



Notice of Ofcom's proposal to make regulations in connection with the award of the 700 MHz and 3.6 – 3.8 GHz spectrum

- Proposals to make a limitation order and amend the mobile trading and the register regulations

BT's Response to consultation published on 31 January 2019

12 March 2019

Comments should be addressed to:

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1 Introduction

BT has considered each of the four proposed Statutory Instruments¹ associated with the 700MHz and 3.6-3.8 GHz spectrum award, namely:

1. The Wireless Telegraphy (Limitation of Number of Licences) Order 2019;
2. The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019;
3. The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019; and
4. The Wireless Telegraphy (Register) (Amendment) Regulations 2019.

We are content with all four Statutory Instruments as drafted. However, we discuss in section 2 below the linkage between the spectrum trading regulations and the issue of spectrum leasing.

2 Consequential matters related to the spectrum trading regulations

Ofcom's existing Spectrum Trading guidance notes² indicate in the Table 4 that Spectrum Access licences that are tradable can (if permitted in the licence) also be subject to leasing, except those in bands covered by the mobile trading regulations. These guidelines may therefore need updating as a consequence of these amendments to the trading regulations given that the 3.6GHz spectrum access licence held by UK Broadband, which does allow leasing, would now fall within the scope of the mobile trading regulations.

Furthermore, the draft Government Statement of Strategic Priorities³ includes the following consideration:

More broadly, the Government believes that there should be greater liquidity in the spectrum market and barriers to spectrum trading should be removed. The Government would like Ofcom to clarify, through amendments to its Spectrum Trading Guidance Notes, that leasing or pooling of spectrum is not prohibited under the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (as amended)."

We understand that the ability to lease (or not) is addressed within licences issued under the Wireless Telegraphy Act rather than the Spectrum Trading regulations and in that case such clarification would seem appropriate even if it does not change the regulatory position.

The wider issue that does remain unresolved is whether a more consistent approach is appropriate as to whether licences for mobile spectrum permit leasing, and whether leasing should be more widely permitted for mobile licences. This is particularly relevant in light of the fact that Ofcom is separately proposing to introduce new users in spectrum already licensed on a national basis to MNOs but where leasing by MNOs is not currently permitted. In our separate response to those consultation proposals we address how shared access that might have similar effect to leasing might be organised while still enabling a degree of Ofcom oversight and involvement in the process.

Irrespective of whether Ofcom implements its own proposals for shared use by new users of spectrum already licensed on a national basis to MNOs, or whether it adopts BT's proposal for how

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/135092/proposal-limitation-order-700-MHz-3.6-3.8-GHz.pdf

² https://www.ofcom.org.uk/_data/assets/pdf_file/0029/88337/Trading-guidance-notes.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779226/SSP_Consultation_-_Publication_Version_2_.pdf

such sharing would be agreed on a more commercial basis, Ofcom should consider whether it has the necessary statutory basis to conduct ex-ante competition checks before agreeing to issue new licences in the mobile bands covered by the mobile trading regulations, especially as there are no limitations on who may apply for such new licences or how many / what extent of the UK geography a single user can acquire.

End

