

CLEARED SPECTRUM CONSULTATION QVC RESPONSE TO QUESTIONS

Question 1: *This executive summary sets out our proposals for the Digital Dividend Cleared Award. Do you agree with these proposals?*

Response: There are two principal areas where QVC has concerns: the management of interference and the maintaining of a level competitive landscape

Question 2: *Do you agree with our proposal to include the interleaved spectrum in channels 61 and 62 in the cleared award?*

Response: no comment to add

Question 3: *Do you agree with our proposal not to allow licence exempt use of channels 61 and 62 by cognitive devices?*

Response: Any application which introduces potential interference with DTT transmissions is to be resisted. The onus should be on new users of spectrum in this area to operate with an acceptable interference impact on existing users. New spectrum users should be obliged to cover the cost of any remedial measures needed by incumbent users.

Question 4: *Do you have any comments on our assessment of the most likely uses of the cleared spectrum and the amount of spectrum required for these services? Are there any other potential uses that we should consider?*

Response: No comment to add

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

Response: If this means that the award process will take place before the investigation into the pay TV market reports then it will serve to skew the market. Sky in particular will be disadvantaged as they may again find themselves in a position where they win spectrum either independently or as a part of a consortium, only to be told later that because of market dominance they have to withdraw. Such an uncertain base for the award makes the competitive landscape questionable and serves to remove certainty as to the future shape of spectrum use for media purposes, neither of which are desirable results

Question 6: *Do you have any views on the appropriate notice period for temporary PMSE access to channels 63-68 and/or on whether or not extend temporary access to channels 31-40?*

Response: QVC believes an appropriate notice period would be 1 year. We have no comment to make regarding channels 31 to 40.

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?*

Response: no comment to add

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

Response: All techniques should be used to determine the best interference solution for existing transmitters.

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

Response: see responses to questions 3 and 8

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?*

Response: The onus must be on the interferer to resolve the problem. See responses to questions 3 and 8

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?*

Response: Ofcom should engage with all existing spectrum users as well as licensors. In the case of DTT this means that Multiplex Operators and active holders of Digital TV Programme Licenses should be consulted.

Question 13: *What do you believe would be the implication 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?*

Response: One of the original design benefits of the COFDM system used for UK DTT is its appropriateness for small antenna use in urban areas. The output of this process must not serve to remove or compromise this benefit.

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

Response: see response to questions 3 and 8

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

Response: no comment to add

Question 16: *Do you have any comments on the transmit masks set out in paras 5 28 to 5 130?*

Response: no comment to add

Question 17 : *Do you agree that the cleared spectrum is used for the operation of a DTT multiplex, we should replicate the ownership restrictions from the Broadcasting Act regime relating (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 ?

Response: We see no reasons why the ownership conditions for a DTT multiplex using new spectrum should be any different to those applying to the existing six multiplexes

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

Response: Yes, we believe this will be of great benefit to the market and the viewing public.

Question 19: *We welcome views on the relative merits of such an approach to information provision: in particular concerning the type of information that may be helpful and any impacts that publication of information might have both on licence holders and the wider spectrum market.*

Response: Any dissemination of information will benefit smaller and new entrant players in a consolidated market and will therefore encourage diversity of supply and service.

Question 20: *Do you agree that the cleared award should include both 8 MHz lots for DVB-T and MMS TLCs and 5 MHz lots of FDD and TDD TLCs across the band?*

Response: No comment to add

Question 21: *Do you agree that the cleared award requires a mixture of frequency specific and frequency generic lots to be offered in the auction?*

Response: No comment to add

Question 22: *Do you agree with the proposed outline definition of lots suitable for MMS, DVB-T, TDD and FDD applications?*

Response: This adds complexity to the auction process and will therefore tend to militate against small or entrant players. To mitigate this in the interests of fairness and diversity it should be possible for small companies to be able to present as potential suppliers to more than one bidding consortium

Question 23: *Should the flexibility to bid for lots defined on both fixed and variable frequency rasters be preserved in the auction? If not, which are preferred?*

Response: see response to question 22

Question 24: *Do you agree with the proposed basis for awarding Channel 38 as a distinct lot in the auction?*

Response: No comment to add

Question 25: *Do you agree with the proposed structure of frequency rules for allocating different licence types in the auction? Are there any amendments that would improve the efficiency of spectrum allocation via an auction?*

Response: see response to question 22

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

Response:no comment to add

Question 27: *Do you favour including the available cleared spectrum in (a) Guernsey and (b) Jersey in the geographic coverage of the licences to be awarded? If not, what approach do you favour instead?*

Response: No comment to add

Question 28: *Do you agree that the combinatorial clock auction is the most suitable auction design for the cleared DDR award?*

Response: see response to question 22

Question 29: *What potential simplifications, if any could be made to the proposed lot structure for DVB-T, MMS, TDD and FDD lot categories which would still reflect the most important differences in value between lots?*

Response: see response to question 22

Question 30: *Do you have any comments on our proposals for the Application and Qualification Stages of the combinatorial clock auction for the cleared DDR award, including our proposals for initial deposits?*

Response: No comment to add

Question 31: *Do you consider that it is important to distinguish relative weightings in advance between the eligibility points of the different 1 MHz blocks available in this award? If so should this be restricted to channels 36, 38, 61 and 62 and what do you consider these relative weightings should be?*

Response: No comment to add

Question 32: *Do you have any views on whether an ex ante eligibility points activity rule or a revealed preference activity rule should be used in this award?*

Response: No comment to add

Question 33: *Do you have any views on whether there should be restrictions on bidders' ability to bid on multiple technical licence types within single package bids or between different rounds of the auction and whether bidder association rules should potentially be adjusted to cater for any such restrictions being imposed?*

Response: see response to question 22

Question 34: *Do you have any further comments on any aspect of our proposals for the Principal Stage of the combinatorial clock auction for the cleared DDR award?*

Response: No further comment other than the above

Question 35: *Do you have any comments on any aspect of our proposals for the Assignment Stage or the Grant Stage of the combinatorial clock auction for the cleared DDR award?*

Response: Complexity. See question 22

Question 36: *Do you agree with our approach to assessing whether the award of cleared spectrum full promotes competition and efficiency?*

Response: Constraints and controls must be put in place to ensure that monopoly or monopolistic behaviour is prevented. It must not be possible for any single dominant operator, consortium or quasi-consortium to control the majority of spectrum in a particular band or for a particular purpose. Such restrictions should apply uniformly across the board and not be focussed on those who have been the subject of such concerns regarding dominant behaviour in other areas. There should be no exemptions from such controls for commercial public service broadcasters or the BBC. The application of such controls will need to look wider than simply the allocation of cleared spectrum under this process and should look at the behaviour of the bidding organisation in the existing operation of spectrum based activities in the UK . An example would be the existing operation of DTT multiplexes and the provision of transmitter infrastructure.

Question 37 *Do you have particular concerns about possibilities for award outcomes to fail to fully promote competition in downstream markets or to result in inefficient use of spectrum? Is so, please explain what these are and provide supporting evidence.*

Response: see response to question 36

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?*

Response: we agree with promoting diversity of holdings but have no comments on the cap

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

Response: Yes

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

Response: No comment to add

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

Response: The areas identified are certainly in need of attention but are not an exhaustive list we would draw Ofcom's attention to the response to questions 5, 22 and 36 as an indication of other potential areas

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 1 GHz spectrum, could result in an outcome where there are limits on the level of competition possible in the provision of these services?*

Response: no comment to add

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 market, could be an appropriate approach to these concerns?*

Response: No comment to add

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?*

Response: see response to question 5

We disagree: This prejudices the results of the investigation and prejudices Sky's potential interest in capacity.

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 compensation resulting from the holding of cleared spectrum by NGW/Arqiva?*

Response: We believe that the market position of NGW/Arqiva is potentially anti-competitive and draw Ofcom's attention to our response to question 36