



## **RESPONSE OF CHANNEL 5 BROADCASTING LTD TO OFCOM'S CONSULTATION ON A FRAMEWORK FOR SETTING COST BASED SPECTRUM FEES**

Channel 5 welcomes the opportunity to respond to this consultation. We recognise that in principle it is reasonable for Ofcom to recover its spectrum management costs from the holders of WTA licences.

We believe this is a separate question from the broader issue of introducing Administered Incentive Pricing (AIP) for DTT spectrum, to which we have made clear our opposition<sup>1</sup>.

We do not have any objection to the substantive proposal in the consultation, but we are concerned about a reference within it which we believe raises issues that go beyond the consultation and trespass into areas that are not Ofcom's concern.

In the first bullet point of paragraph 4.16 of the consultation, Ofcom says "Licensees (and other broadcasters hosted on multiplexes, *who we expect licence fees will pass through to*) have been on notice since 2006 that fees will be introduced in 2014..." [our italics].

We object strongly to the words in parentheses. We do not believe Ofcom should express a view as to whether the cost of the new fees should be passed on – in whole, in part or at all – to the broadcasters who have negotiated carriage arrangements on the multiplexes. That is an issue to be settled through commercial negotiations between the relevant parties (the multiplex operator and the individual broadcaster).

It is a basic tenet of economics that if the price of one input in supplying a good or service goes up, adding to a supplier's costs, then the supplier will attempt to pass the increased cost on to his customers by raising his prices. Equally, faced with an increase in price, some customers may decide they no longer wish to purchase the good or service at that price, which will have the effect of driving the price down. The interaction between these two pressures determines the price at which the good or service is finally sold. This is how markets work.

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<sup>1</sup> See *Response of Channel 5 Broadcasting Ltd to Ofcom's consultation on spectrum pricing for terrestrial broadcasting*, May 2013; and *Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's consultation on the future pricing of spectrum used for terrestrial broadcasting*, October 2006

In this instance, the spectrum management fees proposed by Ofcom will add to the costs of running a multiplex business. The holders of multiplex licences may well try and raise prices as a result – but their broadcast customers are likely to resist such a price increase, especially if demand for multiplex carriage is unaltered. The issue should be resolved between the parties through a normal commercial negotiation.

We find the suggestion that these fees could be expected to be passed straight through to broadcasters particularly surprising in light of Ofcom's consistent preference for market based approaches generally in respect of relations between broadcasters and multiplex operators. For example, in its 2010 determination of the price dispute Channel 5 and Digital 3and4, Ofcom said "...a market based approach would clearly be consistent with our duty to secure the optimal use of spectrum... A market price will most accurately reflect the valuation that the parties place on use of an asset – particularly where spectrum is scarce – and should lead to its most efficient allocation and use"<sup>2</sup>.

We further believe the pass through suggestion may be inconsistent with Ofcom's duties to secure the optimal use of spectrum and a wide range of television services.

Our concern over this issue is not simply about who pays the relatively modest fees being proposed by Ofcom in this consultation, but about the principle of pass through. If established now, this could lead to multiplex operators using it as a justification for passing on the full cost of AIP if and when it is introduced around 2020. That is why it is important that Ofcom clarifies its position now in favour of payment of the fees being determined through individual carriage negotiations.

*Channel 5 Broadcasting Ltd*

*December 2013*

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<sup>2</sup> Ofcom, *Determination between Digital 3 & 4 Limited and Channel Five Broadcasting on charges payable for services on DTT Multiplex 2*, 27<sup>th</sup> July 2010, paragraphs 7.35 and 7.36