

3 August 2020

Dear Chief Executive,

Award of 700 MHz and 3.6-3.8 GHz spectrum

I am writing to you and the CEOs of the three other mobile network operators following the discussion we had at last week's roundtable with Government, to set out how Ofcom plans to proceed with the award of this spectrum.

You will see that we have today published a statement on modelling and technical matters for the auction. We have concluded that it remains appropriate for us to hold the auction, as the best way of releasing spectrum in line with our legal duties. We aim to do so as soon as practicable, taking account of Covid-19. The full reasons for that decision are set out in the statement, but in the light of our discussions last week I wanted to highlight the key points.

We know that this spectrum is important to the future of 5G services in the UK, and that there is considerable demand for it, from your companies and potentially others. That is why we proposed to allocate it by auction, and have consulted on that basis for some time.

This year, some operators have suggested that, in the light of the pandemic, we should adopt an 'administrative allocation' method in place of the auction. It has been suggested that we should award the spectrum at the reserve price and potentially make significant reductions in annual licence fees for other spectrum, in order to secure the agreement of all parties. The need to avoid excessive costs for spectrum was also raised at last week's meeting in the context of the financial impact of the Government's recent decision on Huawei equipment.

As you know, Ofcom's main duty in relation to spectrum is to secure its optimal use, in the interests of citizens and consumers. When we allocate new spectrum rights, we are required by law to do so through an open process, and in a way that meets this duty. Where the demand for the spectrum is high and availability is limited, we have powers to hold a competitive auction process to determine its allocation, and the price to be paid for it. We have no duties either to maximise or to minimise revenue and indeed we are not able to pursue such objectives. Our duties focus on efficient allocation, to ensure that this scarce national resource is used as effectively as possible in the interests of UK consumers.

As set out in the statement, and as I explained when we met last week, we do not consider that there is a viable administrative allocation method which would meet our duties; which could be carried out simply; and which would not lead to a significant delay in the availability of this spectrum. The evidence we have seen suggests that there is still excess demand for this spectrum, and as you will appreciate, any process would need to be genuinely open to any interested party, not just the current mobile network operators. Any such process would also need to be devised to meet our duty to ensure the efficient allocation of the spectrum.

Even if an administrative allocation could achieve these aims (and the last such allocation for spectrum of this type in the UK was in 1989, so there is no recent precedent), we would have to consult on the details before reaching a final decision. In the light of the importance of this spectrum and the differing commercial interests of the network operators, we think this process would be lengthy, and that any final decision would prove contentious.

Finally, allocation at the reserve prices is likely, in our view, to be below the current market value of the spectrum. As we have set fees at market value (either through auctions or through annual licence fees) to secure optimal use of the spectrum, it is not clear to us that an allocation at the reserve prices would be justified in the light of our duties.

A number of other issues have been raised with us during the consultation process, and we have listened carefully to these.

In particular, we recognise that the spectrum already allocated in the 3.4-3.6 GHz band, and the spectrum awarded through our auction, is likely to be fragmented, and that we should facilitate defragmentation through the process. We have always agreed that there are benefits in having large contiguous spectrum blocks for the deployment of 5G. There are incentives for operators to defragment the band through commercial trades, and we initially proposed to rely entirely on market trading mechanisms for defragmentation. However, we have heard and acted upon responses from some operators who told us that we should go further and take active steps to facilitate defragmentation. We have made a number of changes, including introducing a negotiation period within the assignment stage of the auction, to enable winning bidders to agree with each other to receive adjacent spectrum. This will make post-auction trading to defragment the spectrum more straightforward.

I know that some operators wanted us to go further by requiring all existing licensees in the band to put their existing spectrum up for reassignment. However, for the reasons we set out in March, we believe the modifications we have made are a proportionate way to support defragmentation of the band.

Concerns were also raised with us that bidders might seek to use the auction process to drive up their rivals' costs. We have included measures in our auction design to mitigate this risk. These include the auction format itself, which all operators have supported throughout the consultation process; our information policy; not allowing bidders the option of withdrawing or specifying minimum requirements; and increasing the minimum size of bids in the 3.6-3.8 GHz band.

Finally, we fully appreciate that the pandemic will affect the practicalities of how the auction is held. We know that, like us, you will need to take additional steps to participate in a safe way that secures the integrity of the process. We have had very constructive engagement with your company in this regard, and are adapting our auction processes in the light of what you have told us. We are being flexible in our response: not imposing unreasonable requirements on affected bidders; modifying the pace of the auction; and adopting greater predictability of price increments and deposit requests during the auction. In addition, as explained in the new version of the process guidance we have published today, we will consider further changes if potential applicants have comments or suggestions in this area.

With regard to timing, we now expect to start the formal process during November, with bidding commencing in January 2021. We will of course remain in close contact with you and other interested parties throughout, and adapt our approach as necessary in light of Government health guidance.

For all of the reasons set out in the statement, and summarised above, I believe that proceeding to hold the auction – in a Covid-safe way – is the best way to ensure that this important spectrum is allocated fairly and efficiently, and is made available as soon as possible so that people and businesses across the UK can benefit from access to 5G networks and services.

I am copying this letter to the Secretary of State for Digital, Culture, Media and Sport, and to the Minister for Digital Infrastructure.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Melanie Dawes', written in a cursive style.

Melanie Dawes