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17 March 2011

Dear Sirs,

Consultation Response of Hutchison 3G UK Limited (“Three”) to Ofcom’s Notice of proposals to make 900MHz, 1800MHz & 2100MHz public wireless network licences tradable of 2 February 2011 (the “Consultation”)

Three welcomes the opportunity to comment on Ofcom’s proposals to make licences for 900, 1800 & 2100 MHz spectrum tradable.

In general, Three supports Ofcom’s proposals to make 900MHz, 1800MHz & 2100MHz public wireless network licences tradable and in particular, Ofcom’s specific proposal regarding an *ex ante* competition check to ensure that trades of mobile spectrum do not result in a distortion of competition. As Ofcom rightly recognizes, spectrum is a “valuable and finite resource”¹ and a key input for providing mobile services.

In response to the specific questions asked by Ofcom, Three’s comments are as follows:

1. Do you have any comments on the proposals to enable spectrum trades in respect of the 900 MHz, 1800 MHz and 2.1 GHz bands?

Three strongly supports Ofcom’s conclusions that trades of mobile spectrum should be treated differently to spectrum trading in general as “*there is a material risk that concentration of mobile spectrum holdings that could affect downstream competition*” and agrees that access to spectrum is indeed essential for competition at the wholesale level in the mobile market.² Three also agrees that spectrum holdings in the mobile market are crucial given that “*much of the service proposition and service quality is set by the wholesale access provider.*”³

¹ Paragraph 2.9 of the Consultation.

² Paragraphs 3.13 - 3.14 of the Consultation.

³ Paragraph 3.14 of the Consultation.

Three also supports Ofcom's view that "*mobile spectrum is likely to remain relatively scarce even after the auction, given the rapid increase in mobile (especially data) traffic.*"⁴ Given this position, in Three's view, addressing whether the concentration of mobile spectrum holdings could affect the ability of firms to compete at the crucial wholesale level should be a key concern for Ofcom both in the forthcoming auction of 800MHz and 2600MHz spectrum and in any subsequent spectrum trading. Even if Ofcom promotes competition in the design of the 800/2600MHz auction, Ofcom's ability to carry out an ex ante competition check will be essential to ensure competition is maintained thereafter.

Further, Three supports Ofcom's view that it will need to be careful to ensure that operators are not able to use spectrum trading to game the rules set for the auction.⁵

2. Do you have any comments on the proposal regarding an ex ante competition check?

Three welcomes Ofcom's proposal to introduce an ex-ante competition check on mobile spectrum trading where appropriate.

Three considers that Ofcom's proposed check will be vital where mobile spectrum trades are designed to allow operators to gain a disproportionately large amount of spectrum or remove spare capacity. Such acquisitions could potentially hinder competition by leading to capacity constraints, or by preventing other MNOs from acquiring larger amounts of contiguous spectrum over which they could run higher bandwidth services.

In addition, we note that whilst Ofcom proposes to consider whether to grant its consent to any trade of the spectrum which forms part of the merger clearance given to T-Mobile and Orange by the European Commission, Ofcom will not undertake an *ex ante* competition check in relation to the trade. As the European Commission's decision on this merger clearance was taken some time ago, we would be grateful if Ofcom could explain further how it will take subsequent competitive developments in the mobile market into account.

3. Do you have any comments on the proposed statutory instruments set out in this notice?

Three supports Ofcom's proposed statutory instruments.

We would of course, be very happy to discuss further with Ofcom any aspect of our response, if you feel that that would be of assistance.

Yours sincerely



Mark Falcon
Head of Economic Regulation

⁴ Paragraph 3.14 of the Consultation.

⁵ Paragraph 3.15 of the Consultation.