

Ofcom's Consultation on Ultra Wideband

Cable & Wireless response

Wednesday, 23 March 2005



CABLE & WIRELESS

General Comments

Cable & Wireless is concerned about Ofcom's administration of this consultation process. Ofcom has put forward a preferred approach for ultra wideband (UWB) before it and the parties being consulted have the necessary information to make an informed decision. This must be rectified, if necessary by further consultation. Although Cable & Wireless recognizes that Ofcom must act expeditiously to inform the wider European debate, nevertheless it cannot act until it has arrived at a fully informed decision.

Ofcom recognizes the crucial importance of ensuring no undue interference in meeting its statutory duties. However, it is not yet able to demonstrate that its preferred approach to UWB could be implemented without causing undue interference. Adopting such an approach prematurely could, therefore, both represent a breach of Ofcom's statutory duties and also seriously undermine confidence in Ofcom's new spectrum trading regime. This regime will function only if purchasers of spectrum have confidence about the nature of the asset being purchased. Ofcom must demonstrate that it will not intervene in the market (except in a very limited set of circumstances) in a manner that fails to protect existing spectrum users from undue interference, which could potentially destroy the value of spectrum.

This is a particularly acute concern in relation to broadband fixed wireless access (BFWA). The spectrum used to provide BFWA services was auctioned, a method that will be used increasingly in the future by Ofcom, and hence it is essential that Ofcom does not act now in a way that will undermine confidence in future auctions. Additionally, Ofcom has provided an assessment of the many existing technical studies of UWB that is not entirely consistent with that of the various authors. This is likely to result in Ofcom breaking with accepted international precedent and yet Ofcom recognizes that it does not have an alternative method for assessing acceptable interference.

Answers to Ofcom's Questions

Q1: Are these the appropriate topics to be consulting on?

Yes.

Q2: Do you agree with this analysis of our statutory duties? Are there any important factors that have been omitted?

Cable & Wireless supports Ofcom's analysis of its statutory duties but does not accept that Ofcom is yet in a position to demonstrate that its preferred approach is consistent with those duties. In relation to "availability of spectrum" and "efficient management and use of the spectrum" Ofcom notes that it will only be acting in a manner consistent with its duties if UWB can be deployed without undue interference to other authorized services. As stated above Ofcom does not yet have and/or has not made available the information necessary to determine this.

It is not immediately clear that Ofcom's analysis of "promoting competition in electronic communications services" is appropriate in relation to UWB. The definition of "electronic communications services" in the Framework Directive¹ is "a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks". UWB will typically not be provided as a service by an operator for remuneration and does not appear to be provided over an electronic communications network.

Q3: Do you agree with the economic study? Are there other studies that Ofcom should be conducting?

Cable & Wireless has not undertaken a detailed analysis of the economic study, so provides here only general comments.

Ofcom recognizes that the economic study is only one factor to take account of in its decision-making. Nevertheless, it does appear to have placed a significant weight on the study, which could result in Ofcom adopting an approach that is inconsistent with its statutory duties. That a regulatory approach scores highest on the cost-benefit analysis does not ensure that it is consistent with Ofcom's statutory duties.

Ofcom could have approached the economic analysis in a different way:

- it could have considered only those regulatory options that are consistent with its duty to avoid causing undue interference e.g if an amended ETSI mask could not be demonstrated to be consistent with this objective then it would not be put forward for further analysis;
- it could have extended its analysis of the costs and benefits to take account of the huge costs that would result if confidence in the new spectrum-trading regime is undermined by introducing UWB in a manner that is inconsistent with Ofcom's duty to avoid causing undue interference.

Cable & Wireless supports the commissioning of further studies by Ofcom and regrets that these have not been made available before the period of consultation ends, significantly undermining the validity of Ofcom's process.

Q4: Is there a better way that future use of the spectrum could be taken into account?

It is not obvious that Ofcom's view that future bidders for spectrum will value the spectrum given the known interference effects is an appropriate way to conceptualize this issue. The economic analysis rightly considers the societal costs and benefits of UWB, hence it would be wrong to consider only the private operator costs and benefits of new spectrum usages. If UWB prevents the introduction of new services then this foregone benefit to society will not necessarily be captured in the valuation of the spectrum by bidders.

¹ Directive 2002/21/EC of the European Parliament and of the Council, 7 March 2002, on a common regulatory framework for electronic communications networks and services.

Q5: What is the most appropriate solution to the potential interference from UWB to BFWA?

Ofcom must act in a manner that is consistent with its statutory duties and which does not undermine confidence in its spectrum-trading regime. These should be the guiding considerations in addressing this issue.

Q6: Would it be possible to achieve sufficient isolation between radio astronomy and UWB through practical methods of physical separation?

See response to Q5 above.

Q7: Are there any other options that we should consider?

See response to Q5 above.

Q8: Are there any major technical studies that we have omitted?

No comment.

Q9: Have we made an accurate assessment of the existing studies?

Ofcom recognizes that it has typically assessed the studies differently to the authors, including potentially breaking with international precedent in its approach to UWB (see Q14 below). Ofcom must be certain that in making this assessment it can be confident that it is acting in a manner that is consistent with its statutory duties.

Q10: Do you agree that we should seek a common European framework for the introduction of UWB?

Ideally, yes.

Q11: Have we proposed the most appropriate mask? Will it be possible to deliver equipment conforming to this mask?

It is not possible to say at this time whether it is the most appropriate mask as Ofcom does not yet have and has not yet made available all of the information required to answer this question. Again it is essential to reiterate that Ofcom must act in a manner that is consistent with its statutory duties and which will not undermine confidence in its spectrum trading regime.

Q12: To what extent should we define parameters such as those listed above? What is the most appropriate definition for each of these parameters?

No comment.

Q13: Is our proposed approach to international bodies appropriate?

For the reasons emphasized throughout this response Ofcom is not yet in a position to make representations to international bodies.

Q14: How should we best deal with the precedent potentially set by our proposed approach to UWB?

Ofcom's approach is extremely contentious and Ofcom should not proceed on this basis until it has put forward an acceptable alternative method. Its suggestion that each case could be assessed on its merits (including specifically the economics of the situation) is problematic for two reasons:

- it appears to place a narrow economic analysis above the wider statutory duties of Ofcom, particularly the need to prevent undue interference;
- it would introduce significant uncertainty, which would undermine confidence in the management of spectrum and hence in Ofcom's spectrum trading regime.

Q15: What should Ofcom's role be in setting and monitoring EMC standards?

No comment.

Cable & Wireless

Lakeside House
Cain Road
Bracknell
Berkshire RG12 1XL

www.cw.com

Copyright © 2004
Cable and Wireless plc.
All rights reserved.
Lakeside House,
Cain Road
Bracknell RG12 1XL.