

Ofcom Consultation: Data limits on digital terrestrial television multiplexes  
Consultation on Draft Guidance  
Consultation Publication date: 6 July 2006  
Closing Date for Responses: 14 September 2006

Dear Sirs,

### **Data limits on digital terrestrial television multiplexes**

Thank you very much for consulting on this issue for it is appreciated. I shall respond to the questions in the order that they were given.

Question 1: Do you agree that it is appropriate for Ofcom to issue guidance about the Data Limit on DTT multiplexes?

Normally, I would have answered 'Yes' to this question but because of the particular circumstances surrounding this consultation the answer has to be 'No'. The previous Pay Television on Digital Terrestrial Multiplexes consultation indicated that the vast majority of respondents, including Channel 4 and Information TV, were against Ofcom's proposal but Ofcom went ahead and deregulated the system to allow pay television on any digital terrestrial multiplex that just so happened to favour the private pay television service Top Up TV. This nature and times of this consultation cannot be a coincidence with the imminent launch of Top Up TV's Anytime service that requires a lot overnight download time and channel space.

Ofcom appears to have abandoned any sense of impartiality and responsibility and this consultation therefore comes across as just another blatant attempt by Ofcom to gerrymander the digital terrestrial platform to assist its favoured client, Top Up TV. I have no doubt that this is also going to be another sham consultation so that, irrespective of quality of the arguments and the weight of representations, Ofcom will go ahead with these proposals.

This is a very dangerous thing to do because Ofcom has already attracted criticism from health and other charities and viewers over issues such as junk food advertising, the unethical behaviour and proliferation of quiz channels, the number of shopping channels, etc. The standard Ofcom response is to do nothing except send out patronising and disdainful responses. My understanding is that the relevant select committees of Parliament including the Committee of Public Accounts and the Culture, Media and Sport Committee are increasingly aware of Ofcom's poor conduct and so any future Ofcom chief executive is highly unlikely to get an easy ride. If Ofcom goes ahead with these proposals, I shall personally make sure that these committees are fully informed of Ofcom's behaviour. With the departure of Stephen Carter, Ofcom now has a great opportunity to become a more responsive and consumer-friendly regulator and I can only hope it takes advantage of this opportunity.

Question 2: Do you agree with Ofcom's proposed guidance on these issues?

Absolutely not. The proposals to discount Service Information and other data and to allow data proportion accounting over a 24 hour period will allow a greater proportion of scarce multiplex bandwidth to be used for data for one particular favoured

commercial organisation. There is no need to alter the data limits. They are there for a reason – to ensure that as much channel space as possible is used for actual live television and public radio services on a platform where broadcasting space is very limited. The existing data limits should be preserved as they are so that capacity can be used for new commercial radio stations, like Planet Rock, Heart FM and Classic FM, for new games services and for innovative new services combining text, audio and still and moving pictures that would benefit all digital terrestrial viewers and listeners. The existing data limits should not be altered to shore up any one particular commercial organisation that only has a 2% and declining digital terrestrial audience share.

If Ofcom wants to act and issue guidance on the digital terrestrial platform and act in the interests of the majority of viewers then it can do a number of positive things:

Ofcom can lift the artificial restriction that prevents the Sky group from offering no more than 3 free-to-air channels.

Ofcom can start to clamp down on the rogue behaviour and limit the number of quiz channels and programming. So far only the Police and the Gambling Commission have taken any interest.

Ofcom can take an in depth look at one particular channel, namely Ftn, as there has been a serious and significant deterioration in programme quality. A great part of the evening schedule has been taken up by the poor quality Quiz Night Live programme that is abysmal even by the low standards of quiz TV. Not only that, it very frequently sets puzzles that no ordinary person could be reasonably expected to get the answer to. The words 'rip off' and 'con trick' come to mind and there is a strong case for Ofcom to act here.

Ofcom could take an interest in, and review, the unduly large numbers of shopping channels that take up valuable space on the digital terrestrial platform.

Question 3: Are there any other issues relating to the data limit on DTT multiplexes which Ofcom should give guidance on?

A most definite No because Ofcom has been acting in a thoroughly unprofessional and partial way to favour the interests of one particular commercial organisation and its judgement cannot be trusted at the present time. Ofcom's economists should realise that market forces are producing a process of consolidation so that the digital terrestrial platform is inexorably moving to a predominantly free-to-air service and cable is inexorably moving to one single large supplier, NTL: Telewest. Rather than engage in a futile attempt to try to promote competition within any one platform, Ofcom's time would be better spent trying to promote competition between the different platforms such as Sky (satellite), NTL: Telewest (cable), Freeview (digital terrestrial) and British Telecom (broadband).

Thank you again for conducting this consultation.