
The Wireless Telegraphy (Licence Charges for the 3.4 GHz Frequency Band and the 3.6 GHz Frequency Band) Regulations 2022

Regulatory Impact Assessment

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- 1.1 This document sets out in summary form a Regulatory Impact Assessment for the Wireless Telegraphy (Licence Charges for the 3.4 GHz Frequency Band and the 3.6 GHz Frequency Band) Regulations 2022 (“Regulations”).
- 1.2 Ofcom’s full reasoning is set out in the main body of the Statement entitled *“Aligning licence terms in the 3.4-3.8 GHz band”* published on 10 October 2022 and available on Ofcom’s website at www.ofcom.org.uk (the “Statement”). Any conflict should be resolved in favour of that document.

Background

- 1.3 Currently, spectrum in the 3.4-3.8 GHz band (comprising the 3.4-3.6 GHz and 3.6-3.8 GHz bands) is licensed to three mobile network operators (MNOs) and UK Broadband (UKB) (which was acquired by H3G, an MNO, in 2017). The spectrum is used to deliver 5G services. The general consensus of industry is that optimal deployment of 5G is best achieved through the use of large contiguous blocks of spectrum. However, some degree of fragmentation of spectrum holdings remains in the 3.4-3.8 GHz band. Therefore, we consider that there is scope for commercial negotiations to result in rearrangements which increase efficiency further relative to the current position.
- 1.4 The terms of the UKB licences differ to the terms of the other MNO licences in the same band and we have identified that these differences could potentially act as a barrier to spectrum trading. We have therefore considered ways to reduce barriers to trading.
- 1.5 The applicable legal framework is described in full in the Statement at paragraphs 2.3 to 2.15.

Ofcom’s approach

- 1.6 Ofcom have decided to vary UKB’s licence terms so as to align them with the terms of the auctioned licences in the band. To align the fees, we will require UKB to pay lump-sum amounts for its 3.4 GHz and 3.6 GHz licences based on the auction prices in the recent 3.4 GHz auction and 3.6 GHz auction respectively.
- 1.7 The objective of our approach is to remove barriers to trading of spectrum in this band, consistent with our duty to secure the optimal use of spectrum. We consider that this can be achieved by aligning the terms of the licences in each of the UKB 3.4 GHz and 3.6 GHz licences, and in the case of the 3.6 GHz licence by also removing the licence term which permits spectrum leasing.
- 1.8 Our approach should address the issues (different licence terms and fees) which we have identified as causing barriers to trading, and no stakeholders suggested that they would not be effective in doing so. We do not consider that there are any significant costs to

MNOs or consumers from the proposed changes. For this reason we consider that our approach is appropriate and proportionate.

Impact on securing the optimal use of spectrum

- 1.9 In carrying out its functions, section 3(2) of the Communications Act 2003 provides that Ofcom is required, amongst other things, to secure the optimal use for wireless telegraphy of the electromagnetic spectrum, the availability throughout the UK of a wide range of electronic communication services and the availability throughout the UK of a wide range of television and radio services. In the context of this proposal, we place particular weight on our duty to secure optimal use for wireless telegraphy of the electromagnetic spectrum.
- 1.10 As noted above, the differences between the licence terms and fees of UKB's licences and other licences in the same band could act as a potential barrier to trading and could consequently result in a less efficient use of spectrum. We consider that the most effective way to remove barriers to trading is to align the licence terms and fees of the UKB licences with other licences in the same band. This could as a consequence lead to more efficient use of spectrum, consistent with our duty to secure the optimal use for wireless telegraphy of the electromagnetic spectrum.

Other impacts

- 1.11 We do not consider that there are any significant costs to MNOs or consumers from our proposed approach. However, there are potential benefits to society if the changes assist efficient spectrum trades.

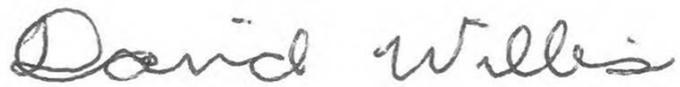
Summary of overall conclusion

- 1.12 For the reasons set out in the main body of the Statement and summarised in this Regulatory Impact Assessment, we have decided to align the terms and fees of UKB's licences in the 3.4 GHz and 3.6 GHz bands with the terms and fees of auctioned licences in the same bands.

Declaration

I have read this Regulatory Impact Assessment and Ofcom's Statement, and I am satisfied that the benefits justify the costs.

Signed:

A handwritten signature in black ink that reads "David Willis". The signature is written in a cursive style with a large initial 'D' and 'W'.

David Willis

Group Director of Spectrum Group

25 October 2022