



Review of wholesale digital television broadcasting platforms

Update of review

Statement

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Section 1

Introduction

Scope of the review

- 1.1 This document sets out the scope and timetable for Ofcom's review of wholesale digital television broadcasting platforms.
- 1.2 In Ofcom's 2006/7 Annual Plan¹, it was announced that Ofcom would carry out a substantial amount of work to promote competition in broadcasting markets, including analysing the degree of competition between different broadcasting platforms. In Ofcom's very recent review of the Technical Platform Services (TPS) Guidelines², Ofcom stated that this analysis would feed into a market review to consider appropriate regulation.
- 1.3 This review, which commenced in July 2006, will involve, where appropriate, an analysis of relevant market(s) and assessment(s) of market power. Ofcom expects that this market analysis will inform its review of regulation in two distinct areas:
 - a review of appropriate conditional access (CA), access control (AC) and electronic programming guide (EPG) listing regulation; and
 - a review of the fair and effective competition conditions contained in the Digital Terrestrial Television multiplex licences.

Structure of this document

- 1.4 The remainder of this document is structured as follows:
 - Section 2 sets out further detail of the relevant wholesale television broadcasting services that this review currently expects to cover;
 - Section 3 outlines some of the regulation that will be reviewed; and
 - Section 4 sets out an estimated timetable for this review.

¹ http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan0607/

² <http://www.ofcom.org.uk/consult/condocs/tpsguidelines/>

Section 2

Services

- 2.1 Broadcasters have, at present, a choice of digital television platforms over which to distribute their content to viewers³. These include:
- **Digital Terrestrial Television (DTT)** (Freeview and TopUp TV);
 - **Digital Satellite (DSat)** (Sky);
 - **Digital Cable (Cable)** (ntl:Telewest and Wight Cable);
 - **TV over DSL** (Homechoice, BT Vision); and
 - **TV over Mobile Telephony (Mobile TV)** (BT Movio/Virgin Mobile, 3G TV services).
- 2.2 The Analogue Terrestrial Television (ATT) platform will not be covered in this review. As a result of the requirements on the public service broadcasters (PSBs), i.e. BBC, ITV, Channel 4 and Five, to broadcast over the ATT platform until digital switchover (DSO) and the existing constraints on ATT capacity⁴, non-PSBs are precluded from distributing their content to viewers over the ATT platform. For this reason, Ofcom has limited this review to wholesale digital television broadcasting services. However, an assessment of the ATT platform at the retail level will be relevant to informing the definition of the relevant market(s) for digital television broadcasting platform services provided to broadcasters at the wholesale level.
- 2.3 In order to distribute their content to viewers on each of the above-mentioned platforms in paragraph 2.1, broadcasters require a number of services that can be bought separately or as a bundle from platform operators. These services may be categorised as falling into two broad categories:
- **Consumer access services (CAS)**, which themselves include:
 - technical platform services (TPS), such as CA, EPG listings and AC services; and
 - channel(s) or content included as part of a retail bundle, that is to say broadcasters supply their content (e.g. through linear channels or non-linear video on demand content) to platform owners that then aggregate this content (along with content from other broadcasters) into retail packages;
 - **Capacity and transmission services (CATS)**, which gives the broadcaster the right to use a specified amount of capacity (e.g., Mbps of bandwidth) to broadcast their content and conveys the content to viewer equipment.

³ Public service broadcasters, however, are required to broadcast on DTT.

⁴ The limited amount of capacity available on the ATT platform is currently fully utilised by the five PSB channels (including the regional variants, e.g. S4C in Wales) and the public teletext service, and will remain so until DSO.

- 2.4 In some cases, services required by broadcasters can be bought separately. For example, broadcasters on Sky's platform may choose to purchase TPS from Sky, but purchase satellite transponder capacity separately from Astra. Alternatively, services may be bundled together, for example on cable, broadcasters purchase CAS and CATS at the same time.
- 2.5 This market review will consider competition between providers of CAS and CATS in all relevant wholesale platform markets. By 'transmission services', this review intends to analyse digital services provided to broadcasters by platform operators, which services can be distinguished from the underlying transmission services provided by transmission providers to platform operators. This review is not intending to consider transmission services provided to platform operators, as they were considered in a separate market review of Broadcasting Transmission Services in 2005⁵.

⁵ Details of the Broadcasting Transmission Services market review can be found at: http://www.ofcom.org.uk/consult/condocs/bcast_trans_serv/

Section 3

Current regulation

3.1 This section sets out the areas of regulation that will be reviewed.

Regulation of Technical Platform Services

3.2 In July 2003, Oftel, the predecessor telecommunications regulator, imposed certain regulatory conditions⁶ dealing with the provision of TPS. As a result, Sky⁷ is required to provide CA, AC and EPG listing services on a fair and reasonable basis, not to unduly discriminate and to publish its charges or a methodology for arriving at charges.

3.3 This market review will consider whether this regulation remains appropriate going forward. In particular, Ofcom intends to consider:

- in relation to CA services, whether any proposals should be made to modify or revoke such access-related conditions set under section 75(2) of the Communications Act 2003 (the “2003 Act”), should the requirements under section 76 of the 2003 Act be met following Ofcom’s market analysis;
- in relation to AC and EPG listing services, whether any proposals should be made to set access-related conditions authorised by section 73(2), including those specifically authorised by section 74(2), of the 2003 Act for the purpose of replacing the continued provisions in respect of AC and EPG listing services referred to above.

Fair and effective competition regulation contained in DTT multiplex licence conditions

3.4 DTT multiplex operators are licensed under Part I of the Broadcasting Act 1996⁸ or, in the case of Multiplex 1, operated by the BBC under their Royal Charter and Agreement with the Secretary of State for Culture, Media and Sport.

3.5 The DTT multiplex licences contain conditions imposed at the time of the award of multiplexes in 1997 and 2002 that prevent multiplex licensees from engaging in activity that would be prejudicial to fair and effective competition. These are mostly contained in Condition 11 of each multiplex licence.

3.6 The review will consider whether it is appropriate for these conditions to be retained, amended or removed going forward.

Consideration and determination of network access questions

3.7 Ofcom anticipates that, given the scope of its review, it will raise questions relating to network access to certain services, facilities or arrangements (or the terms or conditions on which it is or may be provided).

⁶ Details of the regulatory conditions imposed by Oftel can be found at:

http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/sce/arc

⁷ “Sky” refers here to both Sky Subscriber Services Limited and BSkyB.

⁸ The multiplex licences can be found at: <http://www.ofcom.org.uk/tv/ifi/tvlicensing/muxlicensees/>

- 3.8 Accordingly, before considering whether, for the purpose of determining such questions to set, modify or revoke access-related conditions authorised by section 73(2), or SMP services conditions authorised by section 87, of the 2003 Act, Ofcom considers it appropriate to bring this matter specifically to the attention of persons who are likely to be affected by any such action, such as platform operators and broadcasters.

Section 4

Timetable

- 4.1 This section sets out an estimated timetable for this review.
- 4.2 Ofcom will be undertaking research to inform its analysis for the market review over the next three months. As part of this research, Ofcom intends to conduct surveys with broadcasters in order to understand the market/s for wholesale digital television broadcasting platform services.
- 4.3 Following its initial analysis, Ofcom expects to publish a consultation document in or about April 2007, which will set out Ofcom's emerging thinking on issues, such as market definition(s) and market power.
- 4.4 A further consultation is then expected to be published in or about September 2007, in which Ofcom plans to set out its provisional conclusions on market definition(s), assessment(s) of market power and proposed remedies (if any).
- 4.5 Ofcom expects to publish a final statement in December 2007.
- 4.6 In order to ensure that input from stakeholders is obtained at an early stage, Ofcom will be contacting key stakeholders during October and November 2006. However, if any stakeholders would like to separately contact Ofcom to discuss any issues relevant to this review, they should contact :

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