



Amendment to the Statement of Charging Principles

Definition of Relevant Activity

Statement

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Section 1

Statement

- 1.1 This statement follows a consultation¹ by Ofcom to enable stakeholders the opportunity to comment on the proposal to amend the definition of relevant activity.
- 1.2 A single supportive response from UKCTA was received.
- 1.3 Ofcom has amended the definition of Relevant Activity in chapter 4 of the Statement of Charging Principles² to:
 - the provision of electronic communication services to third parties;
 - the provision of electronic communication networks, electronic communication services and network access to communication providers; or
 - the making available of associated facilities to communication providers.
- 1.4 This ensures that the definition is aligned to the Designation³.

¹ <http://stakeholders.ofcom.org.uk/consultations/statement-charging-principles/>

² http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/designation/statement/statement.pdf>

Annex 1

Amended Statement of Charging Principles

Statement of Charging Principles

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Chapter 1

Summary of Statement of Charging Principles

- 1.1 This statement follows a consultation¹ by the Office of Communications (“Ofcom”) in which Ofcom consulted on the principles that it would apply in order to set annual administrative charges and licence fees pursuant to the Communications Act 2003 (the “Act”).
- 1.2 This statement comprises four parts:
 - Information on the background to Ofcom’s funding and an analysis of the methodology used for allocation of this funding requirement across Ofcom’s stakeholder groups;
 - The Statement of Charging Principles that Ofcom will apply in determining the amount to be recovered in administrative fees for networks, services and electronic communication code services, and licence fees for broadcasting licences required under sections 38 and 347 of the Act respectively;
 - Definitions of terms used in this document; and
 - Annexes covering the approach to cost allocation and providing guidance on the principles for calculation of Relevant Turnover in Television and Radio.
- 1.3 For the reasons set out in this document, Ofcom has decided as follows:

Administrative charges

- 1.4 Administrative charges will be payable by those providers of electronic communications networks, electronic communication services and persons making available associated facilities of a description designated by Ofcom for the purposes of section 38 of the Act;
- 1.5 The tariff applicable will be a percentage of turnover from relevant activities as set out in the tariff tables which will be published on or before 31st March for the following charging year;
- 1.6 Fees for the administration of the electronic communication code will be retained at a fixed fee per annum;
- 1.7 Without fettering its discretion, Ofcom will normally expect to follow its guidance on the definition of relevant activity for the purposes of the administrative charging regime.

¹ <http://www.ofcom.org.uk/consult/condocs/socp/>

Licence fees

Television

- 1.8 Licence fees will be payable by those with licences under the Broadcasting Act 1990 and the Broadcasting Act 1996 (the “Broadcasting Acts”);
- 1.9 The tariffs will be set out in the tariff tables which will be published on or before 31st March for the following charging year; and
- 1.10 Ofcom will provide details of transitional relief, where applicable, in the tariff table published on or before 31st March for each charging year.

Radio

- 1.11 Licence fees will be payable by those with licences under the Broadcasting Acts;
- 1.12 The tariffs will be set out in the tariff tables which will be published on or before 31st March for the following charging year; and
- 1.13 Ofcom will provide details of transitional relief, where applicable, in the tariff table published on or before 31st March for each charging year.

Relevant Turnover for the Broadcasting Sector

- 1.14 Following consultation, Ofcom has changed the definition of relevant turnover, and the new definitions are included in Annexes B and C. However, it is intended that the new definition of interactive revenue in the television sector, as set out in Annex B Parts 3 and 5, will not apply until fees are set for the 2006/07 charging year based on turnover data collected for the calendar year ended 31 December 2004. The practical effect of this is that most Broadcasting Act licensees will not have to resubmit their 2003 turnover data for the purposes of fee calculation and that Interactive Revenue data will be collected for the first time for the calendar year ended 31 December 2004.
- 1.15 The definition of subscription revenue to be included in relevant turnover has been amended and is set out in Annex B Parts 2 and 4. The change in definition impacts those licensees who retail their own subscription channels and pay-per-view services and will allow those licensees to recalculate the subscription revenue derived from their own retailing of channels or pay-per-view services so as to arrive at a deemed “wholesale” price. This will require those licensees affected (i.e. those licensees who retail their own channels or pay-per-view services) to resubmit their turnover data for the calendar year ended 31 December 2003.

Chapter 2

Funding of Ofcom

Background

- 2.1 This chapter sets out the background to Ofcom's methodology in relation to fixing charges under the Act. Further details on Ofcom's approach to cost allocation can be found in Annex A.
- 2.2 In summary, Ofcom is partly funded by administrative charges levied on designated providers of electronic communications networks and services and by broadcasting licence fees. Ofcom is required to apportion costs between Regulatory Sectors, and to cover those costs on an annual basis.

Legislative Framework

- 2.3 The statutory provisions under which charges are levied on networks and services providers and broadcasting licensees are as follows.

Networks and services

- 2.4 The statutory provisions relating to the collection of administrative charges for electronic networks and services and associated facilities are found in sections 38 to 44 of the Act.
- 2.5 Section 38(3) of the Act states that:

*"Ofcom are not to fix the administrative charge for a charging year unless-
(a) at the time the charge is fixed there is in force a statement by Ofcom of the principles that Ofcom are proposing to apply in fixing charges under this section for that year; and
(b) the charge is fixed in accordance with those charging principles".*

- 2.6 The principles must be such as appear to Ofcom, to be likely to secure, on the basis of an estimate of costs, on a year by year basis, that the aggregate amount of the charges payable to Ofcom is sufficient to meet the annual cost to Ofcom of carrying out certain functions as specified in the Act².

Broadcasting licences

- 2.7 The statutory provisions relating to the collection of broadcasting licence fees are in the Broadcasting Act 1990, the Broadcasting Act 1996³ and section 347 of the Act.
- 2.8 Section 347(1) of the Act provides that:

² Section 38(4) of the Act.

³ Sections 4(3) and 87(3) of the BA 1990 and sections 4(3) and 43(3) of the BA 1996.

*“Ofcom are not to fix a tariff under section 4(3) or 87(3) of the 1990 Act or under section 4(3) or 43(3) of the 1996 Act ... unless-
(a) at the time they do so, there is in force a statement of the principles that Ofcom are proposing to apply in fixing that tariff; and
(b) the tariff is fixed in accordance with those principles”*

- 2.9 The principles must be such as appear to Ofcom to be likely to secure, on the basis of an estimate of costs, that the aggregate amount of Broadcasting Act licence fees that are required to be paid to Ofcom during a financial year is sufficient to meet the cost of Ofcom’s function relating to the regulation of broadcasting⁴.

Consultation

- 2.10 Before making or revising a statement of charging principles, Ofcom must undertake a consultation on the principles⁵.
- 2.11 The consultation document on this Statement of Charging Principles was published on 6th December 2004 and closed on 17th January 2005.
- 2.12 The non-confidential responses have been published on the Ofcom website together with a summary of the issues raised in those responses⁶ and Ofcom’s response to the issues raised.

Ofcom’s Funding

- 2.13 In each financial year, Ofcom is required to balance its expenditure with its income⁷. Ofcom is required by the Act to raise income from each of the sectors it regulates such that it covers the costs to be incurred by Ofcom in regulating that sector together with a proper apportionment of Ofcom’s ‘common costs’ to each of those sectors⁸.
- 2.14 Ofcom raises its funds from a number of sources including: television broadcasting licence fees; radio broadcasting licence fees; administrative charges for electronic networks and services and associated facilities; and grant-in-aid from Central Government. The grant-in-aid covers the costs of regulating and managing the wireless spectrum. It also covers those statutory functions and duties that Ofcom must discharge under the Act but for which the Act provided no matching revenue stream (e.g. the statutory public interest test for media mergers, media literacy and ex-post Competition Act investigations).
- 2.15 Ofcom operates within an overall financial cap agreed in 2003 with HM Treasury. The current cap, which applies from the 2004/5 Financial Year, runs for three years and is set at RPI plus 0%.

⁴ Section 347(2) of the Act.

⁵ Section 39(5) and 347(3) of the Act.

⁶ www.ofcom.org.uk

⁷ Paragraph 8(1) of the Schedule to the Office of Communications Act 2002.

⁸ Sections 38 and 347 of the Act.

Ofcom's Overall Budget

- 2.16 An outline of Ofcom's proposed budget for each financial year will be published in an Annual Plan each year.

Allocation of Costs by Sector

- 2.17 The Tariff Tables to be published by the end of March each year will also include an allocation of planned costs by sector.
- 2.18 The analysis will be based on the budgeted direct costs of individual projects and programmes, which are allocated to the Regulatory Sector or Regulatory Categories to which they relate. Projects and activities not directly attributable to specific Regulatory Sectors or Regulatory Categories are apportioned across those projects or programmes and hence to Regulatory Sectors.
- 2.19 Overheads not directly allocated to a particular sector are apportioned to sectors by using the most appropriate cost driver, usually the amount of time spent on any particular activity.
- 2.20 The final allocation of the planned level of costs by Regulatory Sector represents Ofcom's overall judgement of both the level of expenditure by project or programme and the allocation of the spend on the project as between Regulatory Sectors or Regulatory Categories.

Ofcom Launch Costs

- 2.21 The initial costs incurred by Ofcom since its establishment under the Office of Communications Act 2002 have been met through loan funding of £52.3m from the Department for Trade and Industry. These loans, which were made in the period from 31 March 2003 to 2 January 2004, are repayable in the period from March 2004 to March 2008.
- 2.22 The phasing of repayments is determined under the loan agreement with the DTI. We have apportioned the launch costs for the complete repayment period until March 2008 on a proportionate basis to the amount of expenditure incurred by the legacy regulators in each Regulatory Sector. The result of this apportionment is shown below:

Loan Repayments (inc Interest)	2003/4 £'000	2004/5 £'000	2005/6 £'000	2006/7 £'000	2007/8 £'000	Total £'000
Networks & Services		2,723	2,592	2,672	2560	10,547
TV Broadcasting		2,578	2,454	2,530	2423	9,985
Radio		403	383	395	379	1,560
Other Sectors	7,328	13,948	13,425	-	-	34,701
	7,328	19,652	18,854	5,597	5,362	56,793

- 2.23 The recovery of these apportioned costs is part of the costs for each Regulatory Category.

Treatment of The BBC and S4C

- 2.24 The Act makes separate provision for the funding of Ofcom's costs in respect of carrying out its regulatory functions for both the BBC⁹ and S4C¹⁰ (the Welsh Fourth Channel). For the avoidance of doubt the fees payable by these organisations are not determined in accordance with the Statement of Charging Principles issued under section 347 of the Act, or determined in accordance with the same tariff to that of Television or Radio licensees. Instead both the BBC and S4C are to pay Ofcom such sums in respect of the carrying out by Ofcom of its functions in relation to the BBC and S4C as may be agreed between each of them and Ofcom respectively from time to time, or in default of agreement fixed by the Secretary of State.
- 2.25 Ofcom's approach to this separate treatment of funding for the BBC and S4C has been to identify its costs in respect of the regulatory functions under sections 198 and 207 of the Act and include an allocation of the start-up loan repayment and overheads.

⁹ Section 198(4).

¹⁰ Section 207(6).

Chapter 3

Statement of Charging Principles

Ofcom Approach to Setting Administrative Charges and Licence Fee Tariffs

Common Principles

- 3.1 Ofcom has identified a number of common principles to apply in setting tariffs for licence fees and administrative charges. These are:
- Use of Relevant Turnover as a common tariff basis across all sectors or the setting of fixed tariffs where applicable. Turnover data is readily obtainable from all licensees and network and services providers and provides a basis for ensuring that the specific fees charged can be derived from a robust source and are broadly proportional to ability to pay;
 - Collection of turnover data for the last but one calendar year (rather than using licensees' and network and services providers' accounting periods). Collecting data for a fixed time period will be necessary to support Ofcom's database of cross-industry data that can be used for market analysis; and
 - Administrative charges and licence fees will be calculated for each Regulatory Sector and for each Regulatory Category within the Regulatory Sector. This ensures reduced fees for Regulatory Categories with lower regulatory costs.
- 3.2 Ofcom has identified a number of distinct Regulatory Categories (set out at paragraph 3.5 below) within each Regulatory Sector. Because the regulatory costs relating to these categories are different, separate tariffs will be set for each category.
- 3.3 For the purposes of sections 38 and 347 of the Act in any Charging Year Ofcom is proposing to adopt a common basis of tariff, usually based on turnover across the network and services and broadcasting sectors. Separate percentages may be set in respect of different Regulatory Categories, and for different bandings of turnover. Tariffs for some categories, where turnover data is inappropriate (for example, under the Electronic Communications Code), may be set as fixed cash sums.
- 3.4 The definition of Relevant Turnover for the networks and services and broadcasting sectors relates directly to the activity regulated in that Regulatory Sector or Regulatory Category. These are described in Chapter 4. A full definition of relevant turnover for the broadcasting sector is included in Annexes B and C. Relevant Activity for the purposes of networks and services is defined in the designation and explained in the guidance on the definition of Relevant Activity.

Identification of Regulatory Categories

- 3.5 Ofcom has identified different levels of costs applying to the following groups of licences or activities:
- Relevant Activities for persons falling within section 38 of the Communications Act 2003 (Networks and Services);
 - Electronic Communications Code administration;
 - Television – Category A – Channel 3, Channel 4, Channel 5 and the Public Teletext Service Licence (Note that this category includes relevant turnover associated with Television Licensable Content Service (“TLCS”) licences for the PSB channels where content is simulcast);
 - Television – Category B – Television Licensable Content Service Licences (TLCS), Digital Television Programme Service Licences, Commercial Additional Services Licences and Digital Additional Service Licences (Note that this category does not include those TLCS licences for PSB channels which are included in Category A);
 - Television – Category C – Restricted Television Service Licences (long-term and short-term);
 - Television – Category D – Multiplex Licences;
 - Television – Category E – Teleshopping Channels;
 - Radio - National and Local Sound Broadcasting Service Licences;
 - Radio – Radio Licensable Content Service Licences, Additional Services Licences, Restricted Service Licences (long-term and short-term), Digital Radio Multiplex Service Licences, Digital Sound Programme Service Licences and Digital Additional Sound Service Licences; and
 - Radio – Community radio licences.
- 3.6 Separate tariffs will be set for each of these Regulatory Categories.

Payment of Fees

- 3.7 Ofcom’s funding requirements are expected to fall fairly evenly over the year. Monthly payment of all licence fees above £75,000 will apply to networks and services and television licensees. Ofcom has decided that a lower limit of £5,000 for monthly payments will apply to radio licensees. The new administrative charges and licence fee tariffs will apply from 1 April in that charging year. Where existing fees are payable by monthly instalment, the new fee tariff will apply to payments from that date.

Networks and Services

Tariff calculation

- 3.8 Ofcom will charge designated providers a percentage of their relevant turnover:
- Where the fees payable exceed £75,000 p.a. they will be payable in monthly instalments;
 - Ofcom has decided to use revenue data based on the last but one calendar year's revenues;
 - A tariff table setting out the percentage to be applied will be published annually in March;
 - There will be no distinction between charges for a network operator and a service provider;
 - Ofcom will raise charges for the administration of the electronic communications code and the fees payable will be set annually; and
 - Ofcom will publish a list of network and service providers who pay administrative fees.
- 3.9 Without fettering its discretion, Ofcom will normally expect to follow its guidelines in determining what is a relevant activity for the purposes of administrative charges.

Basis of Tariff Calculation

- 3.10 Ofcom shall set the tariff for each Charging Year as a percentage of the Relevant Turnover of each Relevant Person. Where turnover falls within a banding within the tariff table, the lower figure of the turnover band will be used to calculate the administrative charge. The percentage applied will be published in the tariff table for the Charging Year.
- 3.11 To determine the percentage, Ofcom shall determine the planned level of expenditure to be recovered in accordance with the principles set down in this document. Any over or under recovery of costs, through variations in the expenditure or the number or turnover of Relevant Persons will be adjusted in the following charging period.
- 3.12 Ofcom will then determine a percentage tariff that it expects will recover this amount based on the known Relevant Turnover of each Relevant Person. Turnover bands will be published in the tariff table for each Charging Year.
- 3.13 Charges for the administration of the electronic communications code will be set on a reasonable basis reflecting Ofcom's statutory duties and taking into account forecast expenditure and the expected number of Relevant Persons.

Designation under section 38 of the Act

- 3.14 Under section 38 of the Act, Ofcom can only charge those providers of electronic communication networks, services or associated facilities of a description that have been designated.

Collection of Relevant Turnover information

- 3.15 Ofcom intends to publish a general demand for information under section 135 of the Act in respect of each Charging Year in the early part of each calendar year.

Broadcasting

- 3.16 Within Ofcom, costs related to the regulation of broadcasting are generally directly attributable to either television or radio. Ofcom has therefore decided to set separate tariffs for radio and television licensees.

Television Broadcasting

Tariff Calculation

- 3.17 Ofcom will charge Category A and B licensees a percentage of their Relevant Turnover (Television). The definition of Relevant Turnover (Television) is included in Chapter 4 and expanded in Annex B. Ofcom will charge Category C, D and E licensees a fixed sum:
- Where the fees payable exceed £75,000 p.a. for Television they will be payable in monthly instalments;
 - Ofcom has decided to use revenue data based on the last but one calendar year's revenues;
 - A tariff table setting out the percentage or fixed annual sums to be applied will be published annually in March.
- 3.18 Ofcom shall set the tariff for each Charging Year for each category of licence and the percentage or percentages applied or fixed annual sums, and any upper limit on Relevant Turnover will be published in the tariff table for the Charging Year published annually in March.

Transitional Relief

- 3.19 Ofcom recognises that the changes to the bases of licence fees for some Television licensees may result in significant percentage variation in the licence fees. To limit the impact of this, Ofcom may limit the maximum percentage change in fees by way of a transitional relief policy. Details of the transitional relief policy will be published in the Tariff Tables as appropriate.

Collection of Relevant Turnover Information

- 3.20 To assess the Relevant Turnover (Television) of a Relevant Person, Ofcom will request, under Broadcasting Act licence conditions, details of the

Relevant Turnover (Television) for the calendar year to be provided within 28 days of the request. The returns must be certified by a director of the Relevant Person.

Radio Broadcasting

Radio Fee Tariff

3.21 For national and local analogue radio licences, Ofcom will set fees as a percentage of Relevant Turnover (Radio). The definition of Relevant Turnover (Radio) is included in Chapter 4 of this document and expanded on in Annex C. For all other types of radio licences, Ofcom will charge a fixed annual sum.

Tariff Calculation

3.22 Ofcom will charge licensees a percentage of their Relevant Turnover (Radio) or a fixed annual sum where applicable:

- Where the fees payable exceed £5,000 p.a. they will be payable in monthly instalments;
- Where fees are calculated as a percentage of Relevant Turnover (Radio), Ofcom has decided to use revenue data based on the last but one calendar year's revenues;
- A tariff table setting out the percentage or fixed annual sums to be applied will be published annually in March;
- Where the calculated fee would be less than a de minimis threshold that will be specified in the tariff table, Ofcom will deem the relevant fee to be zero.

Transitional Relief

3.23 Ofcom recognises that the changes to the bases of licence fees for Radio licensees resulted in significant percentage variation in the licence fees. To limit the impact of this, Ofcom may limit the maximum percentage change in fees by way of a transitional relief policy. Details of the transitional relief policy will be published in the Tariff Tables as appropriate.

Collection of Relevant Turnover Information

3.24 To assess the Relevant Turnover (Radio) of a Relevant Person, Ofcom will request, under broadcasting licence conditions, details of Relevant Turnover (Radio) for the calendar year to be provided within 28 days of the request. The returns must be certified by a director of the Relevant Person.

Chapter 4

Definitions

4.1 For the purposes of interpreting this document the following definitions shall apply unless otherwise stated:

'Act' means the Communications Act 2003;

'Charging Year' means the twelve month period commencing on 1 April in a calendar year and ending on 31 March in the immediately following calendar year;

'Connected Person' shall be interpreted in accordance with Paragraph 3 of Part 1, Schedule 2 to the Broadcasting Act 1990 (as amended);

'Licensed Service' means a service licensed under the Broadcasting Acts;

'Relevant Activity' means any of the following:

- the provision of Electronic Communications Services to third parties;
- the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; and/or the making available of Associated Facilities to Communications Providers;

'Relevant Calendar Year' means, in respect of a Charging Year, the twelve month period commencing on 1 January in the last but one calendar year prior to the Charging Year in question so that if, for example, the Charging Year commences on 1 April 2007, the Relevant Calendar Year will be the calendar year of 2005;

'Regulatory Category' means those groups of licences or activities described at paragraph 3.5 of this document;

'Relevant Person' means a person liable to pay the administrative charge under Section 38 of the Act or a person liable to pay a Broadcasting Act licence fee as defined in section 347 of the Act;

'Regulatory Sector' are the categories of broadcasting and networks and services to which this Statement of Charging Principles applies (pursuant to section 38 and section 347 of the Act), together with Ofcom's spectrum management activities and other specific grant funded activities such as ex-post competition enquiries relating to networks and services, media literacy and newspaper mergers;

'Relevant Turnover' means:

- Relevant Turnover (Networks and Services); or
- Relevant Turnover (Radio); or
- Relevant Turnover (Television),

as applicable depending upon the type of service which that Relevant Person is providing;

'Relevant Turnover (Networks & Services)' means the turnover generated by the Relevant Person during the Relevant Calendar Year from carrying on any Relevant Activity after the deduction of value added tax and any other applicable sales taxes;

'Relevant Turnover (Radio)' means, in respect of each Licensed Service of a Relevant Person for which that Relevant Person holds a national or local analogue radio licence, the revenues (exclusive of value added tax) in respect of each Relevant Calendar Year derived from the provision of that Licensed Service, which shall be determined in accordance with the principles set out in Annex C.

'Relevant Turnover (Television)' means, in respect of each Licensed Service of a Relevant Person for which that Relevant Person holds a Category A or B television licence (see paragraph 3.5 of Chapter 3), the revenues (exclusive of value added tax) in respect of each Relevant Calendar Year derived from the provision of that Licensed Service, which shall be determined in accordance with the principles set out in Annex B.

Annex A

Annex to Statement of Charging Principles

Approach to cost allocation

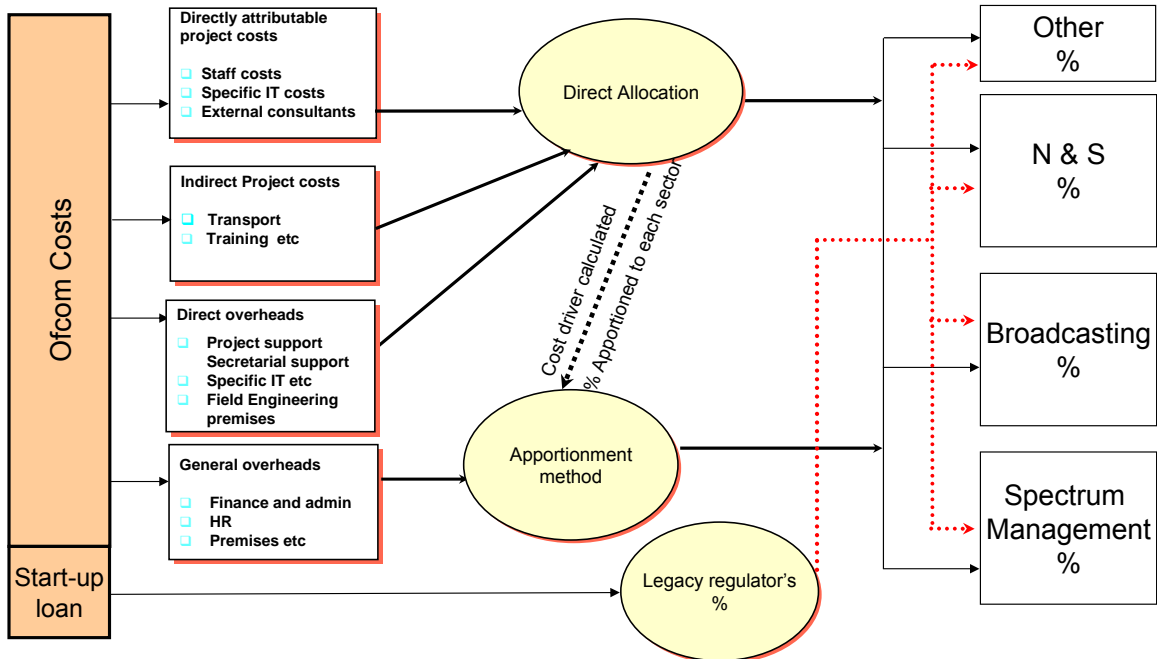
Why Costs Need to be Allocated

- 1.1 Ofcom is required by the Act to raise income from each of the sectors it regulates such that it covers the costs to be incurred in regulating that sector. This means that there needs to be an apportionment of Ofcom's costs between each of the Regulatory Sectors. It may also be necessary to apportion costs between groups of services within the networks and services and broadcasting sectors which have different regulatory needs (for example, where one group of services has different regulatory requirements and hence different regulatory costs). Therefore Ofcom has identified different Regulatory Categories (see paragraph 3.5) within the networks and services and broadcasting sectors.

Identification of Costs

- 1.2 Ofcom divides its activities into projects, programmes of ongoing work and overheads. These are described in Ofcom's annual plan, and may vary each year.
- 1.3 Projects are one-off, separately identifiable projects that have been agreed upon for any particular year's activity. For example, during the financial year 2004/5, Ofcom undertook the Telecommunications Strategic Review, the Public Service Television Broadcasting Review and undertook projects associated with Spectrum Trading and Pricing.
- 1.4 Programmes are work that is ongoing in nature forming part of Ofcom's day-to-day regulatory activities. For example, Ofcom has a duty to deal with complaints regarding standards of television and radio content and a duty to investigate complaints relating to activity in the telecommunications market and spectrum interference.
- 1.5 Overheads are items identified as being the costs that facilitate Ofcom's performance of those duties described above, and include Human Resources, IT Infrastructure, Finance and Building Facilities.

1.6 Ofcom's approach to cost allocation is summarised in the diagram below.



1.7 The allocation of costs is intended to fulfil the following criteria:

Objectivity

1.8 Cost allocations are not intended to benefit any particular sector or activity.

Consistency

1.9 There will be consistency in approach between budget and actual costs, and from year to year.

Transparency

1.10 There will be:

- A clear distinction between direct and apportioned costs
- Identification of appropriate cost drivers
- Clear links to Ofcom's corporate plan

1.11 Ofcom's approach to cost attribution is to identify the appropriate cost drivers for each type of activity (as described in the consultation document on Ofcom's annual plan) and to use objective operational and/or financial data relevant to that cost driver to apportion the costs across the Regulatory Sectors.

Concepts of Attribution

- 1.12 The fundamental feature of this approach to attribution is adherence to the key principle of causality. Each item of cost recorded in Ofcom's accounts is attributed to the activities within each sector.
- 1.13 Direct costs of activities are recorded directly and indirect costs are added by either allocation or apportionment. Allocated costs represent items of operating costs or capital expenditure which can be assigned wholly to a particular sector or activity by virtue of information in the accounting records. Apportioned costs represent overheads which are spread over each of the activities on a fair and equitable basis using standard cost apportionment methods.

How transparency for Stakeholders is achieved

- 1.14 Ofcom has a duty under sections 38 and 347 of the Act to publish for each Charging Year statements relating to the income and expenditure for the sector in the year. These statements will be included in Ofcom's annual report and accounts which are audited by Ofcom's auditors, the National Audit Office.
- 1.15 The underlying methodology and computer models used for cost allocation statements will be subject to an internal audit review. As part of this internal audit process, Ofcom will make available data, at the summary levels described in the business plan, on the costs of activities carried out, and on the allocation of these costs by Regulatory Sector and Regulatory Category.

Over or Under Recovery of Spend

- 1.16 Any over or under recovery of expenditure is carried forward to the next Charging Year. In that year, the allocation of the planned spend by Regulatory Sector is adjusted to reflect the over or under recovery carried forward from that Regulatory Sector from the previous year.
- 1.17 In each year when Ofcom publishes its Tariff Tables, it will provide a forecast of the over or under recovery for the preceding year. In addition, it will provide an allocation of the planned spend in the following year by sector. The forecast of the under or over recovery by Regulatory Sector within the preceding year will be updated immediately prior to the setting of the licence fee tariffs for the following charging year and will be taken into account in the setting of those tariffs.

Annex B

Definition of Relevant Turnover in the Television Sector

ADVERTISING/SPONSORSHIP, SUBSCRIPTION AND INTERACTIVE REVENUE – STATEMENT OF PRINCIPLES

PART 1

Advertising & Sponsorship Revenues - Principles

- 1.1 Set out below are the principles which Ofcom considers should continue to apply in determining whether revenue deriving from the sale of advertising and sponsorship (other than interactive advertising and sponsorship which will fall within interactive revenues) should be treated as Relevant Turnover (Television). Licensees will note that this is almost identical to the existing regime. Accordingly, given there are very few changes, Ofcom sees no need to attach to this document an Annex comprising detailed definitions and example scenarios in relation to advertising and sponsorship revenues.
- 1.2 Advertising revenue will be included within Relevant Turnover (Television) to the extent that it represents the net advertising revenue (i.e. net of commission paid to advertising agents) derived from independent television services regulated by Ofcom under section 211 of the Communications Act 2003 as recorded in the profit and loss account(s) for the relevant calendar year computed on a normal accruals basis. For the purpose of calculating advertising revenue, all revenue which results from the normal trading terms and conditions for the insertion of advertisements into and around the programmes or information on the services, will be taken into account. For example, late payment surcharges and cancellation penalties will be included as Relevant Turnover (Television), and early payment or volume discounts will be deducted when calculating Relevant Turnover (Television).
- 1.3 Specific provisions for bad debts that are made in relation to advertising revenue in the audited accounts of licensees may be deducted. However, costs related to the selling of airtime are not allowable as a deduction when calculating Relevant Turnover (Television).
- 1.4 Where airtime is provided to an advertiser, and where all or part of the consideration for an advertisement is received or is receivable other than in cash (for example, by barter or other exchange or contra-deal), the advertising revenue in respect of that advertisement will be deemed to be the amount that Ofcom determines would have been receivable in cash having regard to the factors that affect the price of analogue or digital television advertising for the licence in question.
- 1.5 Any amount received or receivable by the licensee in respect of an advertisement or other programme to meet his liability for additional payments (excluding the cash bid) will be regarded as advertising revenue.
- 1.6 Apart from commission paid to advertising agents, advertising revenue may not be reduced under arrangements where all or part of the consideration for the advertisement is receivable by any person other than the licensee or his

Connected Person. Commission paid to an advertising agent in excess of 15 per cent of the amount payable by the advertiser will be disregarded when computing advertising revenue.

Sponsorship Income

- 1.7 A programme is sponsored if any payment is made, or if any part of its costs of production or transmission is met, by an organisation or person other than a licensee, with a view to promoting that organisation or person's own or another's name, trademark, image, activities, products, or other direct or indirect commercial interests. This would include any programme which is to any extent funded or supplied by an advertiser.
- 1.8 Sponsorship income of a licensee will be calculated on the same basis as advertising revenue in paragraph 1.2 above so far as applicable. That is, normal trading terms and conditions will be taken into account in determining the amount of sponsorship income which will be included within Relevant Turnover (Television).
- 1.9 As a general principle, sponsorship income may not be reduced under arrangements where all or part of the consideration for the sponsorship is receivable by any person other than the licensee or his Connected Person. Similarly, the costs or commission paid to any agent, organisation, or person appointed to sell sponsorship on behalf of the licensee cannot be deducted when calculating Relevant Turnover (Television).
- 1.10 Where a licensee secures sponsorship income on behalf of one or more licensees in connection with programmes to be transmitted on his own and/or their licensed services, any fee received by that licensee (for example, a finder's fee), will form part of his Relevant Turnover (Television).
- 1.11 Where all or part of the financial benefit (direct or indirect) for including a programme in a licensed service, by way of sponsorship, is receivable by a licensee, but is receivable other than in cash, the Relevant Turnover (Television) of the licensee will include the value, as determined by Ofcom, of the financial benefit received by the licensee. For example, where programme material is purchased on behalf of, or provided to a licensee, the Relevant Turnover (Television) of the licensee will be deemed to include the cost of the programme material to the supplier. Where transactions of this sort occur the licensee must endeavour to obtain true and fair records of the cost of the programme to the programme supplier.
- 1.12 However, if sponsorship appears in a programme but the sponsorship was arranged and sold not by the licensee but by an independent programme maker, other organisation, or by the organiser of an event or occasion which features in the programme (such as a sporting fixture, concert or theatrical performance) and the licensee neither received any part of the sponsorship payments nor played any part in determining the commercial terms on which the sponsorship was negotiated or sold, then such sponsorship income will not be included in Relevant Turnover (Television). It is important, however, that there should be no specific arithmetical or quantitative relationship between the amounts paid for the sponsorship and the amount paid by the licensee for the programme or programme rights. Sponsorship of this kind may well have some impact on the price which the licensee pays for broadcast rights in the programme, but that alone will not bring the sponsorship within the scope of

Relevant Turnover (Television).

- 1.13 Off-air and support material, including books, videos, tapes, conferences, exhibitions, help lines and information lines, such as any premium rate telephone service, may be sponsored. Where the sponsor is given screen credits, the value of this sponsorship will count as Relevant Turnover (Television).
- 1.14 Any amount received or receivable by the licensee, in respect of the inclusion of a programme in the service, to meet his liability for additional payments (excluding the cash bid) will be regarded as sponsorship income.

Advertising and Sponsorship Revenue of the Independent Analogue Broadcasters: Channels 3, 4, 5 and the Public Teletext licensee.

- 1.15 Holders of Channel 3, 4, and 5 licences, and the Public Teletext licensee, may simulcast services on multiple broadcasting platforms, including digital cable, analogue cable, and digital satellite in addition to digital terrestrial and analogue. Broadcasts on the digital terrestrial and analogue platforms are included within the scope of the Digital Replacement Licences issued in December 2004 to Channel 3, 4 and 5 licensees and to the Public Teletext Licensee. Broadcasts by these parties on the digital cable, analogue cable and digital satellite platforms are licensed under Television Licensable Content Service (TLCS) licences that they hold separately.
- 1.16 Licensees generally do not earn advertising and sponsorship revenues on the different broadcasting platforms separately. In order to determine the licence fees payable by these parties to Ofcom, it is therefore necessary to apportion their advertising and sponsorship revenue between that normally attributable to:
- (i) the Digital Replacement Licences; and
 - (ii) any TLCS licences.

Apportionment is not necessary if the advertiser or sponsor is sold and invoiced separately for services provided under the two different categories of licensed service.

- 1.17 Revenue apportioned to the Digital Replacement Licence should be calculated by reference to the proportion of all homes that receive television services that do not receive services via one or more of digital cable, analogue cable or digital satellite services.
- 1.18 Revenue apportioned to any TLCS licence should be calculated by reference to the proportion of all homes that receive television services that receive these services via one or more of digital cable, analogue cable or digital satellite services.
- 1.19 This basis of apportionment may be subject to review from time to time. Details of the method of apportionment (including the source of data to be used) shall be agreed with Ofcom.
- 1.20 The apportionment will be applied retrospectively, i.e. after the end of each calendar year. Licensees may apply the latest apportionment percentage to

their advertising and sponsorship revenue falling within Relevant Turnover (Television) until the next retrospective adjustment is made.

- 1.21 Where advertising or sponsorship agreements on the digital service(s) are invoiced separately, no apportionment will be required. It is expected that the invoiced amount will represent the value of a separate, arm's length transaction. If, in Ofcom's view, the invoiced amount mis-states that value, Ofcom will adjust the amount so that it is equal to a separate arm's length price.
- 1.22 Where advertising or sponsorship agreements are invoiced separately for service(s) provided under one of the two different categories of licensed service, no apportionment will be required. It is expected that the invoiced amount will represent the value of a separate, arm's length transaction. If, in Ofcom's view, the invoiced amount misstates that value, Ofcom will adjust the amount so that it is equal to a separate arms length price.

PART 2

Subscription Revenue Principles

Subscription Revenues For Channels Retailed By Third Party Retailers

- 1.23 This will be the normal situation as the majority of pay TV channels will not be retailed by the Ofcom licensee (or one of its Connected Persons) but will be wholesaled by the Ofcom licensee to one or more Third Party Retailers.
- 1.24 In that situation, the subscription revenues which would fall into Relevant Turnover (Television) would be determined as follows:
- (a) The general rule will be that subscription revenues for a channel will be the actual wholesale revenue received from Third Party Retailers in respect of that channel in the relevant calendar year.
 - (b) The only exception to that general rule will be where a licensee wholesales a package of two or more channels to a retailer for a single wholesale charge (i.e. where a separate fee which is attributable to an individual channel cannot be ascertained). In that case, the wholesale revenues received in respect of that package of channels will be allocated among the channels in that package. That allocation will be based on the respective viewing shares of the channels in that package and the viewing share of each such channel will be the percentage of the monthly average viewing share achieved by that channel in each month, as published by BARB. The only circumstance in which the foregoing approach would not be employed is if the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation or measurement of viewing share would be more appropriate and/or practicable (e.g. where the necessary BARB viewing data is not available). In that circumstance, the allocation or measurement of viewing share would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom.

Subscription Revenues For Channels Retailed By The Licensee

- 1.25 This will be an exceptional situation as only a small number of licensees are likely to retail their own channels.
- 1.26 Where a Licensed Channel is retailed by the licensee itself (or a Connected Person of that licensee) on a particular Platform then (unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis would be more equitable or more practicable) the subscription revenues in respect of the retailing of that Licensed Channel on that Platform which would fall into Relevant Turnover (Television) would be determined as follows:
- (a) The general rule (i.e. where that Licensed Channel is wholesaled on its own or as part of a package of channels and the amount of wholesale revenues attributable to that Licensed Channel can be separately determined from those payable in respect of the other channels in that package by reference to the terms of that wholesale arrangement) would be to use the total amount of wholesale revenues attributable to the retailing of that Licensed Channel by Third Party Retailers in the relevant calendar year (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages), to divide that total amount of wholesale

revenues by the total number of subscribers of Third Party Retailers to that Licensed Channel (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages) in the relevant calendar year and then to multiply the resulting amount by the total number of the licensee's subscribers to that Licensed Channel (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages) on that Platform (i.e. the Platform on which the licensee itself (or one of its Connected Persons) retails that Licensed Channel) in the relevant calendar year.

In order to assist licensees, a worked example of how this general rule would work in practice is set out in Part 4 of this Annex B (in the section relating to subscription revenues).

- (b) However, the following exceptions would apply in the following circumstances:
- i. Where a Licensed Channel is wholesaled by a licensee as part of a package of channels for distribution by a Third Party Retailer and the amount of wholesale revenues attributable to the relevant Licensed Channel cannot be separately determined from those payable in respect of the other Licensed Channels in that package by reference to the terms of that wholesale arrangement, the total wholesale revenues received from the relevant Third Party Retailer for that package of channels in the relevant calendar year will be allocated among the channels within that package. That allocation will be based on the respective viewing shares of the channels in that package (see paragraph 1.24(b) above as to how each Licensed Channel's viewing share will be determined) unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable. In that case, the allocation would be carried out in a manner agreed between Ofcom and the licensee or, failing agreement, determined by Ofcom. The amount of the wholesale revenues allocated to that Licensed Channel from each such package of channels will then form part of, or comprise, the total amount of wholesale revenues which is divided and multiplied as per 1.26(a) above.
 - ii. Where a Licensed Channel is not wholesaled for distribution by any Third Party Retailer and is retailed to subscribers by the licensee (or one of its Connected Persons) only on a stand-alone basis, the subscription revenues for that Licensed Channel in the relevant calendar year would be deemed to be 70% of the total retail revenues from the retailing of that Licensed Channel by the licensee (or one of its Connected Persons) in the relevant calendar year (i.e. in each month a sum equal to the retail price of that Licensed Channel charged by the licensee (or one of its Connected Persons) multiplied by the total number of the licensee's subscribers to that Licensed Channel (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages), which monthly sums

would then be aggregated across all twelve months in the relevant calendar year).

- iii. Where a Licensed Channel is retailed only by the licensee (or one of its Connected Persons) as part of one or more Retail Packages of channels, the retail price of each such Retail Package would be allocated among the channels in that package. That allocation will be based on the respective viewing shares of the channels in that Retail Package (see paragraph 1.24(b) above as to how each Licensed Channel's viewing share will be determined) unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable. In that case, the allocation would be carried out in a manner agreed between Ofcom and the licensee or, failing agreement, determined by Ofcom. In each month, the amount of the retail price of each Retail Package so allocated to the Licensed Channel would then be multiplied by the number of subscribers to that Retail Package to whom the licensee (or one of its Connected Persons) retails that Retail Package, those monthly amounts in respect of each such Retail Package would then be aggregated across all twelve months in the relevant calendar year and the subscription revenues for that Licensed Channel in the relevant calendar year would be deemed to be 70% of the aggregate of those monthly amounts from the retailing of each such Retail Package.

- 1.27 For the avoidance of doubt, the subscription revenues attributable to a Licensed Channel (whether calculated on the basis of wholesale or retail revenues) and the number of subscribers to a Licensed Channel shall be calculated across all packages of Channels in which that Licensed Channel is included (whether at a wholesale or (as the case may be) retail level). The relevant amount or number in respect of each such package shall be determined separately and then aggregated across all such packages in order to obtain the relevant amount of subscription revenues or number of subscribers.

Subscription Revenues For Pay-Per-View Services Retailed By The Licensee

- 1.28 This will be the usual situation as pay-per-view services are likely to be retailed by the licensee in most cases.
- 1.29 Where a Licensed PPV Service is retailed by the licensee or a Connected Person of that licensee, then (unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis would be more equitable or practicable) the subscription revenues in respect of the distribution of that Licensed PPV Service by the licensee or its Connected Person which would fall into Relevant Turnover (Television) would be deemed to be 70% of the total retail revenues from the distribution of that Licensed PPV Service by the licensee or its Connected Person in the Relevant Calendar Year.
- 1.30 For the purposes of calculating such total retail revenues, in each month the

retail price of each programme or event offered, or each number or series of programmes or events offered for a single retail price (a "Multiple PPV Offering"), on the Licensed PPV Service in that month would be multiplied by the total number of "buys" of each such programme, event or Multiple PPV Offering in the relevant month and the amount of retail revenues from all buys of each programme, event and Multiple PPV Offering offered on that Licensed PPV Service in that month would be aggregated in order to determine the total amount of retail revenues for that month. The total amount of retail revenues for each month in the relevant calendar year would then be aggregated across all twelve months in the Relevant Calendar Year.

Subscription Revenues For Pay-Per-View Services Retailed By Third Party Retailers

- 1.31 The subscription revenues from the distribution of a pay-per-view service by a Third Party Retailer which would fall into Relevant Turnover (Television) will be the actual wholesale revenue received from Third Party Retailers in respect of the distribution of that Licensed PPV service in the Relevant Calendar Year. Where a licensed PPV service is both retailed by the licensee itself (or one of its Connected Persons) and by Third Party retailers, the subscription revenues from such retailing of the licensed PPV service (as calculated in accordance with paragraphs 1.29 to 1.31) will be aggregated in order to determine the amount which will fall into Relevant Turnover (Television) in respect of that Licensed PPV service.

PART 3

Interactive Revenue Principles

- 1.32 As a general rule, all sources of revenue deriving from a licensee's interactive services/applications (other than revenue deriving from Retail Activities carried out via interactive services/applications – see below) will be included within that licensee's Relevant Turnover (Television).
- 1.33 All forms of interactivity resulting from a licensee's interactive services/applications will be taken into account irrespective of whether or not the viewer responds via the set-top box or any other means for which the necessary contact information is displayed in or as part of any interactive service or application (for example, the display of a premium rate phone number in an interactive application leading to telephony revenue from viewer calls via that premium rate phone line).
- 1.34 Interactive applications/services will include those which are broadcast as part of, or accessed by any viewer from, the broadcast stream of a channel or pay-per-view service as well as any interactive application/service accessed independently e.g. via a separate menu of "stand-alone" interactive services.
- 1.35 For the purposes of these explanatory notes, interactive applications/services are also deemed to include:
- a. any "call-to-action" displayed on-screen during any television programme or advertising break on any licensed service (including, for example, a call to viewers to vote or participate in a competition via a premium rate phone line, web site or text message) even if no interactive application is launched; and
 - b. any digital text service(s) launched from within, or accessed via, the broadcast stream of any licensed service (including, for example, any on-screen display, as part of the relevant digital text service, inviting or prompting viewers to call a premium rate telephone line in order to place a bet with a bookmaker).
- 1.36 The principles relating to interactive revenue are set out below in three sections:
- a. Sources of Interactive Revenue: This section outlines the sources of interactive revenue which fall within Relevant Turnover (Television).
 - b. Chargeable Interactive Revenue: This section explains how to determine the level of interactive revenue which will be subject to the percentage of Relevant Turnover (Television) payable to Ofcom.
 - c. Trigger for Inclusion within Relevant Turnover (Television): This section explains which viewer transactions and interactions trigger the inclusion of any resulting revenue within Relevant Turnover (Television).

Sources of Interactive Revenue

- 1.37 All forms of revenue derived by a licensee and its Connected Persons from interactive applications/services will (subject to paragraph 1.40 below) fall within Relevant Turnover (Television) other than revenue deriving from the retailing of:
- a. goods; and
 - b. services such as, for example, holidays, insurance or other financial services (but excluding revenue deriving from the provision or offering of betting and gaming services via interactive services/applications which will be included within Relevant Turnover (Television)).

Interactive revenues are not limited to amounts expressed to be payable as shares of revenue and would, for example, include registration fees and "hosting" fees paid to any licensee in consideration for the "hosting" of/provision of access to an interactive application/service behind/from the broadcast stream of a licensed channel.

- 1.38 Interactive advertising and sponsorship revenue will fall within Relevant Turnover (Television). Therefore, in the case of an interactive advertisement which, for example, advertises a particular model of car, any payment by the advertiser for the inclusion within the broadcast stream of that advertisement or a related on-screen prompt or icon (e.g. any advertiser "impact" payment which is triggered by any click through into the advertisement) shall be included within Relevant Turnover (Television) whereas the revenue from any resulting purchase of the model of car being advertised shall be disregarded.

- 1.39 Accordingly, the following principal sources of interactive revenue are included within the calculation of Relevant Turnover (Television):
- a. Telephony charges (for example, resulting from viewer responses of any description (including but not limited to voting and competition entries) via premium rate phone lines and text messaging);
 - b. Betting and Gaming services and activities of any description (including, for example, fixed odds betting, pool betting, spread betting, lotteries, bingo, football pools, casino games, prize draws, scratch cards and pay-to-play games) irrespective of whether or not a licence or permit to provide such services or engage in such activities is required by law (whether by statute or otherwise); and
 - c. Interactive Advertising (including sponsorship of any interactive service/application).

- 1.40 This is not, however, an exhaustive list. Subject to the exclusion for Retail Activities described above, all sources of revenue derived by a licensee from interactive services/applications are included within the calculation of Relevant Turnover (Television).

Chargeable Interactive Revenue

- 1.41 All amounts of interactive revenue payable to, and received by, the licensee and its connected persons which fall within the sources of revenue described in

paragraphs 1.37-1.40 above will be included within Relevant Turnover (Television) subject to the permissible deductions/exclusions outlined at paragraphs (a) to (d) below:

(a) Revenue Share Arrangements

- i. The licensee may exclude from interactive revenues any amount which is a share of those interactive revenues and which never comes into the hands of the licensee (i.e. is taken "off the top") because a relevant third party is contractually entitled to retain such amount. The following contractual payments to relevant third parties would be excluded as being a share of interactive revenues:
 - any percentage of interactive revenue which falls within the paragraph above; and
 - any per call/response fee which is effectively a share of telephony revenue payable for the use of a telephony network.
- ii. For these purposes, the relevant third parties are:
 - any telephony provider/operator in return for the use of that provider/operator's network (whether fixed or mobile) for the purpose of conveying viewer responses;
 - any provider of interactive "back end" services to the licensee in relation to the processing and authentication of viewer responses and the provision of a "return path"; and
 - providers of interactive betting/gaming services (e.g. bookmakers) via the licensee's interactive services/applications. The "provider" of an interactive betting/gaming service will be, typically, the person who is liable to pay out any winnings or prizes (e.g. any winnings deriving from any bet placed by a viewer or any prizes deriving from any pay-to-play game played by a viewer) and not the producer or provider of the content or functionality of the relevant interactive application/service. In order to assist licensees, a further detailed example scenario is set out in Annex 1 below.
- iii. Any person who falls within any of the above categories shall (subject to paragraph iv. below) be treated as a "relevant third party" irrespective of whether or not that person is a Connected Person of a licensee.
- iv. Licensees shall only be entitled to exclude amounts payable to relevant third parties in circumstances where that third party is a bona fide provider of the relevant network or services and where the payment is made on arms' length commercial terms, i.e. licensees may not structure transactions or establish new entities for the purpose of avoiding payment of the full amount due to OFCOM.
- v. Ofcom's current view is to regard this as an exhaustive list of relevant third parties.

(b) Non-Broadcaster Revenues:

A licensee may deduct/disregard any interactive revenues receivable by it in any capacity other than its capacity as an Ofcom licensee or as a provider of a service licensed by Ofcom. Accordingly, to the extent that interactive revenues are receivable by a licensee or any of its Connected Persons in its capacity as a Platform operator or, for example, as a provider of interactive betting or gaming services (see the second bullet in paragraph 1.41(a)(ii) above in respect of the meaning of "provider" in this context), such revenues may be disregarded in computing Relevant Turnover (Television).

(c) Interactive Advertising Commissions:

In the case of sales of interactive advertising involving an advertising agent, the licensee shall be entitled to deduct any commission which is actually retained by or paid to the relevant advertising agent provided that the maximum amount which may be so deducted shall be 15% of the amount payable by the relevant advertiser.

(d) Betting/Gaming Returns/Winnings and Prizes etc:

The licensee may also deduct or exclude from gross interactive revenues any returns/winnings paid out to viewers pursuant to betting and gaming activities (where such activities give rise to gross interactive revenues) and/or the cost to the licensee of any prize(s) provided to viewers as part of any competition but only to the extent that such prizes are paid for directly by the licensee itself.

(e) Cost Deductions

Save as provided in (a) to (d) above, no costs or payments associated with the provision of interactive services/applications shall be deductible from interactive revenues. By way of example, these non-deductible costs would include:

- insurance premiums relating to the broadcast of interactive applications;
- set-up fees in respect of the integration of interactive applications with set-top box software/hardware;
- signing fees relating to the broadcast of interactive applications;
- "production/functionality" costs i.e. the cost(s) of designing, building, producing, acquiring and/or providing the content and/or functionality of interactive applications and services (whether as part of any initial "set-up" phase or on an ongoing basis);
- technical support fees in respect of any online network, online communications module, browser or other software;
- software licence fees e.g. for the use of a browser to navigate through an interactive application; and

- fees in return for contact information and viewer data.

Trigger for Inclusion of Interactive Revenue within Relevant Turnover (Television)

- 1.42 Any interactive revenue deriving from a viewer transaction or interaction (whether that transaction or interaction is carried out via a set-top box, telephone call, website or otherwise e.g. voting via text message) shall fall within Relevant Turnover (Television) if that transaction or interaction is in response to or with, or results from:
- a. an interactive application launched from within, or accessed from, the broadcast stream of a channel or other licensed service operated by the relevant licensee; and/or
 - b. a call-to-action during any programme or advertisement broadcast on a channel or other licensed service operated by the relevant licensee which invites viewers to carry out a transaction or respond to an invitation or prompt (e.g. by voting or entering a competition or game of any description) and, where required, contains the necessary contact information; and/or
 - c. an interactive service which is not launched from the broadcast stream of a channel but is accessed via a separate menu of interactive services (e.g. by pressing the "Interactive" button on any remote control) in circumstances where that interactive service is licensed by Ofcom.
- 1.43 Ofcom may decide to review the methodology described above for setting licence fees based on interactive revenues and the way in which licensees have implemented that methodology.

PART 4

CALCULATION OF SUBSCRIPTION REVENUE – EXAMPLE SCENARIOS AND DEFINITIONS

- 1.44 This Part 4 of Annex B provides broadcasters with further detail as to how the principles set out in Part 2 of Annex B of this document would operate in practice in the context of various scenarios applicable to the wholesaling and retailing of subscription channels and pay-per-view services.
- 1.45 The scenarios listed below are designed to be read in conjunction with the definitions which are set out at the end of this Annex.
- 1.46 For the avoidance of doubt, the scenarios listed below will not necessarily be exclusive of each other throughout a particular year or on all Platforms i.e. different scenarios can apply to the same Licensed Channel or Licensed PPV Service in different months or on different Platforms. For example, in a month where a Licensed Channel is licensed for a stand-alone wholesale price for distribution by one Third Party Retailer, Scenario 1 would apply to such distribution and where a group of channels including that Licensed Channel is licensed for a single wholesale price for distribution by two different Third Party Retailers, Scenario 2 would apply to such distribution; and the Third Party Monthly Subscription Revenue derived from both scenarios would be aggregated. Similarly, where a Licensed Channel is retailed both by Third Party Retailers and by the Relevant Person itself, the Third Party Monthly Subscription Revenue and the Deemed Monthly Subscription Revenue will be aggregated.

Example Scenarios

- 1.47 Most broadcasters will fall within Scenario 1 or, if not, Scenario 2. Only in a limited number of cases will a broadcaster fall within Scenario 3.

a. Scenario 1

A Licensed Channel is distributed by one or more Third Party Retailers where the wholesale revenues in respect of that Licensed Channel can be separately determined:

In this scenario, the amount of subscription revenues included in the Relevant Turnover (Television) in respect of that Licensed Channel would in each month be the Third Party Monthly Subscription Revenue in respect of the distribution of that Licensed Channel by the relevant Third Party Retailers and would in each year be the amount of the Third Party Monthly Subscription Revenue in respect of that Licensed Channel aggregated across all twelve months during that year.

This will apply in circumstances where the wholesale revenues payable in respect of the relevant Licensed Channel are separable from those payable in respect of any other Licensed Channel i.e. where the relevant distribution arrangement is in respect of one Licensed Channel only or, in the event that the relevant distribution arrangement relates to two or more Licensed Channels, the amount of wholesale revenues attributable to the relevant Licensed Channel can be separately determined by reference to the terms of that distribution arrangement from those payable in respect of the other Licensed Channels covered by that distribution arrangement.

N.B. In this scenario, Third Party Monthly Subscription Revenue will include all wholesale revenues derived from the retailing of the relevant Licensed Channel by all Third Party Retailers (whether the relevant Licensed Channel is retailed on a stand-alone basis and/or as part of one or more Retail Packages).

b. Scenario 2

A Licensed Channel is wholesaled for distribution by one or more Third Party Retailers as part of a group of Licensed Channels in circumstances where the wholesale revenues in respect of that Licensed Channel cannot be separately determined:

In this scenario, the amount of subscription revenues included in the Relevant Turnover (Television) in respect of that Licensed Channel would in each month be the Third Party Monthly Subscription Revenue in respect of the distribution of that Licensed Channel by the relevant Third Party Retailers and would be determined in accordance with the proviso to the definition of "Third Party Monthly Subscription Revenue". To determine the annual amount of such subscription revenues, the Third Party Monthly Subscription Revenue in respect of each month would be aggregated across all twelve months during that year.

Therefore, where there is a single wholesale price paid for a group of Licensed Channels by any Third Party Retailer in respect of the distribution of two or more Licensed Channels and a separate wholesale price for each of those Licensed Channels cannot be separately determined by reference to the terms of the relevant distribution arrangement, the Viewing Share Principle will be used to allocate that wholesale price among the relevant Licensed Channels unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom).

N.B. In this scenario, Third Party Monthly Subscription Revenue will include the amount of the wholesale price paid in respect of the retailing of the relevant group of Licensed Channels (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages) which is allocated to the relevant Licensed Channel.

c. Scenario 3

A Licensed Channel is retailed by the Relevant Person who holds the Ofcom licence for that Licensed Channel (or a Connected Person of that Relevant Person):

In this scenario, there will be no arm's length carriage agreement in respect of the distribution of the Licensed Channel by the Relevant Person (or its Connected Person). In such circumstances, the amount of subscription revenues included in the Relevant Turnover (Television) in respect of that Licensed Channel shall be the Deemed Monthly Subscription Revenue in respect of that Licensed Channel which shall in each month be determined as follows:

- i. in any month in which that Licensed Channel is also retailed by one or more Third Party Retailers and a separate wholesale fee for that Licensed Channel is capable of being determined: the Deemed Monthly Subscription Revenue is determined by

reference to the average wholesale per subscriber rate payable in respect of the retailing of that Licensed Channel by all Third Party Retailers (whether that Licensed Channel is so retailed on a stand-alone basis and/or as part of one or more Retail Packages) multiplied by the number of subscribers to that Licensed Channel to whom the Relevant Person (or its Connected Person) retails that Licensed Channel (whether on a stand-alone basis and/or as part of one or more Retail Packages)- see the opening section of the Deemed Monthly Subscription Revenue definition:

i.e. $(A/B) \times C$

Where

A = the total amount of all such wholesale revenues received from the retailing of that Licensed Channel by all Third Party Retailers in the relevant month (whether that Licensed Channel is so retailed on a stand-alone basis and/or as part of one or more Retail Packages);

B = the total number of subscribers of all Third Party Retailers to that Licensed Channel in the relevant month (whether that Licensed Channel is retailed to such subscribers on a stand-alone basis and/or as part of one or more Retail Packages);

C = the total number of subscribers to that Licensed Channel to whom the Relevant Person (or any of its Connected Persons) retails that Licensed Channel in the relevant month (whether on a stand-alone basis and/or as part of one or more Retail Packages);

ii. in any month in which that Licensed Channel is also retailed by any Third Party Retailer(s) but is wholesaled to such Third Party Retailer(s) as part of a group of Licensed Channels for which a single wholesale price is payable: unless a separate wholesale fee for that Licensed Channel is capable of determination by reference to the terms of the relevant distribution arrangement, the amount included within A in the calculation of Deemed Monthly Subscription Revenue shall (in respect of the retailing of that Licensed Channel by such Third Party Retailer(s)) be the proportion of the total wholesale revenues payable in respect of that group of Licensed Channels which is allocated to that Licensed Channel. That proportion shall be determined in accordance with the Viewing Share Principle (see the proviso to the opening section of the Deemed Monthly Subscription Revenue definition) unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom); or

iii. in any month in which that Licensed Channel is not retailed by any Third Party Retailer but only by the Relevant Person or

one of its Connected Persons: an average wholesale per subscriber rate cannot be determined by reference to the distribution of that Licensed Channel by any Third Party Retailer(s). Accordingly, save where paragraph iv. below applies, the Deemed Monthly Subscription Revenue shall be deemed to be 70% of the retail revenues payable for that Licensed Channel by subscribers of the Relevant Person (or its Connected Person) to that Licensed Channel (see the first bullet point of the Deemed Monthly Subscription Revenue definition); or

- iv. in any month in which that Licensed Channel is not retailed by any Third Party Retailer and the retail price charged for that Licensed Channel by the Relevant Person or any of its Connected Persons cannot be separately determined: where the Licensed Channel is retailed as part of a Retail Package by the Relevant Person or its Connected Person for a single retail price, the Deemed Monthly Subscription Revenue shall be deemed to be 70% of the proportion of the total retail revenues payable by subscribers in respect of that Retail Package of Licensed Channels which is allocated to that Licensed Channel. That proportion (i.e. against which the 70% shall be applied) shall be determined in accordance with the Viewing Share Principle (see the second bullet point of the Deemed Monthly Subscription Revenue definition) unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom).

To determine the annual amount of subscription revenues included within the Relevant Turnover (Television) of that Licensed Channel, the Deemed Monthly Subscription Revenue in respect of each month would be aggregated across all twelve months during that year.

d. Scenario 4

A Licensed PPV Service is only retailed by the Relevant Person in respect of that Licensed PPV Service (or one of its Connected Persons):

The amount of revenues included within Relevant Turnover (Television) in respect of such retailing of that Licensed PPV Service by the Relevant Person (or its Connected Person) shall be the Own PPV Service Revenue relating to that Licensed PPV Service and shall be deemed to be 70% of the total retail revenues deriving from PPV Buys during the relevant calendar year (see the definition of Own PPV Service Revenue).

e. Scenario 5

A Licensed PPV Service is retailed by one or more Third Party Retailer(s):

The amount of revenues included within Relevant Turnover (Television) in respect of such retailing of that Licensed PPV Service by Third Party

Retailers shall be the Third Party Monthly PPV Revenue relating to that Licensed PPV Service and shall be the actual wholesale revenues from distribution of that Licensed PPV Service by each Third Party Retailer (see the Third Party Monthly PPV Revenue definition).

Applicable Definitions

1.48 For these purposes, the applicable definitions are:

"Deemed Monthly Subscription Revenue" in respect of the retailing of a Licensed Channel retailed by the Relevant Person who holds the Ofcom licence for that Licensed Channel or a Connected Person of that Relevant Person, means, in each calendar month, the sum represented by "x" in the following equation:

$$x = \left(\frac{a}{b}\right) \times c$$

where:

- a = the total amount of all wholesale revenue received by the Relevant Person (or a Connected Person of that Relevant Person) from the retailing of the Licensed Channel by all Third Party Retailers in the relevant month (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages)
- b = the total number of subscribers of all Third Party Retailers to the Licensed Channel in the relevant month (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages)
- c = the total number of subscribers to the Licensed Channel on the Platform on which the Relevant Person itself (or one of its Connected Persons) retails that Licensed Channel in the relevant month (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages),

provided that in any month in which the Licensed Channel is wholesaled to a Third Party Retailer together with at least one (1) other Licensed Channel for distribution by that Third Party Retailer and a single wholesale price, charge or fee is payable in respect of those Licensed Channels, the figure included within "a" above shall (in respect of the retailing of the Licensed Channel by that Third Party Retailer) be a proportion of that single wholesale price, charge or fee calculated in accordance with the Viewing Share Principle unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom).

Notwithstanding the foregoing provisions of this definition:

- in any month in which the Licensed Channel is not wholesaled for distribution by any Third Party Retailer but is retailed only by the Relevant Person (or one of its Connected Persons), the formula set out above shall be disregarded and (unless the second bullet point below applies) the "Deemed Monthly Subscription Revenue"

in respect of such Licensed Channel shall be deemed to be seventy per cent (70%) of all payments received by the Relevant Person (or any Connected Person of the Relevant Person) from subscribers to the Licensed Channel for the right to view the Licensed Channel (i.e. the retail price payable by subscribers in respect of the Licensed Channel) in the relevant month.

Therefore, in each such month, the Deemed Monthly Subscription Revenue shall be calculated as follows:

(Standalone Retail Price of Licensed Channel x Total Number of subscribers to the Licensed Channel) x 0.7

- unless otherwise agreed between Ofcom and the Relevant Person, in any month in which the Licensed Channel is not wholesaled for distribution by any Third Party Retailer and is retailed by the Relevant Person (or one of its Connected Persons) for a single retail price as part of one or more Retail Packages, the formulae set out above shall be disregarded and the "Deemed Monthly Subscription Revenue" in respect of such Licensed Channel shall be based upon the proportion of the retail revenues payable by subscribers in respect of each such Retail Package which is allocated to that Licensed Channel. Such proportion shall be calculated in accordance with the Viewing Share Principle unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom). The amount equal to the proportion of retail revenues so allocated in respect of each such Retail Package shall, for this purpose of this second bullet point, be referred to as the "Retail Proportion".

Therefore, in each such month, the Deemed Monthly Subscription Revenue shall be calculated as follows:

(Retail Proportion x Total Number of subscribers to the Licensed Channel) x 0.7

- "**Licensed Channel**" means any linear television channel for which an Ofcom licence is required;
- "**Licensed PPV Service**" means any licensed service which offers programmes, events and/or Multiple PPV Offering(s) for purchase on a pay-per-view basis;
- "**Multiple PPV Offering**" means two (2) or more programmes and/or events which are offered for purchase by viewers on a pay-per-view basis for a single retail price;
- "**Ofcom licence**" means a licence under the Broadcasting Acts or the Communications Act 2003 (whether granted by Ofcom or the Independent Television Commission);

- **"Own PPV Service Revenue"** in respect of a Licensed PPV Service means seventy per cent (70%) of the total retail revenue from PPV Buys received by the Relevant Person (or any Connected Person of the Relevant Person) from viewers during the relevant calendar year in respect of single programmes, single events or any Multiple PPV Offering(s) offered by the Relevant Person as part of that Licensed PPV Service on the Platform(s) on which the Relevant Person itself (or one of its Connected Persons) retails that Licensed PPV Service;
- **"Platform"** means any television delivery system including, without limitation, any cable, DTH, DSL and/or DTT system(s);
- **"PPV Buy"** means a payment made by a viewer for the right to view a single programme, single event or Multiple PPV Offering on a pay-per-view basis;
- **"Retail Package"** means a package of services retailed to consumers which comprises one or more television channels provided to subscribers in consideration for the payment of a single, periodic subscription charge;
- **"Third Party Monthly Subscription Revenue"** in respect of the retailing of a Licensed Channel by Third Party Retailers means, in each month, the total sum of all revenues received from any Third Party Retailer(s) of that Licensed Channel (or any Connected Person of such Third Party Retailer(s)) in respect of the carriage or distribution of the relevant Licensed Channel by such Third Party Retailer(s) (whether retailed on a stand-alone basis and/or as part of one or more Retail Packages) and for this purpose, where a Licensed Channel is wholesaled for distribution by a Third Party Retailer together with one or more other Licensed Channel(s) in consideration for a single monthly wholesale price, charge or fee, a proportion of such single monthly wholesale price, charge or fee shall be allocated to the relevant Licensed Channel on the basis of the Viewing Share Principle, and that proportion of such single monthly wholesale price, charge or fee shall be included in the calculation of the Third Party Monthly Subscription Revenue in respect of the retailing of that Licensed Channel by that Third Party Retailer, unless the licensee can demonstrate to Ofcom's satisfaction that an alternative basis for such allocation would be more equitable or more practicable (in which case, the allocation would be carried out in a manner agreed between Ofcom and the relevant licensee or, failing agreement, determined by Ofcom);
- **"Third Party Monthly PPV Revenue"** in respect of a Licensed PPV Service means, in each month, the total sum of all payments received by the Relevant Person from Third Party Retailer(s) of that Licensed PPV Service (or any Connected Person of any such Third Party Retailer(s)) in respect of PPV Buys of programmes, events and PPV Multiple Offerings offered as part of the relevant Licensed PPV Service;
- **"Third Party Retailer"** in respect of a Licensed Channel means any person who retails that Licensed Channel on any Platform and who is not the Relevant Person in respect of that Licensed Channel or a Connected Person of that Relevant Person;

- **"Viewing Share Principle"** means, in respect of each month in which a Licensed Channel is wholesaled for a single wholesale price, or retailed for a single retail price, as part of a package of two (2) or more channels, the allocation to such Licensed Channel of a proportion of such wholesale or retail price on the basis of the monthly average viewing share figures of that Licensed Channel (as determined by BARB or by the use of such other methodology or viewing data as may be agreed between the relevant licensee and Ofcom or, failing that, as Ofcom may determine) expressed as a percentage of the total monthly average viewing share figures of all of the Licensed Channels which form part of the relevant package.

By way of example:

- (i) in the context of wholesale revenues, if Licensed Channel A and Licensed Channel B are wholesaled to a Third Party Retailer for a single wholesale price and Licensed Channel A has 2% of the total monthly viewing share and Licensed Channel B has 1% of the total monthly viewing share, the single wholesale price shall be allocated in a ratio of 2:1 in favour of Channel A; and
- (ii) in the context of retail revenues, if Licensed Channel A and Licensed Channel B are retailed for a single retail price as part of a two (2) channel tier and Licensed Channel A has 2% of the total monthly viewing share and Licensed Channel B has 4% of the total monthly viewing share, the retail price payable by subscribers for that package of channels shall be allocated in a ratio of 2:1 in favour of Channel B.

PART 5

Calculation Of Chargeable Interactive Revenue – Example Scenarios And Definitions

- 1.49 This Part 5 of Annex B provides broadcasters with further detail as to how the principles set out in Part 3 of Annex B would operate in practice in the context of some examples of different interactive applications and services.
- 1.50 Those example scenarios are listed below and are designed to be read in conjunction with the definitions which are set out at the end of this Part 5.
- 1.51 All Chargeable Interactive Revenue shall be included in the Relevant Turnover (Television) of that Relevant Person.

Example Scenarios

- 1.52 A series of example scenarios are outlined below:

a. Scenario 1

An interactive application is accessed from a Licensed Channel by a viewer pressing the "red button" on his or her remote control. The interactive application is sponsored by Company X and contains advertisements for Company Y. The interactive application provides viewers with the opportunity to place bets on the outcome of an event depicted in the programme being broadcast on the relevant Licensed Channel.

In this scenario, the relevant revenues which will fall within Chargeable Interactive Revenue (and, therefore, within Relevant Turnover (Television)) will be:

- i. payments made to the Relevant Person (or any Connected Person) by Company X in respect of the sponsorship of the Interactive Application and by Company Y in respect of the advertisements contained in the application would fall within Gross Interactive Revenue because this is revenue deriving from Interactive Advertising. However, Permitted Deductions would then be deducted from Gross Interactive Revenue in computing Chargeable Interactive Revenue;
- ii. bets placed on the outcome of such event would fall within Gross Interactive Revenue as revenue deriving from an Interactive Transaction prompted by an Interactive Application which is a Betting/Gaming/Lottery Service. However, Permitted Deductions would then be deducted or excluded. Therefore, any Third Party Revenue Share retained by, for example, a betting service provider would be deducted or excluded from Gross Interactive Revenue and the amount of winnings from winning bets (including stakes returned) would be excluded from Gross Interactive Revenue as a Permitted Deduction. Finally, for the avoidance of doubt, any revenue received by the Relevant Person in any

capacity other than as the broadcaster or provider of the relevant Licensed Service (e.g. pursuant to a Betting and Gaming Act Licence) would not fall within Gross Interactive Revenue.

b. Scenario 2

An interactive advertisement for certain goods is broadcast on a Licensed Channel and, by "clicking through" that interactive advertisement, the viewer may purchase those goods.

In this scenario, paragraph i above (in Scenario 1) would apply in respect of the revenues deriving from the Interactive Advertising. However, any revenue which derives from the purchase of any advertised goods by the viewer would be disregarded since this derives from Retail Activity (see the fourth bullet point of the Permitted Deductions definition).

c. Scenario 3

Two separate on-screen messages during the broadcast of a television programme prompt viewers firstly to vote in order to determine the outcome of that programme and secondly to enter a viewer competition. Votes and entries are to be submitted by text message or premium rate phone line and the necessary contact information is displayed in the on-screen message.

In this scenario, the on-screen prompt would be a Call-To-Action and, therefore, each resulting vote and entry would constitute an Interactive Transaction. Any resulting revenue from telephony charges (calls and texts) would then fall within Gross Interactive Revenue (see the first bullet point of that definition) but any Third Party Revenue Share retained by any telephony operator (see the first bullet point of the Relevant Third Party definition) would be excluded. Any Permitted Deductions would then be deducted in computing Chargeable Interactive Revenue including, for example, any competition prizes paid for by the Relevant Person (see the third bullet point of the Permitted Deductions definition).

d. Scenario 4

A viewer presses his or her "interactive" button on the remote control and accesses an interactive service via an interactive menu. He or she then registers with the provider of that interactive service to enable him or her to play pay-to-play games.

Each payment by the viewer to play a game will constitute Gross Interactive Revenue from an Interactive Transaction in response to the content of an Interactive Service which is a Betting/Gaming/Lottery Service. Any registration fee would also be included in Gross Interactive Revenue. Any Permitted Deductions would then be deducted from Gross Interactive Revenue (including, for example, any Third Party Revenue Share) in computing Chargeable Interactive Revenue.

e. Scenario 5

On Grand National day, a viewer presses his or her "red button" or "text" button on the remote control and accesses a digital text service which contains a "page" devoted to a bookmaker.

The bookmaker is the entity who will ultimately pay out any winnings on any winning bet placed by a viewer and is, therefore, the "provider" of the interactive service/application for these purposes. The page lists the odds on the various horses running in the race and sets out the details as to how a viewer can place a bet. The placing of a bet can be achieved via (i) the interactive application itself (using the return path/set top box), (ii) a premium rate phone line and (iii) a related web site of the bookmaker and the necessary contact details for (ii) and (iii) are displayed. All bets placed via each of (i), (ii) and (iii) will fall within Gross Interactive Revenue (subject to any Permitted Deductions e.g. any Third Party Revenue Share). However, if such contact details for (ii) and (iii) were not supplied on the relevant page of the digital text service, none of the bets placed on the race via (ii) or (iii) would fall within Gross Interactive Revenue.

Applicable Definitions

1.53 For these purposes, the applicable definitions are:

- **"Advertising Agency Commission"** means, in the case of sales of any Interactive Advertising involving an advertising agency, any commission which is actually retained by or paid to an advertising agent provided that any such commission in excess of fifteen per cent (15%) of the amount payable by the relevant advertiser will be disregarded when computing Chargeable Interactive Revenue.
- **"Betting/Gaming/Lottery Service"** means any Interactive Application or Interactive Service which allows or enables (for example, by the display of the necessary contact information) a viewer to carry out or engage in an Interactive Transaction which involves:
 - placing a bet of any description upon the outcome of an uncertain or unascertained event;
 - playing or taking part in gaming (for this purpose, "gaming" shall have the meaning set out in section 52 of the Gaming Act 1968) or any game (including, for example, pay-to-play games), competition or quiz; or
 - playing or taking part in a lottery (meaning a distribution of prizes by chance where players make a payment or provide other consideration in return for their chance of winning a prize including, without limitation, lotteries falling within Sections 3, 4, 5 and/or 6 of the Lotteries and Amusements Act 1976 and the National Lottery (as defined in Part I of the National Lottery etc. Act 1993));

and may include, without limitation, fixed odds betting, pool betting, spread betting, bingo, football pools, casino games (such as roulette, blackjack and pontoon), prize draws, scratch cards and pay-to-play games;

- **"Call-To-Action"** means any visual or oral prompt, invitation, on-screen message, on-air announcement and/or interactive television e-mail or message which is visible or audible during any programme, on-air promotion or advertisement broadcast on, or contained in an Interactive Application

accessed via, a Licensed Service. For the avoidance of doubt, there shall be no requirement for an Interactive Application to have been launched or accessed in order for such a call-to-action to have occurred, e.g. a call-to-action may be comprised within the broadcast of a programme on a Licensed Channel;

- **"Chargeable Interactive Revenue"** in respect of a Licensed Service means all Gross Interactive Revenue in respect of that Licensed Service less any and all Permitted Deductions from that Gross Interactive Revenue;
- **"Gross Interactive Revenue"** in respect of a Licensed Service means all sources of revenue deriving from any Interactive Transaction undertaken in relation to that Licensed Service including, without limitation:
 - any and all telephony charges (for example, resulting from viewer responses to any Call-To-Action (including, but not limited to, voting and competition entries) sent via any premium rate phone lines and text messaging);
 - Betting/Gaming/Lottery Services;
 - Interactive Advertising; and/or
 - any other Interactive Transaction;
- **"Interactive Advertising"** means:
 - any advertisement during which viewers are provided with a visual or oral invitation or any other prompt to launch or access an Interactive Application or Interactive Service and which provides further details of the product(s) or service(s) which is or are the subject of that advertisement; or
 - any sponsorship of any Interactive Application or Interactive Service (for example, the sponsorship of a Betting/Gaming/Lottery Service);
- **"Interactive Application"** means any interactive application which is launched from within, or accessed from, the broadcast stream of a Licensed Service including without limitation a digital text service;
- **"Interactive Service"** means any interactive service which may be accessed by a viewer via a separate menu of interactive services (for example, by pressing the "Interactive" button on any remote control or set-top box) and is licensed by Ofcom;
- **"Interactive Transaction"** in relation to a Licensed Service means any transaction, interaction or other response by a viewer (excluding Retail Activity) which is in response to, or with, or results from or is prompted by:
 - any Interactive Application accessed via or launched from that Licensed Service; or

- any Call-To-Action on that Licensed Service; or
- the content or subject matter of that Licensed Service if it is an Interactive Service;
- **"Licensed Channel"** means any linear television channel or pay-per-view service for which an Ofcom licence is required;
- **"Licensed Service"** of a Relevant Person means a Licensed Channel, Licensed PPV Service or Interactive Service for which that Relevant Person holds an Ofcom licence;
- **"Permitted Deductions"** from an amount of Gross Interactive Revenue means each of the following categories of deductions or exclusions from that Gross Interactive Revenue (but not any other costs or payments associated with the provision of Interactive Services or Applications):
 - any Third Party Revenue Share in relation to that Gross Interactive Revenue;
 - any revenue received by a person in any capacity other than its capacity as a Relevant Person including, without limitation, as licensed bookmaker, platform operator, provider of conditional access, access control, customer management, transmission, transponder, uplink, facilities or other technological services;
 - any stakes returned and winnings paid to viewers out of that Gross Interactive Revenue pursuant to any Betting/Gaming/Lottery Service and/or the cost to the Relevant Person of any prizes provided to viewers as part of any competition but only to the extent that such prizes are paid for directly by the Relevant Person itself;
 - any revenues from any Retail Activity;
 - any Advertising Agency Commission in respect of sales of Interactive Advertising broadcast by the Relevant Person (and no other person),
- **"Relevant Third Party"** in respect of a Relevant Person means any of the following:
 - any telephony provider/operator in return for the use of that provider/operator's network (whether fixed or mobile) for the purpose of conveying viewer responses;
 - any provider of interactive "back end" services to that Relevant Person in relation to the processing and authentication of viewer responses and the provision of a "return path"; and
 - providers of Betting/Gaming/Lottery Services (i.e. typically, the person who is liable to pay out any winnings or prizes to participants in the relevant Betting/Gaming/Lottery Service and not the producer or provider of the content or functionality of the relevant Betting/Gaming/Lottery Service) on or via any Licensed Service broadcast or provided by that Relevant Person;

- **"Retail Activity"** means the retailing of goods and/or services (such as, for example, holidays), but excluding Betting/Gaming/Lottery Services;
- **"Third Party Revenue Share"** in relation to an amount of Gross Interactive Revenue means any sum which is a percentage share of that Gross Interactive Revenue, which is earned in consideration for the provision of a service referred to in the definition of "Relevant Third Party" and which is deducted by a Relevant Third Party from that Gross Interactive Revenue before being paid to the Relevant Person or any of its Connected Persons pursuant to a contractual entitlement;

For these purposes, any fee payable to any third party in respect of each telephone call, text message or other viewer response and which is effectively a share of telephony revenue included within Gross Interactive Revenue shall be deemed to be a Third Party Revenue Share.

Annex C

Definition of Relevant Turnover in the Radio Sector

ASSESSMENT OF RELEVANT TURNOVER (RADIO)

Principles Followed by Ofcom

- 1.1 Ofcom considers that the overriding principle that should be applied with regard to the computation of Relevant Turnover (Radio) is that the payment due when the appropriate percentage is applied to this computation should represent as far as possible a charge against all revenue to the extent that it derives from the licensee's possession of a radio broadcasting licence. It is this principle that should be applied when determining the Relevant Turnover (Radio) of the licensee.
- 1.2 In this document, any reference to revenues/benefits earned or received by a licensee shall also be deemed to include a reference to revenues/benefits earned or received by any Connected Person (as defined in Chapter 4 of Section 1) of that licensee. Accordingly, any and all revenues/benefits earned or received by any such Connected Person shall be deemed to have been earned or received by the licensee (and the charge shall be applied against the aggregate of all such revenues/benefits).
- 1.3 Where revenues are earned by a licensee from a radio service simulcast by means of an analogue signal and a digital signal (irrespective of the platform(s) on which such radio service(s) is/are distributed), Ofcom will treat all such revenues as having been earned from the analogue version of the service.
- 1.4 This is because (a) consistent and reliable audience data across all services and platforms (analogue and digital) is not currently available, (b) the revenue which is attributable to simultaneously transmitted digital services is currently insignificant (in comparison with the equivalent analogue services) and (c) it will be simpler for licensees to use and for Ofcom to administer.
- 1.5 However, in the event that there are either (i) significant developments in the measurement of audience share across all platforms (analogue and digital) meaning it is possible to apportion revenue between analogue and digital versions of services or (ii) revenues attributable to digital versions of services substantially increase (meaning it would be inequitable to continue to apportion all revenue to the analogue version of the service), Ofcom may elect to review this approach.
- 1.6 The assessment of Relevant Turnover (Radio) is based upon the statutory accounts as audited and laid before the licensee's shareholders in general meeting. If the licensee's accounting period is different from the relevant calendar year used by Ofcom the Licensee should apportion the relevant revenue from each such accounting period so as to compute the figures for the relevant calendar year. Such accounts, if accompanied by an unqualified report by the licensee's auditors, provide prima facie evidence that income is correctly recorded and expenditure properly chargeable to the revenue account.
- 1.7 Set out below are various forms of revenue and the manner in which Ofcom

proposes they should be treated:

Broadcasting and Advertising Revenues

- 1.8 Any amount that is received by the licensee in consideration for the inclusion of advertisements in the licensed service, shall be included within the computation of Relevant Turnover (Radio) and will be taken to be the amount paid over by the advertiser. In the case of advertisements included under an arrangement between the licence holder and a person acting as an advertising agent the amount included in the Relevant Turnover (Radio) computation shall be the amount paid over by the advertiser after the deduction of the advertising agent's commission. The maximum amount that may be deducted in respect of the advertising agent's commission shall be 15% of the payment by the advertiser.
- 1.9 Where the amount paid over by the advertiser includes a payment in respect of any costs incurred by the licensee in producing the advertisements included in the radio service, then this amount shall be included when computing the Relevant Turnover (Radio) of the licensee.
- 1.10 For the avoidance of doubt, in circumstances where the entirety of (or any part of) the advertising airtime of a licensee is sold by a licensee to a third party (for onward sale to advertisers), the revenue to be included in Relevant Turnover (Radio) shall be that received by the licensee from the third party in respect of that sale of airtime.

Sponsorship and Co-Funding

- 1.11 Any payment received directly or indirectly by the licensee in relation to any programme to be included in the licensed service, shall be included within the computation of the licensee's Relevant Turnover (Radio). This will include all income derived from sponsorship and co-funding, together with any financial benefit derived by virtue of any person making payments for the purpose of defraying, or contributing towards the costs incurred, or to be incurred, in connection with the programme. In determining the licensee's Relevant Turnover (Radio), the amount included in the computation shall be the amount paid over by the sponsor or co-funding organisation, after the deduction of any advertising agent's or other intermediary's commission. The maximum amount that may be deducted in respect of any commission shall be 15% of the payment made by the sponsor or co-funder.

Sale or Assignment of Programme Rights

- 1.12 Any income or benefit that accrues to the licensee in respect of any sale or assignment of programme rights to other broadcasters will not constitute Relevant Turnover (Radio) and therefore can be excluded in the assessment of the payment due to Ofcom.

Interactive Revenue

- 1.13 Any income or benefit that accrues to the licensee as a result of a "Call-to-Action" broadcast on a radio service operated by the relevant licensee which invites listeners to carry out a transaction or respond to that Call-to-Action (e.g. by the submission of a vote or competition entry via a premium rate phone line or text message) will be included within Relevant Turnover (Radio). This would

also include any online payment which flows from any Call-to-Action (e.g. the downloading of a song from an associated website (e.g. www.radiolicensee.co.uk/radiopromotion) whose URL is referred to in a Call-to-Action).

- 1.14 A "Call-to-Action", for this purpose only, means any oral prompt, invitation, on-air announcement, on-air promotion or advertisement broadcast on a radio service operated by the licensee.

Broadcast Airtime Sales

- 1.15 Any income or benefit that accrues to the licensee in respect of any sale or other disposal to any third party of any airtime on the radio service (other than that falling within (a) and/or (b) above) would be included within Relevant Turnover (Radio). For example, this would catch any revenue received by a licensee from the sale of a 2 hour block of airtime to a third party in circumstances where that third party provides its own content for broadcast during that 2 hour block.

Subscription Revenue

- 1.16 At this stage, given there is little or no subscription revenue earned by licensees in respect of radio services, Ofcom does not propose this form of revenue should fall within Relevant Turnover (Radio). However, should subscription-based business models evolve in due course in the radio environment, Ofcom reserves the right to revisit this form of revenue and to consider whether it should be included in Relevant Turnover (Radio).

Non-Broadcasting Related Revenues

- 1.17 Income from events, promotions, the provision of services or other activities which have no direct or indirect link to the licensed service, will not be counted in the computation of Relevant Turnover (Radio).

Investment Income and Income from Asset Disposals

- 1.18 Investment income from interest and dividends would be excluded, together with the proceeds of asset sales (other than airtime sales).

Merchandising and Hire of Facilities

- 1.19 Income derived from merchandising activities (the sale, for example, of promotional goods or services with the intention of making a profit), together with income derived from the hiring out of facilities to third parties, would not be included within the computation of Relevant Turnover (Radio).