



Vodafone Response to Ofcom Consultation:

Defragmentation of spectrum holdings in the 3.4-3.8 GHz band



Executive Summary

Vodafone welcomes Ofcom consideration of how it might facilitate defragmentation of the 3.4-3.8GHz, in line with its duties to ensure efficient usage of spectrum.

The best way to ensure efficient usage of the 3.4-3.8GHz band is for the Assignment Stage in the forthcoming award to relate to the whole of the band, rather than 3.6-3.8GHz narrowly. We do not believe Ofcom's assertions that this may discourage existing licensees from participating in the auction to be credible. In order not to penalise incumbents, we suggest an approach whereby the Assignment Stage proceeds are neutral, i.e. bidders may receive a discount from their Principal Stage bids in exchange for facilitating defragmentation.

With regard to the proposals set out in the consultation:

1. We agree that winners of small amounts of spectrum in the 3.6GHz band should be placed at the top and bottom of the spectrum to be awarded.
2. We agree that unanimity in a negotiation phase should trigger that agreement being favoured over Assignment Stage bids, but in this context believe that dissent by either winners of small amount of spectrum, or operators already possessing large blocks of contiguous spectrum, should not be able to block consensus agreement.
3. We profoundly disagree with the proposals to allow agreement by a subset of bidders to influence operation of the Assignment Stage. The approach set out in the consultation is discriminatory against Vodafone, hence is unacceptable.



Introduction

Vodafone welcomes Ofcom's renewed focus on defragmenting the 3.4-3.8 GHz band. In this response, we consider the proposals set out in the consultation, and also whether further thought should be given to the option of defragmenting the entire 3.4-3.8 GHz band via the award process.

In setting out our opinion, we are mindful of the tension between getting the award process correct, and the award process happening in the desired timeline. The award of this spectrum will frame the degree of market competition for probably the next decade – we unequivocally believe that the priority must be that the award delivers the optimal outcome, even if this means a delay to the process while the best approach is agreed.

Answers to Questions

Question 1: Do you have any comments on the two sub-options for the negotiation phase set out above, including your preference between the two? Please give reasons for your views.

Ofcom is duty-bound to deliver an efficient award of spectrum, and a significant part of this is ensuring contiguity of spectrum to all operators that desire it. As Telefonica quite rightly identified in its response to the main auction consultation, EC Decision for the 3.4-3.8 GHz band, states that

“Member States should aim at ensuring a defragmentation of the 3 400-3 800 MHz frequency band so as to provide opportunities to access large portions of contiguous spectrum in line with the goal of gigabit connectivity. This includes facilitating trading and/or leasing of existing rights of use”

The associated Implementing Act¹ has legal force, and specifically Annex B paragraph 3 states that

“there shall be spectrum available providing the opportunity to access sufficiently large portions of contiguous spectrum, preferably 80-100 MHz, for wireless broadband electronic communications services;”

As set out in our response to the main auction consultation about the award, it would be perverse for Ofcom not to allow the possibility of a negotiated settlement based on concerns about a two or three week delay in the award of spectrum.

Unanimous agreement

Vodafone supports the approach of unanimous agreement being required in order for Ofcom to disregard the Assignment Stage bids in favour of a negotiated settlement. However, we believe that Ofcom should increase the chances of success by adopting a modified approach whereby the following bidders need not agree in order for a negotiated settlement to over-ride the processing of Assignment Stage bids (for the

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019D0235&from=EN>



avoidance of doubt everyone should participate in negotiations, but dissent by these parties would not be sufficient for there to be considered a lack of agreement):

1. Any party not meeting the criteria of having acquired 20MHz of spectrum in the Principal Stage, and
2. Any party already possessing 90MHz or more contiguous spectrum in the 3.4 – 3.6GHz band.

In both cases, we consider that the parties concerned have a greater incentive to block an agreement to defragment the spectrum than to facilitate it. In the case of the small winner, Ofcom's decision to place these licences at the top and bottom of the band – which for the record Vodafone supports – means that they have little to benefit from the negotiation. A licensee with existing contiguous holdings would have little incentive to facilitate its competitors securing contiguous spectrum. ✂ We therefore consider it proportionate conclude that winning bidders falling into these categories need not consent to any Assignment Stage deal.

Partial agreement

Vodafone absolutely disagrees with the sub-option of manipulating the Assignment Stage bids based upon a partial agreement reached between the parties. It would result in a move from the current poor situation where only Three has access to the desired 100MHz contiguous spectrum, to one where Vodafone is uniquely being discriminated against by Ofcom's policies. Vodafone could not accept this situation.

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Even if the partial agreement option were not discriminatory, it would give an unfair advantage to those bidders who reached agreement. In a scenario of Ofcom allowing contingent bidding, bidders would be allowed to ascribe higher value to bids where they were adjacent to specific other bidders. In contrast, in the solution proposed by Ofcom, assignment alternatives where the agreeing bidders concerned are *not* adjacent are essentially ascribed zero value (as they are discarded), even if the dissenting bidders had valued them more highly. Specifically, even if the dissenting bidders had valued certain frequencies more highly than the premium put on adjacency by the agreeing bidders, this is deemed irrelevant in the proposal as those incompatible bid combinations would be discarded as not meeting the agreeing bidders' needs. We recognise that there is a degree of mitigation via the agreeing parties' bids being set to zero in consideration of the remaining compatible bids – thus meaning that they have no choice of *which* adjacent frequency allocations they receive - but this is basically just giving the excluded party(ies) the choice of which crumbs they would like after the cake has been removed from the stand. It is not a fair approach.

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Question 2: Do you agree with our intention to restrict winners of less than 20 MHz to bidding for the top or bottom of the band?

Yes, Vodafone agrees that this is the best approach and provides safeguards against bidders acquiring relatively small amounts of spectrum solely to fragment the band.

Question 3: Do you have any other comments on our proposals to include measures in the auction to help defragment the 3.4–3.8 GHz band?

Vodafone believes that Ofcom is insufficiently ambitious in devising measures to defragment the band. The clue is in the title of the consultation – “*Defragmentation of spectrum holdings in the 3.4-3.8 GHz band*” – the fragmentation spans 390MHz of spectrum, yet the proposals only relate to the award of 120MHz of spectrum. Ofcom could and should be intervening in the whole band, to secure the contiguous spectrum desired by operators and mandated by the EU decision.

We believe that the Assignment Stage should relate to the entirety of the 3.4-3.8GHz band. It should be a condition of entry into the award process that bidders put their existing spectrum allocations up for re-assignment in order to ensure long term efficiency of spectrum (in line with Ofcom’s statutory duties). We understand that Ofcom’s concern is that this may lead to operators choosing not to enter the award process. However:

- We find it implausible that any of the major mobile operators would choose to sit the award process out. ✗
- Even if one of the holders of 3.4GHz spectrum did decide not to join the award process, Ofcom could then revert to an Assignment Stage involving only the 3.6GHz band and be in no worse situation than the current proposals.

It could be argued that this approach penalises Three, given the contiguous spectrum holdings already in their possession. Firstly, this is a moot point as they might welcome the opportunity to trade frequencies subject to Annual Licence Fees (ALFs) for those where ALFs do not apply for another 20 years. Secondly, Vodafone considers that it is entirely possible to devise an Assignment Stage whereby existing licensees are able to make **negative** bids for outcomes that would require them to move some or all of their existing holdings (and hence, if one of these outcomes becomes the winning one, receive a discount on the price they’re paying for spectrum in exchange for moving frequencies). In essence, it should be possible to create an Assignment Stage design whereby the proceeds of BT, Telefonica and Vodafone’s bids act to provide a discount on the amount payable by Three (up to the level of fees payable from the Principal Stage). We do not pretend that this design is obvious, but we believe an extension of the negative price bidding logic that Ofcom has contemplated for the coverage lots would be possible; Ofcom could for instance stipulate a maximum absolute value to any negative bids, representing the largest potential discount it is prepared to



offer for moving. As an expert regulator, with expert advisors, Ofcom should be able to codify this into auction rules without undue effort. We urge Ofcom to take the time to consider this alternative approach, as it yields the best opportunity of all four mobile operators to achieve contiguous spectrum, thus safeguarding competition in the medium-long term.

Vodafone UK
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