



Report of the Independent Review of Spectrum Management

Response by the Radio Authority

General

The Radio Authority responded in September 2001 to the consultation made in June 2001 by the government's Independent Spectrum Management Review. The Authority's views have not changed in the meantime.

The recently-published Review makes some interesting arguments and valuable proposals, which have the virtue of opening debate. This serves to loosen any assumption that retention of the status quo should be perpetuated indefinitely in any sector of spectrum management. The potential to bring market forces to bear, and the benefits which may accrue, are considerable.

We are disappointed that the report seems to offer largely a 'one size fits all' approach to spectrum management. We welcome that some recognition of practical constraints and the character of particular services has been made, but we hope for more acknowledgement of the complexity of the issues in the subsequent debate. In particular, a clearer distinction is needed between the cases of television and sound broadcasting.

In this context, and with the above reservations, the report is useful. There is also a distinction to be made between the narrative of the report, and its actual recommendations. If applied selectively to the right situations at the right time, these recommendations could contribute significantly to the development of efficient and appropriate spectrum management of sound broadcasting, and the other services whose spectrum it will increasingly share in a gradually convergent world. The Authority hopes that OFCOM will have the instruments at its disposal to implement the report's recommendations to the appropriate extent, rather than be too narrowly driven to particular approaches. The Authority's response to the report's specific recommendations on broadcasting are given below.

11.1 Market-based spectrum management tools should be applied to the broadcasting sector so that usage of spectrum by all broadcasters is exposed to the full opportunity cost of spectrum use.

We do not support the implication that all broadcasters have the degree of discretion over their use of spectrum which would enable them to make decisions or alter behaviour in a way which yields (directly) a dividend in overall spectrum efficiency. The recommendation could be developed to acknowledge better the complexity of the issues involved.

11.2 Broadcasters should be given the ability to lease spectrum to other uses and/or users, once they have met their public service broadcasting commitments and other obligations. Broadcasters leasing spectrum would be able to keep the resulting revenues.

We hope that the ability to lease/sub-let spectrum will be a tool available to OFCOM to grant to broadcasters in a future scenario in which licensing may, for argument's sake, and by design, be made with a coarser granularity than at present.

11.3 The spectrum used for broadcasting should be valued and the valuations released into the public domain. From the overall valuation, a value for each national analogue channel and digital multiplex should be derived, based upon relevant factors such as geographical coverage and bandwidth used.

Although it may be helpful to establish a valuation of spectrum, it does not follow that broadcasters should necessarily pay that valuation for their licences. The Authority regards the public interest obligations on ILR as an appropriate return for the use of the spectrum, not therefore justifying further payment. That said, whether or not spectrum pricing is applied to broadcasters or any other public service, any strategic spectrum management decision should take account of the value of that spectrum.

11.4 Spectrum pricing should be applied to all broadcasters. The timing of the introduction of spectrum pricing should take account of extant regulatory agreements between broadcasters and the Government (including commercial broadcasters' current franchise fees, which encompass access to spectrum). It should also take into account the Government's commitment to promote and support the take-up of digital TV.

Where the pricing mechanism can be deployed as an effective tool of spectrum management, then it is appropriate to consider doing so, and it is certainly appropriate that OFCOM should have the powers to exercise this option. However, for the reasons given in 11.1 and 11.3 above, we believe that pricing should not be applied to local commercial radio licences in present circumstances. It is also the case that payment for spectrum, particularly by auction, diminishes the ability to expect broadcasters to be required to heed the public interest in matters such as localness or news provision.

11.5 The Government, its agencies and broadcasting regulators should explore options for using variable spectrum pricing and/or spectrum efficiency grants to

contribute to the Government's aim of promoting and supporting the take-up of digital TV. The Government should also consider using overlay licences as a mechanism for achieving digital switchover.

The principle of using spectrum pricing to lever change from analogue to digital (for those broadcasters for whom this is an option) is one which we support. Overlay licences may be appropriate at a future point, notably for analogue licences whose public policy benefit/requirement will in a relevant timescale be adequately addressed by digital transmission.

11.6 Limits on the proportion of digital broadcasting multiplex capacity which can be used for non-programme related data services should be relaxed as soon as possible, and ultimately eliminated. Spectrum released in the future which can potentially be employed for broadcasting should not be confined to broadcasting use alone, but should be made available for other uses through a competitive auction.

There are some circumstances in which the relaxation of hard limits on non-programme services of broadcast digital multiplexes may be contemplated, even if the regulatory assumptions behind their establishment were predicated on broadcast use (by spectrum allocation and the process and criteria of licence award). However, regulatory conditions of some sort are necessary to ensure that the basis on which spectrum is attributed to a given user (especially if by other than some sort of auction/cash bid) is upheld correspondingly thereafter. In the case of digital multiplex licences awarded by the Radio Authority under the 1996 Broadcasting Act, for example, this could involve tying individual sound broadcast services to a minimum capacity use related to promises made in the application, as well as maintenance of the service itself. It should be remembered that the incentive to roll-out digital radio services was the (valuable) automatic roll-over of analogue licences.

Under such circumstances, spectrum pricing needs to be applied appropriately to ensure a properly level playing field between the different mechanisms by which different non-broadcast service providers obtain delivery of their signals.

We strongly disagree that spectrum released in future with the potential for use by broadcasting should inevitably be thrown up for mixed use (and therefore auctioned). A range of scenarios should be possible (including the one recommended here) according to circumstances, not least of which are the public policy contexts of the broadcasting services which are/may be involved.

11.7 Once Ofcom is established, the Government should devolve detailed spectrum planning to the independent regulator, subject to Ministerial direction where necessary in particular circumstances, e.g. to reserve spectrum for BBC services. In order to ensure that the entire volume of spectrum is used in the most efficient way, Ofcom should be given

responsibility to plan all the broadcasting spectrum including that currently used by the BBC.

We strongly agree that, as anticipated in the Communications White Paper, OFCOM should assume responsibility for both strategic and detailed spectrum planning across the terrestrial broadcasting sector. Necessarily this includes the BBC, which fishes from a common pool with services which OFCOM will license directly. Therefore (not least to secure proper access to spectrum for the BBC) OFCOM needs to assume responsibility for planning spectrum used by the BBC. Indeed the Radiocommunications Agency already has relevant powers, although currently these are exercised by oversight of an arrangement with responsibilities significantly devolved to the BBC and Radio Authority. The most efficient relationship between OFCOM and the BBC will depend on circumstances applicable at the time, and will need to ensure efficiency and effectiveness.

The Radio Authority
10th May 2002