

Three
Star House
20 Grenfell Road
Maidenhead
SL6 1EH
United Kingdom

T +44(0)1628 765000
F +44(0)1628 765001
Three.co.uk



Cliff Mason
Spectrum Policy Group
Authorisations Team
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

22 March 2013

Dear Cliff

Three's response to Ofcom consultation on variation of 900 MHz, 1800 MHz and 2100 MHz mobile licences

Hutchison 3G UK ("Three") welcomes the opportunity to respond to Ofcom's consultation on variation of 900 MHz, 1800 MHz and 2100 MHz mobile licences.

Three supports Ofcom's proposal to vary the 900 MHz, 1800 MHz and 2100 MHz licences to permit those frequencies to be used to deploy 4G technologies.

However, we are concerned with Ofcom's proposal to vary the 900 MHz licences to increase the maximum power limit for UMTS and 4G technology by 3 dB from 62 dBm per carrier to 65 dBm per carrier. More specifically, Three considers that Ofcom should simultaneously vary the 1800 MHz and 800 MHz licences to increase the maximum power to the same level (65 dBm per carrier).

In the consultation, Ofcom identifies a number of benefits from varying the 900 MHz licences to increase the maximum power limit, such as:

- improved coverage and capacity;
- improved deep indoor coverage; and
- greater ability to manage the handover between network layers operating at different frequencies, leading to the improved quality of service and/or a reduction in the cost of providing a given level of service.

Three considers that the same consumer benefits favour a variation of the 1800 MHz and 800 MHz licences, taking the current power limit from 62 dBm and 61 dBm respectively to 65dBm per 5 MHz carrier. For the avoidance of doubt, Three has no objection to the variation of all the UK 1800 MHz and 800 MHz licences.

Three also notes that if the 900 MHz licences are varied, while the 1800 MHz and the 800 MHz licences are not (or their variation is delayed), the 900 MHz licensees (Vodafone and Telefonica) would enjoy a substantial competitive advantage as their services would be more attractive to customers. Indeed, Ofcom states that this is likely to be the case. However, Ofcom then nevertheless concludes that such a benefit will have no substantial impact on competition, but does not reconcile the logic of these two conclusions. Three submits that these conclusions cannot be reconciled and that while consumers will benefit from a power increase, this is likely to distort competition and ultimately to harm consumers if it introduced on a piecemeal basis across operators.

Even a relatively short gap in timing of the 900 MHz and 1800 MHz licence variation may create a long-lasting distortion. Indeed, the 900 MHz operators would have a first mover advantage in terms of upgrading their networks. Based on ICNIRP guidance (which is effectively 'first come, first served'), the 1800 MHz operators would need to plan their networks assuming that the 900 MHz licensees have already deployed the maximum power. This will automatically constrain their ability to increase power of the 1800 MHz spectrum (when permitted) unless all licences are varied simultaneously¹.

Therefore, Three would oppose a variation of the 900 MHz licences if Ofcom does not consult on and apply a similar power increase to the 1800 MHz and 800 MHz licences simultaneously with the 900 MHz licence variation. Ofcom has not adequately reconciled its position on consumer benefit and competitive harm, and has not considered the practical impact on competition arising through the ICNIRP regime. Three therefore believes that Ofcom must reconsult and propose simultaneous variation of the power limits in the 800MHz, 900MHz and 1800 MHz licences.

Three's responses to Ofcom's specific questions

Question 1: do you agree with the proposal to vary Vodafone's 900 MHz, 1800 MHz and 2100 MHz licences and H3G's 2100 MHz licence so as to permit those frequencies to be used to deploy 4G technologies?

Yes, we agree.

Question 2: do you agree with the proposal to vary Telefónica's 900 MHz, 1800 MHz and 2100 MHz licences and EE's 2100 MHz licence so as to permit those frequencies to be used to deploy 4G technologies where we receive formal requests to do so?

Yes, we agree.

Question 3: do you agree with the proposal to vary the 900 MHz licences to increase the maximum power limit for UMTS by 3dB from 62 dBm e.i.r.p. per carrier to 65 dBm e.i.r.p. per carrier?

No. As, set out above, such a variation of the licences of Vodafone and O2 only would create a distortion of competition, in particular through the operation of the ICNIRP regime, which Ofcom has not adequately considered.

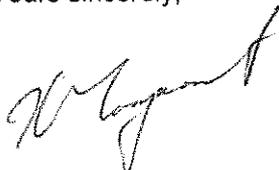
Question 4: do you agree with the changes proposed in section 5?

Yes, we agree.

¹ If the 1800 MHz and 800 MHz licences are varied to allow power increase to 65 dBm per carrier, Three guarantees that ICNIRP compliance will not be compromised by any increase in power on any of our sites.

We would be glad to discuss any aspect of this response in further detail, in particular with respect to question 3.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'X Mooyaart', written in a cursive style.

Xavier Mooyaart

Head of Legal - Competition and Regulatory