



BT's response to Ofcom's consultation on:

**Public Sector Spectrum Release: Award of the
2.3GHz and 3.4GHz spectrum bands**

(Issued by Ofcom on 26 May 2015)

Submitted to Ofcom on 26 June 2015

Summary of BT views

1. BT has considered Ofcom's suggestion to withhold some spectrum from the auction and the explanation of why this proposal has been made. We acknowledge that the present activities around change to the UK mobile market structure introduce a degree of complication for all parties. However, unfortunately we do not believe that simply withholding part of the spectrum to enable an early auction is a suitable solution – indeed it would introduce further unwelcome complication and uncertainty. We are very concerned that splitting the auction in two and starting it in the anticipated timeframe that the UK and EU competition authorities are likely to issue decisions on their respective merger assessments will introduce problems and will not promote efficient use of spectrum nor promotion of competition as Ofcom may intend.
2. The key issue for BT is the timing of the award and how it is best organised given the likely conclusion of the BT/EE and H3G/O2 merger review processes. Splitting the award in two parts to address any competition issues is a secondary issue.
3. We believe that a short deferment of the auction start date, by a matter of up to a few months, will enable all parties to participate properly and will lead to an efficient auction. To complete the auction by March 2015 risks several parties being unable to participate or not being able to properly decide their requirements and valuations, leading to an inefficient outcome and auction proceeds far below market value (to the extent that this is any concern). We acknowledge that a long delay would be undesirable as it would be inefficient to leave cleared spectrum unused; but this is not what we propose and is not a scenario we expect would arise.
4. We note that the anticipated trade of Qualcomm's spectrum gives an alternative opportunity for any parties who may need additional spectrum in a very short timescale; this may mitigate any concerns around a short delay to Ofcom's auction start date.
5. Concerning the competition aspects of Ofcom's auction plans, we are unclear as to what particular competition concern(s) the split auction proposal is intended to solve and also how it is intended to use the retained spectrum to subsequently solve these concerns if they arise. It is therefore difficult to comment on how much and what spectrum should be held back if the award is split in two phases. However, assuming it may be to address a concern about ensuring certain parties could be assisted to secure some high frequency spectrum for capacity, if Ofcom decides to split the award we are of the view that 20MHz of the 3.4GHz band would be sufficient to be held back. This could support an additional LTE carrier and would be particularly effective for indoor small cells. The rest of the spectrum should in this case be auctioned in the first phase with no cap as Ofcom has proposed.
6. If, as BT prefers, Ofcom does not split the award and runs a single auction we continue to believe that no spectrum caps are needed to promote competition and our preference is to leave market forces to determine the most efficient allocation of the spectrum.

7. If a four player market continues to exist and Ofcom does decide to apply a cap, we remain of the view that it should be increased from 310MHz to at least 315MHz.
8. If the H3G/O2 merger is approved and a three player national network scenario results then this would strengthen the case for no caps and certainly the previously proposed cap of 37% of paired spectrum (310MHz) for a four player market would be inappropriate and should be raised to **45%** (376MHz). In this (the most likely) three player market scenario, Vodafone and H3G/O2 each would already hold 20% of the existing and new spectrum¹ and BT/EE would hold 32%, leaving 28% to be contended for in the auction. BT/EE would thus still be limited to securing less than half of the new spectrum. If Qualcomm's spectrum (5% of total) is traded ahead of the auction then only 23% would be contended for in the auction².
9. We believe Ofcom should prepare for the likely three player scenario and, if it believes that caps are needed in this scenario, a consultation should be conducted as soon as possible before any auction proceeds.

Our responses to the consultation questions

Question 1: What are your views on our proposal to introduce the option of holding back some of the spectrum from the auction?

10. BT is not in favour of Ofcom's proposal to introduce the option to withhold some of the 2.3GHz and/or 3.4GHz spectrum from the auction. This proposal would likely result in significant uncertainty around the initial auction, which could lead to an inefficient outcome, as well as a potentially lengthy delay in proceeding with the auction of the withheld spectrum. As such, if Ofcom wishes to consider this proposal further, it should provide a more detailed impact assessment of the proposal in order to explain how it would be implemented and the way in which it is intended to address Ofcom's underlying concerns (as well as setting out what those concerns are).
11. Ofcom has indicated that it "expects to hold an auction in the later part of the 2015/16 financial year" but has not provided any detailed auction process timetable. According to our own estimations, taking account of experience of previous UK auctions and statutory requirements, we believe the earliest that Ofcom could expect the auction process to complete would be early March 2016. This estimate of earliest auction timing, if accurate, is likely to be problematic for a number of the potential bidders. This timing would bring

¹ The 40MHz Qualcomm spectrum, the 40MHz of 2.3GHz spectrum and the 190MHz of 3.4GHz spectrum (including the 40MHz already held by UK Broadband).

² This would enable BT/EE to bid for a third in the auction if it had bought all Qualcomm's spectrum or just over half if it had not bought any of Qualcomm's spectrum.

the auction close to the possible timescale for completion of the CMA's merger review of BT's planned acquisition of EE and, depending on the status of H3G's proposed acquisition of O2, it could also be close to the possible timescale for the completion of the merger control process for that transaction as well. It would be helpful if Ofcom could confirm our understanding of the timetable or provide another estimation of the earliest auction start/end dates if it were to proceed with preparations as quickly as possible.

12. It would appear more logical for Ofcom to postpone the start of the auction by a short period (e.g. 3 months) to commence in April 2016 at earliest and for Ofcom to then proceed to award all available spectrum together. This should substantially reduce the uncertainty that Ofcom faces to satisfy itself about any necessary competition related measures that it may consider are required. It would also enable interested parties to participate in the auction with sufficient clarity about the market structure. This would allow potential bidders to participate fully in the auction, with reduced uncertainty about the market conditions that will prevail both at the time of the auction and following the award of the spectrum. BT expects that this will substantially increase the likelihood of a more efficient auction outcome. However, it is important to clarify that BT only advocates a short delay to ensure an efficient auction is held, to ensure that all interested parties are able to participate fully. We do not consider it appropriate to leave spectrum unassigned for any considerable period of time as this would not represent efficient use of spectrum.
13. The option of withholding some spectrum while proceeding to quickly award the rest of it raises a number of concerns. Furthermore, leaving some of the European harmonised spectrum for mobile broadband vacant for an unspecified period runs counter the obligation to ensure efficient use of spectrum. In this regard, we consider it preferable for Ofcom to postpone the auction of the PSSR spectrum for a defined and short period of time, rather than allow a portion to remain unsold for an unspecified period.
14. We assume that Ofcom's desire to complete the auction in the current financial year is not related to any revenue raising goal, as such consideration is not within Ofcom's duties. A slight postponement of the auction timing should therefore not be a concern from this perspective.

Question 2: Do you have any views on an appropriate amount of spectrum to hold back to allow sufficient flexibility to address potential competition concerns? Please explain your reasoning.

15. Ofcom explains only that it intends to use any retained frequencies "as a tool (amongst others) to assist in addressing any competition issues that may arise, or to promote competition as appropriate". However, it is very unclear to us as to what Ofcom has in mind in this regard. In any case, BT does not believe that withholding spectrum is an appropriate measure at this stage and considers the issue of auction timing to be the most important consideration.
16. Concerning the competition aspects of Ofcom's auction plans, we are unclear as to what particular competition scenario the split auction proposal is intended to solve and also how it is intended to use the retained spectrum to subsequently solve these concerns if

they arise. Assuming the competition concern were to relate to ensuring certain parties could be assisted to secure some high frequency spectrum for capacity, we believe that 20MHz of the 3.4GHz band would be sufficient to support an additional LTE carrier and would be particularly effective for indoor small cells. The rest of the spectrum should then be auctioned with no cap as Ofcom has indicated.

17. BT believes that if Ofcom intends to proceed further with the idea to split the award and to conduct the first auction before the outcome of the CMA merger review of BT/EE is known, then it is important to have a further consultation round. BT would be willing to consider any specific proposals that Ofcom may wish to put forward, but believes that it would be necessary for Ofcom to set out clear information as to (i) the precise problems that withholding spectrum is intended to address and (ii) how the retained spectrum might be used to address these potential problems. Furthermore to assess the proposal we would need to understand what (if any) spectrum cap would apply if it were to instead go ahead and auction all spectrum at once (the counterfactual). A full impact assessment also needs to be provided to enable the consequences to be clearly understood.
18. Finally, we further note that Qualcomm may trade their L-band spectrum before the Ofcom auction and this would affect the total amount of mobile spectrum available. This factor is not mentioned in the consultation and yet it is surely another relevant uncertainty that would need to be considered, and its status included in any consultation on a specific proposal about how much spectrum should be withheld from the auction.