

CONSULTATION PAPER ON DATA LIMITS AND DATA SERVICES ON RADIO MULTIPLEXES

Summary of Consultation Responses and Government's Response

1. Introduction

- 1.1 The Department would like to thank those individuals and organisations that responded to this consultation exercise. The Department received 21 responses and these can be viewed in their entirety, along with a full list of the respondents, on the DCMS website.
- 1.2 Most of the responses received were from industry stakeholders, with a few from members of the public.
- 1.3 The majority of the responses (71%) were supportive of the Government's proposals which will allow TV services to be carried on a radio multiplex and for an increase in the level of data limits on a radio multiplex.
- 1.4 This document provides a summary of the main issues raised through the consultation exercise and the Department's response to those issues.

2. The Main Issues Raised

- i) A number of responses suggested that the proposals could allow DAB to be developed as part of a new innovative multimedia package, and also encourage further the take up of DAB.
- ii) There was a feeling that the proposals would help to bring wider choice to the consumer.
- iii) Some responses felt that the continual improvement in audio coding technology should permit more efficient use of a multiplex's bandwidth, enabling operators to be more flexible with the mix of audio and data services provided.
- iv) There was a general consensus that increasing the data limits to 30% was about right, and that this is a logical development reflecting growing interest in providing enriched content to augment the audio experience. One respondent suggested that it should be lifted to 49% and one considered there should be no limit set.

In the light of these comments we consider that 30% is the right level to increase the maximum level of data to be carried on a sound multiplex.

- v) We note that several respondents raised points about whether a change of service from stereo to mono required Ofcom's approval.

Multiplex licences state the minimum bit-rates for each service on the multiplex. These minima range from 128kbps down to 48kbps, depending on whether the service is music or speech-based, whether it is stereo or mono, and the frequency with which the audio is sampled. Ofcom has the power to vary

the minimum bit-rate provisions in the licences. Ofcom and industry are currently considering these minimum bit rate requirements in the context of a more flexible package of output based regulation and discussions are ongoing.

- vi) Some respondents felt that a digital radio multiplex should be reserved for radio use, and that reducing the amount of bandwidth would reduce the quality of DAB radio broadcasts.

These points were fully considered in the Regulatory Impact Assessment and the consultation document where we concluded that the use of some multiplex capacity for mobile TV would assist the take up of DAB enabled devices; the BT Movio trial showed that users spent more time listening to DAB radio than watching TV.

- vii) One respondent said that there will be a windfall gain for BT which would distort competition.

We do not think that these changes will necessarily cause a market distortion. In fact, the Broadcasting Act 1996 expressly allowed for a certain amount of spectrum to be made available which could be used for services other than radio. It is true that Digital One and BT Movio could benefit from lower costs than their competitors. However, because there are other ways to deliver mobile services, there are no major barriers to entry into the wider mobile data market. So any damage to competition is in the longer term minimal and would be more than off-set by the benefits to consumers

- viii) One respondent considered that there should be a more coherent policy towards broadcast mobile TV in general which might involve clarification of the TV copyright position for simulcast TV transmissions and bringing forward channel 36 for the provision of mobile TV services

The Government has a clear policy on spectrum management. In broad terms, our approach is as far as possible to make spectrum available in a technology-neutral way which allows the market to decide on use. In this case, BT has identified a route to bring one form of mobile TV to market this year with spectrum which is already available. Others can follow as the opportunities arise and further spectrum suitable for mobile TV is being awarded by Ofcom as fast as is consistent with an orderly process. UHF Channel 36 is one of these: plans for it are being developed in Ofcom's Digital Dividend Review which is planned to report later in 2006. A further major band – 1452-1492 MHz ('L-Band') is planned to be awarded for use in early 2007. We are in discussion with Ofcom the timetable for the release of this additional spectrum.

As regards the copyright issue, DTI and Patent Office are aware of the need for clarity on rights issues on new media platforms. The Government has tasked Andrew Gowers to undertake an independent review of intellectual property to ensure that it is fit for the digital age. He is expected to report by the end of the year.

- ix) A respondent considered that by licensing a mobile TV service Ofcom would be in breach of Article 8 of the EU Framework Directive.

Raising the data limit to promote DAB radio is consistent with the Directive. Recital 18 makes it clear that, even though article 8 requires national regulatory authorities to strive for platform neutrality, especially in performing their competition duties, those authorities can take measures to promote specific services so long as those measures are proportionate. Even if the extra data capacity is used for mobile TV there is evidence that this will attract more listeners to DAB radio.

- x) A respondent considered that Ofcom has inadequate powers to ensure fair competition

There are a number of more general competition powers available to Ofcom beyond those referred to in this representation. We do not therefore believe that this point requires a change of policy but have amended the RIA to make clearer the full range of Ofcom's powers.

3. The next steps

- 3.1 The Department laid the Orders on 21 June 2006. It is expected that these will be debated in Parliament before summer recess.

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