

Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's Consultation on the Digital Dividend Review Detailed Award Design (550-630 MHz and 790-854 MHz)

Five is grateful of the opportunity to respond to this consultation. There are only some aspects of the consultation of direct relevance to Five, and we address these in answer to the relevant consultation questions below.

Question 5: Do you agree that we should proceed with our current timetable, with a view to holding the cleared award in summer 2009?

We are happy for Ofcom to proceed with its current timetable. However, we believe it is essential for all bilateral negotiations with other countries to be concluded before the auction takes place, in case there are ramifications for digital switchover that may necessitate short term use of Channel 36 as a parking channel. We also believe it would be sensible for Ofcom's parallel investigations into the pay TV market and into Sky's proposals to put pay channels on DTT to be concluded before the auction takes place (we address this issue further in response to Question 44).

Question 7: What are your views on deferring the start date for rights to use cleared spectrum in London to help meet the need for wireless microphones and other audio links for the London 2012 Olympic Games and Paralympic Games?

Five believes the start date from which the cleared spectrum can be used in London should be deferred until after the Games. The Games are a unique opportunity for London and the UK as a whole, and it is important they are as fully resourced as possible. We would be concerned if the cleared spectrum was not available for PMSE use, not least as this could put pressure on other spectrum bands used for PMSE, which might impact negatively on all broadcasters.

Question 8: Do you agree with the use of SURs as the approach for defining consistent TLCs for this award?

Question 9: Do you have any comments on the SUR parameters listed in Tables 5.1 to 5.5 and the assumptions used to derive them?

In the circumstances of the DDR auction, Five believes that Ofcom's proposals for SURs represent the best means of protecting other services from interference. We are pleased at Ofcom's recognition of the need to safeguard Five's analogue transmissions.

Question 10: Do you agree with our proposals for managing interference between new services in the DDR cleared spectrum?

We support Ofcom's general approach. In particular, we support the proposal for a 5 MHz guard band between neighbouring TDD licensees.

Question 11: Do you agree that the most efficient and effective means of preventing interference to the existing DTT services is by the addition of a protection clause to licences in the cleared spectrum? If not, what alternative approach would you suggest?

Five supports the proposal to include protection clauses in each of the licences for the cleared spectrum. However, we remain concerned about how effective the clauses will prove to be. We would expect them to include clear and specific obligations for an appropriate mechanism, paid for by the new licensee, to monitor and police the arrangements and provide information about the impact of any interference. We would also expect there to be agreement on rectifying problems and providing compensation.

Our particular concern is over the extent to which a licensee occupying channel 36 will impact on Five's analogue transmissions. But we are also concerned to ensure that all DTT service - low power pre-switchover services and high power post switchover services – will be protected fully by these arrangements.

Question 12: Do you agree that the best way to finalise the protection clause approach and to address the practical implementation issues is through direct engagement with interested stakeholders? With which stakeholders should we engage?

Five agrees with Ofcom's proposal for new licensees to be responsible for dealing with any interference into defined DTT reception – and by implication into analogue reception areas until after the analogue signal is switched off. However, we believe this obligation should include a requirement for monitoring of interference levels, paid for by the license but independent of it and capable of audit by the broadcaster whose signal is at potential risk of interference, and for appropriate compensation to be paid and remedial action to be taken by the licensee if interference occurs.

We agree that stakeholders with a direct interest should be involved in helping to draw up the details of such a regime and to finalise licence obligations. In the case of Channel 36, we would expect Ofcom to engage with both Five and the winner of the auction for that channel in order to discuss potential interference to Five's analogue signal in channels 35 and 37.

Question 13: What do you believe would be the implications of protecting indoor/set top antennas? Should a distinction be drawn between set-top antennas and larger antennas designed for external reception of TV signals that are loft-mounted?

We are concerned about homes with such aerials losing reception owing to interference and look forward to the results of Ofcom's further work.

Question 14: Do you agree with our proposals for managing interference between new and existing users?

Five accepts the broad approach outlined for managing interference. However, we believe such protection should be extended to all households that receive a Five signal in practice and not limited to those households deemed to be covered (i.e. the core coverage area).

Our analysis shows that, while 15 million homes are in areas directly served by a Five analogue signal on channels 35 or 37, a further 3.9 million homes are outside these served coverage areas but still receive a Five signal. Clearly, the number of people watching Five by analogue is diminishing year by year as a result of the move to digital reception, and the switchover process will reduce these numbers further. But in 2011 and 2012 significant numbers of people will still be watching Five on analogue in pre-switchover regions and a substantial proportion of these will be outside the served areas. If some of these people experience interference to their reception as a result of a new service, they are likely to blame Five and stop watching our service. This could impact on our revenues – but also cause reputational damage to Five and to the switchover process as a whole.

Therefore, we urge Ofcom to extend the protection proposed for Five's "served" areas to "marginally served" areas. Viewers are unlikely to take kindly to being told that they must suffer interference to their favourite Five programmes because they are not in a core reception area. As far as they are concerned, they are watching television – it will be no consolation to be told they are only watching sub-optimal television.

Question 15: Do you agree with the proposed propagation models and databases to be used for compliance assessment?

We agree with what is proposed.

Question 17: Do you agree that where the cleared 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?

Five believes that any new DTT multiplexes established as a result of this auction should come under broadly the same regulatory regime as the existing commercial DTT multiplexes. Therefore, we believe that broadly the same ownership restrictions should apply to new DTT muxes, and agree with Ofcom's proposal.

Question 18: Do you agree that we should facilitate interoperability between existing DTT multiplex operators and new operators using cleared spectrum?

Five is in favour of mandating interoperability. If a seventh (and possible eighth) DTT multiplex is established, it will be in effect an extension of the existing DTT platform. We believe that it is in the interests of the new multiplex operator(s), existing multiplex operators, and above all viewers that the expanded platform works as smoothly as possible. The danger in the "facilitation" option is that it leaves it up to the new operator to pick and choose what aspects of the technical specifications it would like to follow, with no reference to the impact it may have on the existing multiplexes.

Question 38: Do you agree with our view that we should introduce a general safeguard cap aimed at promoting diversity of spectrum holdings? Do you have views concerning the level of such a cap?

Five favours the introduction of a spectrum cap. If there is to be an expansion of the DTT platform, we believe the public interest would be best served if no bidder was able to acquire more spectrum than is needed to provide one DTT multiplex. A spectrum cap of 50MHz would ensure no bidder could acquire sufficient spectrum to provide two multiplexes.

Question 41: Do you agree with our identification of the three areas requiring further attention?

Five has concerns about the positions of both Sky and NGW/Arqiva, and therefore agrees these require further attention.

Question 44: Do you agree with our assessment that issues in the pay TV market are not at this stage primarily an issue for the cleared award?

Five believes the issues which Ofcom is considering in these two processes must be resolved before the spectrum auction can take place. If there is no such resolution before the auction is held, Sky could be put in the position of bidding for spectrum without knowing to what use it will be able to put it; or of Sky deciding not to bid because it does not know what restrictions may be placed upon it.

Other broadcasters and potential bidders will also want certainty about these issues, given Sky's potential importance as a participant in the auction.

Question 45: Do you agree with our initial assessment that we should not intervene further in the cleared award to remedy any potential impact on competition resulting from the holding of cleared spectrum by NGW/Arqiva?

Five believes the acquisition of extra multiplex capacity by NGW/Arqiva would lead to competition concerns. If NGW/Arqiva acquired sufficient capacity to provide a seventh multiplex, it would control three of the four commercial multiplexes. The multiplex outside its control (SDN) is constrained by the obligation to provide most of Five's and S4C's gifted capacity. So NGW/Arqiva would have a dominant position in the provision of commercial DTT capacity.

This does not lead us to recommend the placing of constraints on NGW/Arqiva's ability to bid in the spectrum auction. But Ofcom should indicate that it will review the provision of capacity on the platform in the event of NGW/Arqiva acquiring such a dominant position.

Channel 5 Broadcasting Ltd

August 2008