



Satellite & Cable
Broadcasters' Group

OFCOM CONSULTATION ON FUTURE PRICING OF SPECTRUM

Submission by the Satellite and Cable Broadcasters' Group

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The SCBG is the trade association for independent satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide consumers with programmes and services across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. They make and show programmes for children and young people, and for ethnic minorities in their own languages. Together they have a combined audience share approaching 20% of all UK television viewing.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

Executive Summary

The Satellite and Cable Broadcasters' Group (SCBG) welcomes the opportunity to respond to this consultation. By creating an open and transparent market for terrestrial spectrum, supported by the introduction of incentive pricing, we believe Ofcom will create the necessary conditions for greater efficiency and innovation in the supply of terrestrial services. This will improve not only the cost-effectiveness of spectrum usage, but also the efficiency by which public service programmes are provided. We believe that consumers and citizens will gain from the introduction of market discipline.

We agree with Ofcom that in order to encourage efficient use of this limited resource, spectrum should be market-priced based on proportionality and on the opportunity cost of holding that spectrum. We support the introduction of Administered Incentive Pricing.

However, SCBG disagrees with Ofcom's proposal to delay the introduction of pricing until 2014. Contrary to Ofcom's assertion, we believe that such a delay will introduce regulatory uncertainty and undermine the incentive that incumbent spectrum users should have to pursue more efficient use of spectrum. Ofcom's proposal to differentiate between new entrants and present incumbents, and to delay pricing for the PSBs until 2014, will perpetuate anti-competitive privilege for the incumbent terrestrial broadcasters, and deter growth and progress in the multi-channel sector. Any delay in introducing pricing will inevitably slow down the release of spectrum. This will have a significant cost to the UK in terms of the lost social value of innovative services that released spectrum would have supported. In addition to the efficiency gains and benefits from innovation, the immediate introduction of pricing would, provide regulatory certainty for all stakeholders. Commitment by Ofcom now to a policy that may or may not be implemented in 2014 will create an uncertain investment climate and deter progress.

Finally, we oppose Ofcom's underlying assumption that only incumbent terrestrial broadcasters will provide publicly valuable uses of spectrum capacity. Instead, we propose that all providers of socially purposive programmes and services should be treated equally in the administration of spectrum pricing, and that a system of contestability for public support of spectrum purchase should be introduced.

1. Spectrum pricing on terrestrial broadcasting

SCBG represents broadcasters mainly operating on satellite and cable networks. However, some members also operate DTT licences and more are likely to be interested in doing so in the future if given opportunities to acquire released spectrum.

We support Ofcom's proposal to introduce AIP for digital terrestrial TV broadcasting. As terrestrial broadcasting is the largest single user of the spectrum, and many other important services such as emergency services, mobile telephony and even defence operations already apply AIP, we see no reason why it should not operate in terrestrial broadcasting as well. In our view, the introduction of pricing creates a framework for the efficient use of a valuable public resource. Similarly, we support the use of opportunity cost in the calculation of charges.

We believe that price incentives on incumbent broadcasters to release their spectrum will increase the potential for new investment, competition and innovation in the market for terrestrial services, to the benefit of consumers. As the availability of attractive services provides consumers with added reasons to switch to digital TV, the introduction of pricing would also aid the pursuit of wider policy objectives in the context of digital switch-over.

2. Impact on public service programming

Spectrum policy is an important aspect of Ofcom's concern to ensure that an appropriate level of public service programming is maintained in the future. But this concern must not result in an automatic continuation of the privileges enjoyed by the present terrestrial "public service broadcasters". The current allocation of spectrum, gifted to these broadcasters is distorting the market for DTT services and in the market for spectrum more generally. It also serves to skew the investment decisions of new entrants who are forced to seek distribution via cable and satellite due to the inefficiency of the market for terrestrial spectrum. The introduction of spectrum charging offers a valuable opportunity to revisit how the provision of public service TV is valued and financed in the UK.

As PSBs to date have not had to pay for their spectrum, we accept that they will need to plan how to absorb this new cost, and may need to reduce other areas of expenditure. But we believe that this will impose disciplines, which will be very much in the public interest, ensuring that organisations such as the BBC and Channel Four cut unnecessary costs and concentrate expenditure on their core public purposes. In the case of ITV and Five the "public service" argument is increasingly irrelevant and should not be used to justify special intervention for what are fundamentally commercial businesses, like others in the market that offer a proportion of public service programmes.

SCBG agrees with Ofcom and its independent consultants that there is no economic merit in discounting the level of AIP for certain operators. Many other users of spectrum deliver social value to the public, so there is no justification for treating incumbent terrestrial broadcasters differently from others in paying for their delivery modes.

SCBG members include dedicated social broadcasters whose equal right to buy spectrum, in the public interest, should be recognised and catered for in any new pricing system. Therefore we propose that the spectrum market should be fair, transparent and open, and not subject to dominance by the incumbent terrestrial broadcasters. Instead, a system of contestable public-value spectrum finance should be introduced to ensure that present and potential socially purposive programming has access to spectrum.

Our proposal is that all broadcasters, including incumbent terrestrials, should have to pay for spectrum at undiscounted market rates. But where a broadcaster is offering to provide programmes or services of public value, within Ofcom's definitions of public service content, they should be able to bid for direct public support for their spectrum purchase. This could be managed, for example, in a framework devised between the Government and Ofcom, or by the introduction of a body such as the Public Service Broadcasting Commission proposed to the DCMS by Lord Burns' panel.

Since Ofcom recognises the need to comply with EU regulations governing the use of State Aid, the requirement that a value should be put on the public benefit derived from use of spectrum ensures compliance with State Aid rules, and also that the underlying spectrum is put to its most socially valuable use. Where the public value is lower than the commercial value of the spectrum then the relevant spectrum should be made available for commercial exploitation, whether or not that spectrum is reserved for broadcasting. For the auctioning of released spectrum, this approach would enable any broadcaster providing public service programmes to receive direct public support for their bids in an open market. Where, for example, the public value attached to new high definition services is deemed to be greater than the commercial value of the same spectrum, then broadcasters will secure the necessary spectrum with the use of direct support. Such a system is transparent, ensures a level playing field for spectrum, and would constrain the ability of the incumbent terrestrial broadcasters to subsidise their spectrum bids from their programming budgets. It would ensure that the PSBs were not being over-funded for their provision of public services.

A system of direct support would enable smaller broadcasters, including dedicated social broadcasting channels, to justify competing directly with the larger PSBs for available funds. If social broadcasters are put in a position of having to bid for DTT capacity without fair access to public funding, they will be forced to abandon this form of distribution. Moreover, as Ofcom has reported, DTT is mainly being used for second sets in the home and these viewers will be increasingly important for niche public value broadcasting in the future. If these services cannot be available on DTT due to high costs for

spectrum, it will considerably reduce the penetration and impact of these services.

It is therefore important that Ofcom's reviews of the PSP and Channel Four funding should be extended to embrace other methods of providing public service programming, especially those methods that make use of the existing broadcast infrastructure.

3. Pricing process

Although we welcome the proposal that all broadcasters would have to pay for their spectrum, we have concerns about the way this will be carried out and how the auction process in practice would operate. The main principle must be that pricing of spectrum should be transparent and proportionate. Spectrum should be priced based on the size and output of the channels. Ofcom must ensure that other players have the opportunity to bid for spectrum and PSBs and their digital networks should be in the same position as everyone else. In the current environment the incumbent terrestrials are likely to win in any auction process. And we believe they will argue their need for more and more capacity for spectrum-hungry applications like High Definition. We therefore call on Ofcom to ensure that the process will be as fair and reasonable as possible to create choice and plurality for the viewers.

4. Timing

SCBG welcomes Ofcom support for regulatory certainty. We are, however, concerned that Ofcom states that a delayed introduction of pricing would create regulatory certainty. We believe that the contrary is the case. As Ofcom cannot commit today to bind the decisions of a future regulatory regime or Government, the delay until 2014 makes it difficult for potential investors to assess the regulatory climate for the use of spectrum. The proposal to introduce pricing for new services immediately, yet protect incumbents from pricing until at least 2014, creates an additional barrier to new investment and innovation.

Ofcom will be familiar with US studies on the loss of public benefit that can be attributed to regulatory decisions that delay the introduction of new services.¹ The societal costs of delaying the introduction of attractive new services can be significant. Hausman estimates that, for the US, delays in the introduction of new services have resulted in "welfare losses" of many billions of dollars per year. Ofcom should be obliged to estimate the scale of losses in public benefit from likely delays in the release of spectrum, before concluding that any benefits of delaying the introduction of pricing outweigh them. It may be that Ofcom has undertaken such an exercise and if so we would welcome the opportunity to review the findings.

Our principal concern is until charging is introduced for all players, the market will be skewed in favour of the incumbents who will be able to launch services

¹ See in particular, Hausman, J. (1997). "Valuing the Effect of Regulation on New Services in Telecommunications." Brookings Papers on Economic Activity: Microeconomics, 1-38. Available also at http://econ-www.mit.edu/faculty/download_pdf.php?id=470.

on their existing capacity in direct competition with new services whose operators will face a higher cost for using spectrum.

5. Conclusion

SCBG believes that this consultation is crucial in order to address some of the concerns of the satellite and cable broadcasters about the competitive nature of the UK broadcasting market. PSBs enjoy many advantages over satellite and cable broadcasters, and gifted spectrum has been one of the more important ones. We hope that Ofcom will take into account the competitive aspects of this issue and not accept arguments from terrestrial broadcasters that would in effect maintain their current level of market dominance without any commensurate PSB return. Ofcom now has the opportunity to open up the DTT market to many more players and a diversity and plurality of new services. This alone will result in the optimal use of spectrum for citizens and consumers that is Ofcom's goal.

SCBG would welcome the opportunity to discuss this issue and our views in more detail.

Contact:

Petra Wikstrom

Executive Director

Tel: 0789 420 65 15

Email: director@scbg.org.uk

Web: www.scbg.org.uk