

Response to 2.6 GHz consultation of 19 December 2007 on auction rules, procedures and draft Regulations

About Arqiva

Arqiva operates at the heart of the broadcast and mobile communications industry and is at the forefront of network solutions and services in an increasingly digital world. The company provides much of the infrastructure behind television, radio and wireless communications in the UK and has a growing presence in Ireland, mainland Europe and the USA.

For broadcasters, media companies and corporate enterprises Arqiva has end-to-end capability ranging from outside broadcasts, satellite newsgathering, studios, playout, satellite distribution and terrestrial transmission, the latter including digital switch over and mobile TV development.

In the communications sector the company supports cellular, wireless broadband, video, voice and data solutions for the mobile phone, public safety, public sector, public space and transport markets.

Arqiva has its headquarters in Hampshire, with other major UK offices in London, Buckinghamshire and Yorkshire. It now operates 10 international satellite teleports, over 60 other manned locations, and around 3500 shared radio sites throughout the UK and Ireland including masts, towers and rooftops from under 30 to over 300 metres tall.

Formerly the broadcast division of ntl Group, Arqiva was purchased in 2005 by an international consortium led by Macquarie Communications Infrastructure Group.

Major customers include ITV, Channel 4, Five, the BBC, BSkyB, Classic FM, the five UK mobile operators, the RNLI and the Metropolitan Police.

The services Arqiva offers to customers are underpinned by Arqiva's Spectrum Planning & Antenna Group which has extensive experience of planning analogue and digital TV and radio networks and which also offers a coverage prediction service for Arqiva's radiocommunications customers.

Introduction

Arqiva welcomes Ofcom's consultation which is further evidence of its willingness to consider stakeholder feedback to ensure that the auction design is optimised.

This year's 2.6 GHz spectrum auction provides a crucial opportunity to provide spectrum to use as a platform for a range of wireless access technologies, including WIMAX, a key enabling technology with which to offer a near-universal wireless Next Generation Access network.

This is essential for UK plc as there will come a time when existing access networks will no longer be able to meet customer expectations. While early days, there is evidence of increasing consumer demand for both bandwidth and mobility.

A wireless NGA network could address both, be built out faster than a fixed network, beyond densely populated areas, and without digging up streets. Arqiva believes that broadband wireless is an essential technology in the development of an NGA market.

Arqiva believes that competition of scale and scope may well require both cooperative investment and deployment at the wholesale level to avoid the sub-scale investment of many previous licensing approaches, from cable franchises to spectrum auctions.

The business model would be similar to Inmarsat in its early days where a wholesale facility was owned by a number of interested parties and marketed in scalable chunks to whoever wanted to buy it (scalability has the additional advantage of enabling small amounts to be sold to entrepreneurs and developers).

Ofcom should ensure that there are no unreasonable barriers to the market achieving the necessary scale and scope. Given that, Arqiva's view is that it is essential that forthcoming spectrum awards enable such cooperation both in terms of bids and caps.

In addition to the above comments, and answers to specific questions below, it is also worth noting that industry will expect Ofcom to provide some pre-auction certainty as to the outcome of its recent proposals for "re-farming" 900 MHz 2G spectrum.

Answers to specific questions

Question 2: Do you agree with Ofcom's proposed changes to the auction information policy?

Yes. Arqiva supports the maximum useful information (even if anonymised) being made available to bidders as the auction progresses, albeit that bidders will need to be provided with sufficient time in which to analyse those data.

Question 3: Do you agree with Ofcom's proposals not to include additional bidding options for split supplementary bids and not to allow Assignment Stage bids to be made contingent on the identity of prospective neighbours?

Yes.

Question 4: Do you agree with Ofcom's suggested changes to the number of eligibility points associated with unpaired spectrum?

Yes.

Question 5: Do you have any comments on Ofcom's proposals not to make changes to the ability of bidders to switch between paired and unpaired spectrum, and not to change the arrangements for the supplementary bids round, as set out in the Discussion Document?

Arqiva supports the proposal not to introduce restrictions to the opportunity for bidders to express all of their preferences in the supplementary bid round.

Question 6: Do you have any comments on Ofcom's proposals not to introduce a link between clock prices at 2.6GHz and 2010MHz?

Arqiva agrees that there is every likelihood that the clock price for 2010 MHz will be considerably different from the 2.6 GHz lots, reflecting very different usability to bidders, and there seems no reason to artificially link the two.

Question 7: Do stakeholders consider that there are strong reasons why a value-based activity rule (a relaxed revealed preference rule in particular) would be materially better than an eligibility points based activity rule for this particular award?

No.

Question 8: Do you have any comments on Ofcom's analysis of the pricing algorithms and winner determination?

No.

Question 9: Do you have any comments on Ofcom's proposals for deposits, defaults and refunds?

Arqiva supports moving away from a 100% deposit rule. However we do not support the proposal that any spectrum nominally awarded to a bidder which defaults at the end of the Principal Stage be left unsold, which would not be an efficient outcome if there were valid bids for that spectrum.

Recognising the potential uncertainty and delay which could result from a recalculation of the auction result, Arqiva proposes that in the event of such a default Ofcom considers whether there was a valid bid for those lots from any bidder which, prior to the default, had not had a bid accepted - if so, accept it. Depending on the amount of spectrum the defaulted bidder had nominally won, Ofcom may have to accept more than one bid to clear the "defaulted" spectrum.

Leaving defaulted spectrum as unsold may appear an easier option (although Ofcom would have to determine whether to allocate the unsold spectrum as paired, unpaired or a combination), but it would not contribute towards the primary objective of maximising efficient use of spectrum. Arqiva strongly believes that Ofcom should determine the optimum solution to ensure that at the end of the auction all spectrum is matched to valid bids.

Question 10: Do you agree with Ofcom's suggestion to amend the rules on bidder association for the award of the 2.6GHz and 2010 MHz bands?

Arqiva strongly supports the proposal. However, although this will benefit a company which otherwise may have found itself holding a material interest in (i.e.

being an associate member of) more than one bidder group, this does not entirely solve the problem faced by Arqiva and a handful of other companies with the necessary resources to be able to provide advice such as spectrum planning, engineering or network design to potential bidders to enable them to determine the suitability of each spectrum lot to their business plan and its maximum value to them. Few potential bidders will have such resources in-house.

Yet for some of the spectrum auctions especially where there is a range of suitable potential technologies (e.g. the 2.6 GHz and especially the Digital Dividend), there is a strong likelihood that Arqiva would find itself approached for technical advice by several potential bidders. Should more than one of those bidders actually register for the auction, then (dependent upon the commercially confidential information Arqiva had been privy to, and the assistance those bidders might desire from Arqiva in the auction) Arqiva could become a member of multiple bidder groups.

Membership of multiple bidder groups may only be as a non-associate, but associate membership may be an option which some potential bidders wish to explore and Arqiva may also wish to bid for spectrum to meet its internal business requirements.

This would expose Arqiva and its customers to the considerable risk of Arqiva and/or some of its customers being disqualified from bidding in spectrum auctions, an outcome likely to lead to a sub-optimal outcome to the auction and, given the scarcity of alternative spectrum-related skills in the market, likely to generate considerable uncertainty amongst potential bidders for subsequent spectrum auctions.

Yet it would be impractical for Arqiva to attempt to “pick a winner” from amongst its customers as agreements for the provision of technical advice will typically be entered into far in advance of the relevant spectrum being auctioned, when it would be impossible for Arqiva to determine which customer will bid (far less which might actually be awarded the necessary spectrum) or which customer’s proposed use of the spectrum might be optimal.

Even if Arqiva could determine which customer to back at an early stage, doing so would lead to a suboptimal outcome for the subsequent spectrum auction as other potential bidders would be forced to obtain their technical advice from one of the few other companies which both had the necessary spectrum-related skills and the willingness to make those skills available to external customers. Of course, such other providers of independent technical advice would also face the implications of the same auction rules as Arqiva. And the current bidder association rules make no allowances for companies providing advice to bidders putting in place internal procedures to stop confidential information being shared between bidder groups.

Arqiva would be willing to work with Ofcom to explore options to ensure that potential bidders could benefit from the provision of external technical advice, while satisfying Ofcom that the integrity of the auction process would be safeguarded. Failure to do so may achieve the very result which Ofcom is seeking to avoid: a distortion of the outcome of the auction.

Question 11: Do you agree with Ofcom’s amended specification of the spectrum cap?

Yes, although Arqiva continues to be sceptical about the justification for a spectrum cap, given the impossibility of predicting which downstream markets may be adversely affected by any hoarding of spectrum which is auctioned on a technology- and service-neutral basis and for which there is substitutability.

A spectrum cap is a considerably interventionist measure which may set an unfortunate precedent for later spectrum auctions in the minds of potential bidders.