

## CMA Response to the Independent Review of Radio Spectrum Management

Dear Daniel,

Please find below our brief responses to the Independent Review of Radio Spectrum Management, which I hope the committee will find useful. Individual responses are, where appropriate, referenced to specific paragraphs in the consultation paper and to the points raised for discussion in Annex A.

A copy of this response is also being posted to you at Wyndham House this afternoon.

### Summary:

- Not-for-profit broadcasters with social and public service objectives should have special status in any new regulatory framework, in particular with regard to the costs associated with spectrum usage and in terms of protection from commercial encroachment.
- The differing requirements of broadcast radio and broadcast television should be recognised in any new framework. In particular the uncertainty of spectrum efficiency gains with regard to radio broadcasting should be taken into account.
- OFCOM should implement a unified approach to the allocation of FM broadcast spectrum for BBC and non-BBC (Community / commercial) radio stations.

### Spectrum use: marketed and non-marketed outputs (paragraphs 49 to 55)

Whilst welcoming the distinction, the CMA questions the existence of serious public service obligations on the part of commercial radio broadcasters. That such minimal obligations can be used to offset costs of spectrum usage seems questionable. The position of the proposed 'Access Radio' Community Radio services will however be more akin to that of the BBC, with such stations operating on a not-for-profit basis with clear public service obligations. Any future cost regime for radio broadcasting should therefore ensure that this fundamental difference is properly taken into account. Commercial broadcasters should be required to accept clearly defined and enforceable public service obligations in return for a reduction in spectrum usage costs, or should be charged at a rate that takes into account their entirely commercial usage of the spectrum concerned.

For the emerging sector of not-for-profit local TV services, once again the level of public service requirements and the non-commercial nature of such services should be reflected in the costs of spectrum usage for such

services in comparison to those charged for commercially based local services.

Annex A (xv) To what extent is the review's distinction between radio spectrum used for marketed and non-marketed goods a helpful one?

The CMA considers that this distinction, properly applied with regard to broadcasting, is an essential prerequisite to the design of a charging structure that recognises the public service remit of not-for-profit broadcasters.

Annex A (xvi) How far can public policy objectives for the delivery of non-marketed goods be separated from the regulation of access to the spectrum necessary to deliver such services?

With regard to the provision of broadcast services, the CMA believes that clearly defined public service obligations and not-for-profit structures are adequate identifiers to distinguish such broadcasters from their commercial counterparts. Regardless of aims and structures, any TV or Radio broadcaster would require similar spectrum resources to achieve a given coverage objective. Any future regulatory approach to the allocation of spectrum resources should therefore only apply different criteria at the charging stage of the allocation process and not before.

The most logical approach would seem to be a licensing system which relates the licence fees charged for the use of a particular spectrum resource to the specific purpose for which that spectrum will be used.

#### Broadcasting (Paragraphs 63 to 84)

For the CMA, it is perhaps this section that is particularly relevant. However, there is some lack of distinction between radio broadcasting and television broadcasting, particularly with respect to the 'major step-change improvement in spectrum efficiency' (paragraph 64). Whilst the anticipated gains in spectral efficiency may be clearly demonstrable for TV, this is not the case for radio. Indeed current spectrum allocations for digital radio (Eureka 147 DAB) are insufficient to allow all existing broadcasters to make the switch. For the 'digital switch-over' (paragraph 84), as in other policy areas, it is vital the distinction between approaches appropriate to Radio and those appropriate to TV is recognised and respected.

There are however concrete improvements that could be made to existing regulatory systems to improve spectrum efficiency. For example, at present, for historical administrative reasons, FM radio spectrum allocations are dealt with by two separate bodies, operating in conjunction

with the DTI RadioCommunications Agency. The BBC and the Radio Authority each have responsibility for individual sub-bands between 87.5 and 108 MHz. This situation inevitably leads to some inefficiencies in the use of this spectrum resource (there are for example unused resources in the BBC national network sub-band which would be ideally suited to use by smaller Community Radio services). More efficient use of this spectrum would be promoted by its administration as a single unit providing allocations for BBC, Community based and commercial services. OFCOM should instigate such an approach from the outset.

#### Spectrum Trading (paragraphs 102 to 121)

The opportunities for the trading of broadcast spectrum are limited when compared to, say, telecommunications frequencies. Broadcasters (TV and Radio) target specific geographical areas and make use of allocations, which are specific to the coverage area concerned, and could not simply be transferred to a new location for use in providing another service. For example an existing licence for, say, Hertford, could not be sold for use in providing a new service in London. That frequency resource may already be in use by another service provider there, or may not be useable because of other broadcasts on nearby or related frequencies. The fundamental difference is in dealing with individually allocated frequencies as opposed to blocks of frequencies. There is in simple economic terms no real mobility of resources.

In broadcasting, spectrum auctions have yielded unpredictable results (London vs. West Midlands ITV bids for example), and have tended to incorporate a quality threshold as a public service safeguard. Recent experience in the mobile phone arena indicates that whilst the Treasury might be delighted with the process, it does not necessarily lead to the best commercial position for the successful bidders or their share prices.

Clearly, if opportunities for commercial investors to trade in frequencies do emerge, there will inevitably be conflicts with other interested parties wishing to use spectrum resources for social and cultural (public good) purposes. An auction system fails in this respect, and any commercial trading system will have to be limited to commercial users of broadcast spectrum if social and cultural uses are to be effectively protected.

Please feel free to contact me at the CMA Head Office if you have any queries relating to the above.

Yours Sincerely,

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