

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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RESPONSE

THE VOICE OF THE LISTENER AND VIEWER

TO

OFCOM CONSULTATION ON BROADCASTING

TRANSMISSION SERVICES: A REVIEW OF THE MARKET

June 2016

Response of the Voice of the Listener and Viewer to Ofcom's consultation on Broadcasting Transmission Services: a review of the market.

Information about the VLV

The Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England No 4407712 - Charity No 1152136).

Executive Summary

- 1.1 The VLV is committed to the preservation of Public Service Broadcasting (PSB) and strives to protect its place in the communications market. We value in particular its wide range of content freely available to viewers and listeners through the media of Digital Terrestrial Television (DTT), Digital Audio Broadcasting (DAB) and some analogue transmissions of radio services.
- 1.2 We are aware of the nature of the market for television and radio services in particular the nature of current regulation where broadcasters and their transmission partners are licensed. We also are aware of the role of Arqiva in providing the dominant proportion of transmission services to broadcasters both public and commercial.
- 1.3 We do not have the expertise to comment in detail on some aspects of this consultation but understand its purpose. We broadly agree with the analysis presented in the consultation and its conclusions. We are principally concerned with the direct impact of any regulatory review on listeners and viewers and their ability to continue to receive a wide range of content.

General Comments

- 2.1 The VLV welcomes the opportunity to respond to the consultation on the market review for Broadcasting Transmission Services.
- 2.2 The short executive summary is a valuable distillation of the issues and makes clear the purpose of the consultation.

- 2.3 We note Ofcom's intention (see clause 1.18) that the regulations applied from 2005 (and subsequently revised) be removed. The purpose of this review therefore is to stimulate comment on this intention. We note the three criteria to be applied (see Clause 2.32).
- 2.4 We welcome the explanation in Section 2 of the issues involved and the historical context of the BTS market. In particular we note the position of the EU on this matter and their relaxation of regulatory conditions for BTS. We also note the results of the merger investigation of 2008 leading to conditions being applied to BTS delivery by Arqiva. We note however that the essential provisions of this, together with the EU regulations as adopted and applied by Ofcom, remain in place and are the subject of this review.

Section 3: Market Definition

- 3.1 VLV is pleased to note that in Section 3, from clause 3.6 to 3.22, that listener and viewer interests are considered as part of the retail sector. We would concur that the introduction of DTT after DSO in 2012 has increased choice for viewers and so has allowed the platform to be more competitive with other commercial platforms than it was in the analogue era. This is also true of DAB services and has been for much longer and continues to expand, although services offered on FM and AM still have strong listener support. Digital technology has also allowed greater access for programme providers because of the multiplex capacity available.
- 3.2 However, this has been at the expense of reducing bit rates per service, especially in the case of DAB where there has been for some time criticism of audio quality (some primary content being reduced to monaural transmissions) as a result of packing so many services into each multiplex. This has led to some quality conscious listeners to prefer on-line delivery of music in high quality formats (eg BBC R3 HD Sound via the iPlayer or commercial streaming companies) but the proportion of listeners doing this for live content remains small. New technology options are available for both DTT and DAB that could improve audio (DAB+ has been added for some services in the latest commercial multiplex) and video quality (HDTV in this case coded using MPEG4) but the fear is that any saving in capacity will simply be used to add more services rather than improve technical quality.
- 3.3 Any concerns we have are related to the health and well-being of Free to Air (FTA) Public Service Broadcasting (PSB) in this mixed market. For example, increases in transmission costs (which are a small part of the overall costs to the BBC and other PSB suppliers) in an era where BBC income is under heavy downward pressure could be detrimental to content quality and scope. This in itself could lead to erosion of PSB quality as perceived by the public. We are gratified to note that this possibility has been recognised in the review (clause 3.13) and so have an expectation that any regulatory stance will provide appropriate protection to PSB.

- 3.4 Considering the recent and continuing pressure on spectrum for DTT, the potential for service erosion is already significant and consumer disturbance as a result of this could lead to migration if the transition is not managed carefully. Any further erosion due to changes in costs as a result of regulatory changes will not be constructive at this time.
- 3.5 We agree broadly with the analysis in clauses 3.6 to 3.22 and are gratified that the DTT and DAB platforms have a stable and valued place in the market with the PSB element being an essential part of it.
- 3.6 When considering the wholesale market we note the comment in clause 3.26 which is supportive of the need to maintain DTT as a major means of delivering PSB services because the alternative platforms cannot meet the coverage requirements.
- 3.7 We would concur with the comments in 3.27 and 3.28 regarding the motives for broadcasters to move certain programmes from DTT.
- 3.8 We understand the arguments presented in clauses 3.29 to 3.50 and concur broadly in the conclusions reached.

Question 1: Do you agree with our assessment of the relevant markets? If not please set out the basis for your disagreement.

- 3.9 Yes. In particular the DTT/FTA market is well assessed and we welcome OfCom's commitment to its future. We are, however, concerned at the continued pressures on the spectrum available to DTT and that, in that future, DTT may be required to make further spectrum contributions to allow mobile data services to expand.

Section 4: Appropriateness of Regulation:

- 4.1 We understand the purpose of the discussion presented in this section. We note the assessment of regulation options by means of three criteria that address the major factors defining the market.
- 4.2 The nature of the market as it has existed since Arqiva was formed as the sole provider of transmission services is such as to discourage other players from offering competitive alternatives. Whilst a sole supplier exists there is clear scope for market failure thus raising the need for some form of regulation. Considering the nature of the UK Radio and DTT markets, options for dividing Arqiva into competing divisions do not seem helpful.
- 4.3 From the point of view of listeners and viewers there is a vital competitive market for FTA content from public and commercial players and further options from pay

platforms. The fact that satellite and cable delivery is limited to particular suppliers is similar to the DTT situation.

Question 2: Do you agree with our assessment that the DTT and radio NA markets are suitable for ex ante regulation on the basis of our assessment of the three criteria test? If not, please set out the basis for your disagreement.

4.4 We agree.

Section 5: Market Power Assessment

5.1 We note the discussion in this section and appreciate the attention given to the role and options of each player. Despite the apparent lack of overt competition there are moderating mechanisms in place that seem to operate in a useful manner.

Question 3: Do you agree with our proposal that no operator holds SMP in the DTT NA market or the radio NA market, as a result of the Arqiva/NGW Undertakings? If not, please explain why.

5.2 We appreciate the discussion of this section and agree with the assessments made and the conclusions reached.

Annexes

Annexe 1: Responding to this consultation:

Annexe 2: OfCom's consultation principles:

Annexe 3: Consultation response cover sheet:

Annexe 4: Consultation questions:

Annexe 5: General analytical approach to market definition:

Annexe 6: Equality Impact Assessment:

Annexe 7: Notification:

The content of these Annexes is noted in particular Annexes 5, 6 and 7. We agree with the conclusion reached in Annexe 6.

Acronyms

AM:	Amplitude Modulation
DAB/DAB+:	Digital Audio Broadcasting
DSO:	Digital SwitchOver
DTT:	Digital Terrestrial Television
FM:	Frequency Modulation
FTA:	Free to Air
HDTV:	High Definition TeleVision
PSB:	Public Service Broadcasting