

**TELEFÓNICA UK LIMITED RESPONSE TO:**

**“EE application for licence variations in support of enhanced mobile communications for the emergency services”**

**NON-CONFIDENTIAL**

## I. INTRODUCTION

1. Telefónica UK Limited (“Telefónica”) welcomes the opportunity to respond to Ofcom’s consultation on EE’s application for licence variations in support of enhanced mobile communications for the emergency services<sup>1</sup>.
2. Telefónica supports the use of 4G technology and the provision of enhanced mobile communications which can be used to provide benefits to citizens through the provision of a new emergency services communication network.

## II. GENERAL COMMENTS

3. Telefónica supports the general principle of liberalisation. However, where there is gross asymmetry in spectrum holdings and an inefficient allocation of spectrum, as is currently evident in the UK, then any decisions on liberalisation must be carefully assessed to ensure that they do not exacerbate the situation or distort competition. Ofcom must promote competition and seek to ensure the optimal use of spectrum.
4. Spectrum is an essential input for which all mobile operators compete. In situations where one or more mobile operators have limited capacity, spectrum holdings have an important impact on the extent to which mobile operators are able to compete with each other in the market and provide attractive downstream services.
5. The current distribution of spectrum holdings across UK mobile operators is highly asymmetric and following BT’s acquisition of EE, this asymmetry has further increased to the extent that the combined BT/EE group now has the largest spectrum holdings of any UK mobile network operator, with 45% of currently ‘usable’ mobile spectrum, giving it an unreplicable advantage [8].
6. Whilst *some* asymmetry in spectrum holdings can result in good outcomes and maintain efficiency, today’s gross asymmetry clearly points to the fact that the current assignment of spectrum between UK mobile operators is inefficient and the situation represents a threat to competition as well as posing a risk of consumer harm.
7. We urge Ofcom to ensure that it does not make decisions that would deepen asymmetries in spectrum holdings and further threaten competition.

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<sup>1</sup>[http://stakeholders.ofcom.org.uk/binaries/consultations/EE-licence-variation-1990-1920MHz/summary/EE\\_Variation\\_Consultation.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/EE-licence-variation-1990-1920MHz/summary/EE_Variation_Consultation.pdf)

8. We focus the remainder of this document on our responses to Ofcom's specific questions.

### III. RESPONSES TO QUESTIONS

*Question 1:*

*Do you agree with our proposal to vary EE's Spectrum Access 2100 MHz licence to allow LTE technology? If not, please explain why you think it would not be appropriate to vary the licence?*

9. Telefónica agrees that, in principle, the 1900MHz unpaired band should be liberalised and we would support mandating synchronisation and a 3:1 downlink ratio. However, we have serious concerns regarding Ofcom's proposed approach to liberalising 1900-1920MHz, as the outcome would not be equitable across operators and it raises serious competition issues.
10. We are concerned that Ofcom does not appear to have given proper consideration to the potential impact on competition that approving BT/EE's application for licence variations could have. At 5.11, Ofcom states that in the past where it has liberalised the licences of mobile operators, it has taken account of the market effect of such changes. Ofcom also states that the fact that different Mobile Network Operators have different spectrum holdings means that licence variations can have differential impacts on the competitive position of different MNOs. We strongly agree with Ofcom on this point.
11. At 5.12, Ofcom states that the requested licence variation would increase the amount of BT/EE's existing spectrum holdings which can be used for LTE equipment by 10MHz. Ofcom further states that a similar licence variation for Telefónica and Hutchison 3G (the holders of the other 10MHz of spectrum in the 1900MHz unpaired band) would increase the availability of LTE spectrum for each of them in their existing spectrum holdings by 5MHz.
12. However, Ofcom fails to adequately highlight that such an increase in spectrum would not be uniform across all holders of the spectrum due to technical restrictions of operation.
13. Ofcom's proposal does not satisfy the principle of proportionality and is not efficient, for the following reasons:
  - The CEPT Report 39 key conditions impose much stricter power conditions on the spectrum held by Telefónica UK and Hutchison 3G. BT/EE's first 5MHz block (1900-1905MHz) is permitted to operate at up to 43dBm per 5MHz and their next 5MHz block (1905-1910MHz) is permitted to operate at a maximum of 30dBm per 5MHz. This is in sharp contrast to the next 10MHz in the band (1910-1920MHz) which includes Telefónica's and Hutchison 3G's allocations, as that is significantly restricted with only 20dBm per 5MHz permitted, which represents a considerably restraint to the provision of viable commercial services.

- The consequences of liberalisation in the manner proposed is that BT/EE will receive a windfall benefit that is unavailable to others who have invested in this spectrum and expected equal usage rights. The difference in power restrictions will make BT/EE's spectrum more valuable for commercial deployment, but not Telefónica's or Hutchison's.
  - BT/EE already has the largest holdings of spectrum in the UK. Liberalising this spectrum in the way proposed by Ofcom, would place even more LTE spectrum in BT/EE's hands [3<]. Ofcom must not make decisions that will exacerbate the current asymmetry in spectrum holdings.
  - The most efficient way to utilise the spectrum would be as a single 20MHz block; this would address the longstanding fragmentation (created by the packaging in the original 3G auction design) that has impeded development of this band. That would also provide a much higher quality service for the emergency services, and make commercial development more realistic.
14. Ofcom should take this opportunity to intervene in order to promote defragmentation of the band and address concerns about gross asymmetry in spectrum holdings. For example by:
- Requiring BT/EE [3<]; or
  - Otherwise require mobile operators [3<].
15. Ofcom should also confirm if any spectrum that it does liberalise, will be incorporated into the determination of spectrum caps for the forthcoming PSSR auction.

**Question 2:**

*Do you agree with our proposal to authorise the backhaul of ESN Gateway devices at a maximum mean transmit power of 31 dBm e.i.r.p. in the uplink frequencies 837.0 to 842.0 MHz and 1736.7 to 1781.7 MHz in EE's 800 MHz and 1800 MHz licensed spectrum to facilitate the occasional and limited use of higher power uplink transmission? If not, please explain why you think it would not be appropriate to vary the licence?*

16. Telefónica supports the proposed licence variation with respect to authorise the backhaul of ESN Gateway devices at a maximum mean transmit power of 31 dBm e.i.r.p. in the uplink frequencies 837.0 to 842.0MHz and 1736.7 to 1781.7MHz in EE's 800 MHz and 1800MHz licensed spectrum to facilitate the occasional and limited use of higher power uplink transmission. However this support to authorise is provided on the basis that it applies to ESN Gateway use only and not for any other use.