

Background

Scottish Screen is the national government-backed agency responsible for developing all aspects of screen industry and culture across Scotland, focusing on the following five priority objectives:

1. **Education** – to ensure that people of all ages and backgrounds are inspired and equipped to analyse, appreciate, explore, create and share screen media;
2. **Enterprise and Skills** - to ensure that there are appropriate levels of skilled individuals and viable companies to sustain all aspects of the screen industries across Scotland;
3. **Inward Investment** - to promote Scotland as a dynamic, competitive and successful screen production hub;
4. **Market Development** - to ensure that the widest range of screen product reaches and is appreciated by a diversity of audiences;
5. **Talent and Creativity** - to identify nurture, develop, support and progress Scotland's screen talent and screen production companies.

Scottish Screen welcomes the opportunity to comment on this part of Ofcom's Digital Dividend Review (DDR), which deals with the award of the geographic interleaved spectrum - that part of the spectrum freed up for new uses by digital switchover (DSO) pertaining to those geographic areas where not all of the channels will be used for existing DTT. We have concentrated our response on those questions raised by Ofcom which are most pertinent to Scottish Screen's remit.

Our response reflects two overriding concerns:

1. The adequacy of the DDR process and timetable for Scotland; and
2. The overwhelming subsidiarity of the social dimensions of the DDR to a commercially oriented market-led approach, incorporating the introduction of spectrum trading.

DDR Process and Timetable for Scotland

The understandable technical complexity of the DDR (for example, those aspects concerning auction design and spectrum management) may well be obscuring the immensely important strategic issues for the future of Scotland's screen industries and culture. We are far from convinced that these issues have been adequately understood or explored with all relevant stakeholders in Scotland, particularly in the context of an increasingly devolved Nation. Therefore we have continuing concerns over the proposed timetable. For example, as we stated in our response to Ofcom's Second Public Service Broadcasting Review - Phase One, earlier in 2008¹:

"A further, major timetable concern is the apparent lack of synchronisation of the PSB timetable with the timetable for DSO and its associated spectrum auctions. The significance and longevity of these spectrum decisions does not yet appear to be on the radar in Scotland. Are Ofcom content that their timetable allows sufficient time for potential players to develop consortia, business plans, finances, etc., to ensure spectrum access?"

¹ Scottish Screen, *Response to Ofcom's Second Public Service Broadcasting Review - Phase One: The Digital Opportunity*, 2008, p.9, on the Ofcom website at http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/ss.pdf.

Subsidiarity of the social dimensions of the DDR

We are still not convinced by Ofcom's adherence to an extreme market-based approach to the DDR, particularly as Ofcom have categorically dismissed the raising of revenue for the Treasury (which could have been justification for such an approach) as a red herring. In our view, Ofcom's favoured approach to the DDR should be seen as primarily based on ideological preference rather than supported by empirical evidence. Scottish Screen does not share Ofcom's confidence in following such an extreme market-based approach in considering the needs of Scotland's screen industries and culture. We continue to hold the views expressed in our earlier response to Ofcom's consultation on the DDR:²

"We do not agree that picking preferred uses will reduce flexibility.³ The reverse is likely to be true: disposing of this unique public asset, mainly on the basis of sale to the highest bidder, will block its development for future provision of services for the public good. This view does not imply that the regulator can foresee the future, but rather the opposite: the accelerating pace of social and technological change and the increasing diversity of spectrum usage make it imperative that a large measure of strategic flexibility is maintained for this exceptionally valuable part of the spectrum. This is not the advocacy of a return to a comprehensive 'command and control' approach to spectrum, the stereotype which Ofcom presents as an alternative to its own favoured approach⁴, but rather a plea for prudence.

We disagree with Ofcom that broader social goals are best achieved by ensuring that, for example, Public Service Broadcasters can acquire spectrum rather than having it allocated to them⁵. This approach would also appear to be at odds with the earlier Government decision to continue with the allocation of spectrum to the existing six multiplexes post Digital Switchover (DSO)."

We are also concerned over the continuing lack of 'use it or lose it' measures or roll out obligations as disincentives to purely speculative acquisition of spectrum.⁶

Our concerns over the DDR process and timetable for Scotland, and the subsidiarity of its social dimensions, have not been allayed by this latest consultation document.

² Scottish Screen, *Response to Ofcom's Consultation on the Digital Dividend Review*, 2006, p.2, on the Ofcom website at <http://www.ofcom.org.uk/consult/condocs/ddr/responses/st/ScottishScreen.pdf>.

³ Ofcom, *Digital Dividend Review*, p.4, Ofcom, 19 December 2006.

⁴ Ofcom, *Digital Dividend Review*, p. 5, Ofcom, 19 December 2006.

⁵ Ofcom, *Digital Dividend Review*, page 5, Ofcom, 19 December 2006.

⁶ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.8, Table 1.1, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

Question 1. The executive summary sets out our proposals for the digital dividend geographic interleaved award. Do you agree with these proposals?

We note that Ofcom have decided to award the geographic interleaved spectrum in lots which would be suitable for local television, but against reserving spectrum exclusively for local television because this might displace other high value uses for spectrum and would reduce incentives for efficient spectrum use, among other factors.⁷ We find this an unsatisfactory half-way house. We would prefer to see a more holistic, managed approach - at least in Scotland - one which identifies the optimal role (if any) for local television within the Scottish broadcasting ecology (taking account of plans for dedicated Scottish and Gaelic channels, among other factors) and makes appropriate provision for its delivery.

We also note that Ofcom plans to match the sale of 'medium' and 'small' lots to match the DSO timetable, with 'large' lots (in areas most suitable for aggregation) to be awarded after completion of the cleared spectrum awards, potentially commencing in late 2009.⁸ We further note that the spectrum rights conferred by the wireless telegraphy licences following the awards will be fully tradable, with an indefinite term with an initial period ending in 2026, during which time Ofcom's powers to revoke will be limited.⁹ In our view, the longevity of these arrangements emphasises the need for the DDR to be able to reflect the distinctive needs of Scotland, for example any measures arising from the recommendations of the Scottish Broadcasting Commission (SBC), whose final report is expected soon.

We note that, although Ofcom has concluded that one general intervention may be appropriate, namely an information provision that may help to facilitate an efficient secondary market, otherwise there are no other specific issues identified that require intervention or remedy (such as 'use it or lose it' conditions or roll-out obligations) in respect of the geographic interleaved spectrum.¹⁰ We do not share Ofcom's view on this (see our response to Question 21 below).

We note that Ofcom's objective in awarding the digital dividend is to maximise the total value to society that using this spectrum is likely to generate over time and that it is categorically not Ofcom's objective to manage the spectrum so as to raise revenue for the Exchequer, nor is this a consideration that Ofcom has taken into account.¹¹ We are not convinced that the adoption of an extreme market-based approach will maximise the total value to society.

Although Ofcom's view is that DTT is the most likely usage for the geographic interleaved spectrum¹², given the huge explicit and implicit public investment in DTT, we would argue

⁷ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.1, par. 1.1, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

⁸ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, pp.2-3, par. 1.11, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

⁹ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.3, par. 1.15, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹⁰ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.3, par. 1.16, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹¹ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.11, par. 2.13, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹² Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.28, par. 5.1, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

that Ofcom should ensure that this public investment is explicitly recognised in its methodology and that this part of the spectrum should be reserved for DTT usage.

Question 2. Do you have any comments on our assessment of the most likely uses of the geographic interleaved lots? Are there any potential uses which should be considered that we have not mentioned?

We note with interest Ofcom's observation that the geographic interleaved spectrum could be used by multiplex operators interested in aggregating the lots in order to form a sub-UK wide multiplex or a multiplex based around a single UK nation (Northern Ireland, Wales or Scotland) or a wider English region.¹³ This option is of particular relevance to Scotland, especially against the background of the SBC's imminent recommendations. It is important that there is sufficient opportunity for informed consultation and debate on this within Scotland.

We note Ofcom's views on the need to look for direct funding if there is a broader social case for supporting local television:

"In the DDR statement we said that reserving spectrum would do little to improve the commercial business case for local TV given the high costs involved in producing content that viewers want to watch and the challenging business model of local TV in the UK. We concluded that in instances where there was broader social value for local TV the challenging commercial business case should be addressed by direct funding rather than by specifically reserving spectrum."¹⁴

While Ofcom may well be correct in its assessment of the feasibility of the business model, this 'hands off' approach to addressing social value does appear to be at odds with the treatment of incumbent broadcasters, for example the award of gifted multiplex capacity and subsidised spectrum pricing for current PSBs.

We remain concerned over process and timetable. It seems to us that considerable time and knowledge will be needed by potential DTT bidders, for instance allowing for the conclusion of possible negotiation with existing or new multiplex operators or band managers.¹⁵ Further, can 'social value' applicants realistically compete if there is interest from powerful commercial bidders, such as mobile telephony companies providing mobile broadband services, should Ofcom's current investigations conclude that such usage is feasible¹⁶?

Question 3. Are there any other types of DTT transmission that should be protected from potential cognitive devices or other factors that we should take into account?

N/A.

¹³ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.21, par. 4.5, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹⁴ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.22, par. 4.11, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹⁵ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.32, par. 5.12, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

¹⁶ Ofcom, *Digital Dividend Review: Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.23, par. 4.19, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

Question 4. Are there any potential future PMSE applications, other than currently available wireless microphones, in-ear monitors and talkback systems, that you consider should be protected from potential cognitive devices?

N/A.

Question 5. Is there sufficient evidence to require protection for other services such as mobile television, bearing in mind the potentially negative implications of such protection for deployment of cognitive devices?

N/A.

Question 6. What levels of coverage and aggregation are of interest to you?

We note Ofcom's observation that "potential Scotland coverage is higher if the interleaved spectrum can be optimised than through straightforward aggregation of Scottish lots."¹⁷ and the statement that "we [Ofcom] are discussing with the operators of the existing DTT multiplexes the feasibility consequences of making any technical adjustments to the DSO plan. In addition, changes to the DSO plan may also need to be agreed internationally. Further consideration is required on the trade off between the adjustments to the DSO plan and the potential introduction of new services."¹⁸

Scottish Screen wishes to see that the potential coverage offered in Scotland by aggregation is optimised and awaits the results of Ofcom's further work on this with interest .

Question 7. 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?

While welcoming Ofcom's recognition that everybody who currently receives analogue PSB services should be able to receive the same PSB channels on DTT, we remain concerned over the impact on commercial DTT coverage in Scotland of changes arising from the DDR:

"The Government wants everybody who currently received the analogue PSB services to be able to receive the PSB channels also on DTT. Ofcom has therefore placed an obligation on the operators of the PSB DTT to match the coverage of the existing analogue terrestrial networks (estimated as being 98.5 per cent of UK households). We consider that it is important that this obligation can be achieved whatever the balance struck between existing and new DTT services. There is no equivalent coverage obligation for commercial DTT multiplexes (at DSO they are expected to be available to around 90 per cent of UK households) but we are equally mindful of the impact that any loss of the planned coverage of these services could have on viewers. We have therefore considered what is the appropriate level of protection that should be provided to existing DTT services in developing our proposals."¹⁹

¹⁷ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.34, par. 5.18, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf> .

¹⁸ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.34, par. 5.18, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf> .

¹⁹ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.36, par. 5.28, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf> .

Question 8. Do you agree with 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?

N/A.

Question 9. Do you agree with the proposal to hold the combined award for large lots of geographic interleaved spectrum shortly after the cleared award in 2009? What should the time interval be?

As noted above, the timetable for Scotland needs to allow for those issues which are specific to and/or distinctive for Scotland, such as the need for plurality of PSB provision *within Scotland* or issues potentially arising from the recommendations of the SBC

Question 10. Do you agree with our approach to expressions of interest in order to finalise the spectrum lots appropriate to allocate by auction?

N/A.

Question 11. Do you agree that we should run single unit ascending bid auctions for the award of each of the spectrum lots for Caldbeck, Winter Hill and Wenvoe?

N/A.

Question 12. Do you have comments on whether the initial auctions of spectrum lots for Caldbeck, Winter Hill and Wenvoe should be run in sequence or in parallel?

N/A.

Question 13. If the initial auctions are run in sequence do you have a preference for the order in which they run?

N/A.

Question 14. Do you consider that a combinatorial clock auction would be more suitable than a simultaneous multiple round auction for the combined award of large lots suitable for aggregation?

N/A.

Question 15. Do you agree with the proposal that the phased award of medium/small spectrum lots at locations linked to the DSO timetable should be by single unit ascending bid auctions? If not, which would be your preferred auction format and timing?

N/A.

Question 16. Do you agree with the proposals for the main rules that we are minded to adopt for each of the three single unit ascending bid auctions?

N/A.

Question 17. Do you have any comments on the technical licence conditions we are

proposing to include in the licences?

N/A.

Question 18. Do you agree that the licences for the geographic interleaved spectrum should not allow the co-ordination threshold to be exceeded?

N/A.

Question 19. 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 regime 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?

N/A.

Question 20. Do you agree that we should facilitate interoperability between existing DTT multiplex operators and new operators using cleared spectrum?

N/A.

Question 21. We welcome views on the merits of the proposed approach to information provision; in particular concerning the type of information that may be helpful and any impacts that publication of information might have both on licence holders and the wider spectrum market.

Ofcom's consultation document explains its aversion to the imposition of 'use it or lose it' conditions and roll out obligations:

"For reasons explained...we do not propose to impose either of those obligations ['use it or lose it' conditions and roll out obligations] in this award. This is consistent with our general policy statements, which explain that such conditions are unlikely to be justified as a means to promote optimal use of the spectrum, which would instead be better achieved through other market-based mechanisms such as a competitive award process, spectrum trading, liberalisation and spectrum pricing."²⁰

Ofcom's preference is rather to promote dissemination of information to encourage a market-based approach to help ensure optimal use of the spectrum:

"In line with our duty to manage the spectrum efficiently, we propose to include a standard condition in the licences for the geographic interleaved spectrum to require licensees to provide us on request with general information regarding their equipment and use of frequencies, or the roll-out of their network. From time to time, we may publish aggregated information received on the number of base stations and frequency use in area across the UK, in order to help secure optimal use of the spectrum and facilitate trading, by helping interested parties who do not have access to this spectrum to identify areas where they may provide additional services by trading with licensees in that band."²¹

²⁰ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.87, par. 9.61, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

²¹ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.87, par. 9.62, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

While we welcome the collection and sharing of relevant information, we find it difficult to share Ofcom's confidence in the efficacy of this approach, in the absence of specific sanctions against users keeping spectrum idle for speculative hoarding or other reasons.

Ofcom also note that roll out obligations "...generally involve a licence condition which places an obligation on a licensee to rollout a network and services to cover a defined proportion of the UK population.....to ensure that service coverage is widespread across the UK, even in areas which may not be commercially attractive, in order to ensure both that spectrum is utilised and that citizens in these areas receive benefits."²²

Ofcom's preference is to rely on a market-based approach instead of such obligations:

"....a more efficient approach is typically to fund provision of the desired additional services directly, with funding coming from bodies tasked with delivering or procuring relevant public benefits. Such an approach would ensure that the socially desirable level of rollout is achieved while allowing flexibility in how services are provided in different areas."²³

Again, we do not share Ofcom's confidence in the efficacy of this market-based approach, which appears likely to place a grossly disproportionate onus on those 'bodies tasked with delivering or procuring relevant public benefits' to monitor developments and form partnerships where appropriate, let alone raise direct funding. Ofcom's favoured approach will effectively marginalise the very concept of a "socially desirable level of rollout" and encourage the development of a digital divide.

Question 22. Do you agree with our approach to assessing whether the awards of geographic interleaved spectrum fully promote competition and efficiency?

N/A.

Question 23. 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 provide supporting evidence.

N/A.

Question 24. Do you agree with our proposals to include an information provision licence condition to help facilitate efficient secondary trading?

N/A.

Question 25. Do you agree with our view that we should not apply any general remedies other than for information provision in the geographic interleaved award?

N/A.

²² Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.149, par. 12.7, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

²³ Ofcom, Digital Dividend Review: *Digital Dividend Review: geographic interleaved awards - 470 - 550 MHz and 630 - 790 MHz*, 12 June 2008, p.150, par. 12.9, on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>.

Question 26. 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?

N/A.

MK/KH