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**Scottish Government Response to Ofcom Consultation:**

**Digital Dividend Review: 550-630 MHz and 790-854 MHz – Consultation on Detailed Award Design**

The Scottish Government welcomes the opportunity to respond on Ofcom's consultation on the detailed award design for the cleared spectrum (550-630 MHz and 790-854 MHz) freed following digital switchover.

In general, we are broadly supportive of the approach proposed by Ofcom as set out in the consultation document. Whilst we do not have detailed views on the minutiae of auction design and packaging, we are generally supportive of measures designed to encourage the participation of small operators in the auction process, and similarly, measures designed to prevent anti-competitive behaviour in the process.

In addition, in consideration of the award of the cleared spectrum, we would urge Ofcom to consider the findings of the Scottish Broadcasting Commission's final report, due to be published early in September, during the ongoing work on the Digital Dividend Review.

In respect of the full detailed consultation questions as set out in the consultation document, we have not provided a response to all, however we wish to offer some high level observations on a number of aspects of the consultation which are important to us, as follows 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 agree that Ofcom should proceed with its proposed timetable and also agree with Ofcom's view that the market should be given the maximum opportunity to develop services using the freed spectrum thereby offering potential for minimum between the spectrum being cleared and new services being offered to end-users.

*Question 26: Do you agree with our proposal to proceed on the basis of UK-wide lots?*

Whilst we understand the reasoning behind Ofcom's proposal, we wish to reiterate our point raised in our response to the first DDR consultation (submitted in March 2007) regarding geographic allocation of spectrum. In the past, Scotland has been awarded but not used by its license holder, thus depriving potential wider benefits to the people of Scotland. We had therefore asked that Ofcom consider allocating some spectrum on a geographic basis. With Ofcom's proposals to award all of the cleared spectrum on a UK-wide basis, we are concerned that Scotland could be similarly disadvantaged if such future occurrence is more widespread. On the basis that Ofcom is nevertheless proceeding with awarding the spectrum on a UK-wide basis, we ask that it considers implementing remedies in the future, should this type of situation arise (see question 40).

*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?*

In our response to the first DDR consultation, we had raised the concern over the potential for large operators to hoard spectrum and therefore we are pleased to note that the regulator has also identified this as a potential issue and proposed a method to limit this. We are therefore in agreement that a safeguard cap should be implemented.

*Question 39: Do you agree with our proposals to include an information provision licence condition to help facilitate efficient secondary trading?*

We agree with these proposals and are in support of secondary trading appropriate as it has the potential to improve the efficient use of spectrum in the market. Moreover, we would like to see the regulator implement a licence condition which actively encourages trading of unused spectrum, with similar conditions imposed on any subsequent buyer.

*Question 40: Do you agree with our view that we should not apply any other general remedies in the cleared award?*

In line with our response to the first DDR consultation, we disagree and would be supportive of the regulator implementing a "use it or lose it" clause, either for total non-use of the spectrum, or for non-use in geographic areas. Furthermore, we consider that there could be wider benefits to society if Ofcom were to implement rollout obligations on licensees, as it has done in the past, e.g. the 80% target for coverage of the population on award of the 3G licenses. We believe that such obligations may assist coverage for services in rural areas, the areas which are typically under-served (e.g. mobile coverage, broadband).

*Question 42: Do you agree with our assessment that the limitations on the amount of cleared spectrum available for mobile broadband applications, and the particular advantages of sub 1GHz spectrum, could result in an outcome where there are limits on the level of competition possible in the provision of these services?*

*Question 43: Do you think that a soft spectrum cap on either (a) the cleared spectrum suitable for mobile broadband applications alone, or (b) the holding of any sub 1GHz spectrum suitable for mobile broadband applications, which would trigger action if a significant competition concern emerges in relation to the market structure in the future mobile broadband*

We agree with Ofcom's assessment outlined in Question 42 and understand the regulator's concerns over the potential for future NGM market competition to be limited. We agree with recommendation that implementation of a soft spectrum cap could be appropriate at this stage, but also share Ofcom's view of the risks associated with setting such a cap, as outlined in paragraph 9.89. We would expect that determination of what is an appropriate level for such a cap to be based on hard and up-to-date evidence on the likely quantity of spectrum required for efficient and proper rollout of an NGM network.

I hope this information is useful.

Yours sincerely

Harry Emambocus  
**Telecoms Policy Team**