



BT Response to the Ofcom Consultation Document:

Award of available spectrum: 2500-2690MHz, 2010-2025MHz
- Consultation on auction rules, procedures and draft regulations

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Executive summary

BT is pleased to respond to this third consultation on the proposed award of the 2010 – 2025 and 2500 – 2690 MHz bands. We appreciate the opportunity to comment on the few remaining issues that Ofcom has identified and we are pleased to note that Ofcom anticipates issuing a Policy Statement early in 2008.

Our response to the key issues raised by Ofcom is provided in detail in Section 2 and are summarized in the following points.

1. On the question of *Auction Information Policy* BT notes Ofcom's movement on this issue since the last Discussion Document. In addition, there are areas where BT believes further clarification would be helpful.
2. On the matter of *Changes to eligibility for unpaired lots*, BT is content with Ofcom's proposals.
3. The minor changes to the *Pricing algorithms and winner determination* are acceptable to BT.
4. With regards to *Deposits and bidder default*, BT notes Ofcom's revised proposals for deposits, recognising the concerns of stakeholders as well as Ofcom itself. BT believes some minor refinements as further detailed below would be simple to implement and improve the robustness of the process and the outcome for all parties.
5. The proposed changes to the *bidder association* rules are noted. As they currently exist in outline form only, it is not possible to provide a definitive response to a partially described proposal. BT acknowledges the rationale for the proposal but also recognises the possible risks this introduces.
6. With regard to the version of the draft regulations included in the consultation, excluding those areas where BT has raised issues, they currently appear to provide a suitable and pragmatic balance. It is however noted that there are areas which are not yet resolved (which Ofcom acknowledges) and therefore not included in the current version of the draft regulations.

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1 Introduction

BT welcomes the opportunity to respond to this third Ofcom document on the proposed award of the 2010-2025 and 2500 – 2690 MHz frequency bands. As set out in detail in our earlier responses, BT is supportive of the general approach that Ofcom is taking in relation to this award, notably the principles of technology and service neutral licensing as well as the flexible partitioning of the band between TDD and FDD based technologies according to the market demand.

We understand that this further consultation focuses on points of detail in the auction procedures and seeks views on these points as well as how the procedures will be implemented in the formal auction regulations. We note that the document also usefully confirms Ofcom's intention to make changes to the technical conditions to align these with work undertaken recently in the CEPT in response to the EC Mandate on WAPECS. We further note that Ofcom is still considering some other technical points and we urge Ofcom to conclude these aspects as quickly as possible so as to reach a final, stabilised set of proposals.

We are pleased to note Ofcom's expectation that this additional consultation need not introduce further delay in the timing of the spectrum award. We agree with this assessment and look forward to Ofcom's Statement on the award early in 2008 and publication of the Information Memorandum and statutory consultation on the draft regulations.

Our response to the individual consultation questions are provided below.

2 Answers to the formal questions in the Consultation Document

Question 1: Do you agree with Ofcom's proposals for changes to the rules and procedures for the award of the 2.6GHz and 2010MHz bands or have any other comments on the contents of this document?

BT welcomes Ofcom's recognition of and constructive movement on a number of issues related to the overall award process which are summarised in para 2.9 of this latest consultation document. BT recognises that through its industry consultations Ofcom has, to date, sought to achieve a pragmatic balance with regard to the evolving overall auction design in order to accommodate a range of realistic commercial market requirements within a technology neutral award.

It is noted however, that Ofcom also identifies a small number of outstanding areas (paras 2.5 and 2.11) , where work is ongoing, which Ofcom suggest could still have an impact on the auction design. BT would encourage Ofcom to:

- Conclude these aspects as quickly as possible and so reach a final, stable set of design proposals;
- Continue to remain receptive to proposed *minor* modifications intended to improve the robustness of, and confidence in the design and the process;
- Quickly learn any additional lessons from the practical implementation and execution of auctions prior to the 2.6GHz award and where appropriate, build the learning into this award (without delaying the overall spectrum awards timetable).

BT has responded to the specific issues raised in each of Ofcom's following questions.

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

BT notes Ofcom's movement on this issue since the last Discussion Document.

Currently the text in paragraph 3.13 states, *"We are therefore proposing to amend the auction rules so that, at the end of each primary round, we will disclose details of which packages have been bid on (and how many bidders have bid on them)."*

However, it is not entirely clear what Ofcom envisages in terms of the information it will disclose. Ofcom is encouraged to provide further clarification (perhaps in the form of a simple example) offering a round to round indication of the information (and format) that Ofcom plans to distribute to bidders. This would allow stakeholders to be completely clear regarding Ofcom's thinking on this issue.

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?

BT supports Ofcom's position not to allow assignment stage bids to be made contingent on the identity of prospective neighbours.

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

Yes, BT agrees with Ofcom's current proposal on this issue as this appears to be a sensible and rational way of accommodating the dual need for facilitating paired-unpaired fungibility as well as ensuring that bidders are in a position to receive the same volume of fully useable spectrum irrespective of it being paired or unpaired in nature.

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?

BT notes that Ofcom has sought to alleviate concerns with potential strategic use of fungibility and has considered the adoption of a relaxed revealed preference activity rule. This proposed solution, appears likely to add additional complexity to the design at quite a late stage in the consultation process and thus may outweigh any potential benefits it might have had. BT agrees with Ofcom's proposal not to implement the rule.

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

BT agrees with Ofcom's current proposal that there should be no linkage between the clock prices for 2.6GHz lots and 2010MHz lots. The 2010MHz lot should be priced as set out in the Discussion Document (based on demand for that lot, with a separate clock price that can progress at a different pace to the 2.6GHz clock price).

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?

The solution considered appears likely to add additional complexity to the design at quite a late stage in the consultation process and may outweigh any potential benefits.

It is noted that Ofcom has also reminded stakeholders that all bids made during the auction are potentially valid and therefore bidders should only bid for what they want, otherwise they risk being awarded, and having to pay for spectrum that they neither want nor can utilise.

Every solution to this issue is a compromise of some sort, in terms of desirability, ease of implementation and complexity for participants to understand and work within. Ultimately this is a balanced decision. BT believes the correct solution in this instance is to maintain the current eligibility points based activity rule design.

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

The algorithm is now precise and identifies clearly a unique set of prices to be paid by winning bidders. Nevertheless, the process of price determination is very complex. We encourage any further efforts that Ofcom can make to support bidders' attempts to understand the process.

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

Ofcom's compromise proposal of a reduced (sub-100%) deposit during certain stages of the bidding process, appears to strike a reasonable balance between the commercial needs and practical concerns of prospective bidders with the equally important need for Ofcom to reduce its potential financial risk/exposure to "unsupported" bids during the auction.

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?

BT notes Ofcom's outlined proposed amendments in paragraphs 3.80 – 3.83 regarding bidder association. In addition, paragraph 3.83 of the Consultation Document states that, "...the draft legal provisions relating to this require further work and so are not reflected in the current version of the draft regulations set out in Annex 7." As such it is not possible to provide a definitive response to a partially described proposal.

However, based upon the currently available information, BT acknowledges the rationale for the proposal and, whilst accepting the proposal, recognises the possible risks this introduces, including the creation of potential information leakage conduits between different

bidder groups. This would be unfortunate, given the effort Ofcom has gone to, to strengthen and secure the process from collusion, deliberate, tacit or accidental.

Therefore it would seem appropriate that when Ofcom constructs the “final” form of words relating to this issue, it provides specific assurances that the process for this proposal ensures transparency. Furthermore, the rules need to be sufficiently unambiguous and rigorously drawn to ensure that stakeholders are able to fully understand and thus abide by them and be clear that there are enforceable safeguards and penalties to allow a high level of confidence in them.

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

BT notes Ofcom’s current proposal to amend the spectrum cap to 80MHz of fully usable spectrum.

Question 12: Do you have any comments on the updated detailed auction rules and procedures for the 2.6GHz and 2010MHz award, as contained in Annex 6?

The updated auction rules and procedures, excluding those aspects where BT has raised issues, currently appear clear, comprehensive and consistent. One apparent ambiguity that appears to remain (and should be simple to resolve) is what happens in the event that a bidder with extensions left fails to submit a bid after the 30 minute extension period? Paragraphs A6.60-A6.65 appear silent about this event.

Question 13: Do you have any comments on the draft regulations contained in Annex 7?

The draft regulations, excluding those areas where BT has raised issues, appear to currently provide a suitable and pragmatic balance. It is noted that there are areas which are not yet resolved (which Ofcom acknowledges) and therefore not included in the current version of the draft regulations, as well as the proposed area of the “opt-out” for organisations with interests in (or relationships to) multiple bidder groups.

3 Other Comments

We have noted the update on relevant European regulatory developments given in section 5 of the document and the technical results of the CEPT SE42 project team that are detailed in Annex 9. BT has participated fully in the work in the CEPT SE42 group that developed the CEPT Report 019 in response to the EC Mandate “to develop least restrictive technical conditions for frequency bands addressed by the WAPECS initiatives”. We broadly support the proposals made by SE42 and understand that the European administrations supported the SE42 results at the ECC meeting held immediately after the EC RSC meeting. We note that the SE42 report contains some comments from a minority of relevant industry players and we would intend to contribute to the present public consultation on that document to indicate BT’s general support for the SE42 results.

We note that the SE42 report identifies the possibility for administrations to relax the baseline out of band emission constraints where the administration places constraints on antenna placement (examples of indoor use or below a certain height are mentioned in the SE42 Report). We agree that this dispensation is very important. We have noted that Ofcom proposes to apply the relaxed levels to indoor use or, in the case of outdoor use, for antennas no more than 5m above ground. We request that Ofcom consider a 6m outdoor

height restriction rather than 5m. We would also hope that if for some reason a licensee wanted to have the height limit reviewed Ofcom would consider a license variation request. We have noted that the title of Table 13 in the consultation document refers to unrestricted channels and presume this is an error, in that the limits in this table apply to both restricted and unrestricted channels. There are other aspects of the SE42 report (e.g. the requirement to sum only the e.i.r.p. of antenna elements when calculating adjacent channel interference) that could perhaps have been phrased more clearly by SE42 and we believe would need to be more accurately interpreted for the purpose of license conditions.

BT is supportive of the EC proposals to develop a binding EC Decision for the 2.6 GHz band based on the SE42 results so long as this retains the full flexibility of Ofcom's licensing proposals for the band and does not lead to additional complications that would delay the opening of the 2 500 – 2690 MHz band to innovative applications in Europe. We support Ofcom's position on this matter, which appears to be aligned with our own views. Assuming that the EC Decision is based on the SE42 technical conditions it will be important to ensure that the binding decision leaves Ofcom flexibility to vary the technical licensing conditions, for example where adjacent operators agree to do so.

We note that some technical details are still under consideration by Ofcom, presumably including points made in the BT response to the last consultation. We remain ready to discuss any technical points further, should Ofcom consider that to be helpful, and look forward to early announcement of Ofcom's final conclusions on these technical matters.

4 Conclusions

BT's views on the latest consultation questions and other related matters have been provided. We look forward to an early conclusion of the matters that Ofcom is still considering in relation the 2010 – 2025 and 2500 – 2690 MHz band spectrum award. Ofcom's aim to produce a policy statement early in 2008 followed by a flexible and technology / service neutral award along the lines Ofcom has previously proposed, including minor changes to the technical conditions to reflect European work on block edge masks, is fully supported. Most importantly, we encourage Ofcom to continue to drive towards its current timetable. We remain willing to discuss any points should Ofcom consider this to be helpful.