

Intellect response to the Ofcom Consultation:

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

About Intellect

Intellect is the trade association for the UK technology industry. In 2007, the industries Intellect represents accounted for 8% of UK GDP, £92bn of Gross Added Value and employed 1.2m people.

Intellect provides a collective voice for its members and drives connections with government and business to create a commercial environment in which they can thrive. Intellect represents over 750 companies ranging from SMEs to multinationals. As the hub for this community, Intellect is able to draw upon a wealth of experience and expertise to ensure that its members are best placed to tackle challenges now and in the future.

Our members' products and services enable hundreds of millions of phone calls and emails every day, allow the 60 million people in the UK to watch television and listen to the radio, power London's world leading financial services industry, save thousands of lives through accurate blood matching and screening technology, have made possible the Oyster system, which Londoners use to make 28 million journeys every week, and are pushing Formula One drivers closer to their World Championship goal.

In the past 12 months 14,500 people have visited Intellect's offices to participate in over 550 meetings and 3,900 delegates have attended the external conferences and events we organise.

Response

Intellect summary position

Intellect supports Ofcom's plans to award spectrum in the 800 and 2600MHz bands (and if applicable 1800MHz) as soon as possible. But this must be done in a manner that promotes competition and innovation to the benefit consumers. The proposed coverage obligations on one 800MHz licensee and the related Mobile Infrastructure Programme are an area of concern to our members and further consideration may be needed to ensure the obligation is clearly specified, verifiable and proportionate.

Over the years that the UK award of these frequency bands has been considered, Intellect has continually supported their timely release for the benefit of UK consumers in a manner that supports innovation, new technologies and the wider availability of mobile broadband services. Many players are disappointed that the UK is now amongst the last of the major European countries to award this spectrum and continue to be concerned that a complex award procedure could delay the process still further. Therefore Intellect urges Ofcom to do everything possible to maintain the schedule for this award.

Specific Responses

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.

Intellect agrees that national competition needs to be carefully addressed, particularly in face of limited spectrum availability and the absence of regulated wholesale access requirements. Ofcom's approach seems reasonable, although Intellect has not analysed all the options in detail. However, some Intellect member companies are concerned that the desire to ensure competition following on recent market consolidation risks adding further delay and complexity to the auction process. They believe that Ofcom should not try and influence the outcome through additional regulatory measures or burdensome criteria unless absolutely necessary preferring to see anti competitive practices addressed via post-auction routes.

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

Intellect recognises Ofcom's priority to create a competitive environment and the benefits that this has brought to consumers. However it has questions as to the effectiveness, in a scenario of limited spectrum availability, of "reservation of spectrum for a fourth national wholesaler" and whether this is an adequate solution. Ofcom should review the situation

again after the auction to ensure that the measures that it has put in place are working in the way Ofcom intends.

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?

Intellect has no position on this question.

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?

Intellect members have mixed views on this.

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.

Intellect members have mixed views on this.

Intellect has not analysed the technical issues in detail but agrees with Ofcom's comment that the proposals to modify the power limits for the low power licences as suggested by an Intellect member merit further consideration.

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?

Intellect is concerned that neither of the proposed obligations are very clear and that they will be hard to verify. The cost of the obligation is not clearly quantified and this should be addressed in order to ensure that it is justified against the benefits. There is concern that it should not be specified and measured in terms of indoor coverage as that cannot be verified. In any case Government's commitment via BDUK to secure 100% availability of broadband to premises at a minimum downlink speed of 2Mbit/s, the availability of WiFi, and the increasing scope to deploy femtocells, offer alternative routes on indoor coverage. In addition, satellite technology already provides near 100% coverage of premises and when used in conjunction with WiFi can provide indoor mobile broadband on a commercial basis. Therefore an indoor mobile coverage obligation, in effect subsidised by the Government because of reduced auction valuation, favours one means of broadband delivery over another and may distort of competition and investment in other types of networks. Any coverage target is therefore better specified in terms of outdoor coverage that can be predicted more easily and measured, even though the networks will of course serve indoors in most of the coverage area.

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?

Neither approach can be supported without caveats, notably the need to address the concerns mentioned in our answer to Q. 5.1. However, if any coverage obligation is needed, a solution based on Approach A, but measured against an outdoor target that can be verified may be the simplest solution.

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?

Intellect has no objection to this proposal. However, Ofcom has not detailed the costs of the coverage obligation and it is therefore difficult to assess what is proportionate.

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?

Related issues are being considered in the Government's current consultation on the Mobile Infrastructure Project (MIP). It is essential that the MIP procurement issues and any uncertainties on the identification of 'not spots' are resolved before Ofcom finalises the auction rules. While Intellect does not consider wholesale access obligations are appropriate in relation to this auction in the general case, where the eventual 800 MHz licensee with the coverage obligation uses MIP-funded sites there is more of a case. However, industry-led sharing initiatives (of which there are increasing occurrences) could be explored.

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?

Intellect agrees that where spectrum remains unused it should be made available to any party that wants to use it. This seems consistent with Ofcom's duties to promote the efficient use of spectrum. The delay of 5 years may be problematic and the refusal to trade would be hard to verify as this could be circumvented by just demanding an unrealistic price. Ofcom could look at how AIP could be used to promote efficient use of spectrum and encourage any unused spectrum to be freed up if there is a genuine business case for another party to use it and this can be done in a particular geographic area without affecting the existing and planned use by the present licensee.

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.

Intellect is content with Ofcom's revised proposals. Intellect's preference is that the cost, of mitigating interference to DTT services in adjacent bands, is shared equally by the new 800 MHz licensees, as Ofcom has recently announced. This being the case, the number of options for the 800MHz packaging might be reduced as there will be less difference between the different frequency slots.

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.

Intellect agrees with the new lot sizes proposed that are based on 5MHz blocks for the paired and unpaired blocks. This is based on the expectation that ultimately the 5MHz blocks are going to be combined into larger contiguous blocks by bidders. The 2.6GHz band is in the best position to provide all the benefits that larger blocks (10MHz or preferably greater) can provide such as significantly improved spectrum efficiency and faster download speeds. It could be some considerable time before another band with this much capacity will be made available and therefore a high priority should be placed on a flexible auction design that enables the wider bandwidths to be secured. Intellect presumes that the specific location of the paired low power spectrum is not yet decided as that was a matter dealt with in the separate consultation on technical licence conditions.

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.

Intellect has no comments on this issue.

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.

Intellect has no comments on this issue.

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?

Intellect has some doubts about the effectiveness of the new methodology, for example whether it would work if the bidders are all existing players with existing 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?

Intellect has no comments on this issue.

Question A7.1: We would welcome comments on any aspect of the data, assumptions and modelling methodology we have used in our technical analysis, in particular our approach to serving users in a range of both easier and harder to serve locations.

Intellect has no comments on this issue.

Question A7.2: We would welcome any additional information, in particular from current operators, on the choice of parameters making up our ‘Min var and ‘Max var’ cases.

Intellect has no comments on this issue.

Question A8.1: Do you agree with our assessment of when Everything Everywhere, Vodafone and Telefónica are likely to be able to refarm their existing 2G spectrum? In particular, do you agree with our views on the importance of user devices and the likely availability and take-up of devices that use different technologies and bands? Please state the reasons for your views, including if appropriate your views on handset roadmaps and the practical constraints which apply to those roadmaps.

Intellect agrees that the analysis of Ofcom is plausible and has no comments to make.

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