



Response to Ofcom's consultation on:

**Notice of Ofcom's proposal to make regulations in
connection with the award of 2.3 GHz and 3.4 GHz spectrum**

(Issued by Ofcom on 21 November 2016)

**BT plc and EE Ltd
30 January 2017**

1. INTRODUCTION

BT/EE has reviewed the revised auction regulations and the proposed changes to the auction procedure. We have considered whether the regulations correctly implement Ofcom's procedure as intended and provide our observations below.

Our response to this consultation on the auction regulations is without prejudice to our views on Ofcom's competition policy proposal (the proposed cap on "immediately useable spectrum"). We address that issue in our response to the parallel Ofcom consultation on the 2.3GHz and 3.4GHz award and do not repeat our views in this response to the proposed auction regulations.

2. COMMENTS ON CHANGES TO THE AUCTION PROCEDURE

Failure to pay final auction sum by UK Broadband or UKB Networks

We note the proposal that if UK Broadband or UKB Networks does not pay its final auction sum it would still be granted a replacement licence (but not a licence for extra spectrum it may have won). In contrast, any other bidders who don't pay their final auction sum will win no spectrum. In all cases the bidders would forfeit any sum on deposit. We consider this approach to be unduly discriminatory between the bidders and would recommend that bidders are treated equally. If UK Broadband or UKB Networks fails to pay its final auction sum they should receive no licence for spectrum, in the same way that any other bidder would be treated. To do otherwise can only increase the risk as they would have less incentive to pay the final auction sum. This consequently increases the risk they could bid up the cost of spectrum to others, while leaving Ofcom with unsold spectrum. This is because they would have less incentive to honour their bids for extra spectrum if they didn't face the risk of losing the amount of spectrum that they already hold. If these parties were to default on annual payment of their existing licence they would have it revoked and so there is no obvious reason why special treatment should be offered to them in this award.

Assignment round bidding on withdrawn lot licences

The draft auction rules appear to enable a bidder who has won only a *withdrawn lot licence* (in one or both bands) to participate in the assignment round before declaring whether or not they intend to accept or refuse the licence(s). Although the motivation to do so is unclear, it does mean that such a bidder can influence where the withdrawn spectrum is positioned in the band and affect how much others pay for where they are located in the band, even if that bidder ultimately refuses the licence.

It would be more logical if a winning bidder, who only wins a withdrawn lot licence in a given band, is only allowed to participate in the assignment round bidding if it first commits not to ultimately refuse the withdrawn licence and pays a higher deposit prior to the assignment round that reflects the higher cost that accepting the withdrawn licence would entail.

3. MINOR COMMENTS ON THE DRAFTING OF THE REGULATIONS

Regulation	Existing text	Comment
50 (1) (b)	(b) may not submit an assignment stage form in the assignment stage round and shall be deemed to have made a valid 2.3GHz assignment stage bid with a value of zero pounds for each of its assignment stage options in accordance with regulations 71 and 77.	Should this regulation not also include reference to the 3.4GHz band and deem that a bid for zero pounds is also assumed for the assignment option for that band?
99	The section is titled “ Acceptance or refusal or the withdrawn lot licence ”.	Suggest changing to “ Acceptance or refusal of the withdrawn lot licence ”.