



**RADIOCOMMUNICATIONS AGENCY
Consultation on Implementing Spectrum Trading**

AN ITV RESPONSE

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1. Introduction

- 1.1 ITV welcomes the opportunity to respond to the RA consultation on Implementing Spectrum Trading. This submission complements previous ITV submissions to the Radio Spectrum Management Review conducted independently by Professor Martin Cave. It represents the collective view of the 15 regional companies that make up the ITV Network.
- 1.2 We are aware that it has long been the intention of Government to introduce spectrum trading, and that the passage of the EU Framework Directive provides an opportunity for OFCOM to be given powers to introduce and regulate spectrum trading through the new Communications Bill.
- 1.3 In our response to the Radio Spectrum Management Review (The Cave Review) in May this year, we expressed support for the general principle of trading spectrum as a means of delivering improved spectrum efficiency, including in the broadcasting sector. This remains the case.
- 1.4 However, the introduction of spectrum trading will be a complex process, particularly in sectors that are underpinned by extensive public policy objectives. Broadcasting is one such sector and the consultation document rightly acknowledges that this will necessitate a slightly different approach, taking particular account of the Government's desire to sustain public service broadcasting.
- 1.5 Trading is one of many interconnected spectrum issues currently on the radar of broadcasters and their regulators. There is considerable uncertainty surrounding the potential to renew public service broadcasting licences as well as the spectrum pricing regime to be applied to these licences. There is also, perhaps understandably, still a lack of clarity from spectrum planners about how much spectrum will be needed to deliver digital switchover.
- 1.6 Spectrum trading policy cannot be made in a vacuum. The debate about its application to the broadcasting sector must be set in the context of these wider issues if it is to be productive. OFCOM should thus be well-placed to ensure that this occurs by taking a holistic approach. At this stage, however, it is not possible for market players to do any more than address the issue in broad, abstract terms. We therefore do not seek to answer each of the questions contained in the consultation document, but rather to briefly highlight some of the main factors to be taken into consideration when applying the principles of spectrum trading to the broadcasting sector.

2. General approach to spectrum trading

- 2.1 ITV understands and accepts the rationale for spectrum trading as a means of improving spectrum efficiency. We agree that its introduction in the UK should, in theory, bring benefits to spectrum users and consumers alike. Trading will give all spectrum users a financial incentive to examine their spectrum needs. This should lead to the freeing up of spectrum that can be used to provide new services. Trading will also give market players a

direct say in how spectrum is distributed and this will complement, though not replace, the current practice of licensing direct by the regulator.

- 2.2 The approach set out in the consultation document seems to be a broadly sensible one. Most importantly, it acknowledges that trading conditions are likely to differ according to the licence sector and licence class concerned, and that it will be necessary to consult separately on the detailed Trading Regulations to be applied to each sector. As such, all that this consultation can realistically do is set the parameters for later consultations. The list of *'topics to be considered during development of Trading Regulations'* in paragraph 17.1 is therefore a useful guide and appears to cover all the major issues.

3. Application of spectrum trading to the broadcasting sector

- 3.1 The RA recognises in paragraph 2.6 of the consultation document that the approach to spectrum trading in the broadcasting sector will be conditioned by the need to set aside sufficient spectrum for the achievement of public policy goals such as public service television. It also acknowledges (para 2.1) that spectrum efficiency should be measured in terms of both the economic and social benefits derived from that spectrum. This logic must underpin the introduction of spectrum trading in broadcasting. Existing arrangements to ensure the universal availability of the public service broadcasters may be inherently 'inefficient' in terms of spectrum use, but they are justified by virtue of the value they bring to society as a whole.
- 3.2 The RA suggests that some forms of trading may be implemented in some licence classes by the end of 2004, subject to, *inter alia*, the passing of the Communications Bill. It also proposes that this be done in waves, taking the 'easiest' sectors first then proceeding with a second wave, where, having learned lessons from the first, more 'difficult' sectors such as broadcasting are tackled. No dates are given for the possible commencement of this second wave and whilst we appreciate it will be difficult to be precise, it would be useful to know what kind of timescale the RA is working to.
- 3.3 It seems sensible not to rush into the introduction of trading in the broadcasting sector. However, the timing of any future trading should be dictated more by the level of certainty surrounding broadcasting spectrum issues in general, rather than the need to learn from the experience of other sectors. Below we highlight various spectrum issues that are yet to be resolved and how they relate to broadcasters' assessment of the potential impact of spectrum trading.

4. Key spectrum issues for the broadcasting sector

Licensing

- 4.1 The RA identifies in section 13 of the consultation document that licence term and security of tenure are 'important to anyone considering whether to trade as a buyer or seller'. It goes on to state that:

“Uncertainty or short-term licences could discourage businesses from undertaking the investment necessary to build the infrastructure needed to deliver services over spectrum, and could reduce incentives for incumbents to lease unused spectrum.”

We would agree with this analysis and have made the same point in our response to the Government’s draft Communications Bill, which proposes to withdraw ITV and Channel 5’s right to automatically renew their licences after 2014. The uncertainty this will introduce for licence holders is likely to have a negative impact on long-term investment, particularly in the roll out of digital terrestrial television. This in turn will restrict the potential for spectrum trading in this area.

Similarly, uncertainty about the security of ITV/C5 licences (and therefore leases) may well deter potential sub-licensees from entering the trading market and making the considerable investment in infrastructure necessary to deliver services over that traded spectrum. If this is the case, there is a real risk that spectrum trading will not deliver its supposed economic gains in the broadcasting sector.

Spectrum Pricing

- 4.2 Spectrum pricing cuts across all spectrum issues. The Cave Review raises the prospect of the introduction of a new pricing regime based on opportunity cost for all users of spectrum. The effects of any new regime will be carried through to the trading market and will determine the overall financial benefit accruing from trading. **However, Government policy in this area remains entirely unclear as we are yet to receive its formal response to the Cave proposals.**
- 4.3 Despite this, the consultation document and accompanying Regulatory Impact Assessment (RIA) attempts to estimate the potential value of the spectrum trading market in the UK. The value of trading in the broadcasting sector is ‘conservatively’ estimated at £20m whilst the total benefit of all trading could be ‘at least £138m over 20 years’ (Annex 1). Although interesting, reliable projections cannot be made without knowledge of both the future pricing regime for spectrum and the trading rules applicable to each individual sector.
- 4.4 It is also noteworthy that the ‘benefits’ of spectrum trading to the UK are presented in monetary terms alone. The basis for the valuation appears to be purely economic, with no attempt to take account of the relative value to society of the services provided over the spectrum. The benefits in broadcasting are therefore quantified in the same way as they are for fixed link or mobile telephony. In our response to the Cave Review we argued that valuing spectrum in isolation from its use was only appropriate as a means of Government assessing the cost of its public policy objectives. If the concept is also applied in practice to pricing, the risk is that an unhelpful disconnect will be introduced between spectrum use and the fulfilment of these policy goals. In that context it is important that the RA’s early work on trading does not pre-empt the forthcoming debate on spectrum pricing.

Scope for spectrum trading - pre switchover

- 4.5 As a result of public service obligations, as well as uncertainty over the timing of digital switchover, the ability of broadcasters like ITV to trade analogue terrestrial spectrum is very limited¹. Nevertheless, it may be questionable whether our obligation to provide a 24-hour service to viewers could be seen as maximising the value of the spectrum.
- 4.6 On DTT, the situation is somewhat different. Until *Freeview* confirms its channel line-up, it is impossible to gauge the potential for trading DTT spectrum. As far as the D3&4 multiplex is concerned, spectrum efficiency has been increased by the deployment of statistical multiplexing and improved compression algorithms. This has, for example, enabled ITV to increase the number of channels from 2 to 3 on its half of the D3&4 multiplex. However, the proposed mode change from 64 to 16QAM would undermine this progress as it would seriously jeopardise the prospects for carriage of the ITV News Channel, which could not be accommodated on the D3&4 multiplex if it were forced to switch to 16QAM. In our view the benefits to reception from a change of mode are unlikely to justify the cost in terms of loss of capacity.
- 4.7 On the D3&4 multiplex, therefore, the potential lies more in leasing than in full scale trading. For example, we would welcome being able to lease the spectrum not used during nighttime hours. However, as pointed out in the Cave Review, broadcasters are currently hampered in this by the 10% limit on non-programme related data broadcasts on the DTT multiplexes. We consider this to be unnecessarily restrictive, particularly given that the public teletext service is allocated 3% of D3&4 multiplex capacity.
- 4.8 In that context we note with interest the Government's proposal in the draft Communications Bill (Clause 163) to allow OFCOM to issue 'general multiplex licences' under the Wireless Telegraphy Act in addition to the existing multiplex licences issued under the 1996 Broadcasting Act. We understand that these licences are intended to offer maximum flexibility to licence holders by allowing them to operate any mixture of broadcast and non-broadcast services (i.e. the 90/10 rule of the Broadcasting Act would not apply). Presumably this would also mean that general multiplex licence holders would be free to choose what transmission mode to operate at. However, existing Broadcasting Act licence-holders would not have this flexibility. We would therefore seek clarification on how OFCOM is planning to ensure that current DTT licence-holders are not put at a competitive disadvantage in terms of their spectrum trading potential.
- 4.9 Finally, it should not be forgotten that spectrum trading should offer broadcasters the opportunity to buy extra capacity as well as sell it. The RIA cites the case of New Zealand, where trading led to enough spectrum release to allow for a new television channel covering 70% of the population. Whilst similar benefits seem highly unlikely in the UK pre switchover, it is hoped that trading would at least enable broadcasters to acquire extra capacity on an ad hoc basis in order to offer viewers enhanced coverage of particular programmes or events, e.g. interactive sports coverage.

¹ As noted in our response to the Cave Review, we do not believe it would be possible to make significant efficiency savings under the current network frequency plan without breaching our broadcast licences. ITV1, together with BBC and C4 is under an obligation not just to reach up to 99.4% of the population but also to "attain high standards in terms of technical quality and reliability" (1990 Broadcasting Act, Chapter 7, para 66(4)). This is the basis for the existing channel applications of 8MHz.

Scope for trading – post switchover

- 4.10 The scope for spectrum trading is, in theory at least, much greater after digital switchover. However, it is impossible to predict with any certainty until the spectrum planning process for DTT has been finalised. ITV is aware that the Digital Television Action Plan Spectrum Planning Group is at an advanced stage in its thinking on this front. We understand that it is proceeding on the basis of the Government's objective of releasing at least 14 national frequencies at switchover, whether through the re-planning or analogue conversions route.
- 4.11 Assuming this level of spectrum release is achieved, the next question is how it is then used. Whether re-allocated or auctioned off by Government, it is likely to become available for trading purposes at some point. It is also likely that, subject to international clearance, this will be spectrum that can be put to a range of uses, from broadcasting to telephony. As such, it will be spectrum that can be used to issue general multiplex licences as discussed above under 4.8.
- 4.12 This prospect raises fundamental issues and dovetails with the general debate necessitated by switchover - namely how to ensure the continuing viability of advertiser-funded public service broadcasting in a world where access to 100% of homes is no longer a rare privilege. Certainly it is a debate that must take place before OFCOM introduces detailed spectrum trading regulations for the broadcasting sector. It is at this point that the conditions attached to each trade - issues of mode, duration and extent as identified by the consultation document - will receive proper consideration.

ENDS
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