



Dear Ms Guest,

Consultation on the proposed approach to the award of the digital dividend spectrum – SCBG response¹

SCBG welcomes this opportunity to comment on Ofcom's consultation on its proposed approach to the award of the digital dividend spectrum. SCBG is the trade association for satellite and cable programme providers who are independent of one of the main terrestrial broadcasters. 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.

SCBG supports Ofcom's proposed market-led approach to the award of the digital dividend spectrum. As Ofcom's discussion paper notes, there are many possible uses to which the digital dividend spectrum may be put, and none of these should be favoured over another. Attempts by regulators to intervene in the market and pick technological winners are likely to lead to market distortion and a restriction in consumer choice.

The uncertainties inherent in predicting future developments in the UK's communications market mean that technological neutrality in the allocation of spectrum is the best way of ensuring the most competitive and efficient outcome possible, and of maximising consumer welfare.

As Ofcom has recognised, the DTT platform is the largest and fastest growing television broadcasting platform in the UK. SCBG believes, therefore, that Ofcom must ensure that all broadcasters have an equal opportunity against all other bidders to secure spectrum, which will enable them to offer their services through the platform. Failing to do so will mean that DTT will continue to be dominated by PSB channels, and DTT viewers are denied the choice of services, which they would most prefer to receive. SCBG also agrees with

¹ The views in this papers do not necessarily reflect the views of all SCBG members

Ofcom that spectrum should be packaged in such a way that it is suitable for DTT-use.

SCBG notes that Ofcom's own consumer research has indicated that consumers would most prefer an increase in the choice of channels on DTT. In the light of this, it is difficult to see how a direct intervention in favour of any other use could be justified. Indeed, if there is any evidence for direct intervention, then it would be for additional channels; this is not, however, a position that is being advocated by SCBG.

SCBG believes in the huge potential that HD has to offer consumers, and many of its members continue to invest heavily in HD content and channels in the UK, and globally. It does not believe, however, that PSBs should be gifted spectrum to enable them to offer HD services. It agrees with Ofcom that if the PSBs wish to offer these services then they must apply for the funding from their usual funding-bodies, and then bid for the necessary spectrum against all other bidders on fair and level terms.

The PSBs argue that DTT viewers have a right to receive PSB services in HD, and that the DTT platform will suffer competitively with those that offer the technology. While this may be the case in the longer run, it is an equally valid argument that DTT viewers have a right to more channel choice, or to receive more TV through mobile technology, and that the DTT platform will suffer competitively if it offers fewer channels than other platforms. Given the difficulty of proving the case for any of these propositions, Ofcom's market-led approach appears to be the only reasonable solution.

SCBG also notes that there are other ways in which the PSBs may, if they wish, deliver HD channels on DTT without the allocation of additional spectrum. They may, for example, use the extra capacity that could be released by rearranging existing multiplexes, by boosting the coverage of commercial multiplexes, or by upgrading the DTT platform to MPEG4; or by providing HD versions of their services on digital satellite (including freesat) and cable platforms.

Notwithstanding its support for a market-led approach, SCBG believes that Ofcom must introduce certain additional safeguards in the allocation of licences, and in licence conditions, in order to protect plurality and competition in the UK communications market.

Specifically, SCBG believes that limits should be placed on the amount of spectrum that single entities may control. The emergence of a single, powerful gate-keeper, controlling the allocation and use of spectrum, might otherwise lead to market developments that do not necessarily serve the consumer interest, nor deliver the most competitively efficient outcome.

Furthermore, Ofcom must take steps to ensure that incumbent operators, with significant resources at their disposal, do not seek to acquire spectrum simply in order to protect their own market positions. SCBG believes, therefore, that Ofcom should place conditions in licences, which require those that acquire spectrum through the auction process use it within a reasonable period of time.

In summary, SCBG believes that:

- (i) existing market uncertainties and the need for technological neutrality justify Ofcom's market-led approach;
- (ii) all PSB and commercial broadcasters should have an equal opportunity to acquire spectrum for DTT use;
- (iii) PSBs have no automatic right to additional spectrum for HD services – they must justify this requirement to their funding bodies, and bid for spectrum on an equal footing with all other bidders;
- (iv) spectrum ownership caps and 'use-it-or-lose-it' licence conditions are the minimum necessary steps required to protect against anti-competitive outcomes.

Yours sincerely,

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