

1. Scope:

This response deals specifically with the question of digital terrestrial spectrum provision for HDTV. It does not attempt to answer all the Consultation questions.

2. Main argument:

The main points of the response are

- In defining the choice between intervening to reserve spectrum for HDTV on DTT or auctioning the spectrum (in a way that is open to HDTV bidders and others), Ofcom is taking a view bounded by the subject of spectrum and looking beyond broadcasting. While this is understandable, a complementary perspective is to consider what form of public intervention, if any, whether by Ofcom or by Ofcom and the Government, may be appropriate in relation to the potential development of HDTV-DTT within UK broadcasting. Addressing this latter question could help inform a decision on the spectrum issue.
- It is likely that HDTV will become increasingly important in the terrestrial television receiver market, led by developments in the United States and Japan, as well as by initiatives on other platforms and other media. 'HD ready' receivers already feature prominently in the UK flatscreen TV market. HD programme production is also growing, led in part by the American export market. The Olympics could well boost consumer interest.
- The UK is unlikely to achieve the optimum outcome from a consumer standpoint if HDTV-DTT is left completely to market forces: also auctions can reflect market forces imperfectly. Equally Ofcom is correct in identifying the risk of regulatory failure through intervention. A market-led transition strategy, with certain public policy and regulatory ingredients, is preferable, if possible.
- It is not Ofcom's job alone – nor the Government's alone – to develop such a strategy but Ofcom's next step, *ahead of a final decision on whether or not to reserve spectrum for HDTV on DTT*, should be to invite the industry to initiate transition strategy proposals as a basis for a consultation on the subject.

3. My standing in this field:

I played a central role in developing the BBC's strategy for digital television and, under contract to the Government, was the Project Manager for the UK Digital TV Project which, through the Action Plan, laid the foundations for the current national digital switchover programme. This, of course, involved working closely with Ofcom.

I am now an Associate of the Programme in Comparative Media Law and Policy at Oxford University (but write here in a personal capacity) and, funded by the British Academy, have researched digital switchover on a comparative international basis. My book, *Switching to Digital Television*, is due to be published in September. I have also done some consultancy work on digital switchover for the New Zealand government and, together with Oxford colleagues, submitted evidence on international perspectives to the Commons Select Committee on Culture, Media and Sport during its 2005-6 examination of switchover policy.

4. A complementary perspective:

In considering the possibility of HDTV on digital terrestrial television (DTT), Ofcom has understandably focussed specifically on the choice between intervening to reserve spectrum for this purpose or auctioning the spectrum in a way that is open to HDTV-DTT bidders but also open to competitors with other interests.

However, there are broader issues of public policy in relation to the possible development of HDTV-DTT, in which Ofcom, the Government, the broadcasters and the receiver industry all have an interest. These arise, not least, from the coincidence between the possible timetable for HDTV development on DTT and the completion of digital switchover during the period 2008-12. If HDTV were to develop on DTT, it would presumably involve a receiver migration strategy. From a public policy perspective, every care should be taken in those circumstances to safeguard the interests of consumers due to be compelled to purchase new digital equipment as a consequence of digital switchover. Questions about the feasibility of upgrading standard digital set-top boxes, and the incentives the market has to supply dual capability boxes in conditions of policy uncertainty, need to be considered. Consumers likely to be attracted by HD services would appreciate timely advice and timely new product availability to avoid wasting expenditure on reception equipment.

There is also, of course, the public policy issue of whether HDTV-DTT should at some future date be established as a public service. Greater clarity about a potential transition strategy for the development of HDTV on DTT should inform a *final* decision on the 'allocation versus auction' spectrum issue.

5. The probability of HDTV developing on DTT

This would be less of an issue if the chances of HDTV developing on DTT were remote. However, while the timing is uncertain, this development seems probable. An increasing number of the TV sets in UK households will be 'HD-ready' and, again increasingly, UK prestige productions will be made in HD. This is in part due to international influences.

While there have been some initiatives in Europe (e.g. France), the principal influences come from the United States and Japan. Both countries have digital switchover policies involving the provision of sufficient spectrum to terrestrial broadcasters to underpin the launch of HDTV on DTT. The United States is due to complete its digital switchover in 2009. While American broadcasters are not compelled to transmit in HD, the major ones are doing so and HD programmes now feature on all main platforms. Japan, having initially pioneered HDTV in analogue, has now switched to digital; DTT licensed broadcasters in Japan have to transmit 50% of their output in HD; and Japan's full digital switchover is scheduled for 2011. Between them the US and Japanese markets have a major influence on the major global TV receiver manufacturing companies and the Japanese have long been keen on developing HD programming to complement the large-size flat-screen TV market. 'HD-ready' flatscreen TVs have already made an impact in the UK.

Another major influence on the UK market comes from other platforms, most obviously from BSkyB's initiative on satellite during 2006. If, as can be expected, HDTV becomes an integral part of the satellite and cable service propositions in future years, it is likely that this will affect the expectations of DTT households owning the same 'HD-ready' flatscreen TV models. High quality recorded material in disc format also raises consumer expectations of broadcast quality.

Partly because of the importance to them of the US export market, UK broadcasters and production companies are increasingly producing their prestige programmes in HD. The BBC is committed to producing all its own productions in HD by 2010.

If many of the programmes are made in HD, and many of the consumers have the 'HD-ready' flatscreen TVs on which to display them, strong demand for completing the transmission element in the DTT chain is likely to develop, especially if UK viewers face the prospect of UK-originated HDTV-DTT coverage of the London Olympics being beamed out to America, Japan, France and perhaps other European nations, without being available for viewing in the host country.

6. Why not leave it completely to the market?

While the development should undoubtedly be market-led, it is not self-evident that a regulatory decision not to intervene will produce the result that consumers would most value. Several considerations give rise to doubts on this point:

- the UK's experience in satellite television in the 1980s, when, in contrast to other countries such as Japan, the UK failed to make effective use of its allocated national slot for direct-to-home satellite TV broadcasting and came to rely on Luxembourg satellite operations (though, as noted below, inappropriate technical regulation also contributed to this failure);
- the experience of auctioning the ITV franchises in 1991, some results of which are now seen to have been artificial products of the process, rather than a clear expression of market preferences;
- assessment of the 3G auction in 2000, where the process is now judged to have generated higher bids than market conditions could justify;
- the complexity of the open horizontal market encompassing programme-makers, broadcasters, transmission companies, TV receiver manufacturers and retailers – and, in particular, the separation between the receiver industry, which could expect a flow of revenue from the sale of HDTV-DTT receivers, and the broadcasters who, either directly or indirectly, might be expected to pay for the spectrum required;
- the care taken over setting the regulatory framework for HDTV in the United States and Japan (in the latter case extending to setting sufficiently common technical standards for terrestrial and satellite television to support the manufacture and sale of dual-platform receivers) and currently in France;
- the care taken over setting the public policy and regulatory framework for the launch of digital television in the UK, at a time when its prospects too could not be fully known or 100% predicted.

Ofcom, however, rightly identifies the risk of inappropriate regulatory intervention precipitating or contributing to failure (the imposition of MAC technical standards on the ill-fated BSB satellite venture still stands as a warning to interventionists).

However, on the evidence of the Ofcom Consultation document, currently missing from the UK's present thinking about HDTV-DTT, is a picture of:

- a) the services or programme genres which broadcasters propose to make available for transmission in HD on one or more platforms (do many existing standard definition channels plan to remain standard definition only?);
- b) proposed coverage and the relationship between DTT plans and HDTV transmissions via other platforms (satellite and cable are likely to be the principal means for the delivery of a wide range of HD services, it is probably not practical, technically and/or financially, for all such services to be mirrored on DTT, so what sub-set of satellite and cable HD services might be selected for HDTV-DTT and why?);
- c) spectrum requirements arising from the proposed services and coverage, encompassing possible re-configurations of existing multiplexes as well as expressions of interest in any new multiplexes;
- d) possible alternative methods of pricing and allocating any new spectrum, for evaluation against the option of an auction as proposed in the Ofcom Consultation;
- e) proposed receiver strategy, including migration strategy, and related technical standards, and how these interface with digital switchover policy;
- f) viable financial model(s) for consumers (subscription, free-to-view etc?);
- g) suggested timings for a decision to commit and for launching, having regard to the timing of digital switchover, the availability of released spectrum, and any linkages to the introduction of pricing for existing spectrum, funding reviews, renewal of licence terms etc.

Proposals for a market-led HDTV-DTT transition strategy, based on fuller market analysis and research than the Ofcom Consultation document includes, could begin to fill out this picture. If properly articulated and tested by full consultation, such a strategy would be more likely to lead to the successful implementation of HDTV-DTT in the UK than blind faith in the market wisdom which might emerge from an open auction process.

7. Whose job would it be to provide such a strategy?

Framing such a strategy is not Ofcom's job alone, nor is it the Government's alone, though both are likely to have significant contributions to make. If the strategy is to

be market-led, it is for potentially interested broadcasters and manufacturers to initiate it, coordinating their thinking to the degree that is appropriate in a competitive market. Thus proposals could potentially come both from individual organisations and from potential business partnerships or alliances. It would be for the Government and Ofcom to input on public policy issues.

Clearly there are some 'chicken and egg' features surrounding the formulation of any strategy which includes both market and public policy elements. What is required therefore is a way of starting what would inevitably become a dialogue. After the current process of gathering responses to the Consultation, Ofcom will be in a position to challenge those who have contested its proposed approach to HDTV-DTT to put forward a serious alternative set of proposals, including payment for spectrum, if they believe such an alternative would genuinely be in the best interests of the public.

Assuming that serious alternative proposals are then received (albeit with caveats), they could then be evaluated alongside the spectrum auction option in the second round of consultation due later in 2007. In this context the Government and Ofcom would also have the opportunity to input on appropriate public policy and regulatory issues.

In the event that no such proposals are received from the broadcasting and receiver industry, or should the industry's proposals fail to add up to the basis for a coherent and convincing strategy, Ofcom could still proceed with the auction as currently envisaged. It would, however, be high-risk to decide now wholly to skip any such opportunity for the formulation of a considered transition strategy for this probable technology development.

Michael Starks, February 2007