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28<sup>th</sup> March 2013

Dear Cliff,

**Consultation on licence variations to allow 4G on 900MHz, 1800MHz and 2100MHz licences, as well as changes to max. permitted power limits**

Telefónica welcomes this opportunity to respond to Ofcom's recent consultation. In summary our position on each of the three issues is:

- **Liberalisation** : Ofcom's advice to the Secretary of State<sup>1</sup> of 25<sup>th</sup> October 2010 found that the incremental cost benefits of networks with sub-1GHz spectrum were small compared to networks operating at 2GHz, with dense site grids.

This has been true with GSM networks, UMTS and will be with 4G. The underlying laws of physics do not change when technology changes. It is obviously regrettable that it took three years<sup>2</sup> for Ofcom to satisfy itself of this fact before processing Telefónica's licence variation in 2010. We therefore welcome Ofcom's change of approach in addressing more recent (and we hope future) liberalisation processes for existing licences.

The analysis in the "Advice to Government" led to Ofcom framing the rules for the Combined Award in the way that it did. Competition remedies reserving spectrum for a "fourth national wholesaler" related to H3G's size and exposure to strategic behaviour, not to the underlying benefits of one spectrum band over another. Indeed, reservations existed that did not include any sub-1GHz spectrum.

In reaching its conclusions on the Combined Award, Ofcom relies on the existing mobile operators both; retaining their existing spectrum going forward and having the ability to

<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/spectrumlib/advice-to-government/>

<sup>2</sup> [http://catribunal.org/files/1154\\_Telefonica\\_Judgments\\_071010.pdf](http://catribunal.org/files/1154_Telefonica_Judgments_071010.pdf) §104

*"We would express the earnest hope that OFCOM will now move speedily to ensure that liberalisation occurs very soon. The two stage process should not be used as an excuse for further delay. The legislation envisaged speedy liberalisation for the benefit of service providers and consumers....."*

use it for 4G in a timely manner.<sup>3</sup> Telefónica has, therefore, a legitimate expectation that its licences will be liberalised, unless Ofcom can present new evidence to the effect that do so would be disproportionate.

No such evidence is presented, so we believe that Ofcom is correct to offer to vary these licences to allow 4G services. If Ofcom does reach such a decision, Telefónica wishes its 900MHz, 1800MHz and 2100MHz to licences to be so varied.

[&..]

- **900MHz power limits for UMTS and 4G** : we have requested these changes and are supportive of their implementation in the licences in the format consulted upon.
- **Administrative changes to licences** :
  - Limiting the application of the historical 80% coverage obligation : we agree with this change, it is something that we highlighted required removal as early as 2005, as it creates an impediment to efficiency.
  - 900/1800MHz licences Schedule 1, para 11 – definition of 1800MHz : the definition included in these licences extends to the “DECT guardband spectrum” at 1781.7-1785MHz/1876.7-1880MHz which is licensed on a different basis and for a different purpose at much lower powers. It would be helpful if Ofcom could clarify or amend this definition.
  - 2100MHz licences Schedule 2, para 11(a) – typo : this schedule should refer to the unpaired spectrum.

Yours sincerely

**Nicholas Blades**  
**Head of Spectrum Strategy**

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<sup>3</sup> Combined Award statement 24<sup>th</sup> July 2012 §§4.127-4.132, for example.