

Offer to bring forward periods for reviews of financial terms for Channel 5 and Public Teletext licences

Consultation document

Issued: **22 July 2004**

Closing date for responses: **19 August 2004**

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Section 1

Summary

1. This consultation seeks views on a proposal to offer the Channel 5 and Public Teletext licensees the option to bring forward the dates of the review periods for the financial terms associated with their licences. Responses are invited by 19 August 2004. Ofcom intends to publish a statement on the results of the consultation and a decision as soon as possible following the closing date.
2. Through the proposal in this document, Ofcom aims to promote a more consistent and predictable regulatory environment.
3. In pursuit of this objective, Ofcom decided, following its 26 January Consultation, to offer Channel 3 licensees the opportunity to align the dates for reviews of financial terms for their licences by offering to curtail the analogue licence periods. If the offer were accepted, all Channel 3 licensees would be able to apply for reviews as early as 31 December 2004. Without this offer, the sixteen Channel 3 licensees would have three different review periods beginning on dates ranging from 31 December 2004 to 31 March 2007.
4. In response to views put forward in its earlier consultation, and in order to promote further consistency across all broadcasting licences, Ofcom now proposes to extend an offer to the Channel 5 and Public Teletext licensees to bring forward the dates of their financial review periods to begin on 31 December 2004 as well. Without this offer, Channel 5 would have a review period beginning on 31 March 2009 and Teletext would have a review period beginning on 31 December 2007.
5. This proposal would allow Ofcom to consistently take account of any issues related to digital switchover, the issuance of digital replacement licences and Ofcom's review of public service broadcasting, in the valuation of licences, for all licensees who accept the offer to bring forward their review periods and apply for a review at the earliest possible date.
6. On 29 June 2004, Ofcom published a consultation document on the methodology for the review of the financial terms for Channel 3 licences. Ofcom intends to publish a statement on the results of the consultation, including a decision on the final methodology for the reviews, in September 2004. It is proposed that the same methodology would be applied for the review of the financial terms for the Channel 5 and Public Teletext Licences.

Section 2

Introduction

7. Section 225 of the Communications Act 2003 (the Act) allows for Channel 3, Channel 5 and Public Teletext licensees to apply for optional reviews of their financial terms for payments to the Treasury, which were set by the Independent Television Commission (ITC) at the time of the most recent renewal of their analogue broadcasting licences (analogue licences). Separately, the Act requires Ofcom to replace the existing analogue licences with new digital licences (digital replacement licences) prior to 29 December 2004. Each licensee's existing financial terms will carry forward to its new digital licence, in accordance with the statute, and will remain in place until the relevant licensee applies for a review of the financial terms. The period during which each licensee is allowed to apply for a review is based on the expiry date of its old analogue licence.
8. Ofcom issued a consultation on 26 January 2004 on the timetable and general approach to the reviews of financial terms for Channel 3 licensees (the "26 January Consultation")¹. In that document, Ofcom proposed to offer Channel 3 licensees whose analogue licences expire after 31 December 2008 the option to align their financial review periods by curtailing their existing analogue licence periods. Following consideration of the responses to the consultation, Ofcom has decided to conduct a second consultation on a proposal to offer the Channel 5 and Public Teletext licensees the option to curtail their existing analogue licence periods in order to bring forward the dates of their financial review periods to coincide with the review periods for Channel 3 licensees.
9. The time period for this consultation is four weeks and the consultation is due to close on 19 August 2004. The shortened consultation timetable is necessary in order for Ofcom to make a decision on this point as soon as possible. Also, Ofcom considers that it addressed the point, indirectly, in the 26 January Consultation.

¹ Available at

http://www.ofcom.org.uk/consultations/past/channel3_licences/channel3_licences_consultation/condoc.pdf?a=87101

Section 3

Consultation proposals

10. In accordance with the Act, each holder of a digital replacement licence is allowed to apply for a review of its financial terms during a period of time beginning four years prior to the expiry date of its old analogue licence.
11. Ofcom proposed, in its 26 January Consultation, and subsequently decided to offer Channel 3 licensees with analogue licence expiry dates in 2010 and 2011 the option to bring forward the expiry dates of their analogue licences to 31 December 2008 to align the dates of licensees' financial review periods. Licensees who accept the offer will be allowed to apply for reviews of their financial terms as early as 31 December 2004.
12. Some respondents to the consultation on the above proposal raised the point that the proposed approach was discriminatory against Channel 5 and Teletext. Also, it was mentioned that Ofcom should aim for a more consistent regulatory environment more generally, rather than just for Channel 3 licensees.
13. Ofcom agrees that there is considerable merit in seeking to value all of the broadcasting licences simultaneously, in order to create a more consistent regulatory environment overall, and therefore proposes to extend the same offer to the Channel 5 and Public Teletext licensees. This proposal would allow Ofcom to consistently take account of any issues related to digital switchover, the issuance of digital replacement licences and Ofcom's review of public service broadcasting, in the valuation of licences, for all licensees who accept the offer to bring forward their review periods and apply for a review at the earliest possible date.
14. Ofcom also considers that it could be unduly discriminatory not to offer the Channel 5 and Teletext licensees the opportunity to seek a review of financial terms at the same time as Channel 3 licensees. This reflects the fact that all these classes of licensee face similar changes in the regulatory and commercial environment associated with digital switch-over, the issuance of digital replacement licences, and the review of public service broadcasting.
15. The current analogue licence expiry dates and the implied earliest possible application dates for reviews for Channel 5 and Teletext are as follows:

Licence	Analogue licence expiry date	Earliest possible application date
Channel 5	31 March 2013	31 March 2009
Public Teletext	31 December 2011	31 December 2007

16. Under this proposal, Ofcom would offer the Channel 5 and Public Teletext licensees the option to bring forward the expiry dates of their analogue licences to 31 December 2008, which would allow them to apply for reviews of their financial terms as early as 31 December 2004.

17. Section 3(4)(a) of the 1990 Broadcasting Act allows for analogue broadcasting licence periods to be varied, as proposed above, with the consent of the relevant licensees. The proposed change would need to be effected by way of a licence variation by consent prior to the issuance of the new digital replacement licences and would not affect the expiry date of these licences (31 December 2014).

Question 1: *Is it appropriate to offer the Channel 5 licensee the option to curtail its current analogue licence period, as described, in order to promote further consistency across all broadcasting licences?*

Question 2: *Is it appropriate to offer the Public Teletext licensee the option to curtail its current analogue licence period, as described, in order to promote further consistency across all broadcasting licences?*

18. A licensee applying for a financial review under Section 225 will have the option to accept or reject the new terms set by Ofcom. However, under Section 228(2)(d) of the Act, Ofcom is required to set an expiry date for the licensee's broadcasting licence in the event that the new financial terms are not accepted. This date must not be earlier than the expiry date of the licensee's old analogue licence and must not be later than the expiry date of the existing digital replacement licence, i.e. presently 31 December 2014.
19. Ofcom would not intend to make any licensee worse off as a result of the licensee accepting an offer to curtail its analogue licence period. For this reason, Ofcom decided, following the public consultation on the timetable for the Channel 3 financial reviews, that, in the event that a licensee, who has consented to such a licence curtailment, applies for a review of its financial terms and rejects the new terms offered, it would be appropriate to set an expiry date for the licence, under Section 228(2)(d), no earlier than the relevant licensee's original analogue licence expiry date. Ofcom proposes to extend the same approach to the Channel 5 and Teletext licensees.
20. On 29 June 2004, Ofcom published a consultation document on the methodology for the review of the financial terms for Channel 3 licences² (the "29 June Consultation"). The closing date for responses to the 29 June Consultation is 6 August 2004. Ofcom intends to publish a statement on the results of the 29 June Consultation, including a decision on the final methodology for the reviews, in September 2004. It is proposed that the same methodology would be applied for the review of the financial terms for the Channel 5 and Public Teletext Licences.

Question 3: *Is it appropriate to apply the same valuation methodology for the review of the financial terms for the Channel 5 and Public Teletext licences as that applied for the review of the Channel 3 licence terms?*

²Available at http://www.ofcom.org.uk/consultations/current/channel3_consultation/?a=87101

Section 4

Responding to this consultation

How to respond

1. Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 19 August 2004.
2. Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
3. Please send your response to david.brown@ofcom.org.uk.
4. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

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Competition and Markets
3rd Floor
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2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

5. Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
6. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you could explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

7. If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact David Brown on 020 7981 3718.

Confidentiality

8. Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm this is acceptable).

9. All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
10. Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.
11. Please also note that copyright in responses will be assumed to be assigned to Ofcom unless specifically retained.

Next steps

12. Ofcom will consider all responses to the consultation questions as soon as possible following the closing date of 19 August 2004 and will publish a statement with its decision. Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

13. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
14. This consultation is shorter than Ofcom's standard ten-week period in order for Ofcom to make a decision on this point as soon as possible. Also, Ofcom considers that it addressed the point, indirectly, in the 26 January Consultation.
15. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
16. If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam
Ofcom
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London SE1 9HA
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Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

1. Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

2. We will be clear about who we are consulting, why, on what questions and for how long.
3. We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
4. We will normally allow ten weeks for responses, other than on dispute resolution.
5. There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
6. If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

7. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

1. In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
2. We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
3. The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.
4. We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
5. Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/
job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes

☐

No

☐

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom can publish my response: on receipt

☐

once the consultation ends

☐

Name

Signed (if hard copy)

Annex 3

Consultation questions

Comments are invited on any aspect of the consultation document. However, we are inviting views, specifically, on the following questions:

Question 1: *Is it appropriate to offer the Channel 5 licensee the option to curtail its current analogue licence period, as described, in order to promote further consistency across all broadcasting licences?*

Question 2: *Is it appropriate to offer the Public Teletext licensee the option to curtail its current analogue licence period, as described, in order to promote further consistency across all broadcasting licences?*

Question 3: *Is it appropriate to apply the same valuation methodology for the review of the financial terms for the Channel 5 and Public Teletext licences as that applied for the review of the Channel 3 licence terms?*