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By email only
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Three's response to Ofcom consultation, 'Notice of Ofcom's proposal to make regulations for the award of the 700 MHz and 3.6-3.8 GHz spectrum bands'

1. Three welcomes the opportunity to respond to Ofcom's consultation on its proposal to make regulations for the award of the 700 MHz and 3.6-3.8 GHz spectrum bands. Though it is somewhat irregular that Ofcom is consulting on the detailed regulations before having the opportunity to consider stakeholder responses on the underlying policy proposals and auction design published in December 2018. Our expectation is that Ofcom will revise its approach to address concerns raised by stakeholders.

Summary

2. As explained in detail in our response to Ofcom's 700MHz and 3.6-3.8GHz Award Consultation, our main comments remain as follows:
 - (i) Ofcom's inclusion of coverage obligations in the auction are now perversely the main obstacle standing in the way of resolving the problem of mobile coverage at once using the SRN (Single Rural Network). Given this, Ofcom should not impose coverage obligations in the auction. This would allow the mobile industry to align on a Single Rural Network (SRN) which would lead to a wider mobile coverage for more consumer citizens at a fraction of the cost to the taxpayer.
 - (ii) Three is concerned about the risk of distortion in the auction if a low-cost provider of a coverage obligation runs against the positive price constraint. We want to compete on a level-playing field in the auction, not one where the odds are tilted in favour of MNOs with larger coverage and a greater subscriber base to monetise investment in coverage. These MNOs may be expected to win more spectrum than they would otherwise in an efficient allocation, contrary to Ofcom's efficiency and competition duties. Following this we recommend that no coverage lots should be offered unless Ofcom can accept negative bids and pay bidders in the auction.
 - (iii) If a coverage objective must remain in the auction, having a single coverage obligation with Rural Roaming obligation as would at least limit the potential inefficiency.

- (iv) Ofcom's proposal to include coverage obligation adds a highly non-standard element to the otherwise standard CCA design which means that several standard efficiency properties of the CCA disappear.
- (v) Masking of the aggregate demand for spectrum lots in ranges of 20MHz is unnecessary in a CCA and would provide some of the benefits of an open auction, but stops short of providing the full benefits associated with an information policy where aggregate demand is disclosed after each round.
- (vi) The proposed information policy on coverage lots is undesirably opaque, while the proposed activity rule (assigning zero eligibility points to the coverage lots) is highly nonstandard and falls short of its objective.

In the remainder of this response we provide some further comments on the draft auction regulations and the supporting bidding example.

Comments on Ofcom's proposed auction regulation and the supporting bidding example

3. The Bidding Example document while useful is missing the main feature associated with the bidding caps included in the proposed auction rules i.e. how are they calculated when the positive price constraint is binding. Our prior thinking was that the most likely explanation for zero eligibility points for the coverage lot was to partially mitigate the effect of incorrectly implementing the activity rules. If in fact Ofcom correctly implemented the activity rules, the need for assigning zero eligibility points to the coverage lot becomes unclear.
4. The Bidding Example document barely mentions the positive price constraint until its last page, and the positive price constraint does not appear to play any role in the calculation of the bidding caps that are elaborated in the document. As such, the document would be much more useful if it included an elaborated example in which a revealed-preference constraint is applied to two packages, at least one of which has a negative clock price in the relevant round. Such an example, in which the positive price constraint is binding at one or more of the relevant packages, will be useful to understand how Ofcom intends that the positive price constraint will enter the determination of supplementary or relative caps.
5. Regulation 25(3) states:
"Chain bids which accompany a relaxed primary bid in accordance with the regulations in Chapter 5 are known as "primary chain bids".
The reference to Chapter 5 appears to be incorrect. Presumably, the reference should be to Chapter 3.
6. Regulation 42(6) states:
"The cap referred to is the sum which would have been payable for the connected round actual selection at the round prices in the current round."
This appears to be incorrect because Regulation 42 pertains to the second chain bid ("CB2"). We think that the statement in Regulation 42(6) should have been: 'The cap referred to is the sum which would have been payable for the **second eligibility reducing** round actual selection at the round prices in the current round.'

7. Regulation 50(2)(c) specifies how the supplementary cap is calculated. Our understanding is that the amount J defined in this regulation takes into account the positive price constraint. This regulation would be clearer if that were stated explicitly. In addition, it uses the wording “*would be payable*” instead of the usual “*would have been bid for*” (for example, see 42(3)(c)). The “*would be payable*” wording is incorrect if interpreted as an actual payment that a bidder would be required to make if it wins this package.
8. Regulation 52(3) refers to “...*that primary bid round...*” which is undefined within this regulation. Furthermore, it refers to “...*the upper limit in regulation 48*”, while regulation 48 does not appear to define an “*upper limit*”.
9. Regulation 52(4) refers to the round prices in the current round and it is not clear what those prices are, since the current round is the supplementary round.
10. Regulation 54(3) states:
“*OFCOM will check sequentially (starting with the previously related bid in the connected eligibility reducing) each eligibility reducing round each round to establish if a chain bid is required in respect of the previous related bids made in those rounds.*”
Presumably, the intended statement is:
OFCOM will check sequentially (starting with the previously related bid in the connected eligibility reducing **round**) each eligibility reducing round to establish if a chain bid is required in respect of the previous related bids made in those rounds.
11. Regulation 56(5) refers to Regulation 51(2)(c); however, there is no Regulation 51(2)(c) in the Draft Regulations.
12. In Regulation 57(2), the reference to Regulation 53 appears to be incorrect since Regulation 53 does not have any steps associated with it.
13. In Regulation 60(1), the reference to Regulation 56 also appears to be incorrect.
14. The meaning of Regulation 60(1)(a) is unclear.
15. Regulations 92(1) refers to “*the total 700 MHz paired frequency base price*”. However, there is no such price. The base price that is determined after the supplementary round pertains to the bidder’s winning package, not only to the bidder’s winnings of 700 MHz spectrum. Similar comments apply to Regulations 97(1) and 102(1).
16. Regulation 2 of Schedule 4 states:
“*The base price for each winning principal stage bid shall be—*
(a) *no less than the highest between—*
 (i) *the total of the round prices in the first primary bid round for the lots included in the selection of lots specified in that winning principal stage bid; and*
 (ii) *one thousand pounds; and*
(b) *no greater than the amount of that winning principal stage bid.*”

This statement is somewhat confusing because clause (a)(i) does not explicitly mention

the coverage obligation and it appears to assume that the coverage obligation is a "lot". However, our reading of the regulation is that the coverage obligation is not a "lot". For example, Regulation 2(3) states: "*A reference in these Regulations to a "lot type" or "lot" shall be construed in accordance with Schedule 1.*" And Schedule 1(d) states: "*'lot' means a 700 MHz paired frequency lot, a 700 MHz individual frequency lot or a 3.6 GHz lot.*"

17. Elsewhere in the main text, the coverage obligation is mentioned separately from spectrum lots. For example, Regulation 38(1) states: "*....it shall indicate the selection of lots and coverage which it wishes to make.*" Furthermore, Schedule 9, which lists the lots in the auction, does not mention a coverage obligation lot. Thus, in a literal interpretation, Regulation 2(a)(ii) of Schedule 4 would never apply and the bidder would always be responsible for at least the reserve price of spectrum lots (without considering the discount for the coverage obligation). Note that this could contradict part (b) of Regulation 2 of Schedule 4. Clarity would be greatly improved if regulations such as Regulation 2 of Schedule 4 consistently adhered to the definition provided of a "lot".