

# GLOBAL REGULATIONS



By Gerry Oberst

## Satellite's Digital Dividend

Europe, as well as the rest of the world, is gearing up for the switchover from analog to digital television, and since digital TV will use radio spectrum more efficiently, there is a mad scramble arising for the use of the "digital dividend" that will result from the change.

Because new digital terrestrial services will be provided, the competitive implications on satellite networks could be big. These new services also raise questions of subsidies and interoperability of equipment that affect the satellite industry.

The United Kingdom has numerous activities underway to make sure the switchover is managed efficiently and without undercutting competition. In December, the U.K. Office of Communications, known as Ofcom, discussed its approach for awarding the digital dividend. One of the considerations is whether new digital terrestrial TV platforms might be weakened by competition from satellite and cable and what should be the policy response.

Ofcom's assessment is that if the digital terrestrial platform loses viewers due to competition it could lead to less efficient use of spectrum resources, but other platforms that have gained viewers would likely be using their resources more efficiently. "There is no net loss of efficiency" for "society as a whole" according to Ofcom.

Ofcom also saw no reason to shape the spectrum allocation to beef up terrestrial TV's competitive status. The regulator noted that competition law and regulations could create "a range of mechanisms for assessing and addressing weak competition." Based on this assessment, "competitor subsidies are not a solution that would usually be considered," Ofcom says.

In addition, even if the public broadcasters have a more significant presence on the digital terrestrial stations, this is no reason, in Ofcom's view, to favor the terrestrial platform. In fact, such a strategy could be counterproductive in the long run if it caused consumers to shift to other platforms such as satellite to get the programming they want.

For its part, the European Commission released a paper in November on the digital dividend which recognizes the

"impressive prospects" of satellite broadcasting for mobile multimedia as an offshoot of the digital dividend.

To the Commission, however, the issues of broadcast terrestrial mobile

TV services should be kept separate from discussion of what satellites have to offer. That is what the Commission also said in a July paper on mobile TV that focused to a large degree on the technology of terrestrial mobile and incidentally referred to digital satellite technologies.

At that time, the European Commission focused on the spectrum needs of terrestrial users, noting that European Union member states should "make available spectrum for mobile broadcasting as quickly as possible, including in the UHF band as it becomes available." Again, however, there is limited mention of satellite in this mix.

The competitive interaction between new digital TV by terrestrial providers and by satellite most directly is seen in recent decisions in which the European Commission has had to review government subsidies to new terrestrial platforms. For instance, the Commission overruled several subsidy programs in Germany aimed at helping out the powerful public broadcasters — who are mainly on cable in Germany — and the provider of digital capacity, which happens to be the national telecommunications operator. By contrast, the Commission permitted subsidies by the Italian government that did not necessarily discriminate between platforms but instead assisted the purchase of consumer decoder equipment used for digital TV services.

Another issue that comes up in the terrestrial and satellite mix is the interoperability of equipment. Starting in 2004, Europe reviewed whether set-top boxes and other technical aspects of digital interactive TV should be interoperable. By 2006, the Commission concluded the market would provide the necessary interoperability. The policymakers recognized that the installed base of satellite receivers already was too large to require or permit further interoperability.

This issue again is on the table, however, with proposed changes to the European Union regulatory framework and increased focus on terrestrial digital service. Among other changes proposed, the Commission calls for new reports on interoperability and would give regulators the authority to require greater levels of interoperability in licensing networks and services.

While other industry sectors are scrambling over the spectrum released from the digital dividend, the satellite industry should keep a weather eye on the competitive mix. A "digital dividend" to other industry sectors could be a competitive debit to satellite. ▀

*Gerry Oberst is a partner in the Hogan & Hartson Brussels office.*