

Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's consultation on the future pricing of spectrum used for terrestrial broadcasting

INTRODUCTION

Five welcomes this opportunity to respond to Ofcom's consultation on spectrum pricing for terrestrial broadcasting. Our general approach was set out in our response¹ to Ofcom's previous consultation on spectrum pricing, and this paper builds on the principles and arguments we advanced then.

Five recognises that there is a strong rationale for using pricing to encourage more efficient use of spectrum in general. But in deciding whether to introduce spectrum pricing to terrestrial broadcasting in particular, we believe that considerations about how broadcasting (and in particular public service broadcasting) can be best made available to the citizens of this country need to be taken fully into account.

Nevertheless, Five welcomes the proposal to exclude analogue broadcasting from spectrum pricing, a course we advocated in our previous response, and to postpone the introduction of spectrum pricing to digital broadcasting until 2014.

We have concerns about the implications of applying spectrum pricing immediately to any spectrum that might be reserved for broadcasting in the future, as we believe a decision on whether or not to apply spectrum pricing (and at what level) should be taken as part of any decision to reserve such spectrum.

APPLYING SPECTRUM PRICING TO THE DTT PLATFORM

Five recognises that spectrum is a limited resource and that Ofcom has introduced a number of economic mechanisms in furtherance of its duty to secure the optimal use of the spectrum. But the heterogeneity of spectrum use has meant it is not been possible to apply a single set of economic levers.

¹ Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's Consultation on Spectrum Pricing, December 2004

The debate about introducing spectrum pricing for broadcasting has been lengthy precisely because of the difficulties inherent in arriving at a way of applying pricing to broadcast users of spectrum that is effective and commands broad acceptance. Introducing spectrum pricing for public service channels is particularly problematic, as they have been allocated just enough spectrum to meet their licence requirements, which cover both geographic coverage and picture quality (this will be as true in the all-digital world as in the analogue world). Ofcom acknowledges that these regulatory constraints “limit the freedom [of these channels] to change their spectrum use in the short term”² – and it is not clear how changes could be made in the much longer term that do not involve significant changes in public policy and not just changes in the commercially motivated behaviour of broadcasters.

This is because the digital terrestrial platform is not the creation only of broadcasters, but has been mandated by Parliament and government through a series of interventions that started with the 1996 Broadcasting Act. In the process decisions have been taken about the amount of spectrum that the platform should take up, which have been effectively imposed on broadcasters. For example, in 2003 the government decided in favour of a spectrum planning option that involved converting existing analogue frequencies and against an alternative plan that would have involved planning a digital network from scratch, even though the first option took up six more frequency channels than the second one³; so broadcasters were forced to use more spectrum than they might otherwise have done because of a decision of government.

It must also be remembered that our viewers are not our customers. Other users of spectrum have supplier/customer or employer/employee relationships: a mobile phone company can decide to upgrade its customers’ handsets, the emergency services can issue its frontline staff with new communications equipment. But free-to-air broadcasters do not have this one-to-one relationship; viewers expect to receive broadcast signals as long as their television works, at which point they will buy a new one and expect the same services. It is largely because viewers expect to continue receiving the main channels free-to-air on their existing reception equipment that switchover is such a politically sensitive project.

² Consultation document, paragraph 3.23

³ Statement on the principles for planning the use of the UHF spectrum once analogue terrestrial transmissions end, DTI/DCMS, 30 January 2003

It is inconceivable that a future change of spectrum use on the scale of switchover could take place without not just the close involvement of Ofcom but positive decisions by government. So to effect a second switchover by moving from MPEG2 to MPEG4, or to abandon DTT entirely in favour of satellite, cable and broadband platforms, are decisions that could not be taken by broadcasters alone but would need to be decided by ministers. It is therefore disingenuous of Ofcom to imply that forcing broadcasters to pay for their spectrum use would have an impact on decisions that would actually need to be taken by government.

So Five believes that the arguments for applying spectrum pricing to DTT broadcasters are illusory, because of the nature of the DTT platform and the commitments already made to it by government.

SPECTRUM PRICING AND PUBLIC SERVICE BROADCASTING

We recall that in setting out its policy on spectrum pricing the government stated “The charges levied on broadcasters after switchover will balance the value of the spectrum used with the ability of broadcasters to meet their public service obligations”⁴. In other words, Ofcom should take into account not only the opportunity cost of the spectrum but also the costs of public service broadcasting when setting spectrum pricing.

Although in the present document Ofcom says it has considered broadcast policy and spectrum management issues “in the round”⁵, it remains the case that it is proposing to make a decision about spectrum pricing ahead of the reviews⁶ of broadcasting policy that it will be conducting in the next few years, in particular the next Review of Public Service Television Broadcasting.

Five questions why a decision needs to be taken in principle this year to introduce spectrum pricing to terrestrial broadcasting, rather than the issue be left to be resolved after the next PSB review has taken place - so that issues around the extent to which broadcasters can manage their public service obligations can be factored into decisions taken at that point about spectrum pricing. Ofcom’s proposal to postpone any spectrum pricing for broadcasting until 2014 makes this not only possible, but desirable. And as Ofcom acknowledges, there will be greater clarity about the likely level of spectrum pricing at that time, which would also better inform policy decisions.

⁴ Government Response to the Independent Review of Radio Spectrum Management, October 2002, paragraph 8.27

⁵ Consultation document, paragraph 3.3

⁶ As detailed in paragraph 3.43 of the consultation document

Such an approach would also make sense in the context of Ofcom's own suggestion in its phase two PSB Review report that spectrum pricing waivers could form part of a new compact to underwrite commercial public service broadcasting⁷.

The future of public service broadcasting after digital switchover will be considered in the next PSB Review, which Ofcom has an obligation to conduct "with a view to maintaining and strengthening the quality of public service television broadcasting"⁸. Spectrum price waivers could form part of a basket of incentives⁹ to maintain a certain level of commercial public service broadcasting; it seems perverse to eliminate that option now, ahead of the PSB Review taking place.

The present Ofcom paper spends some time pursuing the theoretical and somewhat academic argument that "securing socially desirable outcomes is...better achieved through interventions targeted directly at the achievement of those outcomes". But the reality is that to make overt payments to Five (or ITV or Channel 4) in exchange for public service programming would be a crude intervention that involved paying commercially funded broadcasters to make (and find time for) programmes they would not otherwise make. It would also require primary legislation, a new funding mechanism and raise possibly insuperable issues of state aid. On the other hand, a basket of incentives along the lines of those identified in the PSB paper would provide a basis for broadcasters to deliver PSB outcomes that went with the grain of their commercial imperatives.

Five believes there is an important debate to be had about the contribution that we and other commercially funded broadcasters can make to public service broadcasting after switchover. We would be dismayed if that debate was foreshortened by an unnecessary rush to introduce spectrum pricing now.

THE TIMING OF DECISIONS

Five agrees with Ofcom that there is no point introducing spectrum pricing for analogue broadcasting. As we argued in our response to Ofcom's previous consultation, the terrestrial broadcasters' digital licences provide sufficient leverage to force us to cease broadcasting in analogue at the point of switchover – and spectrum pricing would not provide any effective additional incentive.

⁷ Ofcom review of public service television broadcasting, phase 2 – meeting the digital challenge, paragraph 3.55 and Box 3.2

⁸ Communications Act 2003 s264

⁹ Other elements of this package identified by Ofcom in the PSB review include appropriate prominence on EPGs; must carry status on cable networks; and gifted DTT capacity.

As far as digital broadcasting is concerned, we think it is sensible for Ofcom to rule out the first two options (immediate introduction and introduction in 2010 for three of the six multiplexes) for the reasons it puts forward: government gave clear commitments that there would be no pricing for digital broadcasting until at least 2010; and it is incongruous to introduce spectrum pricing for only half the DTT platform. But having taken those decisions, we do not believe it is necessary to commit to introducing spectrum pricing in 2014. Instead Ofcom could decide now that it will not introduce pricing any earlier than 2014, but leave the decision on whether and when to do so until the PSB Review and the other broadcasting reviews to which Ofcom is committed.

We therefore favour Ofcom's fifth option, postponing the introduction of spectrum pricing, so that it can be considered alongside other relevant issues in the next PSB Review.

We would like to add that we see no merit in taking a decision in 2006/7 that will not be implemented for seven years, until 2014. Such a decision could just as easily be taken in five or six years' time, after the next PSB Review. The argument that deciding to introduce spectrum pricing now provides regulatory certainty in the future would carry more weight if there was any clarity about the likely level of such pricing. As the table below illustrates, the last few years have seen wildly fluctuating estimates of likely spectrum prices. And Ofcom makes clear there continues to be much uncertainty about how much broadcasters might actually have to pay in 2014.

Year	Publication	Estimated spectrum price for nationwide analogue channel	Estimated spectrum price for nationwide digital multiplex
2002	Government response to Cave report	£10-15m pa	n/a
2004	Ofcom consultation on spectrum pricing	£70-75m pa	£57m pa
2006	Ofcom consultation on spectrum pricing for terrestrial broadcasting	n/a	£16-24m pa

NEW BROADCASTING SERVICES

Five believes that the question of whether to apply spectrum pricing for any new terrestrial broadcast use should be considered on its merits as part of Ofcom's Digital Dividend Review, and not prejudged before then.

Ofcom has made clear its preference for spectrum auctions as the mechanism for allocating any spectrum that becomes available, and therefore that a spectrum auction is the most likely means of allocating the spectrum that will become available as the result of the digital dividend.

But in contemplating the possibility that some of the release spectrum might be allocated to broadcast use by means other than an auction¹⁰, Ofcom is clearly entertaining the possibility that public policy considerations might override a market-based approach. The most likely reason for this would be that public policy goals would not be realised through a market-based auction, because the potential broadcast users of the spectrum would be unlikely to be able to outbid rivals committed to another use.

However, it would be somewhat perverse if the broadcast users were then charged a spectrum price set “by reference to the full opportunity cost of the spectrum acquired”. Such an opportunity cost would be likely to be the sum that an alternative bidder would have been prepared to pay in an auction. Therefore the broadcast users would end up paying broadly the same amount for the spectrum as if they had participated in an open auction.

The most likely broadcast use for the spectrum to be made available by the digital dividend is High Definition Television (HDTV). Ofcom has already received a report¹¹ from Indepen commissioned jointly by the BBC, ITV, Channel 4 and Five exploring the issues around using some of the release spectrum for HDTV.

Five believes that if it was decided that some of the release spectrum should be made available to develop a HDTV service on DTT, then Ofcom should consider facilitating the development of such a service by applying no or low spectrum charges in its early years. Rolling out a HD transmission network will involve large upfront costs and very limited revenues, especially if the services offered are free-to-air simulcasts of the existing major channels. Additional costs in the form of heavy spectrum charges will only make delivering the proposition more difficult.

We believe a parallel can be drawn with the launch of digital terrestrial television. The 1996 Broadcasting Act made DTT multiplex licences available for no more than an administrative charge, on the understanding that the holders of those licences would invest in rolling out digital transmission networks and that the existing broadcasters would bear the costs of making both their existing analogue channels and new services available on the new digital platform. This was judged necessary to kickstart DTT, and a similar approach may be needed to get HDTV on DTT off the ground.

¹⁰ Consultation document, paragraph 4.40

¹¹ Indepen, Using the Digital Dividend Wisely, August 2006

Five believes that such a trade-off ought to be considered as part of the digital dividend review, rather than being pre-empted by decisions taken in response to this consultation.

CONCLUSION

Five is proud of being a public service broadcaster, and wants to retain this status. But the increased competition of an all-digital world could put pressure on our ability to continue delivering public service commitments – and on those of the other commercially funded psbs. We believe the future delivery of public service broadcasting should be considered in the round, and decisions about the role of spectrum pricing need to be taken as part of that overall debate.

Channel 5 Broadcasting Ltd

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