carter, *OECD Roundtable on Convergence*, 2 June 2005, p. 2.

¹⁴ See K. Jakubowicz, *Konwergencja I jej konsekwencje dla rozwoju i regulacji mediów elektronicznych* (in:) KRRiT, *Internet jako medium XXI wieku. Problem polityki i regulacji radia i telewizji w erze cyfrowej*, Warszawa 2000, p. 14.

¹⁵ See European Commission, *Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Towards an Information Society Approach. COM(97)62*, Brussels, 3 December 1997.

¹⁶ *Ibidem*, p.1.

¹⁷ See K. Jakubowicz, *op.cit.*, p.14.

responsible for strong economic growth and innovation, as noticed by the European Committee¹⁸. Despite a slump on the *dotcom* market in early XXI century, the process of technological convergence is still considered a major factor determining change in the sector.

The power of technological change and its consequences for the economy and social life is something to be taken into consideration by the authorities responsible for the institutional/legal ramifications in this sector. The European Committee, in its announcement from June 1, 2005, stated, “A pro-active policy is necessary in response to the ongoing fundamental technological changes. Digital convergence needs a political one, it is necessary to adjust regulation where there is need, in order to remain consistent with new digital economy”¹⁹. In practise it means redefining the present regulation.

It should be noted that so far the different markets were regulated separately (vertically). This is still the case in countries which have traditional regulatory bodies. However, the advancing process of convergence has lead many countries to debate on the issue of regulation reform in this area, in order to enable further development of the market. In the EU, the first step toward this was the issuing of the Green Paper by the European Committee which encouraged the 15 members to initiate structural changes regarding the regulation of the electronic and telecommunication markets, taking into consideration the process of technological convergence. A large number of different regulatory bodies can be a potential barrier to the development of companies in this field. The European Committee questioned the effectiveness of functioning of separate regulatory bodies in the age of convergence and has proposed three possible scenarios for the future:

- Scenario 1: Building based on already existing structures,
- Scenario 2: Establishing a new regulation model for new types of services, which will coexist with old regulation systems for telecommunications, radio and TV sectors,
- Scenario 3: Progressive introduction of a new model effective for all services, traditional and new²⁰.

From the above, the most interesting seems to be scenario nr. 3 as it is for the creation of new regulation encompassing old and new services. It is a radical solution but it could also lead to the future creation of institutional ramifications for the sector and an evolution toward regulation taking into account the rule of technological neutrality. It should be noted that during the debate²¹ on the document, the European Committee did not vote on any of the three scenarios leaving it to member states to decide on their own media policy. In the conclusions presented by the European Committee in a special Communication, COM(1999) 108 final, the institution underlined the need for change of regulation to more horizontal, and one which would differentiate between media content and infrastructure²². The postulate for reforming the regulation model, according to the technological neutrality rule, and stepping away from the vertical regulation model seem to be the key conclusions of the European Committee.

¹⁸ See European Commission, Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. i2010 European information society for growth and employment, Brussels, 1.6.2005, (COM (2005) 229 final).

¹⁹ Ibidem, p.1.

²⁰ Ibidem, p. 34-35.

²¹ Debate on the Greek Paper took place during two public consultations. The first was between December 1997 and May 1998, the second from July to November 1998..

²² See European Commission, *Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. The Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Results of the Public Consultation on the Green Paper* [COM(97)623] , Brussels, 10th March 1999 COM(1999) 108 final.

It should be noted that there is still debate going on regarding the new directive regulating the audiovisual media sector which is in tune with the ongoing technological changes²³. Any new Community legal regulations in this area may be in response to member state reform in this sector. Such regulatory changes can be seen outside of Europe as well²⁴, and may also inspire institutional changes. This may mean closer cooperation between the old regulatory bodies or the creation of new, integrated ones.

Discussion on integrated regulatory bodies

Despite the lack of precise instruction from the EU, the Council of Europe or any other international organizations as far as the shape of media market regulators, many countries debated the issue of integrated regulatory bodies in the general discussion on the influences of technological convergence. Both, opponents and proponents of the idea used arguments regarding three basic concepts: state interests, market interests and consumer interests.

As far as state interests are concerned, proponents of integrated bodies mentioned advantages of adapting regulatory structures to market processes which allows more effective regulation of the changing market. Due to the fusion of present day traditional regulators, it is also easier to adapt to the new regulation away from sector regulation and toward technologically neutral regulation. Moreover, combined competences in one organizational structure means lack of repetition of duties or competition between regulators. This should have a positive influence on the regulators, result in less conflict and a common policy regarding telecommunications and media market interests which, in turn, should be of public interest as it is more effective also economically. Additionally, a strong, new regulatory body would be a counterbalance to the giants of the industry and one authority would be more cost effective due to a synergy with less people employed or one headquarters²⁵.

Opponents of integration, regarding state interests, question the depth and sense of change created by technological convergence²⁶. They point out the vast differences between telecommunications and media markets policies, impossible to consolidate. They also mention the danger of domination of the new structure by telecommunications policy goals which may lessen the state overseeing of certain rights such as media pluralism. Opponents are under the impression that it is not possible to create a common policy which would combine both, telecommunications policy and state media policy. A creation of one regulatory structure would only lead to a diminishing of natural barriers between the two sectors. Moreover, the advantages of such a synergy are not clear to them²⁷.

The creation of one regulatory body means new challenges for the players on the market. Although, in this case there seem to be more advantages than threats regarding their interests. First of all, the new regulatory body would be more in tune with technological convergence and thus the market could become more liberal. Proponents of change state that an integrated regulator would create a chance for a change of regulatory practises into more horizontal and based on the rule of technological neutrality. The changes which could take

²³ Work on the Television Without Frontiers directive officially began in 2003. In December 2005 the European Committee proposed the first draft of the new directive (*Audiovisual Media Services Directive*). In March 2007, after taking into consideration suggestions of member states and European Parliament, the proposal was modified. The legislative process can be observed on the EC's site:

(http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm).

²⁴ See Republic of South Africa, No. 36 of 2005: Electronic Communications Act, 2005.

²⁵ See E. Machet, *Background Paper to the Debate on the Pros and Cons of Convergent Regulatory Authorities*, 14th EPRA Meeting, St Julian, 27-28 September 2001, p. 5-6.

²⁶ See D. Kevin, *WG3 Reform & Convergence of Regulatory Authorities: Practical Issues. Round table discussion*. 23rd EPRA meeting, Elsinore, May 17-18 2006, p. 1.

²⁷ See E. Machet, *Background...*, op.cit., p.6.

place would increase effectiveness of market regulation and ease cooperation between market players and the regulator. For market players it would mean being able to resolve all matters in one place²⁸. This is imperative in the era of great increase in the number of additional available interactive services which require regulation of different regulatory bodies. The new system would enable multimedia groups great savings regarding doing away with many structural barriers in their activity. One integrated regulatory body could also mean greater political independence of this new structure if it wasn't, for example, financed from the state budget.

On the other hand, an integrated body does not automatically mean a common regulatory policy. Despite the changes, certain market players can fall "prey" to internal conflicts and competition within the structure²⁹. According to specialists, market player interests can be endangered by the sole functioning of a strong, large organization, if it is under political influence. This is especially regarding those subjects for which regulatory body independence guarantees the preservation of pluralist media character³⁰. As it turns out, there are significant differences regarding independence between traditional telecommunications and electronic media market regulators. The possibility of creation of an organizationally strong and politically independent structure is a key argument for those in favour. According to them, an accumulation of competences would require the creation of means which would guarantee the new body political independence.

The last issue which divides public debate regarding the creation of integrated regulatory bodies is that of consumer interests. An argument for the creation would be greater transparency of market functioning. Also, for consumers it means one institution to which they can direct their complaints³¹.

A threat to consumers is that the new structure could become dominated by telecommunications policy goals, with diminishing emphasis on cultural and social issues³². It could also mean less engagement in the issue of media plurality protection, based on, for example, changes in concession policy. Another threat from the consumers' point of view could be political and market players influence on the new structure and lack of dependence from them. It should be noted that traditionally electronic media market regulators enjoy greater autonomy than their counterparts on the telecommunications market.

In conclusion, it can be said that the most contentious issue in this matter is the visible as well as projected influence of the process of technological convergence. Proponents of change stress possible advantages such as the increase of innovation or competition while opponents point out the threat of outside influences such as politics or commercial interests overriding imperative social values such as media plurality or the diversity of media offer. A decision to create an integrated regulatory authority would be seen as a pro-market state activity. However, its opponents point to the *market failure* phenomenon and advocate the necessity of protection of values which could be viewed as contrary to market logic.

²⁸ Ibidem, p. 5-6.

²⁹ Ibidem, p.6.

³⁰ More on regulatory bodies' independence see: Recommendation No. R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum; F. Gilardi, *Evaluating Independent Regulators* (in:) OECD, Working Party on Regulatory Management and Reform. Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom. 10-11 January 2005; P. Jacobzone, *Independent Regulatory Authorities in OECD countries: an overview* (w:) OECD, Working Party on Regulatory Management and Reform. Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom. 10-11 January 2005.

³¹ See E. Machet, op.cit., p.5.

³² Ibidem, p.6.

According to them, the maintenance of separate regulatory bodies would more effectively protect consumer rights.

Moreover, it should be noted that modifying legal/institutional regulation in tune with the process of technological convergence is an imperative, however, not the only argument in favour of the creation of integrated regulatory bodies. There are other arguments such as lowering the costs of regulation via a synergy, lessening the competition between regulatory bodies, increasing the transparency of regulation and strengthening the position of state versus strong multimedia groups. On the other hand, according to opponents of the idea, there are also other motives which countries could have regarding the creation of integrated authorities. One would be limiting of political independence of new, integrated bodies through new structural solutions.

The above analysis shows that countries which decide to create integrated bodies are not solely driven by technological or market factors but also have other motives. In some cases, it can be a pretext in order to introduce institutional changes. However, regardless the reasons, it is worth taking a look at those countries which have implemented such changes and have integrated regulatory bodies in terms of the compliance of their internal structures with the rule of technological neutrality.

“Convergent” regulatory bodies

When analysing the structure of integrated regulatory authorities³³ we can reach the conclusion that the creation of such structures does not automatically mean compliance with the spirit of technological convergence³⁴. The new structure can still be divided into two separate sectors and be regulated vertically. This is regarding integrated bodies which were created prior to the technological convergence debate (ie. Canadian CRTC or American FCC) and those established in the XXI century. In our analysis, we are more interested in the second group of bodies as ignoring the rule of technological neutrality in newly created organizations should be questioned. In this context mentioned should be the Bosnia and Herzegovina regulator RAK, Slovenian APAK and South African ICASA. In each of these structures there are two separate organizational sectors, one responsible for electronic media and the other – for telecommunications. This might mean that there were arguments other than adjusting to technological change for their creation, maybe such as limiting competition between traditional regulators and cost saving. It does not mean, however, that these structures cannot be adjusted but it will be more difficult since vertical divisions do not cater well to such changes.

There are also integrated regulatory bodies which have adjusted their internal structures according to the changes taking place regarding technological convergence. These are: Australian ACMA, British OFCOM, Malaysian MCMC and Italian AGCOM. These countries have done away with vertical divisions and moved toward more horizontal structures. For example, Paola Manacorda from AGCOM stated that “the new structure was built based on process and knowledge ideas and not the market structure”³⁵. A horizontal structure in practise means one organizational unit responsible for the regulation of infrastructure and one unit responsible for regulation of broadcasted content, regardless the type of carrier. Most of all, according to the rule of technological neutrality, there are no

³³ See P. Stępa, *Zintegrowane ciała regulacyjne dp. komunikacji elektronicznej. Opracowanie Departamentu Polityki Europejskiej i Współpracy z Zagranicą Biura KRRiT*, Warszawa, March 2007, p.15-46, (http://www.krrit.gov.pl/dokumenty/dm/dm_komunikacja_elektroniczna.pdf).

³⁴ See E. Machet, op.cit., p.4.

³⁵ P. Manacorda, *Pros and cons of convergent authorities, 14th EPRA Meeting*, St Julian, 27-28 September 2001, p.1.

structures separately regulating the telecommunications and the electronic media markets. According to Manacorda, a horizontal structure is more tricky to manage because it is more difficult to decide who is responsible for what. New procedures need to be established as well as rules for cooperation between departments in order to avoid repetition of competences or administrative voids. Despite the difficulties, the new structure is superior because it allows the cooperation of various experts from different fields. This results in a new regulation model which takes advantage of people's diversified professional experience and looking at the market from various perspectives³⁶. Richard Hooper, from British OFCOM, has a similar attitude. He states that the structure of OFCOM reflects the new philosophy of regulation, "(...) we did not combine the five existing regulators or shape them as five different departments within one structure. From the beginning, we converged the organization from the top all the way down"³⁷.

The opinions above prove the creation of a new way of regulation of the market. It is characterized by greater elasticity which allows the regulator to adjust more quickly to technological change. The internal structures of these bodies also reflect the change, doing away with old, vertical structures and moving toward more elastic, horizontal ones. Based on the above two examples, we can say that the changes were chiefly motivated by technological convergence which inspired the creation of integrated bodies. This group of countries, according to Richard Hooper, we can say, has "convergent" regulatory bodies and they treat the process of technological convergence seriously³⁸. This group has proved to be most determined in adapting its legal/institutional regulation to technological and market changes for which it should be praised, however, the results of their actions are yet to be estimated.

The above analysis allows us to classify the existing regulatory bodies according to their structural adaptation to the process of technological convergence. The first group are traditional regulators responsible for different markets, such as the ones in the Czech Republic, Ireland, France and Poland. In these countries the two sectors are clearly divided and function according to vertical structures. This group does not adapt to new challenges due to the process of technological convergence.

The second group includes countries which have integrated regulatory bodies but they possess the traditional, vertical division into two separate sectors. These are countries such as Bosnia and Herzegovina, Canada, Slovenia and the United States. They have one regulatory body which allows for closer cooperation between experts representing various backgrounds but the vertical administrative structure also strengthens old divisions. In case of change, this group would just have to adjust its structure into a more horizontal one and it would be much simpler than in case of countries which have two separate bodies and where such change would require political consensus.

The third group are countries with "convergent" regulatory bodies overlooking both the telecommunications and the electronic media markets which have a horizontal internal structure. These are Britain (OFCOM) and Italy (AGCOM). As was already said, these are countries which have adapted to challenges resulting from the technological and market changes. They are convinced of the power and long term effects of the developments taking place.

This classification regards only structural divisions and not the practical functioning of regulatory bodies. It should be noted that traditional regulators responsible for different markets can also cooperate with a goal to establish common regulation policy regarding new technologies and services. It is possible to have horizontal regulation despite vertical structuring although it is more difficult. It should also be mentioned that different countries

³⁶ Ibidem, p.1-2.

³⁷ R.Hooper, *Convergent Regulation – OFCOM's First Two Years*, 10 November 2005, p.4 (own translation)

³⁸ R.Hooper, op.cit., p.4.

have various attitudes toward the process of technological convergence. Some pay more attention to it, others – less. The countries that are most influenced by it are those most advanced technologically. These countries are also more inclined to enforce change. The Table below shows a classification of countries according to the type of regulatory bodies they have.

Table 1 Classification of countries according to the type of regulatory authority

	Traditional regulatory bodies	Integrated regulatory Bodies	
		With a traditional internal structure	Convergent regulatory bodies
European countries	The Czech Republic, France, Ireland, Germany, Poland	Bosnia and Herzegovina, Slovenia, Switzerland	Great Britain, Italy
Others	New Zealand, South Korea	Canada, United States, RSA	Australia, Malaysia

by author

Closing remarks

The debate on the necessity of creation of integrated regulatory bodies in the different countries takes place parallel to the discussion on the influence of technological convergence on telecommunications and electronic media markets. Every time, there are similar arguments for and against regarding state, market and consumer interests. The process of technological convergence is speeding up, despite a momentary slump on the dotcom market, but the process of creation of integrated regulatory bodies is not dynamic enough. As seen based on the above analysis, these types of regulatory bodies are still a minority. Also, the enthusiasm regarding the process of technological convergence, characteristic to the turn of the century, has cooled down considerably. This situation can be illustrated by EPRA’s chairman, Joan Botella, in an interview for OFCOMWatch on October 19, 2005, “Presently, I would say that most EPRA members are waiting to see what the integrated regulatory bodies can do, in terms of their relations with the market and maintaining a balance between the different group interests (market players, audience, copyright owners, etc. (...)) The idea of convergence as a force for deregulation, where consumer needs override citizen needs and where competition replaces the law, is oversimplified. Maybe we should wait and see what happens?”³⁹ This quotation shows that the creation of integrated regulatory bodies is seen only as one possibility of structural change and not as a necessity in a world of advancing technological convergence.

It seems that many countries reflect Botella’s attitude and are also waiting to see what happens on the market before they change their regulation. In case of European countries, a catalyst which could mark the direction of change and institutional reforms could be the long awaited new directive regulating the audiovisual media sector. It seems that in the long run it will not be possible to function with traditional regulation in the age of growing pressure from the market. This does not necessarily mean the creation of integrated regulatory bodies but it will require closer cooperation between the regulators. The main threat associated with new regulatory bodies is the danger of domination of commercial goals over social ones in terms of policy. It should be noted that in most countries there are significant disproportions

³⁹ Ofcomwatch interview with Mr. Joan Botella, 19 October 2005, p. 7 (www.ofcomwatch.co.uk).

between the telecommunications and the electronic media markets in terms of size. The telecommunications market is not only much larger but also more liberal than the media one. It seems that the above mentioned threats can be justified. A decision not to create an integrated regulatory body does not have to mean that a country is ignoring technological convergence. It may mean that, for the time being, it is a decision that may seem too radical to take. Countries look for other, indirect ways to adjust institutional ramifications to market needs without establishing new regulatory bodies. However, so far there has not been developed an alternative solution which takes into account the rule of technological neutrality, as is the case with integrated bodies responsible for both content and infrastructure regulation⁴⁰.

As the analysis has shown, technological convergence is not the only factor stimulating countries toward the creation of integrated regulatory bodies. There are also factors such as the advantage of cost cutting as a result of administration synergy, lessening of competition between traditional regulators, greater regulation transparency and increased power of state versus large multimedia groups.

A comparison of integrated bodies' internal structures allowed us to classify them into two categories. There are "convergent" regulatory bodies which have an administrative structure based on the technological neutrality rule (British OFCOM, Italian AGCOM, Australian ACMA) and those which have traditional vertical structures. The countries in the first group adjusted the institutional regulation to the process of advancing technological convergence. These countries are advocates of radical legal/institutional changes in tune with market and technological changes and needs.

The other group of countries has an administrative structure with a division of sectors into a telecommunications and an electronic media one (American FCC, Canadian CRTC, Slovenian APAK, etc.). In this case, it can be said that there were factors other than technological convergence which were taken into consideration when creating this type of integrated bodies. It should also be noted that maintaining a traditional division between the telecommunications and media sectors could mean avoiding the threat of commercial gains dominating the new regulation model.

⁴⁰ See E. Machet, Background..., op.cit., p.5.