INTRODUCTION

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The contributions to this issue of *Javnost-The Public* all address aspects of one of the most important communication issues of our time: that of the convergence between computers, telecommunications and broadcasting. This new phenomenon raises perhaps the most important set of political and economic policy issues that will have to be addressed by economists, politicians and communication scientists as we establish the infrastructural base for the new global information society. It is regrettable therefore that much of the public debate that has taken place so far has been either ill informed or reliant on out-of-date economic assumptions.

As Milton Mueller rightly points out in his contribution to this issue, the idea of convergence promoted by Nicholas Negroponte and his acolytes at the Massachusetts Institute of Technology has been around for over two decades. But even though that vision has not yet materialised, the hopes and aspirations of many politicians and economists are riding on the hoped-for benefits that a fully wired society could bring to the global economy in general, and to economies of the advanced nations in particular.

Indeed, several steps have already been taken in both North America and in the European Union. Technological improvements in chip technology, allied to the adoption of common protocols and standards have led to the emergence of three separate areas of convergence. First, that between computers and telecommunication systems has permitted the electronic processing of information and its transfer from one part of the globe to another. The spectacular growth of the Internet is the most obvious outcome. Second, there is the possibility of convergence between telecommunications and other communications media, such as radio and television broadcasting, book and newspaper publishing or music and video recording. In theory at least, this will mean the end of national broadcasting or telecommunication policies that are ultimately based on spectrum scarcity or network monopoly. Finally, convergence also permits everyday

commercial transactions to be conducted electronically: in a word, e-commerce. Each aspect of convergence raises its own specific problems and the contributions to this issue will hopefully help the communication scientist and the policy-maker to take account of the contradictions and the policy implications of the challenges posed by these new technological opportunities.

Convergence has not just happened however. Politicians and regulators are having to *engineer* its emergence, economically and socially as well as technologically. Interconnect arrangements between telecommunications networks do not come about by chance, they often have to be imposed by regulatory authorities. As Pyungho Kim argues, the attempts by Time Warner and Bell Atlantic to introduce interactive television failed because they attempted to introduce a vertically integrated model of conventional television broadcasting in order to retain control over their networks. Indeed, it was the deregulation and competition policies of the authorities in the USA that allowed the emergence of an integrative strategy that permitted new players to integrate telephony, television and the Internet into competitive bundles.

So far, so good. Policies designed to open up networks and enhance free trade have also strengthened free speech. But the convergence of broadcasting and telecommunications is raising more profound questions, which are currently the topic of intense debate in the Council of Europe and the European Union. Furthermore, as we enter the new Millennium Round of the World Trade Organisation Agreement, the resolution of these issues will have a global as well as a European impact. What is at stake, is not just the regulation of communication technologies, but the range, diversity and scope of the information and ideas that will be available to be carried down the new electronic pipes. For the freedom of expression that article 10 of the *European Convention of Human Rights* guarantees to every citizen of a member state of the Council of Europe extends beyond the free speech granted by the First Amendment to the *American Constitution*. The European Convention includes the right of the citizen to *receive* information and ideas as well as the right to impart them. Outside Europe, these rights are more weakly inscribed in Article 19 of the *Universal Declaration of Human Rights*.

One of the principal issues in the current European debate over convergence is how the citizen's right to receive information and ideas will be guaranteed in Europe's new information order. It is a debate that will be replayed at a global level in the negotiations over the new Millennium Round, when international trade in telecommunications and audio-visual services is brought under the auspices of the World Trade Organisation.

Within the European Union, one legal guarantee of the citizen's right to receive information and ideas is that enshrined in the 1997 EU *Directive on Interconnection, Universal Service and Interoperability in Telecommunications* which requires each member state to ensure the universal provision of voice telephony and certain other telecommunications services at affordable cost. To date, the guarantee for citizen access to the new information networks afforded by the Council of Europe is weaker than that afforded by the European Union. At their fifth Conference on Mass Media Policy held in Thessaloniki in December 1997, the Ministers of the Council of Europe, doubtless bearing in mind that many Central and Eastern European states were quite poor, only undertook to develop a "universal community service." Even so, however extensive and however affordable access to the new networks becomes, these measures

pay no regard to either the content or the quality of the information and the ideas that the citizen can reasonably expect to access on the new converged networks. At the end of the day, each citizen needs to be able to access the information and ideas that can help to improve the manner in which he or she lives their life, or experiences the world.

As Seamus Simpson argues in his contribution, the broadcasting sector may require different treatment at the supranational level than the progressive liberalisation and re-regulation of telephony that is currently taking place. Indeed, Farrel Corcoran goes further, arguing that the rise of subscription television is leading to a growing gap between broadcasters' revenues and their expenditure on programme production.

In Europe, the debate about content and the quality of the information and ideas that will be available to citizens falls into two neat halves. On the one hand, there are the debates about the information and the ideas that should *not* be available; i.e. those that should be kept off the networks of the global information society. Here the absolute commitment to free speech, that is guaranteed by the First Amendment to the American Constitution, collides with the wide range of restrictions on the freedom of expression permitted by article 10(2) of the *European Convention of Human Rights*. Furthermore, there is no European consensus as to precisely which ideas, or what information, should be banned. The Council of Europe's *Convention on Transfrontier Television*, to which only some European states have acceded, requires all items of programme services to respect the dignity of the human being and the fundamental rights of others, while the EU's *Television Without Frontiers Directive* requires member states to ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality. Neither European legal instrument can be used to prevent the transmission of obscene material over the Internet however, either in theory or in practice. For the Internet is a global network, and any restrictions on free speech that the European authorities may want to impose will require a global solution. Meanwhile, European states have to rely on self-regulation by the telecommunications industry.

The other, but more contentious, part of the European debate is how to formulate and provide Europe's citizens with a positive guarantee that they can continue to receive information and ideas that are of real value to the way they live their daily lives. Many will be provided by the free market of course. But there may be others that are democratically, socially or culturally important, which the market may not deem to be profitable.

The Council of Europe made a valuable start in December 1994 when at their 4th Ministerial Conference held in Prague, the ministers of all its member states unanimously adopted a resolution on the future of public service broadcasting. The "Prague Resolution" as it came to be known, established four things: a common European definition of the nine specific missions of national public service broadcasters, an undertaking to provide sufficient funding for at least one radio and one television channel in each state, a guarantee of arrangements designed to ensure political independence and public accountability, and guaranteed access to new communications technology. Public service broadcasters are therefore the principal guarantors of the right of Europe's citizens to receive information and ideas. Indeed, the EU considered that as the system of public service broadcasting in its member states was directly related

to the democratic, social and cultural needs of each society and to the need to preserve media pluralism that it added a new protocol to the Treaty of Rome at its Amsterdam summit. This guaranteed greater legal security for its funding in the new converging European information order.

Even so, the practical implementation of this new guarantee may not be straightforward. It is not simply that state funds may continue to be used to aid public service broadcasters. But as a recent consultation document issued by the Competition Directorate of the European Commission has already shown, it raises profound questions about the application of EU competition policy. Important issues have arisen about the degree of subsidiary that can, or should be, afforded to the funding arrangements that an EU member state can put in place for its public service broadcaster. This is especially tricky when it has dual funding from the state (sometimes by means of a licence fee) and from the sale of commercial airtime. It also raises the critical question of the extent to which a public service broadcaster should be allowed to compete against its commercial competitors in acquiring the transmission rights to well-liked programmes or popular sports events. At the time of writing, these are issues that still await resolution.

Indeed, the whole question of the relation between intellectual property rights and competition policy in a converged information society is an even trickier question that Europe still has to address. The economic survival of all information providers, including public service broadcasters, may well depend on the degree of freedom with which they are allowed to exercise their monopoly intellectual property rights in the programmes that they commission or produce.

Copyright law has traditionally drawn a distinction between the existence of an idea, which the law does not protect, and the manner in which that idea is expressed, to which the law has traditionally afforded monopoly protection. On the other hand, the originality requirement for the expression of many ideas has now become so minimal that it becomes virtually impossible to distinguish between the existence of an idea and the manner in which it is expressed. Thus in British and Irish law, although the information expressed in a television programmes listings magazine is not protected by copyright, the expression of that information in the form of a list involves what the courts term "sweat of the brow" and is therefore protected as intellectual property.

It required the European Court of Justice to establish that the competition provisions of the Treaty of Rome take precedence over the monopoly rights of copyright owners guaranteed by the Berne Convention for the Protection of the rights of authors in their literary and artistic works. In the *Magill* case on television programme listings, the court ruled that a refusal to grant a licence constituted an abuse of a dominant position in the market. In this instance, there were three exceptional circumstances. First, there was no substitute for the programme listings, second there was no objective justification for the broadcasters to refuse to license their programme listings, and third the broadcasters were trying to reserve for themselves the secondary market for weekly television guides by excluding their rivals from all access to the information for that market. The court's judgement may be read as showing two things. First, that intellectual property can be an indispensable economic commodity for creating a new information market; and second that an attempt by a dominant supplier to prevent the exploitation of its intellectual property, even in a secondary market in

which it is not itself offering a product or a service, may constitute an abuse of a dominant position.

Another key competition issue therefore, is the extent to which the special treatment on their funding that the Amsterdam protocol affords to public service broadcasters, now extends to the degree of anti-competitiveness with which they may choose to exercise their own intellectual property rights, possibly denying rival broadcasters or networks access to their old programmes, should they consider that such access could jeopardise their own economic survival. That is, will the general precedents on the exercise of intellectual property rights, established by the European Court in *Magill* and related cases, continue to apply to public service broadcasters, or are they entitled to special treatment in this aspect of competition law, as well as in the manner in which they are funded?

What the European Court of Justice did not do in *Magill* however, was to establish the precise terms and conditions on which the public service broadcasters should sublicense their intellectual property to their commercial rivals. In the United Kingdom, this ultimately had to be decided by the Copyright Tribunal. This reveals the degree of detail into which national regulatory bodies may have to delve in order to resolve commercial differences between competing information providers. Indeed, the perhaps the most profound regulatory issue in the convergence between broadcasting and telecommunications, is the balance to be achieved by regulators between ensuring more competition in the delivery of information and ideas, and the need to allow information providers sufficient market dominance to invest in producing or commissioning their own programmes, or pursuing their own journalistic inquiries. At the end of the day, if the fervent pursuit of free market competition between information providers which underlies EU telecommunications policies is extended to broadcasting, there is a grave danger that television broadcasters will become nothing more than carriers of other people's programmes or public relations videos. It is notable how a large a proportion of the material that is currently available on the internet can be accessed free of charge, since it has been made available for informational, promotional or public relations purposes by public or private bodies, or involves forms of market testing for potential internet-related products or services.

A key issue for policy-makers therefore, should be to have a means of evaluating their policy decisions. But as Lucy Küng and her colleagues reveal, Michael Porter's value chain cannot easily accommodate dynamic, non-sequential and interactive industry alignments, while the layer models are flawed because they treat all sectors as identical; and since they are based on an endpoint scenario provide no insight into the interim stages of convergence. In short, there is a danger of developing convergence policies that are based on a combination of technological determinism and economic dogma. Although the convergence of ICTs is technologically possible, it does not follow that it is either democratically or culturally desirable, or indeed that one particular approach to linking networks would be economically preferable.

The difficulty in developing a global policy — or rather a set of related national policies — towards convergence brings economic, democratic and cultural issues together in a particularly explosive mix. On the one hand, neo-liberal proponents of free trade argue that global deregulation will reduce network costs to a minimum, while on the other, community-minded proponents of the freedom of expression argue that only national authorities can guarantee their citizens the provision of infor-

mation services at an affordable cost and a broadcasting system that will enable them to receive the full range of information and ideas necessary to empower them as citizens.

This raises the issue of how convergence should ultimately be regulated. What will be at issue in the new Millennium Round, is the degree of autonomy that the new global treaty should afford to individual states to manage their own affairs. But as Clive Barnett shows in his comparison of developments in South Africa and Zimbabwe, the market liberal model of communications promoted by the WTO, the IMF and the World Bank does not automatically destroy a history of state control. The precise manner in which the national regulatory bodies are established and implement their responsibilities is probably more important than the liberal free-market rhetoric of the global entrepreneurs. Indeed, the proposed merger of South Africa's Independent Broadcasting Authority with the newly established South African Telecommunications Regulatory Authority, threatens to undo the good work done by the former in protecting the citizens interests in broadcasting.

Within the European Union, the proponents of an evolutionary approach towards regulating convergence currently appear to be marginally in the ascendant, but the outcome is by no means clear cut. The more difficult issue within each member state is the precise articulation of the balance between the economic regulation of the competitive environment in which broadcasters must survive and the democratic and cultural regulation of their programme mix and content.

For some, the key national issue is whether there should be a single regulatory body to regulate both the economic framework and programme content, as is the case in the USA and Canada, or whether there should be separate bodies for economic and content regulation. But the deeper issue is whether those regulatory bodies who seek to impose positive programming requirements upon the broadcasters whom they license, can ensure that those broadcasters have sufficient funds to fulfil their democratic and cultural programming responsibilities. The answers will certainly vary from state to state and the world will surely see several political economies of convergence working side by side. What will be at stake in the Millennium Round of the WTO negotiations therefore, will be the degree to which the rules shaping the future globalisation of trade in telecommunications and audio-visual services will allow national regulators to continue to impose positive programming requirements on broadcasters within their jurisdiction, and thus retain a degree of democratic control over their own political and cultural destinies.