



Methodology for determining the financial terms for the Channel 3 and Channel 5 licences

EE Response

2 May 2013



General comments

Everything Everywhere (EE) welcomes the opportunity to comment on Ofcom's consultation: *Methodology for determining the financial terms for the Channel 3 and Channel 5 licences*¹ ("the Consultation"). EE considers that it is important to ensure the efficient use of spectrum in the wider economy and that appropriate incentives are provided to all spectrum users.

AIP should be applied to mux licences from 2015 as planned

Ofcom first outlined its plans to introduce Administered Incentive Pricing (AIP) to the broadcasting sector in the 2007 Statement.² In its May 2012 advice to the Secretary of State,³ Ofcom further reiterated its intention to apply AIP to the broadcasting sector.

Ofcom has also recently published its consultation: *Spectrum pricing for terrestrial broadcasters: Consultation on implementation*⁴ ("the AIP Consultation") which sets out Ofcom's approach to the introduction of AIP to the broadcasting sector, including proposed AIP rates. The Consultation and the AIP Consultation represent the first opportunity for stakeholders to comment on these issues since the 2007 Statement. EE will be responding to the AIP Consultation in due course and this response should be considered in conjunction with those forthcoming comments. It is important that the overall regime provides appropriate incentives to use what is currently broadcast spectrum in an efficient way and to enable and incentivise release of spectrum where that would create greater benefits to consumers and citizens as a whole.

The historic arguments for delaying the introduction of AIP for broadcasting use until 2014 had a number of justifications in the 2007 Statement. For instance, broadcasters were constrained in how they could commercially respond to AIP under long term commercial and PSB licences with Government, and under long term contracts with private owners of multiplexes. In addition analogue broadcasting was being cleared under the planned migration by broadcasters to digital broadcast frequencies (i.e. DTT frequencies) under Digital Switchover (DSO). These factors no longer apply.

EE disagrees in principle with applying AIP to tradable spectrum licences, as trading should be sufficient to promote efficient use. Given that Ofcom's policy is to apply AIP, this should be done consistently across all spectrum users, and especially between different communications sectors:

- that represent different, alternative platforms where consumers can access the same content; and

¹ Ofcom, *Methodology for determining the financial terms for the Channel 3 and Channel 5 licences: Consultation*, 21 February 2013

² Ofcom, *Future pricing of spectrum used for terrestrial broadcasting: A statement*, June 2007

³ Ofcom, *Licensing of Channel 3 and Channel 5: A report to the Secretary of State under section 229 of the Communications Act 2003*, 1 May 2012

⁴ Ofcom, *Spectrum pricing for terrestrial broadcasting: Consultation on Implementation*, 13 March 2013

- who are potentially competing users of the same spectrum.

The introduction of AIP has been clearly signalled to the broadcast sector and there are no reasons, post DSO to delay its implementation further. EE therefore considers that AIP should be applied to broadcasting spectrum licence holders operating PBS multiplexes from 2015.

It would provide the wrong incentives to delay the implementation of AIP for broadcasting beyond 2015 as suggested in Ofcom's most recent consultation, and would contradict both the 2007 Statement and the recent advice to the Secretary of State.

PSB obligations do not justify an 'AIP rebate'

The proposed methodology for determining the financial terms for the Channel 3 and Channel 5 licences considers the incremental benefits and costs associated with the PSB licences compared to commercial broadcasters. Commercial broadcasters who broadcast on the DTT platform have to pay for carriage according to market rates. Such market rates are determined by the demand for and supply of slots on the muxes, independently of the level of spectrum fees mux operators pay.

The rights associated with the Channel 3 and Channel 5 licences relate to the reserved capacity on muxes as well as appropriate prominence on the EPGs. We note that the methodology for valuing these rights is set out in a way that is agnostic to the level of AIPs applied to the muxes. The obligations on the other hand are to deliver certain Public Service content as well as restrictions on air time dedicated to advertising. The proposed methodology will therefore net off the costs of providing the Public Service Obligations against the benefits from reserved mux capacity and EPG prominence irrespective of the level of AIP subsequently applied to the mux licences.

If the cost of providing the Public Service Obligations outweighed the benefits associated with the licence, even at the nominal charge of £10,000, the licensees would not seek renewal. The alternative of applying for a 'standard' commercial broadcasting licence would be more attractive. Hence when it comes to determining the AIP for mux operators, there can be no question of the mux operators somehow needing a 'rebate' in AIP charges to compensate for the PSB obligations that some of the broadcast channels are subject to.

Beyond these high level, but important principles, EE does not have further comments to make on the detailed methodology for determining the financial terms for the Channel 3 and Channel 5 licences.

Comments on specific consultation questions

Q1. Do you agree that the overall valuation methodology remains appropriate for the determination of the PQR and cash bid element of the renewed licences? If you do not, please explain why you view that methodology as inappropriate and what justifications exist for suggested alternatives.

Yes we agree to the high level principle of setting out a valuation methodology that is agnostic to the level of AIP levied on the mux operators. This means that the licensees' decision whether to seek renewal is independent of the AIP and in turn that when setting AIP for mux licences, the cost of PSB Obligations need not be considered.

Q2: Are there any other rights, obligations or regulations associated with the Channel 3 and Channel 5 licences that we should consider, or any other factors that may affect the valuation? If so, please explain how we should take them into account and provide any relevant data or analysis to support your suggestion.

See EE's response to Question 1.

Q3: Do you agree with Ofcom's proposed approach to valuing the rights associated with the Channel 3 and Channel 5 licences as outlined above? If not, please explain why and what alternative approaches would be available (providing any relevant data to support your alternative view). In particular, how should we value the right to appropriate EPG prominence to a new entrant (please provide relevant data to support your response)?

EE has no comment.

Q4: Do you agree with this approach to assessing the opportunity cost associated with PSB programming obligations? If not, please explain why and what alternative approaches would be available (providing any relevant data to support your alternative view).

EE has no comment.

Q5: Do you agree that we should take into account the extra restrictions on advertising that apply to PSB licence holders alongside the right to appropriate EPG prominence? If not, what alternative approaches are available? What data or evidence exists to indicate the effect on advertising impacts or revenue of the advertising minutage restrictions on the Channel 3 or Channel 5 licences?

EE has no comment.

Q6: Do you agree with Ofcom's approach to dealing with the uncertainties outlined above? If not, please explain why and what alternative approaches would be available? Please provide any relevant data or analysis that could assist Ofcom.

EE has no comment.

Q7: Do you agree that a real, pre-tax discount rate of 9.2% is appropriate? If not, then please set out what other considerations Ofcom should have in determining the discount rate.

EE will be providing any views on relevant discount rates in the context of broadcast spectrum in response to the AIP Consultation.