



# **The BBC response to Ofcom's consultation on Spectrum pricing for terrestrial broadcasting**

## 1. Introduction

The BBC welcomes the opportunity to respond to Ofcom's consultation, *Spectrum pricing for terrestrial broadcasting*, dated 13 March 2013. We are keen to engage constructively with Ofcom on this critical issue which touches on fundamental approaches to securing efficient use of spectrum as well as ensuring a sustainable model for Public Service Broadcasting (PSB) and digital terrestrial television (DTT).

The BBC and Channel 4 have commissioned Aetha to carry out an in-depth review of the case for applying AIP to broadcasting spectrum to inform our response to the consultation. It assesses whether applying AIP to broadcasting spectrum is likely to have the desired effect of incentivising more efficient spectrum use both now and post-2020, what unintended consequences (regulatory failures) it may cause, and the extent to which it could negatively impact on PSB and UK content investment.

This report has been submitted to Ofcom in parallel with our response.

We welcome Ofcom's sensible and pragmatic proposal not to apply administered incentive pricing (AIP) to digital terrestrial television (DTT) before c2020. We support the reasons as set out why AIP poses such unique difficulties for DTT broadcasters. In coming to this position, Ofcom has shown an appreciation of the challenges facing the industry in responding to spectrum pricing incentives.

Over the next few years, some major decisions are likely to be made regarding the future use of UHF spectrum. These will include the ongoing debate about the appropriate allocations for DTT and mobile spectrum, possible deployments of white space devices and the future of spectrum allocations for programme making and special events (PMSE). In that context, we are supportive of Ofcom's proposals not to pursue the potentially disruptive AIP policy in the medium term.

Further, we consider that the fundamental factors which define the BBC's terrestrial broadcast spectrum requirements will not change in the medium or longer term – making it very difficult to believe that any future introduction of AIP to broadcasting will deliver the goal of increased spectrum efficiency. The BBC's spectrum requirements are primarily a function of its public service remit, and therefore its ability to unilaterally respond to spectrum pricing signals are

extremely limited. We would welcome further discussions to understand why Ofcom considers that today's constraints on the application of pricing will be addressed after 2020.

## 2. Overview

We support Ofcom's rationale for not charging AIP to broadcasting before 2020. We would go further and argue that AIP should also not be applied to broadcasters after 2020 when the current UHF strategy is expected to have made significant progress. This is because the factors which prevent PSBs from responding to pricing incentives now will still be present after 2020. The factors which underpin UK DTT broadcasting in general and define PSBs in particular mean that pricing is unlikely to ever be an effective tool to realise material efficiencies in the use of spectrum.

Ofcom has a statutory duty to promote optimal use of spectrum for the benefits of citizens and consumers<sup>1</sup>. The BBC is concerned that Ofcom has not presented evidence which shows how the introduction of AIP after 2020 would achieve that objective.

Ofcom also has a statutory duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom<sup>2</sup>. The introduction of pricing would be likely to have a negative impact on investment by the PSBs in UK content.

This section explores the key factors lying behind our argument that AIP is, and will continue to be, a flawed tool for incentivising efficient spectrum use by the PSBs on the DTT platform, or on the DAB platform. ***PSBs ability to release spectrum for other uses is limited***

Aetha's report sets out in detail the reasons why the PSBs cannot unilaterally respond to pricing incentives in the way that a conventional spectrum user would be expected to do. The three broad reasons for this are:

- We are subject to regulatory coverage obligations and any attempt to reduce our use of spectrum (without substantial consumer costs and disruption) would inevitably lead to a reduction in coverage;
- Any change in our spectrum use would require international agreement which we do not directly control; and

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<sup>1</sup> Communications Act 2003, Section 3 (2) (a)

<sup>2</sup> *Ibid*, Section 4 (a)

- Whilst we could, in theory, change the technology that we use to more efficient standards (in particular, move wholesale from DVB-T to DVB-T2) our lack of direct control over viewer take up of related receiver would mean that significant numbers of viewers would lose TV reception.

Ofcom recognises these factors in its consultation. Indeed Figure 4.1 of that document shows the theoretical measures that PSBs could take to improve their spectrum efficiency, before going on to explain that only marginal gains can actually be made in practice.

Paragraph 4.18 of the consultation succinctly describes the constraints PSBs face:

*First, they [terrestrial broadcasters] are subject to regulatory obligations imposed through licence conditions. These are designed by Ofcom to reflect our duties under the Communications Act to secure a wide range of television services throughout the whole of the UK and to promote, in particular, public service television (PSB). Second, there is a risk that an uncoordinated transition to more efficient transmission technologies would leave significant numbers of consumers with obsolete receiver equipment to the detriment both of those using the DTT platform and to the reach of public service content. Third, broadcasters' use of particular spectrum frequencies in the UK is dependent on internationally agreed co-ordination because of the need to avoid cross-border interference.*

However, Ofcom then states in the next paragraph 4.19:

*These factors do not absolutely prevent broadcasters from seeking to deliver efficiency improvements, but they collectively make it more challenging.*

The extent to which broadcasters can unilaterally respond to spectrum pricing incentives in any significant way – even in the longer term – appears to be the central point of contention. It may be possible that some marginal efficiency improvements can be made and Aetha sets out in its report the numerous measures we have already taken to use spectrum as efficiently as possible, including the launch of the T2 multiplex which provides HD simulcasts. However, significant further improvements such as those that would be needed to clear

sufficient spectrum for other uses or to effect a wholesale technology upgrade are prevented by the factors set out by Ofcom.

Aetha report’s also suggests there is already a well-functioning market for DTT capacity which should continue to provide strong incentives for broadcasters and multiplex operators to use existing spectrum holdings more efficiently, thereby increasing their own capacity and enabling the trading of that capacity to higher value users. It is far from clear that AIP would add to incentives for efficiency in own-use of broadcasting spectrum.

We would therefore be keen to have further dialogue with Ofcom in advance of any re-opening of this issue to enable us to fully understand how it considers the application of AIP would help overcome the constraints which will continue to define terrestrial broadcasters’ longer-term use of spectrum.

***In terms of spectrum use, broadcasters are qualitatively different from other users***

There is an argument that as other users pay AIP for their spectrum (including public services) it would be unfair for broadcasters to be exempt from the same pricing approach.

This argument however is not supported by Ofcom’s own established policy on AIP which is designed to achieve the efficient use of spectrum by exposing users to the opportunity cost of their use.

It should be for Ofcom to decide on an industry-by-industry basis whether there is any scope for users to respond to pricing incentives in the ways envisaged (e.g. release spectrum, reduce the amount of spectrum used or deploy more valuable services) – even in the long term. A July 2009 Ofcom report, *Policy evaluation: AIP*, identified where efficiencies had already been realised in likely response to AIP being imposed. Examples of these were:

**Table 1: Examples of spectrum efficiencies realised as a likely result of AIP application**

Original user	Change
MOD	Release of 2290–2300 MHz
Radio Astronomy	Remove constraints on active services at 150.05–

	152 MHz
Police	Release of 450–462.5 MHz

Since 2009 other efficiencies have been realised such as the impending release of 2.3 GHz and 3.4 GHz by the MOD and the sharing with PMSE (between 2009 and 2012) and then release of 606–614 MHz by Radio Astronomy.

However, the key point here is that these users, unlike broadcasting, were able to realise significant spectrum efficiencies in a way that did not impact on their core purposes or impose substantial costs and/or dis-benefits on the general public. As set out in the Aetha report, no similar significant opportunities exist for terrestrial broadcasting. Any attempt to release spectrum or move unilaterally to more efficient technologies will inevitably lead to a loss of coverage or to some viewers losing access to valued services.

As a result, it may well be appropriate for AIP to be charged to one type of spectrum use but not to another. In this case, Ofcom has set out in paragraph 4.18 of the AIP consultation the reasons that make broadcasting effectively *unique* in its inability to respond to pricing signals, even in the long term.

***PSBs will not be able to respond to pricing signals even after 2020***

Ofcom has proposed in its AIP consultation that it intends to charge AIP to broadcasters after c2020, when it expects to have made significant progress on its ongoing UHF strategy work. We do not agree that there will be a case for applying AIP to broadcasting – and in particular PSBs – at this point in order to secure a more efficient use of spectrum. As Aetha's report sets out, the reasons for this are:

- As a PSB, the BBC will almost certainly continue to be subject to public service and coverage/universality obligations. We will therefore not be in a position to reduce our use of spectrum without being in conflict with these obligations and leading to consumer detriment;
- Ongoing international negotiations in the lead up to World Radiocommunications Conference in 2015 strongly indicate that the DTT platform will still be a central broadcasting platform throughout Europe in the medium to long term. Therefore, any proposed changes to our use of

frequencies would still be subject to international agreement –a process over which we will continue to have no direct control; and

- Given the nature of the DTT platform, we are still unlikely to have a direct relationship with consumers’ choice of receiver equipment, including rooftop aerials. Therefore any unilateral attempt to move to new and more efficient technologies would continue to risk disenfranchising many viewers from valued TV services – or at very least impose substantial costs on consumers in forcing their transition to other distribution platforms. This could have knock-on detrimental effects on inter-platform competition and the reach of PSB services.

We understand the reasoning behind Ofcom’s linkage of AIP to the ongoing UHF strategy process. However, whatever the outcome of that process, AIP will still not be an appropriate tool in this instance. With regards to 470–694 MHz the three factors above will clearly apply. In addition, it is not clear that there will be excess demand for these spectrum bands from non-broadcast uses.

The future status of the 700 MHz band is less certain but the problem with applying AIP to this spectrum is similarly fraught with difficulty. The table below outlines why this is the case:

**Table 2: Implications of AIP application to broadcasting based on 700 MHz scenarios in 2020**

Scenario	Implications for AIP
700 MHz has already been cleared	Broadcasting not using 700 MHz spectrum and will not be subject to AIP
700 MHz signalled to be cleared but to take effect after 2020	We understand that Ofcom policy is <i>not</i> to charge AIP where the intention to clear existing use has already been confirmed <sup>3</sup>
700 MHz not to be cleared of	There is no alternative mobile use

<sup>3</sup> SRSP: *The revised Framework for Spectrum Pricing*, December 2010. Paragraph 4.332 states “we would normally look to intervene and clear the band in a planned manner rather than looking to spectrum pricing to effect such a change”. There is precedent of Ofcom following this policy with PMSE access to TV Channels 61-69 before 2012.

broadcasting	opportunity cost, and more general problems with the application of AIP to broadcasting apply
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Therefore, not only will the fundamental problems that make AIP a flawed tool for promoting spectrum efficiency persist after 2020, but, more specifically, the conclusion on any wider process involving the 700 MHz band will not resolve those issues. As a result, we consider that there is a clear case for not applying AIP to broadcasting – either in the 470–694 MHz band or in the 700 MHz band – both before 2020 and thereafter.

***Applying AIP would adversely impact on PSB content spend***

We note that Ofcom’s consultation does not consider the potential impact of AIP on PSB and broadcast content investment but provides a commitment to do so before applying AIP in future. Given the constraints on the BBC’s ability to use less spectrum, the imposition of AIP would increase the cost base and reduce the resources available for investment in original content. Such an outcome would appear to run counter to Ofcom’s duty to promote the fulfilment of the purposes of public service broadcasting and divert resources away from activity that promotes cultural and economic value. It is, therefore, essential that a full cost–benefit analysis is undertaken by Ofcom to inform long–term decisions on AIP, including the likely impact on UK original content investment and the wider creative industries. The accompanying Aetha report sets out some initial analysis on this point.

### **3. Response to questions**

*Question 1: Do you agree that the principle of applying AIP remains relevant to spectrum used for broadcasting?*

No, we disagree that AIP is an appropriate tool for promoting spectrum efficiency for broadcasting. Our reasons are given above and are supported in more detail in the accompanying Aetha report. The PSBs are unable to respond to pricing incentives, even in the long term, in terms of how they use spectrum. As a consequence of this, the likely impact of the application of AIP to the PSBs would be reductions in content spend.

*Question 2: Do you agree with our revised proposals to delay the introduction of AIP based on opportunity cost for national DTT multiplex operators until we have materially progressed our proposals for the future use of the UHF spectrum?*

As stated above, we welcome Ofcom's pragmatic proposal that AIP should not be applied to broadcasting before around 2020. However, the reasons why broadcasters are unable to respond to pricing incentives now will still be present after 2020. We, therefore, similarly see no convincing case for applying AIP after c2020.

*Question 3: Do you agree with our proposals to apply a fee for spectrum used for national DTT, in the meantime, based on the cost of administration instead?*

We recognise the necessity for Ofcom to ensure that its administration costs are recovered. Therefore, on the assumption that the level of those fees will be broadly in line with those indicated in the *Award of the 600 MHz Band* statement of February 2013, we are content with this proposal.

*Question 4: Do you agree that charges based on the costs of managing the spectrum should be applied to DAB radio and to local TV broadcasting?*

We welcome Ofcom's proposal not to charge AIP for DAB radio and local TV. In terms of paying a fee based on the costs of managing the spectrum, we reiterate our answer to Question 3.

*Question 5: Do you agree that when full AIP is applied for spectrum used for national DTT broadcasting (once we have materially progressed our proposals for future use of the UHF spectrum) it should be applied gradually, rising over five years.*

We have no detailed comments, at this stage, on this proposal. The gradual introduction of AIP for broadcasting does not, in our view, affect the basic

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assessment of whether or not it is an appropriate tool to secure spectrum efficiency.