

General Commentary

1. In its response to the March 2011 consultation, the Department of Enterprise, Trade and Investment (DETI) expressed concern that coverage obligations set at national level had failed to deliver for Northern Ireland. DETI notes that others have expressed similar concerns and that the proposed 95% coverage level was widely viewed as unambitious.
2. It is vitally important that this auction delivers economic and social benefits as widely as possible, addressing the needs of rural areas that have remained un-served as a consequence of previous licensing arrangements. In its own words, OFCOM concludes that this auction represents **“the last significant opportunity to obtain prime mobile spectrum for many years”, “the last significant opportunity to obtain prime mobile spectrum for the foreseeable future” and “the sole opportunity for many years to access additional prime spectrum resource for the provision of mobile services”**.
3. DETI also commented that use of additional funding to improve coverage should be considered, particularly if there was an approved mechanism by which funds could be channelled to compel or direct the holder of a licence to build additional infrastructure to improve coverage. To all intents and purposes the £150m made available under the Chancellor of the Exchequer’s Mobile Infrastructure Project recognises this issue and DETI considers this a positive step towards incentivising or requiring investment in at-risk and not-spots areas. It is appropriate that OFCOM should therefore consider alternative coverage options, recognising this important development since its first consultation in March 2011.
4. More generally DETI continues to agree with the OFCOM assessment that the market benefits from the competitive tensions offered by at least four national wholesalers and recognises the importance of sub-national RAN operators offering niche retail products. Further comments on this issue are included in our response to Question 4.5 of the current consultation.
5. DETI notes with interest the modelling carried out on behalf of OFCOM by Real Wireless. In particular DETI welcomes the inclusion of Counties Fermanagh and Tyrone as study areas. There are obvious coverage issues in both Counties which have been the topic of considerable and prolonged correspondence with the Department from a wide range of stakeholders and a regular agenda item in discussions between the DETI Minister and OFCOM. DETI recognises that a full analysis of UK not-spots areas would be prohibitive from a costs perspective and time-consuming given the pressures of bringing forward arrangements for the spectrum auction. However, we are disappointed that the bulk of the analysis as presented in the Real Wireless Report carries a focus on the Mid and North Wales study areas, particularly given the level of engagement between the Department and OFCOM.
6. In its March 2011 response (OFCEM Questions 6.2 and 6.4) DETI also raised the issue of inadvertent mobile roaming in border areas of Northern Ireland. This, we understand is an issue that has also been raised with OFCOM by other stakeholders at various community meetings and through Councils. The Department is therefore disappointed to note that no assessment of the potential to address the roaming

issue has been made in the Real Wireless report or that consideration has been given to how a suitable coverage obligation might be applied to address the problem. DETI therefore calls again on OFCOM to ensure that whatever coverage obligations arise from the auction process, appropriate measures are factored in to address this issue once and for all.

7. DETI has also noted with interest the OFCOM assessment of the three potential network options (macro-cell, metro-cell and customer premises equipment (CPE)). While OFCOM has not specifically asked for comments on its analysis there are matters that DETI wishes to raise.
8. The Department recognises the difficulties in provision of ubiquitous access to services. However it is concerned that the conclusions drawn by OFCOM regarding use of CPE assessment may not actually address end-customer needs or expectations. OFCOM notes that ***“there are open questions regarding their ability to fully substitute for a service delivered in the conventional manner”***, that such a solution ***“may not constitute a fully mobile service”*** and that ***“consumers may be motivated to bear some or all of the cost themselves”***.
9. A review of correspondence received by the Department in relation to delivery of broadband services provides useful comparison of how alternative or different approaches may be viewed by consumers. It is clear that anything different is often resisted as sub-optimal or discriminatory against particular user groups. While recognising that a range of approaches may be required to raise mobile coverage to its highest level, DETI considers that both OFCOM and the mobile sector must do more to address end-user concerns. This should include positioning equipment as a recognised brand, ensuring that it can deliver additional functionality, monitoring the end-user experience and being prepared to take action where required to address deficiencies in service delivery.
10. In its response to the March 2011 consultation (OFCEM questions 6.2 and 7.3) DETI expressed concerns that the consultation was silent on proposed monitoring arrangements to ensure compliance with resulting coverage obligations. DETI notes that notwithstanding the extensive documentation issued by OFCOM under the second consultation, this issue has not been addressed. The use of at least £150m of public funding in support of a coverage obligation should be supported by robust and extensive monitoring arrangements to ensure that value for money has been delivered. The consultation is largely silent on all aspects of the Mobile Infrastructure Project and this is unfortunate given its importance to regions such as Northern Ireland which have endured a legacy of under-provision through previous licensing arrangements.
11. Accordingly DETI repeats its call for a requirement as part of resulting licensing arrangements for the provision of data, including GIS co-ordinates of sites and predicted coverage maps together with all other existing obligations under the Stewart Report Recommendations. DETI also calls again on OFCOM to publish details of how it will monitor compliance with coverage obligations and the specific steps it will take where it notes evidence of default.
12. DETI notes the complexity of the auction process and shares OFCOM's desire to see that the appropriate outcomes are achieved to ensure that consumer interests

are addressed. However achievement of the benefits of high speed mobile services and the opportunities to develop solutions for mobile broadband delivery either as a mainstream or infill technology platform in support of the Broadband Delivery UK agenda require decisive and timely actions. Northern Ireland is one of a number of nations or regions exploring the opportunities presented by 4G as part of broadband investment programmes. DETI therefore urges OFCOM to ensure that there are no delays in the auction process that threaten such investments.

13. Turning to the specific consultation questions, DETI comments as follows:

Question 4.6 Do you agree with our assessment of the competition concerns relating to national wholesale competition that could arise if the auction took place with no measures to promote competition? Please state your reasons for your views.

DETI notes that this is to all intents and purposes the same question as question 5.4 in the March 2011 consultation. DETI is not placed to make any judgment on the specific analysis of the respective strengths and vulnerabilities of the existing national wholesalers of mobile services. However, it re-iterates its previous response that competition checks are appropriate to ensure that no fewer than four national wholesalers emerge from the auction process.

DETI also notes OFCOM proposals to use spectrum caps and spectrum reservation measures to promote competition, believing that such measures are more appropriate than wholesale access regulations to ensure that consumer interests are addressed. A potential side-effect of such an approach may be to strengthen the position of a wholesale operator with extensive infrastructure in a specific region. Use of wholesale access measures improves the likelihood that interventions using public funds deliver options for consumers. Exclusion of wholesale access measures may cause difficulties for public bodies seeking to fund infrastructure build to address remaining coverage issues, particularly from the requirement to demonstrate from a State Aid perspective how their investments will guarantee provision of minimum services to consumers.

Question 4.4 Do you believe that geographically split licenses for a particular block of 2.6GHz spectrum between standard power use and lower power use is likely to create significant additional benefits for customers?

In its response to the March 2011 consultation (OFCEM question 5.3), DETI was supportive of the potential for sub-national Radio Access Network (RAN) operators to emerge and deliver localised solutions. DETI remains of the opinion that measures to encourage the opportunity to deliver localised solutions are important. The Department is however disappointed that limited assessment of the potential benefits has been undertaken by OFCEM, particularly as OFCEM recognises that the auction represents the last opportunity to acquire prime mobile spectrum for a long time.

Question 5.1 Do you have any comments on the proposal to include a coverage obligation in at least one of the 800MHz licenses, and the proposed extent of such a coverage obligation?

In its response to the March 2011 consultation (OFCEM question 6.1) DETI argued strongly for a mechanism to compel holders of spectrum to build additional infrastructure to improve coverage. The Department also called on OFCEM to ensure that any coverage obligation

expressed nationally translated into the same level of coverage across the nations and regions.

The £150m Mobile Infrastructure Project is, as previously stated a mechanism welcomed by DETI and linking a coverage obligation through the auction to this funding is appropriate.

DETI recognises the difficulties and costs associated with provision of ubiquitous mobile coverage. It also welcomes the acknowledgement by OFCOM that the £150m funding under the Mobile Infrastructure Project (MIP) offers an opportunity to take a more directive approach towards the coverage issue. However, we have concerns that the options for coverage as proposed by OFCOM have not been considered adequately or that supporting evidence for the conclusions are sound.

Question 5.2 Do you have any comments on which of the two approaches proposed for the specification of such an obligation would be preferable?

DETI cannot agree with the OFCOM conclusion (paragraph 5.62 of consultation paper) that an obligation to cover 98% of the UK population is likely to result in a high level of coverage in each of the nations and in all but the most remote rural areas. Specifically DETI challenges OFCOM's assessment that this option would provide coverage of at least 95% of the population. As DETI highlighted in its response to the March 2011 consultation (OFCEM question 6.1) there is irrefutable evidence that national coverage obligations do not deliver for the Devolved Regions, with the 90% coverage obligation under the 3G licensing arrangements translating into coverage for a prolonged period of time of just 40% in Northern Ireland. Even assuming that coverage of 95% of the population of Northern Ireland might be achieved under this option, some 90,000 consumers in Northern Ireland would continue to be unable to access mobile services.

DETI also notes OFCOM Option B, requiring an additional coverage obligation beyond the level of existing 2G coverage. OFCOM's assessment of the likely impact of this option is that it will achieve coverage of areas within which 95% of the population of each nation lives. DETI concludes that linking coverage to the £150m funding under the Mobile Infrastructure Project (MIP) offers opportunity to direct investment to at-risk or not-spots areas. However, insufficient information on the MIP has been made available as part of this consultation to draw any informed decisions on the option.

In particular DETI is concerned with the OFCOM assessment that resulting coverage of areas within which 95% of the population of each nation lives could, for Northern Ireland, continue to exclude rural locations. cursory examination of areas of population in Northern Ireland shows high concentration along the east coast area and into a number of larger towns and cities. The option, as currently presented does not convince DETI that the most pressing locations will benefit

from improved coverage or that it represents significant improvement over Option A. Accordingly we call on OFCOM to undertake more detailed and specific analysis of this issue.

Question 5.3 Do you have any comments on our assessment that it is unlikely to be proportionate to impose such a coverage obligation on more than one licensee?

DETI is concerned that insufficient information on the present status of the MIP has been presented through this consultation to allow any structured assessment of a proportionate coverage obligation to be taken. For example, if the intention is to develop a single, national procurement exercise for the MIP, to be won by a single national wholesaler, it would clearly be inappropriate to expect other operators to deliver similar coverage without the funding intervention. However, if either the intention or the outcome of the MIP procurement is collaboration in the provision of services or consolidation of networks, a more embracing coverage obligation might be appropriate.

Question 5.4 Do you have any views on the costs and benefits of a wholesale access obligation on the licensee with the coverage obligation in respect of those areas beyond existing 2G mobile voice coverage?

DETI is disappointed that OFCOM has not undertaken more detailed examination of costs and benefits as they are clearly relevant to a range of issues including the actual coverage obligation which will emerge, competition issues in the most remote areas and potentially on the pricing and range of services that will be made available.

Question 5.5 Do you have any comments on the possibility that we may in certain limited circumstances consider granting concurrent licenses?

In its March 2011 consultation response (OFCOM question 6.5) DETI expressed concerns that there appeared to be no specific “use it or lose it” clause in relation to licences awarded through the auction. The Department now notes and welcomes the proposal to apply a “concurrent licensing” measure in specific circumstances. DETI generally welcomes such a measure, particularly where future Government policy may require access to spectrum but the holder of the spectrum is unwilling to use or trade the spectrum.

DETI notes that OFCOM does not envisage such a scenario arising within the first five years after issue of a license and that such a period of time is required to allow full network development after the auction is completed.

DETI cautions however that notwithstanding OFCOM's preference to act as a light-touch Regulator, should examples of non-use or hoarding of spectrum be identified, it will use its powers under statutory duties to address quickly and efficiently any such issues.

DETI has previously referenced OFCOM's assessment of the importance of this spectrum. OFCOM also concludes that with the growth in use of mobile devices, for some consumers, mobile is likely to be a cheaper solution. The potential benefits of this spectrum cannot be lost through delays in addressing breaches of coverage or non-use of the spectrum.