

Update on the 2.6GHz award – 26 March 2009

Litigation update

Previous update notes in June, August, October, and December 2008 have informed stakeholders of developments in respect of the litigation being brought against Ofcom by T-Mobile and O2 in relation to Ofcom's decision in April 2008 to go ahead with the 2.6GHz award as soon as possible.

T-Mobile commenced proceedings in the High Court in May 2008. The Court of Appeal's judgment (which was reported on in our update of December 2008) opened the way for those proceedings to be listed in the High Court.

T-Mobile has recently indicated that it no longer intends to pursue its claim for judicial review. However, shortly before T-Mobile gave this indication, O2 (which was supporting T-Mobile's claim) lodged its own claim for judicial review. O2 is also arguing that T-Mobile's claim should continue notwithstanding T-Mobile's decision to withdraw.

The High Court has decided that the question of whether O2 should now be granted permission to bring its own claim out of time, as well as O2's procedural arguments relating to T-Mobile's claim, should be heard at the same time as O2's substantive case is heard. A hearing has therefore been listed in this regard to commence on 19 May 2009. It is anticipated that this hearing will last for four days.

A High Court judgement in Ofcom's favour would open the way for us to invite applications in the summer and to begin the auction in September.

Adjacent band radar receiver selectivity and possible need for transitional coordination arrangements

We also wish to make stakeholders aware that, as set out in our Statement of 4 April 2008, we have carried out further testing of the risk of interference to aeronautical radars from the 2.6GHz band. That testing has identified that some radars operating in the adjacent band above 2.7GHz are likely to be susceptible to transmissions from within the 2.6GHz band. This could have two implications for stakeholders that are interested in using the 2.6GHz band.

- There is likely to be a need for some transitional coordination arrangements during a period in which the radars are modified to address this vulnerability.
- We will take this risk into account when reviewing applications for non-operational (T&D) licences to trial technology in the 2.6GHz band. As a precautionary measure, we will decline requests for trials in locations that pose a risk to radar performance.

The substance of the issue relates to a lack of selectivity of some radars that operate in the spectrum band 2.7-3.1GHz. These radars include air traffic control radars used at airports and airfields around the UK and possibly radar installations on certain ship types. This lack of selectivity means that radar receivers may be susceptible to transmissions which do not originate in the radar band but in neighbouring bands, including the 2.6GHz band. Radar performance may be degraded as a result.

Ofcom, the Civil Aviation Authority, the Ministry of Defence and the Maritime and Coastguard Agency are jointly investigating this issue through technical studies and testing programmes. To date, these show that it will be necessary to take measures in order to mitigate the susceptibility of some radars to transmissions in adjacent bands. As part of this work we have commissioned a study to design and test a modification for the most common air traffic control radar so as mitigate this selectivity problem. We are commissioning similar work in relation to other radar types.

All parties recognise the importance of preserving the operation of priority radar services to ensure safety and security in the UK and its territorial waters, as well as the importance of ensuring that adjacent spectrum, including that in the 2.6GHz band, can be fully used for the benefit of citizens and consumers.

As a result, it is likely that some transitional measures will be required to ensure the operation of priority radar services if 2.6GHz base stations are deployed before any required mitigation solutions have been implemented to radar receivers. We will publish further information on this issue ahead of the award of the 2.6GHz band.