

Advice to Ofcom from the Ofcom Consumer Panel



Title of Ofcom Project:	Digital Dividend Review
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Background

1. At the Consumer Panel meeting on 20 November 2007 the Panel discussed Ofcom's planned statement on the Digital Dividend Review (DDR) with the Ofcom team. The Panel had previously reviewed Ofcom's statement at the October meeting but were concerned by the direction of Ofcom's thinking and therefore asked to meet the team discuss it.

Key points from the Panel

2.
 - It is essential to ensure the UK as a whole benefits from the release of the spectrum after switchover, and that the risk of companies 'cherry-picking' regions or localities to where it delivers its services and products is minimised.
 - Ofcom should devise a regulatory technique to re-visit the outcome of the proposed auction if market failure does become apparent in the light of later and unknowable events.
 - We fully endorse Ofcom's proposal to look at the possibility of introducing licence conditions for the auctioned spectrum. We note this is a change in direction to earlier Ofcom pronouncements on the issue and that this is a difficult area to enforce. We look forward to reviewing the work undertaken.
 - We are surprised that Ofcom has dismissed the creation of an innovation reserve having raised it as a possibility. We do think that companies that provide services of a high but dispersed public value will benefit from being able to access this valuable part of the spectrum – access that we think may not be possible if they have to compete at auction prices.
 - We think Ofcom should review the possibility, in tandem with its licence conditions work, of leaving part of the released spectrum unlicensed as a means to ensure that innovation in the market and public value is maximised. An unlicensed block of spectrum could remove the need for licence conditions and the need for Ofcom to 'pick winners' to access an innovation reserve.

HDTV on the Freeview platform

3. We welcome the recent announcement made by Ofcom that will enable the availability of HDTV on the DTT platform by re-organising the broadcasting muxes. We recognise this work will provide HD services to UK consumers universally, and 'free to air', and that this efficient use of spectrum maximises this valuable and scarce resource for the benefit of all UK consumers and citizens.

Delivery of services to rural and uneconomic areas

4. In our initial response to Ofcom's consultation on the DDR we said that an auction of the released spectrum, won by the highest bidder, is unlikely to serve those citizens or consumers in rural or uneconomic areas. Whilst we understand that Ofcom thinks secondary trading in the spectrum market may help to mitigate these problems, we still think there is a strong risk that services and products of a high but dispersed public value will not be delivered and 'cherry-picking' will occur - constituting a market-failure. It is important to note that these areas are already underserved by the communications market, and the premise that services could be delivered over different communications platforms may simply not happen, for the reasons that have led these localities to be underserved in the first place.
5. Thus, we would like to refer to Ofcom's own consumer research, undertaken for the DDR, in which people in the UK valued highly the notion of universality in the sense of social inclusivity. In our consultation response we asked Ofcom, *"to set out its thinking on what may happen if a service was deemed to be central to a person's social inclusivity but geographical access was not possible; and how Ofcom, or others, could help provide conditions for such a service to be delivered."* We still think this is a relevant issue.

Rectifying market failure

6. With the above in mind, we ask Ofcom to look again at devising a regulatory technique that could deliver a contingent or modifiable outcome that enables it to re-visit the allocation of spectrum after it is auctioned - if it was deemed that an outcome had led to market failure in the light of later and unknowable events.

Introducing licence conditions for the auctioned spectrum

7. We would like fully to endorse the proposal, set out by the Ofcom team at the November meeting, to review the possibility of introducing licence conditions for the auctioned spectrum. These conditions may help ensure that the released spectrum is used innovatively, efficiently and produces the optimum outcome for the UK. We understand that these conditions may include what Ofcom views as 'bad behaviour' by companies, and 'damaging to UK interests'. We note there are difficulties in enforcing such conditions and we will be interested to know more about whether Ofcom thinks these conditions are in fact workable, and to what standard of proof will be required to mount a case against a company that transgresses them.

Innovation reserve

8. We find it surprising that Ofcom should set out the possibility of an innovation reserve in its earlier document and then seemingly, dismiss it out of hand in the statement. We note that a number of responses to the DDR consultation were in favour of the innovation reserve and we were concerned by the lack of weight the

Ofcom statement gives to these responses. We wonder whether these responses are thought to reflect a lack of analytical grip on technology or finance? This may or may not be the reason for their being dismissed – but if it were, we would want rather sombrely to caution Ofcom to beware of taking such an approach without the most careful deliberation.

9. With this in mind we would re-iterate our view that releasing this entire section of valuable spectrum without knowing the future, could result in unforeseen or unintended consequences that are unable to be rectified once the policy has been implemented, and that a more evidenced based argument should be sought by Ofcom other than ‘the case is not proven’, if it does reject a proposed innovation reserve.
10. It was also put to the Panel by the Ofcom team that cognitive radio could be the solution in ensuring that the released spectrum is used efficiently and maximises the total value to society. Whilst we recognise that cognitive radio could become part of the solution in delivering innovative or high but dispersed public value services or products we would like to caution Ofcom against viewing this technology as a panacea to address public policy issues. First, it is ‘early days’ for this technology and we do not know: if it will work; what level of interference (if any) it may cause; or how widespread the technology will become. Second, if the technology is successful we do not know when cognitive radio based products will make it to market - thus we do not know what level of detriment to citizens or consumers will occur in the meantime.

Licence exemption

11. We think Ofcom should consider the possibility of license exempting a certain amount of the released spectrum. This spectrum could be used for services or products not being delivered in the auctioned blocks. We note that Ofcom already supports licence exemption for other parts of the spectrum market. In its Licence Exemption Framework Review Ofcom stated that studies commissioned by it had indicated that the contribution to the UK economy of licence exempt applications is significant. One example referred to was the assessment that the net present value of public Wi-Fi local area networks alone (without taking congestion and interference costs into account) might be as high as £100bn over the next 20 years.
12. Thus, we think Ofcom should consider seriously the possibility of making part of the released spectrum licence exempt as a means to maximise innovation and the public value of services or products across the UK and to help deliver services that are unlikely to be commercially viable for large corporations but could be delivered by smaller niche companies. This will avoid the need for Ofcom to auction the whole of the released spectrum that will exclude smaller organisations from the process as they will be unable to pay auction prices. In our view this is a more proven route than relying on technology such as cognitive radio to deliver these outcomes – technology that has yet to arrive.