Second consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues

About Arqiva

Arqiva is a telecoms and media infrastructure and technology company operating at the heart of the broadcast and mobile communications industry and at the forefront of network solutions and services in an increasingly digital world. Arqiva provides much of the infrastructure behind television, radio and wireless communications in the UK and has a growing presence in Ireland, mainland Europe and the USA.

The company supports cellular, wireless broadband, video, voice and data solutions for public and private sector customers.

Arqiva operates around 9,000 shared radio sites throughout the UK and Ireland including masts, towers and rooftops from under 30 to over 300 metres tall as well as nine international satellite teleports.

Our major customers include the BBC, ITV, Channel 4, Five, BSkyB, Classic FM, the four UK mobile operators, Metropolitan Police, Airwave and the RNLI.

Arqiva is owned by a consortium of long-term investors and has its headquarters in Hampshire, with other major UK offices in Warwick, London, Buckinghamshire and Yorkshire.

Introduction

Arqiva welcomes the opportunity to respond to Ofcom's second consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues (the "Second Consultation").

This will be the largest spectrum auction for many years and a significant opportunity to make spectrum available for 4G services. Ofcom is well aware of the value of this spectrum and of the demand for the mobile data services that will use it. However the UK is falling behind the rest of the world in deploying next generation mobile services.

In Europe auctions of both 800 MHz and 2.6 GHz have taken place in France, Germany, Italy, Spain, Portugal and Sweden with many others countries having held auctions for one or the other of the bands. In all of these countries operators have certainty over the spectrum that they will be able to use and are well on the way to planning, rolling out and launching services. By contrast, in the UK the auction has been delayed for many years. While there are reasons for this, it does not change the end result that there is spectrum in the UK that is in high demand for valuable services that is lying unused. We urge Ofcom to ensure that this auction takes place as soon as possible.

We provide responses to the specific questions below.

Question 4.1: Do you agree with our assessment of the competition concerns relating to national wholesale competition that could arise if the auction took place with no measures to promote competition? Please state your reasons for your views.

Question 4.2: Do you agree that option 4 should be adopted to promote national wholesale competition? Please state the reasons for your views.

Question 4.3: Do you agree that the portfolios in group 2 (middle portfolios) of option 4 are likely to be most appropriate and proportionate implementation of this option?

The UK is behind the much of the rest of the world in ensuring that consumers and business will have access to the mobile data services that they need. It is critical that whatever rules are put in place for this auction, mobile operators can afford to roll out LTE networks quickly and so offer services to end users.

Therefore the question of whether there should be three or four wholesale mobile network competitors is not critical to whether there is a healthy market that works in the best interests of citizens and consumers. The critical question is whether the auction rules ensure that all of the operators that are present in the market are financially viable and able to afford both their spectrum fees and the cost of network roll out. The more financial constraints the operators have, the slower and the less extensive network roll out will be. Given that the cost of rolling out a next generation mobile network will not change that means that Ofcom should ensure that reasonable fees are paid for the spectrum licences so that operators are able to make next generation services available to consumers as quickly as possible.

Question 4.4: Do you believe that geographically split licences for a particular block of 2.6 GHz spectrum between standard power use and lower power use is likely to create significant additional benefits for consumers?

We have not seen any evidence that splitting blocks in the way suggested by Ofcom will create significant additional benefits for consumers.

Question 4.5: Please provide your views including the reasons for them on which options you believe should be taken in relation to promoting low power shared use of 2.6 GHz spectrum.

New entrants with innovative business models based on lower power use of the 2.6 GHz spectrum are likely to provide significant benefits to UK citizens and consumers. However Ofcom should be aware that these services are still emerging and that industry is still working through the technical and business implications. Certainty over to access to spectrum will help to alleviate some of those concerns. Therefore we believe that Ofcom should reserve spectrum at 2.6 GHz to help to stimulate these services.

In relation to this we note that coordination of the sharers will be a critical issue in making the lower power use successful. As part of the further work that Ofcom

undertakes on this we would welcome further guidance on how that coordination might work.

Question 5.1: Do you have any comments on the proposal to include a coverage obligation in at least one of the 800 MHz licences, and the proposed extent of such a coverage obligation?

The lack of mobile services in many rural locations is holding back economic growth and development in many communities. The need to have a usable mobile phone is increasingly an essential requirement for workers and business. More than a quarter of a century on from the launch of mobile services in the UK the continued lack of rural mobile availability, despite the wider benefits described below, shows that there is a market failure when it comes to rural mobile coverage.

In terms of meeting Ofcom's statutory obligations there is clearly value to individual rural consumers in being able to access mobile services. For example consumers benefit from being able to run a business and staying in touch with friends and family. There is also value to citizens and society from the wider benefits of that coverage (e.g. network effects and allowing competition between fixed and mobile communications services). However, while there are benefits to society from making mobile services available, mobile network operators have today rolled out services as far as they can justify using their existing business models. Indeed in many cases individual mobile sites are already run at a loss. It is therefore clear that without some form of intervention from Ofcom or government this market failure will not be rectified. An intervention such as the proposed coverage obligation on at least one of the 800 MHz licences would be a proportionate way of doing this and we support Ofcom's proposal.

In terms of what the coverage obligation should be, Westminster made it clear when it passed a motion on this issue on 19 May 2011 that it would like that coverage obligation to be 98%[1] and this is an important signal that Ofcom should pay attention to. While we have made the case in the past for a 99% coverage obligation[2], and continue to believe that this would lead to significant benefits to society, we welcome Ofcom's proposal to increase the coverage obligation from 95% to 98%.

[1] The motion and the debate are here;
http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110519/debtext/110519-0002.htm#11051950001382

[2] See Arqiva's evidence to the Culture, Media and Sport Committee here:
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcumeds/1258/110621.htm

Question 5.2: Do you have any comments on which of the two approaches proposed for the specification of such an obligation would be preferable: Approach A, which would require the licensee to provide a 4G mobile data service to an area within which at least 98% of the UK population lives; or Approach B, which would require the licensee to provide the specified mobile data service with coverage comparable to the combined mobile voice coverage of today's 2G networks and in addition to provide the same service with coverage comparable to that of the additional mobile voice coverage achieved through the MIP, in those areas where MIP infrastructure is capable of supporting a 4G mobile data service?

As discussed in our response to question 5.1 it is important to ensure that this auction is taken as an opportunity to bridge the current digital divide. More important than which of these two specifications is chosen is that there is an extensive coverage obligation to ensure that rural consumers for the coverage that they deserve.

However, it is also important that such an obligation is imposed in a proportionate way. This means that, where possible, Ofcom and government should find ways of helping the MNOs deliver these obligations.

In light of this we suggest that the best approach would be to ensure that an obligation lies on the provider of the Mobile Infrastructure Project (MIP) infrastructure to ensure that it has to carry the 800 MHz licensees (as opposed to the current limitation on the MIP for voice-only services). This guarantees to the 800 MHz licensees that they are able to meet their coverage obligation in a cost effective way. However, it also allows the normal competitive dynamics of the acquisition of masts as MNOs would be able to choose which of the MIP masts it would be best placed to use to meet their obligations. Finally it increases the incentive for the MIP operator to put infrastructure in place where it knows that it would appeal to the MNOs.

Question 5.3: Do you have any comments on our assessment that it is unlikely to be proportionate to impose such a coverage obligation on more than one licensee?

From the information that Ofcom published in the Second Consultation it is unclear what analysis Ofcom has carried out in order to reach this conclusion. In particular the cost-benefit analysis that Ofcom carried out to reach this conclusion was not clear. In terms of responding to the question it would be helpful if Ofcom published their detailed assessment.

Question 5.4: Do you have any views on the costs and benefits of a wholesale access obligation on the licensee with the coverage obligation in respect to those areas beyond existing 2G mobile voice coverage?

We agree with Ofcom's view that there are significant costs and problems with imposing a wholesale access obligation. The most significant issue is that operators without the wholesale access obligation would have a significantly reduced incentive to roll out their own networks further. This would reduce competition at the network level with the associated consumer detriment. In fact, depending on the terms of the

access it is possible that some operators may choose to reduce their current coverage.

There are also practical difficulties with making such an obligation work. These include the technical challenge of how you mange roaming calls between networks at the boundaries of the wholesale agreement. As the obligation would not apply to all of the coverage provided by that operator with the obligation, even defining the specific areas that would, or would not, be covered by the wholesale obligations would be practically challenging.

In addition we agree with Ofcom that such an obligation would increase the regulatory costs of dealing with any disputes and with defining the terms of any obligation. Compared to the straightforward nature of including a coverage obligation wholesale access takes longer to agree and is more susceptible to legal challenge.

This is not to minimise the importance of the competition benefits that accrue to consumers should they be able to have access to the services of multiple operators. However there are other ways of achieving those goals.

Question 5.5: Do you have any comments on the possibility that we may in certain limited circumstances consider granting concurrent licences as set out in paragraphs 5.88 to 5.93?

We note Ofcom's view that it may issue concurrent licences in these bands in specific circumstances, namely when there was a specific broadband policy in particular areas, the licensee was unable or unwilling to trade and there had been a request to use the spectrum for the government's broadband policy. We also note Ofcom's position that they already have the power to issue such licences in the spectrum that will be the subject of the auction and the implication that therefore this is not a change in policy.

If such licences were to be issued at all we believe that it should only be done in specific and constrained circumstances. We welcome Ofcom's view that a detailed cost-benefit analysis would have to be carried out ahead of any licence being issued and that any grant could not be incompatible with Ofcom's statutory duties.

We note that whatever Ofcom concludes on this it should not automatically be seen to be a precedent for other spectrum licences. In particular it should not be seen as an automatic precedent for the other spectrum licences that have been auctioned to date.

Ofcom should make it clear if these additional concurrent licences would be considered for the proposed low power licences. These licences will already face a complicated sharing regime and the possibility of further concurrent licences would significantly increase that problem.

Overall this is an area where we think that Ofcom needs to carry out more analysis and consultation ahead of determining whether this would be a proportionate way to proceed. In particular Ofcom will have to consider issues for other spectrum licences and the uncertainty that was created for current and prospective licensees.

Question 6.1: Do you agree with our revised proposals for the packaging of the 800 MHz band? Please state the reasons for your preference.

We note the proposals for the packaging of the 800 MHz spectrum. In general we hold the view that the auction should be as liquid as possible. Therefore we support lots of 2x5 MHz in the 800 MHz band. If Ofcom decides that the coverage obligation should apply to all of the 800 MHz licensees then the packaging should reflect that decision. However that does not necessarily mean that all of the lots should be 2x10 MHz lots as we do not believe that it would be proportionate to exclude those operators that want lots of, say, 2x15 MHz from being precluded from expressing that preference in the auction.

We also note the importance of ensuring that DTT viewers continue to be able to receive the services that they have legitimate expectations of being able to receive after the launch of LTE services. It is important that the final solution meets the needs of all stakeholders.

Question 6.2: Do you agree with our revised proposals for the packaging of the 2.6 GHz band? Please state the reasons for your views.

As we discuss in our response to Question 6.1, we hold the view that the auction should be as liquid as possible. Therefore we support lots of 2x5 MHz in the paired 2.6 GHz spectrum. This does not materially add to the complexity of the auction, but it allows for more precise packages to be defined without precluding anyone from bidding for spectrum in multiples of 2x10MHz if that is what they wish to do. Importantly it does not preclude packages of, say, 2x5 MHz or 2x15 MHz. As has been shown in some of the European auctions there is desire for packages of this size[3].

Similarly we support lots of 1x5 MHz in the unpaired spectrum. Again it is important that the auction rules do not preclude those that wish to only bid for all, or half, of the whole 50 MHz block from doing so. However it should also ensure that those who do not want all of the TDD spectrum are able to express that preference. As before the European auctions show a desire for spectrum blocks smaller than 50 MHz[4].

For the lower power blocks the spectrum should be packaged in a single paired block. If it is split into smaller blocks it would significantly increase the costs of sharing and make the spectrum less useable.

[3] For example in the Netherlands T-Mobile won 2x5 MHz of paired 2.6 GHz and in France both Bouygues and SFR won 2x15 MHz blocks.
[4] In Austria both Telekom Austria and Hutchison 3G won 25 MHz of the unpaired 2.6 GHz spectrum.

Question 7.1: Do you agree with our revised proposals for the number of eligibility points that should attach to each lot? Please state the reasons for your views.
Question 7.2: Do you have any comments on the proposed auction rules as explained in section 7, Annex 11 and Annex 12? Please state the reasons for your views.

At this point we simply note that it is unhelpful to have no detailed guidance on the reserve prices for the various spectrum blocks. Setting high reserve prices (as discussed in Section 4 of the Second Consultation) will mean that industry will need as much time as possible to understand the implications.

Question 8.1: Do you have any comments on the Additional Spectrum Methodology as one of several sources of information for estimating the full market value of spectrum?
Question 8.2: Do you have any comments on our updated thinking on estimating full market value for the purpose of revising ALF as set out in this section and Annex 13?

Ofcom's proposals on Annual Licence Fees (ALF) significantly increase the uncertainty for those that hold 900 MHz and 1800 MHz spectrum. Providing updated thinking is helpful, but not as useful as detailed proposals or a confirmed methodology. This serves to increase the regulatory risk and uncertainty and makes it impossible for market participants to plan for the future with the associated delay to investment and the consequent consumer detriment.