

Freeview Response to Ofcom Consultation: Digital Dividend Review 470–550 MHz and 630–790 MHz

1. Introduction

This document outlines Freeview's response to the Digital Dividend review 470-550 MHz and 630-790Mhz consultation and we welcome the opportunity to respond to Ofcom. Freeview's response has been prepared by the company's management team and is not necessarily representative of the views or opinions of Freeview's shareholders.

In writing this response our focus has been to comment on the proposals from the perspective of Freeview's current and future consumers – in line with our objective of continuing to drive take up and enjoyment of a vibrant free broadcast proposition on DTT.

Our response is anchored in our consumer research and understanding of both existing Freeview consumers and the wider population's attitudes to digital TV as a whole.

2. Executive Summary

Freeview currently provides a real alternative to pay TV in the UK and is now enjoyed by over 16m households. Consumer advocacy is currently positive – 66% of Freeview consumers would recommend Freeview – with their satisfaction driven in particular by the strength of the free channel line up. But this cannot be taken for granted over time. Existing Freeview homes tell us that evolution of the platform, particularly in terms of evolving the strength and breadth of the channel offer – as well as keeping pace with technological developments – is essential to their continued support. This is particularly true in the face of increased competition and promotional strength from the satellite and cable pay sectors with their inherent spectrum advantages. Additionally, Freeview now also faces competition for the first time from a new free competitor, again with the spectrum benefits of satellite in terms of capacity for both multiple SD and HD channels. Freeview therefore strongly supports an award process which facilitates maximum participation from operators seeking to establish free services on DTT with high consumer appeal.

The auction process outlined by OFCOM would in our view be effective in encouraging bids and maximising the value of the spectrum. Freeview would, however, look to non-technical licence conditions to ensure that the full benefit of the auction is ultimately felt by citizens and consumers.

As a prerequisite, the licence conditions must minimise the potential disruption to reception of existing DTT multiplexes. Consumer disruption and confusion must also be kept to a minimum, especially given the timing during the rollout of Digital Switchover and the launch of new HD services on the platform.

Freeview would broadly agree with OFCOM's faith that the market will determine the most effective use of spectrum to the benefit of consumers, but believes that

the structure of the auction must help ensure that the services which reach the market are those with genuine consumer appeal. We believe that a sub-national channel or network would have most likelihood of success in terms of maintaining ongoing competitiveness of the platform so we welcome the aggregation of large lots. In the interest of diversity we also support the rollout of small and medium lots which may attract more local services. We also believe that some safeguards must be put in place within the licence conditions to ensure appealing services are brought to market.

We will respond to Questions 1, 2, 7, 8, 17, 19, 20, 23 and 26 of this consultation.

Q1 – The executive summary sets out our proposals for the digital dividend geographic interleaved award. Do you agree with these proposals?

We do agree with OFCOM's proposals, including the awarding of spectrum in lots, the timing of the awards and the balancing of new DTT services with the protection of existing DTT services. In the questions that follow we seek to highlight where we think the process can safeguard the interests of consumers.

Q2 – Do you have any comments on our assessment of the most likely uses of the geographic interleaved lots? Are there any potential issues which should be considered that we have not mentioned?

We do agree with the most likely uses, and would clearly support the process and how it encourages bidders seeking to launch services on the DTT platform. The launch of Freeview has been a considerable force in the UK's transition to digital and enjoys a high level of consumer satisfaction – currently 90% - through the provision of quality TV content to consumers for free. As Ofcom's own figures show, however, primary set acquisition is slowing and the gap between Freeview and other operators is narrowing. The release of spectrum to DTT is an essential tool with which Freeview can maintain competitiveness. We know that increasing the content on Freeview with new quality channels can drive appeal. For example once E4 was launched on Freeview 59% of purchasers said it influenced their purchase decision and 14% of consumers who didn't have Freeview said it made Freeview more appealing.

Q7 – Do you agree that the median option offers an acceptable balance between protecting reception of DTT services and maximising new DTT services using geographic interleaved lots?

Reception issues are the primary source of complaints for consumers - in July these accounted for 52% of all calls to Freeview's call centre. Loss of services, the need for retuning set top boxes and aerial issues weaken Freeview's comparative position vis-à-vis satellite services. We therefore appreciate Ofcom's concern with balancing the benefit from new channels and the disruption caused by the need for consumers to reposition aerials. We do feel however that the issue of further disruption to the DTT platform is critical and all possible measures should be taken to safeguard it. This is especially true given the

increased amount of retuning already required of consumers through the switchover process.

In principal we agree with the median option, which appears to give the best return between new services for the most people and cost and disruption for the fewest. However, we would like to point out two considerations.

Firstly, the calculation looks at the total economic impact of new services vs. the total cost to households. The experience of an individual household should not be lost in the equation. For those impacted by the change, the macro-economic benefit will not figure. Therefore communications need to be very clear, information widely available and if possible, some assistance made available in the form of discounted aerial support, potentially within the DSO assistance programme. In order to support a transition, Freeview and the industry more broadly needs to understand as quickly as possible how many households will be affected and who and where they are.

Secondly, the fact that there will be a negative impact on some Freeview households underlines the fact that the new TV services need to be of real value to consumers. We understand the limitations of the auction process in bringing to market the most appealing services, but would encourage some safeguards to go some way to achieving this outcome.

Q8 – Do you agree that the proposal for a series of awards of spectrum lots – an award of lots for Caldbeck, Winter Hill and Wenvoe in late 2008 or early 2009, a single award in 2009 of large lots and awards of lots for other locations linked to DSO?

We do agree with the proposal. Our view is that the opportunity presented by a sub-national service is the most significant for the health of the DTT platform, as it is most likely to deliver the highest quality content and can most cost-effectively be marketed. As such we would encourage the minimisation of the risk of aggregation, and agree with the proposal to auction combined 'large lots'. However, we also think that it is in the interest of niche audiences and of the broadcasting industry more generally to encourage smaller operators. It therefore makes sense to undertake the auction of small and medium lots as recommended by Ofcom.

In terms of the timing, Freeview will be best positioned to work in partnership with the new operators in promoting the channels and the platform if the award is decided as early as feasible in 2009. This is especially the case where the launch of regional television services necessitates the modification and fragmentation of marketing plans and materials.

Q17 – Do you have any comments on the technical licence conditions we are proposing to include in the licences?

In the event of the spectrum being awarded outside of DTT, Freeview would expect Ofcom to include conditions that precluded or absolutely minimised any potential interference to TV.

Q19 – Do you agree that where the geographic interleaved spectrum is used for the operation of a DTT multiplex, we should replicate the ownership restrictions from the Broadcasting Act relating to (a) local authorities, (b) political bodies, (c) religious bodies and (d) bodies exerting undue influence but not replicate restrictions relating to (e) broadcasting bodies and (f) advertising agencies?

The quality of the channels and programmes on Freeview are critical to the competitiveness of the platform, especially given the natural restrictions around the quantity of channels. The opening up of the platform to content provided by advertising agencies in particular is of concern. This may result in an overall reduction of the quality of content provision if allocated spectrum goes to pure advertiser funded content, which as yet is unproven in its ability to raise the overall standard of the TV viewing experience. The quality of viewing on the platform is often compromised already by the existence of barker channels, such as those held by pay operators. We are in agreement with Ofcom's view as regards other potential licence-holders.

Q20 – Do you agree that we should facilitate interoperability between existing DTT multiplex operators and the new operators using cleared spectrum?

Freeview considers interoperability between all operators a prerequisite to the sound operation of the DTT platform, and believes that Ofcom and the multiplex operators have an obligation to preserve it. The need for consistency and accuracy in the scheduling information, the viewer interface and viewer services are essential to making the platform competitive. Whilst not in favour of the 'mandate' option which would involve greater intervention and potentially the suppression of innovation, we would support a strong facilitation role for Ofcom, with the industry working together through the DTG to ensure a maximum level of interoperability, whilst continuing to encourage, as a group, innovative market offerings.

Q23 – Do you have particular concerns about possibilities for award outcomes to fail to fully promote competition in downstream markets or to result in inefficient use of spectrum? If so, please explain what these are and supply supporting evidence.

Freeview agrees with Ofcom in the importance of ensuring that the spectrum released benefits citizens and consumers. The market approach to the awarding of spectrum is in principle favourable to promoting competition and bringing compelling new services to market. Freeview does, however have a specific concern around the 'hoarding' of spectrum which Ofcom refers to as a potential

outcome. We would like to see some sort of 'use it or lose it' clause written into the award in order to ensure that consumers ultimately see the benefit of the award.

Q26 – Do you agree with our initial assessment that we should not intervene in the geographic interleaved award to remedy any potential impact on competition resulting from the holding of geographic interleaved spectrum by either Sky or NGW/Arqiva?

Freeview agrees with Ofcom that Ofcom's pay TV market investigations are not primarily linked to the potential for Sky to acquire interleaved spectrum.

With regards to a potential award to Sky, Freeview would support any services which appeal to consumers. We recognise however that the most appealing channels to a (potential) Freeview consumer would be free to air; for example 59% of consumers buying Freeview products at the time of the launch of E4 on Freeview said it influenced their decision to get it. Pay services also hold appeal – but although 84% of Freeview viewers agree that it would be a good thing to have the option to access more pay channels, the majority (79%) would not pay for them, being happy with what they have.

Finally, we also agree with Ofcom that in the event of the acquisition of interleaved spectrum by NGW/Arqiva, any anticompetitive behaviour would be subject to separate and subsequent review. We would be concerned that imposing any regulatory restrictions on NGW/Arqiva at this stage may result in missed opportunities for appealing services on DTT.