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**Three response to second  
consultation on  
coexistence of new  
services in the 800MHz  
band with digital terrestrial  
television.**

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**Non-Confidential**

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Date: 18<sup>th</sup> April 2012



# Three supports the principles proposed by Ofcom and government.

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- 1 Three welcomes the opportunity to respond to Ofcom’s consultation on this matter. We are broadly in agreement with the basic principles underpinning the proposals set out by Ofcom and government; specifically we agree that:
  - a. MitCo should be established as an independent body (managed and staffed by independent personnel) responsible for the provision of consumer based mitigation measures.
  - b. That the 800MHz licensees (“The Licensees”) own and control the entity with oversight from government and Ofcom.
  - c. Mobile operators remain responsible for the optional implementation of network based mitigation.
  - d. That the maximum liability of The Licensees has been clearly specified and that government will bear the risk of any overspend.
  - e. That following closure of MitCo The Licensees will not be liable for further costs associated with mitigation.
- 2 This response addresses the specific questions posed by Ofcom in the consultation document.

***Question 7.1: Do you agree that it is best to seek to establish MitCo in advance of the auction for later transferral to 800 MHz licensees?***

- 3 Yes, we agree with Ofcom that MitCo should be set up by government before the auction. In particular, government should establish MitCo's constitution and ensure that The Licensees are able to take control of an entity with basic functions immediately following the auction.
- 4 However, we do not think that any operational decisions, e.g. negotiating contracts with postal services, set up of call centres or appointment of operational personnel need to be made at this initial stage. It would be more efficient if these decisions are made by the 800MHz licensees after they become shareholders of MitCo (i.e. after the auction).

**Question 7.2: Do you agree with our initial views on MitCo's constitution and governance?**

- 5 Three agrees that the following elements have to be reflected in MitCo's constitution:
- MitCo's mission and objectives;
  - MitCo's reporting obligations to the Supervisory board;
  - The composition of the governance structure;
  - The need to have an independent CEO/Chairperson;
  - MitCo's internal decision-making process, etc.
- 6 It is particularly important to design the governance structure carefully in order to ensure efficient decision-making process and prevent strategic behaviour.
- 7 The incorporation of MitCo should enable the creation of shareholder agreements between licensees to ensure that legal recourse is available to them for unilateral failures/actions that result in collective losses (through the imposition of operational conditions or Ofcom enforcement action and fines).

**Question 7.3: Do you have any views on the proposed approach to the Supervisory Board?**

- 8 Three agrees with the proposed approach.

**Question 7.4: We propose that the 50% gain share be split between 800 MHz licensees based on the volume of spectrum they hold in the 800 MHz band. Do you have any comments on this proposal?**

- 9 Three considers that £180m funding for MitCo should come from the auction proceeds. This would be far easier for bidders compared to paying a further separate sum after the auction. If, however, Ofcom decides otherwise, and the 800MHz licensees will need to provide funding for MitCo separately, outside the auction process, this has to be communicated clearly before the auction.
- 10 Three agrees with the proposed gain share split to be based on the amount of spectrum each licensee holds.

**Question 7.5: Are the information parameters defined above and in Annex 5 sufficient to allow MitCo to accurately and reliably forecast the scale and scope of households affected by DTT interference?**

- 11 We believe that, in addition to the information parameters specified in the consultation, MitCo would benefit from the provision data specifying the orientation, azimuth and tilt of a given cell site.

**Question 7.6: Do you agree the KPIs related to MitCo's activities are appropriate and robust?**

- 12 Three agrees that the proposed KPIs are appropriate in principle. Ideally, all KPIs should be outcome-oriented rather than process-oriented. However, in practice, it is difficult to accurately predict which households will be affected. Therefore, some measures, e.g. sending out information and filters, are more likely to be process-oriented and may vary in their effectiveness depending on accuracy of these forecasts.
- 13 Comments on specific KPIs:
- KPI 1 – Information supply – Three agrees with the proposed KPI. We also note that providing information by post is likely to be more effective if it is undertaken alongside a wider information campaign, e.g. in local media.
  - KPI 3 – Reactive filter supply - Three notes that the requirement to deliver 91% of filters within 2 working days of customer requirement confirmation may be too stringent. 3-5 working days would be more realistic.
  - KPI 4 – Vulnerable consumer support – 99.9% installations within 8 working days – 99.9% threshold appears to be overly precise and may be unrealistic. We suggest less precise target (90%) and, for the reasons discussed below, a time range within which an installation can take place.
  - KPI 5 - Platform change supply – as above, 99.9% may be unrealistic. Platform change would involve contacts with third parties (alternative platform providers). Hence, timing may be affected as third parties are unlikely to work within similarly tight deadlines.
  - KPI 6 – Consumer complaints – When finalising this KPI, Ofcom needs to ensure that there are no opportunities for 'gaming'. For example, given that only one filter is provided per household free of charge, some customers might complaint that they have not received a filter, expecting that another one will be send to them.

Steps need to be taken to ensure that this kind of behaviour does not affect the assessment of MitCo's performance.

**Question 7.7: Do you agree that the KPI for incentivising and measuring the proactive supply of DTT receiver filters to households affected by interference should be based on an assessment of the outcomes rather than the activities performed by MitCo?**

- 14 Yes, we agree. An outcome-based KPI provides MitCo with some flexibility around how this outcome is delivered. MitCo is incentivised to deliver the outcome (less than 10% of households forecast to be affected by DTT request a reactive filter) in the most cost-effective way, given that 50% of any savings made will be returned to the 800MHz licensees.

**Question 7.8: Do you agree with the approach we have outlined for incentivising KPI achievement and managing cases of non-compliance with KPIs?**

- 15 We are concerned that the application of the Operational Conditions as currently proposed could facilitate strategic behaviour or unfairly penalise compliant licensees. Specifically we are concerned about the Operational Condition requiring base stations to be operated under test conditions across a whole DTT transmitter coverage area where it is applied to KPI 2.
- 16 Our interpretation of the application of this Operational Condition to KPI 2 is that all operators would be penalised where only one operator has erred and caused more than 10% of households to request a filter.
- 17 Clearly where the failure is a result of MitCo's under performance in terms of the provision of consumer information and/or consumer based mitigation measures the concept of collective responsibility should apply (as is the case for all other proposed KPIs).
- 18 However KPI 2 could be breached as a result of interference caused by the (deliberate or unintentional) actions of a specific operator outside the control of MitCo. For example a failure to apply network based mitigation measures by one operator could result in the imposition of test conditions on other licensees (who have undertaken such mitigation).
- 19 It is possible that an unscrupulous licensee could deliberately breach KPI 2 by failing to apply network level filtering to a single base station thereby

triggering the “test conditions” operational condition in order to frustrate the roll out of services by other operators across a much wider area.

- 20 Ofcom should consider this risk when drafting the final specification of this KPI.
- 21 We also foresee the need for shareholder agreements to ensure that, in addition to the supervisory structure proposed, the licensees are able to hold each other to account for unilateral failures that result in the imposition of operational conditions and the resultant financial losses to other operators.

***Question 7.9: Do you agree with our proposed approach for managing MitCo’s performance against other elements of service delivery that are not captured by KPIs?***

- 22 We believe that more clarity is needed in this area. We agree that there are other activities that MitCo needs to undertake that are not captured by KPIs, e.g. specifying technical standards for filters, undertaking demand forecasting, setting up online platform, etc. We also agree that the Supervisory Board has a role to play in monitoring these activities. However, it is not clear from the consultation document what would happen if the Supervisory Board and MitCo have different opinions on certain aspects of these activities. Would the Supervisory Board be allowed to apply operational measures and/or delay the roll out until an agreement is reached? The consultation document needs to be more specific.

***Question 7.10: Do you think a hard or soft limit should be set in relation to platform changes? Do you have any other comments in relation to the platform change cap?***

- 23 Three support the soft limit option. We note that it is difficult to accurately predict the number of households that might need platform change. Therefore, there is a risk that any limit set on platform changes might underestimate the actual number.
- 24 In the ‘hard limit option’, Ofcom proposes:  
“... if the hard limit was breached, there could be an obligation placed on new licensees that they would pay for any further platform changes themselves. This would be outside the scope of the £180m that is being used to fund MitCo ...” (para. 7.154)

- 25 We believe that this approach puts too much risk on the licensees. While it is obviously desirable to minimise the number of platform changes, the 800MHz licensees should not be penalised if the number of forecasted platform changes turns out to be too optimistic and more platform changes are needed in practice.
- 26 Therefore, a soft limit option is preferable. MitCo should be permitted to seek Ofcom's approval for an increase to the platform change limit, particularly if there are clear reasons for doing so (e.g. identified modelling errors).

***Question 7.11: Do you agree with the requirements we propose to place on licensees to address interference after MitCo closes?***

- 27 We agree with these requirements.

***Question 8.1: Do you have any views on the nature or detail of the requirements we propose may be necessary as set out in this Section?***

- 28 We have no further comments beyond the points set out above.