Virgin Media O2 response to Ofcom consultation:

Proposals to make auction regulations for the 1.4 GHz award

September 2026

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INTRODUCTION

Virgin Media O2 ("VMO2") welcomes the opportunity to respond to Ofcom's consultation on: Proposals to make auction regulations for the 1.4 GHz award.[1]

GENERAL COMMENTS

We note Ofcom's decision to adopt a sealed-bid single round format for this award. Whilst this format brings simplicity, and is less resource intensive than other auction formats, we wish to reiterate the comments that we made in our response to the February 2025 consultation[2] regarding the general problem with a sealed bid format - it does not allow price discovery. VMO2 strongly prefers that Ofcom adopt multi-round auction formats for awards of core mobile spectrum. Bidding over multiple rounds facilitates price discovery and makes governance decisions over bid values and limits easier. This process promotes value-based bidding and efficient outcomes. Accordingly, our general preference is that Ofcom limit the use of sealed bids to low value processes, such as certain assignment rounds. We of course accept that a sealed bid format has been decided for this award, but we believe that it should not set a precedent for future awards of core mobile spectrum.

In relation to the Regulations, we have identified a limited number of issues of substance, and some drafting issues. These are set out in our main response below. We request that Ofcom consider and respond to each of these.

[1] Consultation Proposals to make auction regulations for the 1.4 GHz award
[2] Consultation Award of 1492-1517 MHz spectrum for mobile services

MAIN RESPONSE

1. ISSUES OF SUBSTANCE

These are issues where we have substantive concerns about aspects of the Regulations, or the way they may be implemented. We request actions to address our concerns.

a. Regulation 21 – Required Deposit is commercially restrictive and capital-inefficient, and raises confidentiality risks

Regulation 21 requires bidders to pay a further sum (i.e. in addition to the initial deposit) into OFCOM's bank account, with accompanying information which identifies the bidder, by a deadline specified by OFCOM (the "required deposit"), and that the required deposit shall be an amount such that the total amount that the bidder has on deposit, including the initial deposit, is not less than the bidder's bid.

The requirement for all bidders to deposit an amount not less than their bid, is not only commercially restrictive and capital-inefficient, it also raises a serious bid confidentiality risk.

It introduces a risk - that this information could be exposed, given that it would be conveyed outside the secure encrypted auction system. If this information is deduced, the exact bid values of participants would undermine the integrity of the sealed-bid auction.

We request that Ofcom consider these points carefully, and whether a lower percentage deposit could achieve Ofcom's objectives, and mitigate the confidentiality risk.

b. Regulation 16(4), Regulation 22(2), Regulation 33(6) – Disproportionate forfeit of Required deposit, i.e. the entire bid-sized deposit.

Under Regulation 21, bidders must deposit an amount such that the total amount the bidder has on deposit, including the initial deposit, is not less than the bidder's bid.

Regulations 16(4), Regulation 22(2), and Regulation 33(6), state that in the event of failure to specify, or submit, a valid bid within the time period for bidding, a bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

Forfeiture of a bidders entire bid-sized deposit for a failure to submit a bid, or for submitting an invalid bid, is an excessive and disproportionate penalty.

Whilst we note the provisions in relation to technical failures and re-running the award process (Regulations 33 and 38), and for refunds (Regulation 39), the express wording, as drafted in Regulation 16(4), Regulation 22(2), and Regulation 33(6), clearly states that in the event of a failure to specify, or submit, a valid bid within the time period for bidding, bidders shall not receive a refund of any sums which the bidder has paid as a deposit.

We urge Ofcom to re-consider this excessive and disproportionate penalty, and apply a more proportional mechanism, for example, exclusion from the award.

2. DRAFTING ISSUES IN THE CONSULTATION AND REGULATIONS REQUIRING CLARIFICATION OR CHANGES

The Consultation

On page 9 of the consultation, under the subheading "Completion of the award process," the paragraph is numbered **"**3.109**"**, however it is positioned between paragraphs 3.50 and 3.51.

The Regulations

Regulation 8(2)(h)

There appears to be a typo. The text reads: *"…services to OFCOM in relation to the awards process; and"*. This should be singular, "award process", to remain consistent with all other references in the Regulations.

Regulation 13(4) and Regulation 27(1)

Regulation 13(4) states: "*Following payment of the total price by the winning bidder, OFCOM shall grant a licence.*"

Regulation 27(1) states: *"After determining the winning bid and the identity of the winning bidder in accordance with regulation 23, OFCOM shall grant the winning bidder the licence."*

The two provisions are not aligned. Regulation 13(4) includes reference to payment, whereas Regulation 27(1) does not.

Regulation 24(2)(a)(i)

States: *"where only one valid bid has the highest value, a sum equal to the higher of:*

(i) the next highest value bid; or

(ii) the reserve price".

We query the absence of the word "valid" in (i). Its absence creates ambiguity i.e. could an invalid bid be used to determine the amount payable by the winning bidder?

We suggest the inclusion of the word "valid", so that it states: *"the next highest value, valid bid; or*".

A further issue that we have identified is that if there is only one bidder in the auction, or if only one valid bid is submitted, there is no "next highest value, valid bid".

We suggest that additional wording is included to clarify that if there is only one bidder in the auction, or if only one valid bid is submitted, the amount payable by the winning bidder will be the reserve price.

Signature area (below Regulation 40)

There appears to be a typo. A missing "s", at the end of: "*For and on behalf of the Office of Communication*".

Schedule 1, Section 8(a)

There appears to be a typo. The text reads: *"the persons authorised in section 2of this application…"*. The “2” and “of” are joined.

Schedule 2, para 2

States *“Under regulation 8 of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant’s bidder group.”*

That rule is found in regulation 9, not regulation 8.