



Communications Commission
Oaseirys Çhellinsh

**Consultation Paper on Proposals for a New
Framework for Communications Regulation**

17 December 2009

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1. Foreword

The Communications Commission is inviting written responses, by Thursday 11 February 2010 to this consultation paper which invites views on proposals to change the regulatory regime for communications on the Isle of Man.

Responses will inform the Commission and Government in the development of the Island's regulatory regime, so that it can enable the development of the communications infrastructure and services the Island will need to meet the challenges of the future.

This consultation, which includes a response form for your convenience can be viewed online at <http://www.gov.im/government/boards/cc.xml>.

Following the closing date all responses will be considered. This will help inform the more detailed drafting of any new legislation and arrangements that might be needed, which will be subject to a further consultation in 2010.

Please send your comments by Thursday 11 February 2010 to:

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Office Manager
Communications Commission
Salisbury House
Victoria Street
Douglas
Isle of Man
IM1 2LW

Or by email to: margaret.king@cc.gov.im

If you have any queries please email tom.brew@cc.gov.im or call 01624 677022.

With thanks for your cooperation

Hon Adrian Earnshaw MHK
Chairman

Dr Carmel McLaughlin
Director

2. The Consultation

This consultation outlines a number of options for the modernisation of the Isle of Man's regulatory approach to media and communications, which has become increasingly dated as competition has developed, and as mobile telephony and digital technologies have been widely taken up. Fast and effective communications are fundamental in reversing the global economic downturn. The purpose of this consultation is to ensure the Island has the best regulatory framework to enable continual development of our communications networks and services for both residents and business.

3. Background

The Isle of Man has very good communications networks and services, which have formed one of the foundations of the competitive edge enjoyed by the Island over recent years. The ICT sector (Information Communications Technology) grew by 45% in the financial year ending 31 March 2008 to £99m. The sector continues to grow, illustrating its importance to the Island's current success and efforts to further grow and diversify the economy.

The on-Island fixed (land-line) phone network is extensively used. Manx Telecom has invested substantially over the years, recently with their commitment to replace its existing mobile, fixed and broadband networks with a converged Next-Generation Network (which uses internet protocol as opposed to circuit switches) and to upgrade to faster broadband (using ADSL2+ technology). The company has also invested in new off-Island circuit capacity to enhance the Island's ability to send and receive telecommunications and data traffic which demonstrates the importance of telecommunications to the Island's economy, now and in the future.

In mobile telephony, the Island has traditionally been at the forefront of innovation, and was the first European nation to launch 3G data services. Island residents have access to three indigenous radio stations as well as TV and radio services originating from the UK. Here again the Island has been a leader, as the first nation in the British Isles to complete digital switchover. Switching off analogue transmissions has resulted in more spectrum being available to test and develop new wireless technologies and services.

Although there is the potential to use the Island's communications infrastructure to develop new businesses and services for residents, the Island also faces a number of challenges. There is a global drive towards further development of communications networks – such as investment in fibre optic and 4G mobile networks, universal fixed and mobile broadband services and digital switchover for radio being planned by a number of nations. In many cases, governments are committing large sums of public money to achieve ambitious targets. The Communications Commission recognises the need to ensure that the Island's infrastructure remains leading-edge, both to remain competitive in our existing sectors and to develop new wealth-creating industries.

One potential obstacle to meeting these challenges is that the system of communications regulation on the Island is becoming increasingly outdated and inflexible in the face of increased competition and rapidly changing communications requirements and services. The Telecommunications Act dates back to 1984, while the Broadcasting Act has remained largely unchanged since 1993. Both were drafted in a pre-digital age. Until only a few years ago, there were only two incumbent licensees – Manx Telecom and Manx Radio. Today, the Island has two mobile operators (and a third is licensed but not yet operational), five Internet Service Providers and three radio stations – all competing for the attention of a population of 82,000 people.

This competition has undoubtedly brought with it greater value for Isle of Man residents and businesses but the regulatory framework has not evolved to keep pace. However, with competition also come disputes and issues not encountered previously. While the Broadcasting (Amendment) Act 2007 clearly set out procedures for issuing new broadcasting licences, it does not provide for any renewal process. The Broadcasting and Telecommunications Acts, in large part pre-date convergence and limit the Island's ability to enable new communications services using satellite, wireless and internet technologies. New legislation will allow the Commission to deal with such issues and developments in a more effective manner.

The role and objectives of the Communications Commission are not clearly defined in statute. A clearer legal framework would provide the scope to enable new services and effectively resolve the types of problems and disputes which simply did not occur in the pre-competition years. This would also create a more certain environment for both investors in, and users of, communications services.

Seeking to address these challenges, the Communications Commission is undertaking a strategic review of communications on the Isle of Man and has appointed Perspective Associates Ltd to assist with this process. Perspective's first report lays out both a vision for the Island's future communications infrastructure and an approach to addressing the Commission's system of regulation, the report can be viewed online at <http://www.gov.im/government/boards/cc.xml>.

4. A Vision for the Isle of Man

The Perspective Report identifies a number of objectives for the Isle of Man's communications.

A communications sector that invests for the future

As stated above, the Isle of Man has a good existing communications infrastructure that has helped to attract a number of businesses to the Island. In many respects, communications on the Isle of Man have been more advanced than those of its neighbours and competitors. However, in recognition of the increasing reliance on advanced communications networks to maximise the benefits from the digital economy, and accelerated by the desire to stimulate economic growth after the onset of the 2008 global downturn, a number of countries are making significant investments in their digital infrastructure. This includes investments in both fixed (land-line) and mobile networks.

The Isle of Man's fixed network, which delivers both telephone and broadband services, has been upgraded a number of times by Manx Telecom using mainly copper lines to connect most premises to the network. Whilst this technology is able to provide speeds that are acceptable for most of the applications that run over the Internet today, it is unlikely to be able to meet the increasing demands of both consumer and business applications in the future, see Table 1. It is for this reason that a number of countries are beginning to invest in next-generation networks based around optical fibre technology. These offer a number of advantages over copper systems:

- Fibre provides high speeds in both directions, for fast uploading as well as downloading. As the popularity of remote working and social networking continues to grow, upload speeds are becoming increasingly important as more and more people want to upload and share complex work or rich media on the Internet;
- Fibre can provide a guaranteed connection speed, whereas copper speeds are inherently variable;
- Fibre speeds do not vary as dramatically with the distance to an exchange

Table 1: Differences between Today's and Next-Generation Internet

Today's Internet	Next-Generation Internet
Standard-Definition TV delivered over Internet Protocol (IPTV)	High-Definition IPTV
Basic videoconferencing	Telepresence: very high-resolution videoconferencing
Reactive websites	Interactive virtual worlds
One-to-one and basic one-to-many communication	Many-to-many communication and real-time collaboration
Acceptable download/slow upload speeds	Dramatically faster file transfer speeds, symmetrical between downloading and uploading
Type of use dependent on bandwidth available	Possibility of simultaneous high bandwidth uses
Learning resource	Remote education/virtual classrooms
Online backups	Shared resources: Online file servers and synchronised remote devices (Cloud Computing)

Source: Adapted from 'The Need for Speed: The Importance of Next-Generation Broadband Networks', Information Technology & Innovation Foundation

Mobile services are arguably evolving more quickly than any other sector in telecommunications. This has been reflected in the rapid adoption of mobile broadband across Europe since its inception in 2007. Looking further ahead there is increasing interest amongst operators in next generation mobile (NGM) broadband services such as LTE and WiMAX, indeed TeliaSonera will be offering customers in Scandinavia access to so-called '4G' services in early 2010. By providing a mobile broadband service as responsive as the fastest of today's fixed offerings, there is the potential to revolutionise how broadband is used by residents, visitors and businesses.

Mobile broadband provides a number of benefits over and above fixed connections, including the ability to connect from anywhere and the emergence of new mobile, location based services. Extending mobile broadband island-wide would enable these services for residents in areas which do not currently have access. Furthermore it would also bring wider economic benefits to these areas by enabling internet connectivity through their personal devices for both visitors and businesspeople.

By encouraging investment, the Isle of Man could map out a course to either universal or localised roll-outs of faster fixed and mobile technology. This could enable the Island to offer its residents cutting-edge services spurring local commercial creativity using these next generation networks. Furthermore, it would increase the attractiveness of the Island as a place from which individuals would have the freedom to work globally.

Competition in those areas where it will benefit businesses and consumers

A good communications infrastructure will only generate economic benefits for the Island if high quality, cost-effective services are delivered. In most industries competition is the spur which ensures that high quality, innovative services are provided. However, this has often proved difficult with communications.

For fixed physical networks it is less common to see competition between networks, especially in the 'last mile' which connects customers to the network. This is largely due to the extremely high costs involved with physically building these networks. As such, complete nationwide fixed networks have often been treated as natural monopolies in which the market will eventually deliver a single operator.

However, this does not necessarily mean that retail services to customers using fixed networks are best delivered by a single entity. In many parts of the world, regulatory action has opened up networks that had previously been operated by single incumbents to new entrants. This has often led to a flurry of innovation and has resulted in important economic benefits.

Regulators, especially in Europe, have attempted to mimic the effects of competition in the fixed-line market by enforcing cost-based pricing on incumbent operators. Although this has proven successful in reducing prices it has had one important negative side-effect: it has reduced the incentives for these operators to invest in the vital next-generation networks of the type described above.

The mobile sector is somewhat different to the fixed sector in that the costs of mobile telephony are much lower than those of fixed networks. This allows there to co-exist a number of different network operators. In many countries there are at least two mobile network operators. This has led to their respective mobile markets being generally competitive, resulting in high-quality and inexpensive services which have benefitted residents and business. However, there are some areas of the mobile sector which have required regulation, such as the prices charged by operators for terminating calls on their networks.

Competition in both retail fixed services and mobile has created tangible benefits for users. However, this competition could be weakened or threatened in its entirety if the actions of incumbent operators prevent newer, rival entrants from surviving in the market.

A healthy broadcasting sector

There are three indigenous FM radio stations: Manx Radio (the Island's National Public Service Radio Station, which also broadcasts on AM), Energy FM and 3FM. They are funded by advertising, although Manx Radio also receives a substantial government grant to provide information, education and entertainment which is responsive to the tastes, interests and concerns of the whole community.

The sector faces a number of short-term and long-term challenges.

The primary short-term challenge is to ensure that a framework exists for the licensing of domestic radio services. The current legislation does not allow for the re-licensing of any radio stations and does not distinguish between domestic services based on the Isle of Man and international services designed largely for foreign consumption. Whilst this legislation is not clear the system for managing the sector will remain unwieldy.

The most significant long-term challenge facing the radio sector is that in addition to the global movement to digital television, a similar evolution is being proposed for radio services. A number of technologies are being suggested as candidates to replace AM and FM broadcasts. What these technologies have in common is the ability to deliver a greater number of channels whilst also allowing a clearer sound. For national FM services, some nations across Europe including the UK, are adopting versions of the Digital Audio Broadcasting (DAB) standard.

However, DAB has itself faced substantial criticism, especially for the high cost of the transmission network, and the poorer coverage in comparison to FM. Furthermore, even if DAB succeeds in

replacing national FM stations, it is not designed as a successor to local and regional FM broadcasting. Therefore, for the foreseeable future, radios will be capable of receiving both FM and DAB.

The UK is currently considering legislation which could define a target date for switching national stations to DAB. The result of this process is still unclear, but could have a material impact on the Island's approach.

A regulatory approach that provides forward-looking certainty

If the Isle of Man wishes to attract businesses that will contribute to its long-term economic potential then it must have a system of regulation that promotes long-term stability and investment.

In terms of the investments that need to happen to the fixed infrastructure, outlined above, long-term visibility about when and how these upgrades happen will provide confidence to businesses seeking to invest in the Island. Furthermore, longer timelines will also allow a greater number of stakeholders to contribute their views on the direction the Island should take.

Innovation in the fixed retail services offered by operators and the development of the Island's mobile infrastructure is likely to be driven by competition. The Island needs a regulatory approach which ensures that operators can compete on a level-playing field which provides strong incentives to invest in the services they offer.

Furthermore, the Island could benefit from an approach that secured an appropriate level of responsibility for spectrum allocation to encourage the best possible use of the resource, and to encourage businesses to take advantage of the innovative opportunities that result from the Island's unique position.

Such an approach should possess a number of key characteristics, it should be:

- Effective, to ensure that we meet these goals
- Proportionate, a costly bureaucracy would not suit a nation with 82,000 residents
- Agile, able to react to opportunities and address problems quickly
- Transparent, providing confidence to all the parties involved

5. Options Available

The Isle of Man can take three broad approaches to communications regulation:

1. continue with the existing regulatory arrangements,
2. move to a standard EU approach, or
3. develop a distinctly Isle of Man approach to communications regulation

These options are outlined below.

Option 1: Continue with the existing regulatory arrangements

The Communications Commission continues to use the various pieces of legislation at its disposal to regulate communications networks and services. These include the Telecommunications Act 1984, the Broadcasting Act 1993 and the Broadcasting (Amendment) Act 2007.

Option 2: Move to a standard EU approach

The most obvious alternative approach would be to adopt the prevailing European model of regulating communications. This relies on the application of competition law to address problems; market entrants are protected through regulatory powers to investigate and act upon the incumbent's prices and behaviour.

This option would involve a radical change in the approach of the Commission, and would require legislation to create new structures, processes and powers.

Option 3: Develop a tailored Isle of Man approach to communications regulation

The third option is one that has been developed by Perspective as "an approach that is tailored to the Isle of Man's unique position". The core of this model is to evolve and modernise the existing approach, around two central principles:

1. regulation focussed on developing a communications infrastructure that will maximise the Island's economic potential, and
2. a regulatory approach that emphasises cooperation as the first approach to tackling disputes or areas of concern and resorts to competition law only if the prior approach fails.

This option would build on the existing approach of the Commission. New legislation would be needed to tidy up and modernise the existing laws under which the Commission operates, including providing greater ground for the Commission to work more closely with the Office of Fair Trading.

6. Discussion

The costs, benefits and risks from each of the options available are set out below to summarise what they might mean for both the process of regulation and the outcomes they might achieve.

Costs

Each of the three options could create costs, both in terms of the costs of running the Communications Commission and the complexity of the system that will be in place.

	Status quo	EU competition law approach	Tailored Isle of Man approach
Costs of regulation	Increasing costs as more and more disputes over competition and licence renewal clog up the system	Substantial increase from the existing levels as each EU defined market will need to be investigated and modelled	Slight increase from existing levels – as competition investigations might occasionally be needed
Complexity to operate	Increasing complexity as legislation becomes increasingly out of date	Substantially more complex	Will simplify the existing approach to regulation. Occasionally an investigation might be needed.

Benefits

Each of the potential courses of action must be judged against a range of benefits.

	Status quo	EU competition law approach	Tailored Isle of Man approach
Price reductions for users	None	Substantial	Some, in areas where competition is strengthened
Investment in the Island's future infrastructure	At the discretion of licensees	Reduced incentives to invest	Maximum investment, as long-term investment needs would be agreed between licensees and regulator
Agility of regulation	Slow, as existing legislation prevents the effective resolution of some disputes	Potentially slow, as complex analysis might be needed to resolve even trivial disputes	Most agile, as disputes can be resolved in a collaborative fashion
Clear framework for settling disputes	No	Yes	Yes
Long-term visibility for inward investors	No	Potentially, in areas where long-term price controls are used	Yes

Risks

The major risk with the status quo (option 1) is that the existing system will become increasingly unable to cope with the complexity and volume of disputes that it will be called to deal with. If these disputes are not resolved then existing operators in the market could reconsider their position. Were this to happen, the Island's hard-won reputation could suffer damage, and inward investors might be discouraged.

The EU option (option 2) is risky because it is not a system designed for a small nation such as the Isle of Man. The weighty requirements of such an approach are challenging for European nations whose populations are measured in millions and the money spent on specialist advisors and potential legal challenges is substantial. Furthermore, it is not a system whose explicit focus is on investment, whereas this is a key source of the Isle of Man's competitive advantage.

The key risk of the tailored, Isle of Man approach (option 3) is that this is a system which has no international precedents. Even though it is not a radical departure from the status quo, as the standard EU approach would be, the Communications Commission would have to chart its own distinctive course through the issues it faces.

Recommendation of the Commission

The Commission has carefully considered each of the three options that have been described.

The first option, relying on the existing laws and structures, would minimise costs in the very short-run. However, this is likely to be a false economy: the costs of an increasing number of lengthy disputes are likely to be felt both in the costs of running the Commission as well as the opportunities that could be lost.

It is especially in the area of telecommunications that the Island's existing legislation is showing signs of deficiency. Firstly, all operators are regulated through their licences, instead of codes (as per most modern jurisdictions), and so regulation cannot evolve or react in a nimble fashion. Secondly, there is a lack of clear objectives for communications on the Island that the Communications Commission, and indeed Government as a whole, is trying to achieve. Thirdly, the Commission's role and objectives with regards to spectrum are not explicit. Finally, with regards to broadcasting there is no mechanism for renewing licences and no distinction between the Commission's ability to license services targeted on-Island and off-Island.

The second option, moving to an EU system, represents a well-trodden path whose mode of operation is well-understood. However, experience has revealed two serious concerns with this approach: the lack of investment it engenders, and the enormous cost and complexity of the regulation itself. Both of these side-effects would be contrary to the wider principles championed by the Isle of Man.

The third option, the Isle of Man tailored approach as articulated by Perspective, would appear to be a practical response to the situation the Island faces. This option would allow the Isle of Man to develop a stable environment which recognises that dogmatically introducing competition into each and every market may not be the best use of resources. However, it would also insist that operators who are less exposed to competition provide assurances on investment and access for downstream providers. Although this approach may not be the most effective for reducing prices, it would instead focus on two other goals: ensuring that investments are made so that the Isle of Man's communications infrastructure remains world-class, and allowing a number of companies to use this platform to innovate and provide services for businesses and residents.

If this approach were to be adopted the Commission would face a number of strategic issues in both telecoms and broadcasting. The major strategic issue in broadcasting is the question of DAB radio. At present, the future of DAB radio is uncertain, even in the UK, and as noted by Perspective, all radios are likely to have dual DAB and FM capability for the foreseeable future. As such, and possessing limited resources, the Commission proposes to address the strategic issues in wholesale and retail telecoms before moving on to the strategic issues facing broadcasting.

7. Questions to Consider

In order to inform the approach taken to communications regulation on the Island, the Communications Commission is seeking views from individuals, interested parties, groups and public representatives. It would be particularly helpful to have your responses to the following questions:

Question 1:

Do you agree with the Commission's characterisation of the options available for communications regulation?

Question 2:

Which option outlined above do you think will best serve the Island's long-term interests?

It would be helpful if you can give reasons and provide us with any evidence for your answer.

Question 3:

In the context of the limited resources available to the Commission, do you agree with the suggestion that the Commission should first address the strategic questions in telecoms regulation, before moving to those in broadcasting later in the year?

It would be helpful if you can give reasons and provide us with any evidence for your answer.

Question 4:

Are there any other points you would like to make regarding these matters?

8. Next Steps

This consultation is for a period of 8 weeks and responses are requested in writing by Thursday 11 February.

The Commission will then publish its conclusions, along with a further report prepared by Perspective on the appropriate ways to implement its conclusions.

Please send your comments by Thursday 11 February to:

Mrs Margaret King
Assistant to the Commission
Communications Commission
Salisbury House
Victoria Street
Douglas
Isle of Man
IM1 2LW

Or by email to: margaret.king@cc.gov.im

Anonymous responses will not be accepted.

If you are responding on behalf of a group it would be helpful to make your position clear.

The Commission will consider all responses, a summary of which will be published on the Government website. Unless specifically requested otherwise, any responses received may also be published either in part or in their entirety.

A response form is attached at Appendix 1.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which an informed decision on the options can be made.

Appendix 1: Response to Consultation Form

Please complete and return to: margaret.king@cc.gov.im or send to:

Communications Commission
Salisbury House
Victoria Street
Douglas
Isle of Man IM1 2LW

Your details

Title:

Forename:

Surname:

Representing Self:

Yes/No

Representing Organisation:

Yes/No

Name of Organisation if applicable:

Address:

Email:

Phone Number:

Confidentiality

Do you want us to keep any of your submission confidential? Yes/No

If yes please detail what you would like kept confidential.

Confidential Responses Only

If you want part of your response, your name or your organisation to be confidential, can we still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

The Communications Commission may publish a response summary: Yes/No

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full unless otherwise specified on this cover sheet, and I authorise the Communications Commission to make use of the information in this response to meet its legal requirements.

I confirm that I have read the declaration*

Question 1:

Do you agree with the Commission's characterisation of the options available for communications regulation?

Question 2:

Which option outlined above do you think will best serve the Island's long-term interests?

(It would be helpful if you can give reasons and provide us with any evidence for your answer.)

Question 3:

In the context of the limited resources available to the Commission, do you agree with their suggestion that they should first address the strategic questions in telecoms regulation, before moving to those in broadcasting later in the year?

(It would be helpful if you can give reasons and provide us with any evidence for your answer.)

Question 4:

Are there any other points you would like to make regarding these matters?